newsletter on intellectual freedom

IFC ALA

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ISSN 0028-9485 May 2006 ☐ Vol. LV ☐ No. 3 ☐ www.ala.org/nif

It's Perfectly Normal tops list of most challenged books

One of the most frequently challenged authors of the past decade has two books on the American Library Association's (ALA) list of the most frequently challenged books of 2005. Robie H. Harris's *It's Perfectly Normal: Changing Bodies, Growing Up, Sex,* and *Sexual Health* heads the list, while *It's So Amazing! A Book about Eggs, Sperm, Birth, Babies, and Families* rounds out the top ten. Both books drew complaints for sexual content.

The ALA Office for Intellectual Freedom received a total of 405 challenges last year. A challenge is defined as a formal, written complaint, filed with a library or school requesting that materials be removed because of content or appropriateness. The majority of challenges are reported by public libraries, schools and school libraries.

According to Judith F. Krug, director of the ALA Office for Intellectual Freedom, the number of challenges reflects only incidents reported, and for each reported, four or five likely remain unreported.

The "Ten Most Challenged Books of 2005" reflect a range of themes. The books are:

- *It's Perfectly Normal* for homosexuality, nudity, sex education, religious viewpoint, abortion and being unsuited to age group;
- *Forever*, by Judy Blume, for sexual content and offensive language;
- *The Catcher in the Rye*, by J. D. Salinger, for sexual content, offensive language and being unsuited to age group;
- *The Chocolate War*, by Robert Cormier, for sexual content and offensive language;
- *Whale Talk*, by Chris Crutcher, for racism and offensive language;
- *Detour for Emmy*, by Marilyn Reynolds, for sexual content;
- *What My Mother Doesn't Know*, by Sonya Sones, for sexual content and being unsuited to age group;

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

in this issue

targets of the censor

books

periodicals

film and video

broadcasting

(ISSN 0028-9485)

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

President Bush signs PATRIOT Act renewal

With just two more votes than needed to meet a required two-thirds majority, the House reauthorized the USA PATRIOT Act March 7, approving by a vote of 280–138 amendments passed a week earlier by the Senate by a vote of 89–10 to a bill revising the original act. President Bush signed the legislation March 9, a day before sixteen provisions of the original bill were set to expire.

"Today marks, sadly, a missed opportunity to protect both the national security needs of this country and the rights and freedoms of its citizens," commented Sen. Russ Feingold (D-WI), who led a December filibuster to block renewal, in a March 9 statement. "I vow to redouble my efforts to bring back the safeguards that the entire Senate agreed to last summer and enact the further safeguards contained in the bipartisan SAFE Act."

American Library Association President Michael Gorman criticized the act's renewal in a March 7 statement. "The American Library Association has been in the forefront of the battle to reform sections of the PATRIOT Act in order to restore privacy protections to the millions of people who rely on America's libraries," Gorman said. "Although most of the moderate, reasonable, and Constitutional reforms we sought were not included in the reauthorization bill, our work on restoring privacy and civil liberties to library users is not over. We will continue to argue for a more stringent standard for Section 215 orders—one that requires the FBI to limit its search of library records to individuals who are connected to a terrorist or suspected of a crime. We will also seek the addition of a provision allowing recipients of Section 215 or 505 orders to pose a meaningful challenge to the "gag" order that prevents them from disclosing the fact that they have received such an order. We are encouraged by Members of Congress' pledges to introduce legislation that will remedy those sections of the PATRIOT Act that infringe on the civil liberties of library patrons, and we look forward to working with those Senators and Representatives to repair this deeply flawed legislation."

The ten senators who voted against the reauthorization were: Akaka (D-HI); Bingaman (D-NM); Byrd (D-WV); Feingold (D-WI); Harkin (D-IA); Jeffords (I-VT); Leahy (D-VT); Levin (D-MI); Murray (D-WA); Wyden (D-OR).

Some legislators voted to pass the renewal despite their reservations—including Sen. Arlen Specter (R-PA), chair of the Senate Judiciary Committee, who introduced legislation (S. 2369) March 6 that he said "puts down a benchmark to provide extra protections that better comport with my sensitivity of civil rights." The bill includes amendments to Section 215 that would implement a three-part test to obtain a 215 order and would eliminate the mandatory one-year waiting period for judicial review of its nondisclosure requirement.

Previously, on February 16, the Senate voted for cloture (96 Yeas to 3 Neas with 1 not voting) on the PATRIOT Act renewal. The vote for cloture ended the debate on the Senate floor over disputed provisions of the Act in favor of the compromise legislation that added limited civil liberties protections to the law. Sens. Feingold (D-WI), Byrd (D-WV), and Jeffords (I-VT) voted against cloture, and Sen Vitter (R-LA) did not vote.

Sen. Feingold said of the compromise, "The modifications to the conference report agreed to by the White House do contain one other purported change to one of the NSL statutes. This modification states that the FBI cannot issue an NSL for transactional and subscriber information about telephone and Internet usage to a library unless the library is offering 'electronic communication services' as defined in the statute. But that just restates the existing requirements of the NSL statute, which currently applies only to entities—libraries or otherwise—that provide 'electronic communication services.' So that provision has no real legal effect whatsoever. Perhaps that explains why the American Library Association issued a statement calling this provision a 'fig leaf' and expressing disappointment that so many Senators have agreed to this deal."

After the cloture vote, Sen. Richard Durbin (D-IL) entered a colloquy with Sen. John Sununu (R-NH) designed to clarify the impact of the NSL requirement on libraries. During the discussion Sen. Sununu said of the requirement, "What we did in this legislation is add clarifying language that states that libraries operating in their traditional functions: lending books, providing access to digital books or periodicals in digital format, and providing basic access to the Internet would not be subject to a National Security Letter. There is no National Security Letter statute existing in current law that permits the FBI explicitly to obtain library records. But, as was indicated by the Senator from Illinois, librarians have been concerned that existing

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(challenged . . . from page 117)

- Captain Underpants series, by Dav Pilkey, for anti-family content, being unsuited to age group and violence;
- *Crazy Lady!* by Jane Leslie Conly, for offensive language; and
- *It's So Amazing! A Book about Eggs, Sperm, Birth, Babies, and Families*, by Robie H. Harris, for sex education and sexual content.

Off the list this year, but on for several years past, are the Alice series of books by Phyllis Reynolds Naylor, *Of Mice and Men*, by John Steinbeck, and *The Adventures of Huckleberry Finn*, by Mark Twain. ☐

National Security Letter authority is vague enough so that it could be used to allow the Government to treat libraries as they do communication service providers such as a telephone company or a traditional Internet service provider from whom consumers would go out and get their access to the Internet and send and receive e-mail. Section 5 clarifies, as I indicated, that a library providing basic Internet access would not be subject to a National Security Letter, simply by virtue of making that access available to the public."

Sen. Durbin, pressing for further clarification said, "So a library that has Internet access, where a person can find an Internet e-mail service, is not a communications service provider; therefore, it would not fall under the purview of the NSL provision in 18 U.S.C. 2709. It is a critically important distinction . . . Libraries are fundamental to America . . ." Sen. Durbin also thanked librarians for their, "heroic efforts to amend the PATRIOT Act in a responsible way . . ."

The PATRIOT reauthorization legislation signed into law by President Bush on March 9, 2006, contains some changes from the original USA PATRIOT Act. These include:

Sunsets: A sunset of December 31, 2009 was established for Section 215 of the USA PATRIOT Act.

Section 215—Standards: The standards under which the FBI can obtain library records in the course of an investigation are slightly more stringent under the new law. Under the original PATRIOT Act, the FBI had only to assert that records were "sought" for an authorized investigation "to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities."

Under the new legislation, the FBI can obtain library records of anyone when they present facts showing "reasonable grounds" to believe that the records are "relevant" to an "authorized investigation" as described above.

Individualized Suspicion: The reauthorized statute brings in SAFE Act language regarding individualized suspicion, but it does not require the FBI to show such individualized suspicion and so it leaves the door open to wide search order requests.

The law now says that the records sought will be "presumptively relevant" (i.e., nothing further needed) if the FBI shows that they pertain to: a foreign power or agent of a foreign power; the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation.

The reauthorized law also follows the SAFE Act language in requiring records or other things to be described with "sufficient particularity" to allow them to be identified—educing the danger that the FBI will engage in fishing expeditions in library or bookstore records.

It also states that the order "may only require the production of any tangible thing if such thing can be obtained with a subpoena duces tecum (a writ or process including a clause requiring the witness to bring with him and produce to the court, books, papers, etc., in his hands, tending to elucidate the matter in issue) issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or other tangible things," again putting some limits on the scope of the order.

Approval: The law requires the Director of FBI, or (if delegated) the Deputy Director of the FBI or the FBI Executive Assistant Director for National Security, to personally approve any request for records from a library or bookstore or for firearms, tax return, educational or medical records.

Disclosure: The reauthorized PATRIOT Act reforms the original legislation by allowing disclosure of receipt

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Connecticut librarian still John Doe

As this issue was going to press Federal prosecutors announced April 12 that they would drop their appeal in a case involving the Connecticut library system that received a demand for patron records under the USA Patriot Act, which is the subject of the following article. The American Civil Liberties Union—which filed the original suit, Doe v. Gonzales, seeking release for its unnamed client from the gag provision of the Patriot Act's Section 505—said it will identify the library involved and give the librarian a chance to speak after court proceedings are completed.

The hotel ballroom was packed as a sensibly dressed, well-read crowd from around the country gathered in San Antonio on January 21 to celebrate one of their own. Yet, as many expected, the guest of honor was a no-show, despite the five-hundred-dollar intellectual freedom prize that awaited. Attendees at the American Library Association Midwinter Meeting blamed Washington for the empty chair.

Lawmakers may be giving themselves credit for having improved safeguards on civil liberties when they reauthorized the nation's antiterrorism law, otherwise known as the USA PATRIOT Act, but many librarians and civil liberties lawyers say the revisions did nothing to enable the guest of honor to take the stage and discuss the PATRIOT Act without risk of prosecution.

Known as John Doe in court filings, the guest of honor was the Connecticut librarian who was visited by the Federal Bureau of Investigation last year and presented with what is known as a National Security Letter demanding patron records. The subpoena, issued as part of a counterterrorism investigation, not only barred him from disclosing the target of the inquiry, but also forbade him and others at his place of work to ever discuss the letter or even to acknowledge its receipt.

Though some thirty thousand National Security Letters are issued each year without arousing public protest, the

librarian was reluctant to comply because of professional ethics aimed at keeping library records confidential. On the advice of the American Civil Liberties Union, his employer went to court to challenge the constitutionality of the subpoena, the provisions of the PATRIOT Act that broadened the use of National Security Letters and the order permanently forbidding discussion of the FBI's demand.

As the Bush administration pushed for the act to be reauthorized, a handful of Democratic and Republican lawmakers argued that it went too far in encroaching on civil liberties. In the end, they persuaded the White House to accept a compromise that placed library records beyond the reach of a National Security Letter if they were gathered by libraries operating in what many people understand to be their traditional roles. The final bill also gave recipients of National Security Letters the explicit right to consult lawyers.

While those concessions allowed lawmakers to say that new safeguards on civil liberties have been put in place, another powerful provision in the Patriot Act, known as Section 215, remains on the books. It gives law enforcement another confidential way to demand information but has seldom been used because it requires judicial approval. National Security Letters, in contrast, require merely the signature of an FBI official.

Between Section 215 and the new language governing National Security Letters, opponents of the new version of the PATRIOT Act are skeptical that the revisions will provide much protection against unwanted invasions of privacy or infringements on free speech.

"The revised law provides almost no protection whatsoever for libraries," said Ann Beeson, the civil liberties union lawyer representing the organization that brought the suit in Connecticut. "It's virtually meaningless."

The section of the new law that addresses "privacy protection for library patrons'' states that library records are beyond the reach of National Security Letters so long as the library is not operating as an "electronic communication service." Elsewhere, that term is defined as "any service which provides to users thereof the ability to send or receive wire or electronic communications."

But much of what a modern library does goes through its computers. Patrons can research topics on the Web. They can even reserve books from home. "A National Security Letter can be used to get any library record that is maintained via an electronic communication service," Beeson said. "That definitely includes Internet access and e-mail records and can also include patron borrowing records."

The new law does establish the recipient's right to challenge the nondisclosure orders that typically accompany National Security Letters and Section 215 requests. But the recipient would have to wait a year before raising the question anew if the government continued to assert the need for secrecy.

"If you're a business that has resources to challenge it every year, you can," Beeson said. But she said a judge would be hard pressed to rule against a government request to keep the information secret for reasons of national security. In the Connecticut John Doe's case, she said, "nothing in the new law permits John Doe to disclose his identity."

Though government lawyers demanded that John Doe's identity be shielded in court filings, the government failed to completely conceal the name in those filings, which revealed the plaintiff to be the Library Connection of Windsor, Connecticut, a nonprofit organization that provides back-office services to some two dozen libraries in the Hartford area.

Eager to testify publicly about the PATRIOT Act, the group's officers won the right last summer to identify their organization as the recipient of a National Security Letter after Judge Janet C. Hall of U.S. District Court in Bridgeport found that the government had unjustly imposed a prior restraint on free speech. But her decision was stayed while the government appealed, and the United States Court of Appeals for the Second Circuit, in Manhattan, has yet to rule.

"I am rather appalled that our country's laws silence John Doe and require him to remain anonymous for standing by his professional ethics, for standing up for the principle that it is nobody's business what you read, or listen to, or look at in the library but yours," Judith F. Krug, the executive director of the Freedom to Read Foundation, told the crowd in San Antonio, as she accepted the University of Illinois's annual Robert B. Downs Intellectual Freedom Award in John Doe's absence.

Alice S. Knapp, a Stamford librarian who is this year's president of the Connecticut Library Association, said she was there "taking pictures left and right." But the Library Connection's executive director, George Christian, and the vice president of its board, Peter Chase, did not attend. Chase's absence was especially odd since he was to be the Connecticut Library Association's advocate on intellectual freedom this year.

Without commenting on John Doe's likely identity, Knapp confirmed that she had assumed many of Chase's speaking duties this year. For moral support, she has been nominating John Doe for other awards.

"We nominate them for everything we can," Knapp said. "Never mind the pressure they're under. Just the sheer act of bravery to decide not to comply and to decide to make an issue of it was incredibly huge, and within the library community, there is a lot of respect for them." Reported in: *New York Times*, March 21. □

opponents of "academic bill of rights" form coalition

Ten student, faculty, and civil-liberties groups have banded together to fight the Academic Bill of Rights in a more organized fashion. Members of the coalition, which is calling itself Free Exchange on Campus, include

the American Federation of Teachers, the American Association of University Professors, the American Civil Liberties Union, the Center for American Progress, Planned Parenthood, and others. The groups have decided to take aim at David Horowitz, the conservative activist, and at his self-styled bill of rights, a proposal that he says aims to make college campuses more intellectually diverse and to protect them from being "indoctrinated" by "political propagandists in the classroom."

The group states that it is "committed to advocating for the rights of students and faculty to hear and express a full range of ideas unencumbered by political or ideological interference." FEOC referred to Horowitz's idea of an "Academic Bill of Rights" as an "ideological agenda" and said Horowitz is a "radical conservative."

The Academic Bill of Rights (ABOR) is a legislative proposal that Horowitz said "recognizes that political partisanship by professors in the classroom is an abuse of students' academic freedom . . . and that a learning environment hostile to conservatives is unacceptable."

Horowitz, through his group Students for Academic Freedom, has been largely unsuccessful in getting universities and state legislatures to adopt the ABOR since he introduced it in 2001. Colorado and Ohio schools have adopted similar policies, but the ABOR in its purest form has not been adopted or enacted as legislation.

"This is really an unfair attack on higher education and would impose government controls on decisions that historically have been made on campus and in the classroom," said Jamie Horwitz, a spokesman for the American Federation of Teachers, of Horowitz's bill. "There's a need to have an organized defense for higher education and to set the record straight."

"Universities should be filled with diverse opinion . . . and the textbooks that people use should also have diversity of thought," Horwitz said. "However, to mandate that, gets tricky. If you really were going to legislate an end to bias of all sorts," he said, "are you going to require peace studies to be taught in military academies in order to show both sides of the equation? It seems like you could take this to the point of absurdity."

Horwitz said the Academic Bill of Rights is an issue that should upset conservatives "who don't like government control of thought and ideas." He added that he "would not identify [Free Exchange on Campus] as a liberal group," even though most of its ten member groups are liberal.

"We definitely want to do more outreach to conservatives," Horwitz said. He added that there are conservative members of the affiliated groups who have complained about the Academic Bill of Rights.

He said he also disagreed with the characterization that liberals dominate college campuses. "This has been introduced in legislatures all over the country, [but] they're hard-pressed to find students that have any stories to tell that are meaningful," Horwitz said.

The new alliance has created a Web site, which features a blog as well as a list of frequently-asked-questions about the Academic Bill of Rights. Horowitz's bill has been introduced in twenty-four state legislatures but has been passed in none.

Horwitz said that the coalition had been in the works since January. It held its first meeting that month, he said, at the same time that a committee of Pennsylvania lawmakers held hearings in Philadelphia as part of the committee's ongoing investigation into whether the state's public colleges subject their students to left-wing indoctrination.

The coalition, Horwitz said, plans to arrange for faculty members to testify against the Academic Bill of Rightswhen the committee holds another round of hearings at Millersville University of Pennsylvania.

On March 15, Horowitz testified before the appropriations committee of the Kansas State Legislature on behalf of his proposal. He said that the alliance's campaign would have no effect whatsoever on his crusade. The alliance's members are "all the same people who've been attacking me since the beginning," he said. The members of the coalition, he said, "defend professors no matter what they do."

Two recent studies suggest support of those who question Horowitz's charge that liberal faculty stifle free expression on campus and indoctrinate students. A new study—soon to be published in *PS: Political Science & Politics*—finds that students are the ones with bias, attributing characteristics to their professors based on the students' perceptions of their faculty members' politics and how much they differ from their own.

The authors of the study say that it backs the claims of proponents of the Academic Bill of Rights that students think about—and are in some cases concerned about—the politics of their professors. But the authors also said that the study directly refutes the idea that students are being somehow indoctrinated by views that they don't like. "Students aren't simply sponges," said April Kelly-Woessner, part of the husband-and-wife team of political scientists who wrote the study. She added that the study suggests that not only do students not change their views because of professors, but may even "push back" and judge professors based on politics, not merit.

The study ends with a strong call for professors to be willing to present ideas that may upset some students. "College is not Club Med. As instructors, we ought not to refine our pedagogy exclusively for the purpose of making students comfortable or improving course evaluations," wrote Kelly-Woessner, who teaches at Elizabethtown College, and Matthew Woessner, who teaches at Pennsylvania State University at Harrisburg.

The couple surveyed 1,385 students in political science courses at a variety of public and private institutions. The students were asked a series of questions about their views of the politics of their professors, their own politics, and various other qualities that they attributed to the profes-

sors. They found that students experience "indirect effects" from having professors with significantly different politics from their own. In what the scholars call a "partisan difference variable," students give less "source credibility" to professors with different views. They are also more likely to characterize professors with different politics as "biased or uncaring."

Liberal or conservative isn't the key factor, Kelly-Woessner said; the real disconnect comes in the difference between the views of student and professor. "It's pretty much the same either way. The thing that matters is the difference between them."

The research included the following findings:

Most students feel confident that they know their professors' political inclinations and that they are not hidden. Asked if they knew their professors' leanings, 15 percent said that they were "positive," 32 percent said that they were "very confident," 40 percent were "somewhat confident," and only 11 percent were "not at all confident."

Professors who students think are conservative are generally rated more favorably by students on whether they present material objectively. Professors who students think are liberal are generally rated more favorably by students on whether students are encouraged to present their own viewpoints, whether grading is fair, whether the learning environment is comfortable, and whether they care about the success of students.

Another study showing that conservative and liberal students do equally well in courses with politically charged content cast further doubt on conservative activists' claims that liberal faculty members routinely discriminate against their conservative students.

The study found no difference in the grades conservative and liberal students receive in sociology, cultural anthropology, and women's-studies courses. It also found that conservative students tend to earn higher grades than their liberal classmates in business and economics courses.

Titled "What's in a Grade? Academic Success and Political Orientation," the study was conducted by Markus Kemmelmeier, an assistant professor of sociology at the University of Nevada at Reno, who was the lead author; Cherry Danielson, a research fellow at Wabash College; and Jay Basten, a lecturer in kinesiology at the University of Michigan.

The researchers published their paper in the *Personality and Social Psychology Bulletin* last October, but it has attracted little attention. Kemmelmeier's study follows two others, published within the past seven years, that found that conservative students tended to earn slightly lower grades in majors such as sociology and anthropology. The professor, who describes his politics as slightly left of center, said he did not undertake the study to contribute to the ongoing discussion of political bias on college campuses, but to address ongoing questions in social psychology about the choices people make regarding their interaction with organizations and what personal characteristics contribute to their success within those organizations.

The earlier studies are "consistent with what Horowitz might suggest—that conservative students are actually not doing all that well in fields that are thought more left-leaning," says Kemmelmeier. But there's a problem with that argument, he pointed out: The students' performance "has nothing to do with bias" on the part of their professors.

In a four-year longitudinal study that began in the late 1990s, he surveyed 3,890 students at a major public university in the Midwest. Asked to describe their political orientation, 2.7 percent identified themselves as far left, 34.6 percent as liberal, 42 percent as middle of the road, 20 percent as conservative, and 1.2 percent as far right.

Kemmelmeier then compared the transcripts of a variety of students taking the same courses, specifically courses taught in the economics department and the business school (which Kemmelmeier considered "hierarchy-enhancing," or conservative) and those taught in American culture, African American studies, cultural anthropology, education, nursing, sociology, and women's studies (which he considered "hierarchy-attenuating," or liberal).

He found that in the latter courses, students' political orientations had no effect on their grades—which, the study says, suggests that disciplines such as sociology and anthropology "might be more accepting of a broad range

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holocaust denier imprisoned

The British historian David Irving pleaded guilty February 20 to denying the Holocaust and was sentenced to three years in prison. He conceded that he was wrong when he said there were no Nazi gas chambers at the Auschwitz death camp. Irving, handcuffed and wearing a navy blue suit, arrived in court carrying a copy of one of his books, *Hitler's War*, which challenges the extent of the Holocaust.

"I made a mistake when I said there were no gas chambers at Auschwitz," he told the court before his sentencing, at which he faced up to ten years in prison. "In no way did I deny the killings of millions of people by the Nazis," testified Irving, who has written nearly thirty books. He also expressed sorrow "for all the innocent people who died during the Second World War."

Irving's lawyer, Elmar Kresbach, immediately announced that he would appeal the sentence. "I consider the verdict a little too stringent," he said. "I would say it's a bit of a message trial."

Irving appeared shocked as the sentence was read. Moments later, an elderly man who identified himself as a family friend called out, "Stay strong, David! Stay strong!" The man was escorted from the courtroom.

Irving, sixty-seven, has been in custody since November 11, when he was arrested in the southern province of Styria on charges stemming from two speeches he gave in Austria in 1989 in which he was accused of denying the Nazis' annihilation of six million Jews. He has contended that most of those who died at camps like Auschwitz were not executed, but instead succumbed to diseases like typhus. He was denied bail by a Vienna court, which said there was a risk he would flee the country. He was convicted under a 1992 law, which applies to "whoever denies, grossly plays down, approves or tries to excuse the National Socialist genocide or other National Socialist crimes against humanity in a print publication, in broadcast or other media."

Irving's trial came during a period of intense debate in Europe over freedom of expression, after European newspapers printed caricatures of the Prophet Muhammad that set off deadly protests worldwide. Reported in: *New York Times*, February 21. ☐

U.S. again bars Cuban scholars from international conference

The United States has denied visas to all fifteen Cuban scholars who had planned to attend an international conference of the Latin American Studies Association in Puerto Rico. According to the association, known as LASA, the Cubans were informed of the decision on February 23, just three weeks before the conference was scheduled to start, on March 15. The association holds an international conference every eighteen months.

The decision is consistent with Bush administration decisions that have increasingly tightened restrictions against academic and other contacts between Americans and Cubans. In March 2003, only 60 of 105 Cuban academics were granted U.S. visas to attend LASA's conference in Dallas. In 2004, all 65 Cubans who had planned to attend the group's conference in Las Vegas were informed ten days before the gathering that they would be barred from entering the United States.

In a letter sent to Secretary of State Condoleezza Rice, LASA stated: "The U.S. government's decision seriously interferes with LASA's ability to carry out its core mission and represents an egregious affront to academic freedom." Nearly six thousand academics were expected at the gathering in Puerto Rico.

Milagros Pereyra-Rojas, LASA's executive director, said the group had sought to meet with State Department officials months earlier to discuss whether any Cuban academics would be allowed to attend the conference. "We requested a meeting," she said, "but they never got back to us."

Laura L. Tischler, a State Department spokeswoman, said the decision to bar the Cubans was justified since "Cuban academic institutions are state-run and the Cuban government tightly controls the activities of its academics and researchers."

The blanket visa denials were made under a section of the Immigration and Nationality Act that allows the government to keep Cuban government employees out of the country. The Bush administration has increasingly applied the law to faculty members at Cuban institutions, since they are civil servants. Cuban scholars regularly attended LASA conferences before 2003.

Asked why the State Department had waited so long to inform the Cuban scholars that they would be barred, even though they had applied for visas months earlier, Tischler said: "We got back to them in an expedient manner."

LASA said the government also denied visas to six other scholars who had planned to attend the conference from six other countries. Those scholars were from Bolivia, Chile, the Dominican Republic, Ecuador, Mexico, and Uruguay. Reported in: *Chronicle of Higher Education* online, March 7. ☐

EPA set to close library network and electronic catalog

Under President Bush's proposed budget, the U.S. Environmental Protection Agency is slated to shut down its network of libraries that serve its own scientists as well as the public, according to internal agency documents released by Public Employees for Environmental Responsibility (PEER). In addition to the libraries, the agency will pull the plug on its electronic catalog which tracks tens of thousands of unique documents and research studies that are available nowhere else.

Under Bush's plan, $2 million of a total agency library budget of $2.5 million will be lost, including the entire $500,000 budget for the EPA Headquarters library and its electronic catalog that makes it possible to search for documents through the entire EPA library network. These reductions are just a small portion of the $300 million in cuts the administration has proposed for EPA operations.

At the same time, President Bush is proposing to significantly increase EPA research funding for topics such as nanotechnology, air pollution and drinking water system security as part of his "American Competitive Initiative."

"How are EPA scientists supposed to engage in cutting edge research when they cannot find what the agency has already done?" asked PEER Executive Director Jeff Ruch, noting that EPA Administrator Stephen Johnson is moving to implement the proposed cuts as soon as possible. "The President's plan will not make us more competitive if we have to spend half our time reinventing the wheel."

EPA's own scientists and enforcement staff are the principal library users. EPA's scientists use the libraries to research questions such as the safety of chemicals and the environmental effects of new technologies. EPA enforcement staff use the libraries to obtain technical information to support pollution prosecutions and to track the business histories of regulated industries.

EPA currently operates a network of twenty-seven libraries operating out of its Washington, D.C. Headquarters and ten regional offices across the country. The size of the cuts will force the Headquarters library and most of the regional libraries to shut their doors and cease operations. Reported in: www.peer.org, February 10. ☐

clergy supports evolution

A national group—organized by a dean in Wisconsin—is seeking to spread the word: Many members of the clergy see no conflict between their faith and the teaching of evolution.

The Clergy Letter Project—which has ten thousand signatories from Christian clergy, including many theologians or others who work at religious colleges—announced at the annual meeting of the American Association for the Advancement of Science that it would be joining with groups of scientists to back the Alliance for Science, which will oppose attempts to teach creationism and intelligent design, and will push for more federal spending on science and technology.

The letter and the new group are part of an expanding effort by scientists to go on the offensive against groups that challenge evolution using arguments that have been widely discredited by researchers. The statement that the clergy signed is a strongly worded defense of evolution—and in particular of the idea that there is any conflict between belief in God and study of evolution.

"We the undersigned, Christian clergy from many different traditions, believe that the timeless truths of the Bible and the discoveries of modern science may comfortably coexist," the letter says. "We believe that the theory of evolution is a foundational scientific truth, one that has stood up to rigorous scrutiny and upon which much of human knowledge and achievement rests. To reject this truth or to treat it as 'one theory among others' is to deliberately embrace scientific ignorance and transmit such ignorance to our children. We believe that among God's good gifts are human minds capable of critical thought and that the failure to fully employ this gift is a rejection of the will of our Creator."

The letter was organized by Michael Zimmerman, an evolutionary biologist who is dean of the College of Letters and Science at the University of Wisconsin at Oshkosh. The idea behind the letter, he said, is to confront head-on the way anti-evolution groups and people are trying to gain support. Zimmerman said he was watching a news show one night and realized that the argument being put forth by some fundamentalist leaders was: "You have to choose. You can choose evolution and go to hell or you can choose faith."

Of that idea, Zimmerman said, "it's a ridiculous position," but it is also influential. "Americans are a religious people," he said. "That was a false dichotomy, but if you give Americans that choice, they will pick religion."

At the time, Zimmerman was in the middle of a fight—ultimately successful—against a Wisconsin school district's attempts to change its curriculum to favor intelligent design over evolution. Zimmerman had been involved in similar fights in Ohio in the 1980s, when he taught at Oberlin College, and said that was where he first came to believe in the importance of clergy in defending science—not just clergy, but Christian clergy. "That's where the attacks are coming from," he said, explaining that he politely turned down requests from Jewish and Muslim clergy to sign his letter because he feared that their inclusion might undercut the argument that scientists need to make.

Toward that end, he also doesn't discuss his own religious views or those of scientists, except to say that there are researchers of all faiths and no faith.

"The focus is that ten thousand Christian clergy are confident that modern science and particularly evolutionary biology has nothing to scare them and they are fully comfortable with the principles of modern science," he said. Opponents of evolution, he added "are incredibly dangerous to higher education and American society." Reported in: insidehighered.com, February 21. ☐

Secrecy News wins Madison Award

The Project on Government Secrecy, publisher of *Secrecy News,* has been recognized by the American Library Association (ALA) as the 2006 winner of ALA's James Madison Award, which is "presented annually on the anniversary of his birth (March 16) to honor those who have championed, protected, and promoted public access to government information and the public's right to know."

"This award is, we believe, a fitting recognition of your effective voice for transparency and against unnecessary—and often pointless—government secrecy," wrote ALA President Michael Gorman. "Your publication, *Secrecy News*, contains invaluable information and often serves as the first notice to the public of proposals to limit access to information."

"The Project on Government Secrecy Web site is a critical resource for all those concerned with access and secrecy issues. It contains a remarkable range of infor-

mation on government secrecy policy and often is the only place that much of the information can be located," Gorman wrote. □

translator fired from FBI for blowing whistle on intelligence failures to receive 2006 PEN/Newman's Own First Amendment Award

PEN American Center has named Sibel Edmonds, a translator who was fired from her job at the FBI after complaining of intelligence failures and poor performance in her unit, as the recipient of this year's prestigious PEN/Newman's Own First Amendment Award. Edmonds received the $25,000 prize at PEN's annual Gala on April 18, 2006, at the American Museum of Natural History in New York City.

Shortly after 9/11, Edmonds was hired as an FBI Language Specialist for Turkish, Farsi and Azerbaijani. In her work, Edmonds' discovered poorly translated documents relevant to the 9/11 attacks and reported these to her supervisors. She also expressed concerns about a co-worker's relationship with a foreign intelligence officer, and reported being told to work slowly to give the appearance that her department was overworked, despite the large backlog of documents needing translation. Edmonds followed all appropriate procedures for registering her concerns. However, instead of acting on her information, the FBI fired Edmonds in March 2002, claiming she had "committed security violations and had disrupted the translation unit."

In June 2002, two U.S. Senators wrote the FBI demanding information on Edmond's case, noting that many of her allegations had been confirmed by the FBI in unclassified briefings to Congress. The following month, Edmonds filed a lawsuit challenging the FBI's retaliatory actions, but in July of 2004 *Edmonds* v. *Department of Justice* was dismissed by the U.S. District Court for the District of Columbia after Attorney General John Ashcroft invoked "State Secrets Privilege" to prevent any materials that supported her case from becoming public. The Supreme Court has refused to hear her appeal.

In early 2004, an unclassified summary of the Justice Department's Inspector General's report on Edmonds confirmed that many of her claims "were supported, that the FBI did not take them seriously enough, and that her allegations were, in fact, the most significant factor in the FBI's decision to terminate her services." In February of that year, Edmonds testified before the 9/11 Commission about problems at the FBI. Three months later, the Justice Department retroactively classified Edmonds' briefings to Senators and the 9/11 Commission, as well the information the Senators had cited in their letter to the FBI, and forced the Members of Congress who had information about Edmonds' case posted on their Web sites to remove the documents.

In addition to courageously pursuing her case, Edmonds founded the National Security Whistleblowers Coalition in August 2004. The NSWBC organizes current or former government employees who have been punished for exposing official wrongdoing and advocates for legislation to protect the rights of National Security whistleblowers.

In announcing the award in New York, PEN Freedom to Write Program Director Larry Siems praised Edmonds' commitment to preserving the free flow of information in the United States in a time of growing international isolation and increasing government secrecy. "It is hard to think of a position in public service more valuable to the nation in these turbulent times than a language specialist who is engaged in making important international information accessible to government officials and policymakers," said Siems. "Sibel Edmonds understood the importance of her position and carried out her work with energy and honor only to face retaliation and dismissal. Unintimidated, she has fought to inform Congress and the American people on the urgent need for better translation services in areas vital to our national interests. PEN is proud to recognize her for her work as a language specialist, her heroic efforts to improve our country's translation services, and her current efforts to organize and protect government whistleblowers."

Siems noted that this year's PEN/Newman's Own Award comes amid a spate of news reports of government retaliation against employees who expose wrongdoing or dissent from official policy. "Sibel Edmonds' Kafkaesque ordeal underscores how easily government powers, especially powers wielded in the name of national security, can be abused to keep the public in the dark about official failings. PEN is deeply troubled by Sibel Edmonds' story and by the growing number of reports of efforts by the administration to silence government employees."

This is the fourteenth anniversary of the PEN/Newman's Own First Amendment Award, which was established by actor Paul Newman and author A. E. Hotchner to honor a U.S. resident who has fought courageously, despite adversity, to safeguard the First Amendment right to freedom of expression as it applies to the written word. The judges for the 2006 award were author and Princeton University professor K. Anthony Appiah; Robert Corn-Revere, Partner; Davis Wright Tremaine LLP; Nan Graham, Editor-in-Chief of Scribner, a Simon and Schuster Company; Judith F. Krug, Director, Office for Intellectual Freedom, American Library Association; and acclaimed novelist Roxana Robinson. □

censorship dateline

libraries

Lake Los Angeles, California

Twenty-three books including the latest "Harry Potter" were removed by Wilsona School District trustees from a list recommended by a parent-teacher committee for the Vista San Gabriel Elementary School library. Trustees said one rejected book contained an unsavory hero who made a bad role model for children; another was about a warlock, which they said was inappropriate; and others were books with which they were unfamiliar and didn't know whether they promoted good character or conflicted with textbooks.

"There were several of the books on there that board members felt were not appropriate for the children," board President Sharon Toyne said. "I think basically because for the last eight or nine years, we've been pushing character education in our school district. There are so many issues changing in the society we are living in. With this ever-changing society, we have to just stick back to the traditional thing of what kids are supposed to be learning."

The board voted unanimously February 16 to remove the twenty-three books from a list of sixty-eight that had been forwarded for board approval to place on the shelves of the Vista San Gabriel school library.

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

Toyne wouldn't comment on what was objectionable about the latest of the "Harry Potter" series, which has proved wildly popular in print and on screen but from its inception has drawn criticism that it promotes what predominantly Christian critics term "occultism," using supernatural means not from the divinity to acquire personal power.

Trustee Marlene Olivarez, a teacher who retired from the district two years ago, said the latest "Harry Potter" installment was rejected because it is fantasy. "We want books to be things that children would be able to relate to in real life," she said.

The board rejection upset some parents and surprised school officials. "If they read these books, they would see these are the books the kids are interested in," said parent Sheri Jurovich, who works for Wilsona as a dispatcher and bus driver and has a child at Challenger Middle School. "If they take away the ones the kids are interested in, (the kids) are not going to read the books they are offering. It's important for my children to read something they are interested in that makes them want to read."

Danielle Sweeney, a parent of two children at Vista San Gabriel, served on the book committee and read four of the rejected books. She said the board's rejection was inappropriate. "I'm not happy because I approved some of the books—*Beauty is a Beast*, the Rapunzel book, all the 'princess' books," Sweeney said. "I don't understand why they don't think they are appropriate. I read them with my fifth-grade daughter and didn't find anything inappropriate to read with her."

Of the Potter, Artemis Fowl and "princess" books, Sweeney said, "The fifth-graders, that's all they're into. They can't afford thirty-dollar books. They will lose interest in reading and lose interest in academics."

Sweeney said she understands that some parents don't like the "magic and witchery" of Potter, but felt that they could work with the librarian to ensure that their children are not allowed to check those books out.

Besides rejecting the books, the board directed Superintendent Ned McNabb to develop library book-selection guidelines.

"What's hard is to get everyone to agree on which ones those are," McNabb said. "The committee in good faith recommended sixty-some books. The board feels that a number of those books are not appropriate. They are not seeing things the same. The guidelines will make things clearer."

Trustee Patricia Greene said the guidelines would be something against which school committee members can evaluate books for stocking in school libraries. "Right now it's the opinion of the person reading the books. Opinions vary between me and the person who read the book," Greene said. "I don't want it based on opinions anymore. I want it based on something concrete that we can look at,

whether it promotes character education. The books need to be educational and uphold the district's standards."

Trustees feel accountable for what books they put in children's hands, Olivarez said. "We want these books to support the curriculum, build character, give kids enjoyment, and encourage reading. Right now we're doing it by the seat of our pants," she said.

Vista San Gabriel librarian Jackie Livingstone said she believes that youngsters should be given a variety of reading choices. This was the first time the board rejected books in the five years she has been librarian, Livingstone said.

"I personally do not necessarily approve of removing books, which are selections for children to read, because it is good to present children with a very diverse selection because each child is not going to want to read the same thing," Livingstone said. Livingstone said other Harry Potter books are in the library, but Greene said the board had not approved them

Principal Terri Grey said she was surprised at the number of books removed from the list. The books had been read to make sure they were appropriate for the grade levels at Vista San Gabriel, she said. "I'm rather shocked, shocked in the sense that if there were certain titles that they read, I don't know that all the titles were read," she said.

Olivarez, Greene and Toyne said children can read the books on their own. "If a parent wants their child to read it, they have that right. It is our right as school board members to reject books. We have a right to develop guidelines and choose what we want our students to learn," Toyne said. "Kids identify with a personality in a book, and I think characters do not need to be negative characters."

Some of the books appeared to be innocuous, such as the Clifford books, and one titled *Welcome to the USA California*, which school officials said was part of a series about the fifty states. Trustees later indicated that these books, including *Disney's Christmas Storybook,* were not objectionable, but were nevertheless lumped in with the rejected books.

Olivares explained that there was a three-day weekend before the February 16 meeting, and there was not enough time to check out all the books. "When it came time to say which were acceptable and which ones weren't, they picked a block of books that had Clifford and Disney, that they really had no problem with, but they were in the same group that they did have concerns about," trustee Maurice Kunkel said.

"I really think the next time this comes up, the Clifford and Disney books will be approved, and guidelines will be laid down on some books that some had concerns about," Kunkel said.

One of the books struck from the list was called, *The Eye of the Warlock*. The school committee member who read it reported: "A very fractured version of Hansel and Gretel. The hero, Rudi, saves the day. I greatly enjoyed it."

"That was not something we want to present to children. We felt this would not fit in with guidelines. It's about a warlock. It's not a case to build character," Olivarez said. Reported in: *Los Angeles Daily News*, February 16, March 21.

St. Louis, Missouri

The Council of Conservative Citizens, a nationwide group that has been portrayed as racist, is suing four libraries in the St. Louis area for allegedly blocking patrons from viewing its Web site. Gordon Baum, a lawyer who is the group's chief executive, said the U.S. Constitution protects the public's right to see his Web site.

"We don't believe we're any more to the right than the NAACP is to the left," he said, adding that his group does not advocate violence.

The site, cofcc.org, does not feature the racial epithets commonly used by racist groups. It does, however, provide a slate of news stories about crime by blacks or immigrants. It also offers for sale a T-shirt with the words, "White Pride," "Deutschland" and "Save Our Culture."

The Southern Poverty Law Center says that racism "underlies" the group and that it has long had ties to politicians the law center considers racist.

Baum filed a suit in U.S. District Court March 13 claiming the Maplewood City Library, University City Public Library, Valley Park Community Library and Festus Public Library had violated his constitutional right to free speech by blocking access to the Web site. At least two of the libraries say they now permit patrons to view the site.

Baum said the suit was filed after the group checked on local libraries and wrote letters complaining to those libraries that blocked access to the group's site.

Maplewood City Library Director Terrence Donnelly sent the group a letter replying that the Internet filter service the library uses had blocked the site after tagging it as being in "the categories of Hate and Discrimination." Donnelly said that changed after the library's board discussed the issue and he consulted with a lawyer. Donnelly said the Web site is now accessible at the library.

Federal law requires libraries that use federal money to have an Internet filter that can block out pornography, but it does not require a filter to block hate speech, Donnelly said.

The University City Library stopped blocking the group's Web site after it received a letter from Baum in November, said the library's director, Linda Ballard. "We have turned off the hate speech filters for the adult machines, but they're still in place for the children's machines," she said.

Both libraries use Morenet, a division of the University of Missouri in Columbia that offers Internet service to eighty-five libraries across the state. Morenet provides the libraries with the Bess filter system offered by Secure Computing, a software company in San Jose, California. Secure Computing's site on the Internet enables users to check on how its filters would categorize a given Web site. A check on cofcc.org showed the site was considered to be "hate speech."

It was unclear whether the two other libraries block the site. Festus Public Library director Lollie Gray declined to comment. Valley Park Community Library director Bonnie Morris could not be reached for comment.

Baum said the group is not like the Ku Klux Klan and includes Jewish members. "We're not a white Supremacist group that insists you have to be a white Christian," he said. Reported in: *St. Louis Post-Dispatch*, March 17.

Savannah, Missouri

A children's book about two male penguins who raise a baby penguin was moved to the nonfiction section of two public library branches after parents complained it had homosexual undertones. The illustrated book, *And Tango Makes Three*, is based on a true story of two male penguins, named Roy and Silo, who adopted an abandoned egg at New York City's Central Park Zoo in the late 1990s.

The book, by Peter Parnell and Justin Richardson, was moved from the children's section at two Rolling Hills' Consolidated Library's branches in Savannah and St. Joseph in northwest Missouri. Two parents had expressed concerns about the book last month.

Barbara Read, the Rolling Hills' director, said the book hasn't been restricted at all but simply moved from children's fiction to children's nonfiction because it tells a true story. Read said she decided to retain the book but move it to children's nonfiction after having read it and consulted with zoologists about penguin behavior. The complainants thanked her for researching the issues, and acknowledged that while they disagreed with Read's conclusions, they respected her opinion and that the reconsideration process made them "feel like valued patrons." The bottom line, Read said, is that *Tango* will remain accessible so "the book can say to kids in nonnuclear families that they—the kids—are okay regardless of how we feel about their parents' life choices."

The book's authors did not buy Read's explanation. In a letter to the *Newsletter*, they stressed that Read originally told a local newspaper that the book was reshelved in juvenile non-fiction, because, "Given that patrons rarely browse the nonfiction section, there was less of a chance that the book would 'blindside' someone."

In other words, they wrote, "Read rationalized the move to nonfiction by stating that the book was a true story, but her explanation made the motive behind her decision clear. The book is less likely to be found there by visitors to the library." Reported in: *Chicago Sun-Times*, March 5; *American Libraries Online*, March 10.

Helena, Montana

The Montana State Library announced February 21 that it was canceling its upcoming screening of a film critical of the USA PATRIOT Act because of complaints that the program would only feature the opinions of the film's producer, the American Civil Liberties Union. A day after the cancellation, the ACLU of Montana reserved the meeting room of the Lewis and Clark Library in Helena to show *Beyond the PATRIOT Act* in the same February 24 time slot as the originally scheduled statelibrary program.

Applauding the Lewis and Clark Library for "recognizing the need for an open dialogue," ACLU of Montana Executive Director Scott Crichton said February 22 that the PATRIOT Act "has fueled a climate of fear that unfortunately appears to have clouded the vision of those at the state library." However, Montana State Librarian Darlene Staffeldt had explained in a prepared statement the previous day, "We originally decided to premiere this series because the PATRIOT Act has particular resonance for Montana's libraries and library users" but scrapped the program when staff members realized it did not provide "a balanced reflection that considers all aspects of an issue."

The concern expressed by "citizens and a few state employees" that the ACLU viewpoint would be represented with no counterpoint "really opened our eyes," Jim Hill of the Montana State Library said. Emphasizing that there was no directive from any higher-ups, Hill predicted staff will "self-scrutinize more in the future [to ensure] we're giving all the topics we present the broadest possible airing."

The library only received two phone calls of "concern," Lewis and Clark Library Director Judy Hart said. She added that the decision was not "in response to the state library on our part" but rather "follows the practice of our meeting-room policy," which proscribes staff from rejecting a group's reservation "based on their affiliations or anything like that." Reported in: *American Libraries Online*, February 24.

Lockwood, Montana

The Lockwood School Board considered a change in district policy March 14 after some parents asked that the school remove a book in the middle school library. If the change is adopted, the district will respond to parent complaints by convening a Reconsideration Review Committee to look at the contested book and make recommendations to the superintendent, who will make a final decision.

During a recent school board meeting, a group of concerned parents asked the board to remove *The Guy Book: An Owner's Manual*, by Mavis Jukes. The book, geared toward boys approaching puberty, includes information on sexual development and other sex-related topics in an informal 1950s shop manual format. The parents who spoke during the meeting objected to what they believe to be misleading, sexually explicit material in the book. The book includes information on masturbating in groups, sex toys, condom purchasing and genital piercing.

The complaint was filed by Chris and Becky Malenowsky. Becky Malenowsky said she believed the

book contains important information that needs to be provided to adolescent boys but that not all of the information was appropriate for middle school students. "Our sex education here at Lockwood School is excellent, but we think this goes too far," she said.

The board ultimately decided to retain the book in the library's collection but will update the current policy. Now, when a parent files a complaint, the book is reviewed by the superintendent, who decides whether to keep the book in the collection. If a parent is not satisfied with the decision, he or she can make an appeal to the school board.

The Guy Book has been in the Lockwood Middle School Library since 2003 and was chosen by the librarian, Johanna Freivalds. She selects books based on criteria that measure whether a book is appropriate for school libraries. The criteria demand a book be relevant to school curriculum, accurate, appropriately written for the age of the reader, free of bias and stereotypes, representative of differing viewpoints on controversial subjects and appropriate for students with special needs. It also must be of good value for the cost.

The Guy Book fit the district's selection criteria, Freivalds said. It was included in a list of "Best Books" in the Middle and Junior High School Library Catalog and was recommended by the American Library Association. Freivalds said she used reviews from both publications in her decision to add it to Lockwood's collection.

The Lockwood Middle School library includes numerous titles that provide girls with information on sexual development, but Freivalds said information on the subject is scant for boys. Freivalds said interest in the book has increased since the challenge, but before that it was not a book that was frequently checked out.

"It's a book on a shelf. It's a reference book—it's there when you need it," she said.

The challenge came on the heels of a December decision by the board to pull three books from the middle school library. Those books were *The Vanishing Hitchhiker: American Urban Legends*, by Jan Brunvand, and *Urban Legends* and *Alligators in the Sewer*, both by Thomas Craughwell.

Becky Malenowsky brought those titles—and their questionable content—to the attention of the librarian and superintendent, who both agreed they did not meet selection criteria. She began to question other titles in the library at that time, including *The Guy Book*.

"I'm having trouble understanding why they would eject the first book and not this book," Malenowsky said.

She and other parents who are concerned about the possibility of inappropriate books being added to the school's libraries want to become involved in the book selection process. The policy under consideration would not provide that opportunity. Reported in: *Billings Gazette*, March 15.

Upper Arlington, Ohio

A public library is no place for gay newspapers, a member of the Upper Arlington library board says. Board member Bryce Kurfees wants *Outlook Weekly*, an Ohio paper, removed. The paper, and a second publication—*Gay People's Chronicle*—were the subjects of a similar dispute last summer.

Both papers had been available, along with other newspapers, in the entranceway of the library. After a noisy protest by a conservative community group, the gay papers were moved to a tall bookcase near the front desk in a compromise effort aimed at keeping them in the library but out of the hands of children. Now Kurfees wants *Outlook* out altogether.

"You've got these erotic, pornographic articles and you've got an elementary school one hundred yards away. It's not a good combination," Kurfees told the *Columbus Dispatch*.

Kurfees is one of two new additions to the library board in the suburban Columbus community. The other new member, Brian Perera, said he, too, is hearing continued complaints about the papers from residents. The board appeared about equally divided on whether to bar the papers or leave them where they are. Reported in: 365gay .com, March 21.

Oklahoma City, Oklahoma

Oklahoma City's Metropolitan Library Commission identified twelve social issues that it deemed sensitive enough when treated in a children's book to warrant the title being restricted to the parenting collection established by commissioners last fall. The twelve restricted categories are alcoholism, child abuse, child abuse prevention, child sexual abuse, child sexual abuse prevention, domestic/family violence, drug abuse, extramarital sex, homosexuality, medication abuse, premarital sex, and substance abuse.

"Please do not insult me and others like me by passing this reprehensible proposal that segregates us and equates us with child abuse, drug abuse, and family violence," Rev. Dr. E. Scott James, who said he is gay, asked commission members before they okayed the guidelines in a 12–1 vote. Four commissioners were absent.

The titles in the collection will be off-limits to children age twelve and younger unless they have their parents' permission to borrow the books, which will be limited to the reading-level categories of easy, easy-reader, and tween. "People on either side of the issue may be unhappy with [the] outcome," library Executive Director Donna Morris said, "but it does preserve some of our existing policies that call for free access." Reported in: *American Libraries Online*, February 17.

Scranton, Pennsylvania

Teresa Hanchulak was startled to learn there's no policy to stop her three underage daughters from borrowing an R-rated movie at the local library without her permission. "I never thought about it. I'll be a lot more careful of allowing them to go to the library alone," said the South Abington Township mother, whose children are ages eleven to fourteen.

The Scranton Public Library Board is now giving thought to the issue. The board's legal committee was expected to make a recommendation on a policy at the March 30 board meeting, library director Jack Finnerty said. He favors issuing age-specific library cards that would restrict R-rated rentals to those seventeen and over unless a parent or guardian has given permission.

"It's not based on a complaint, just a hypothetical, just that it could happen," Finnerty said. "I'm unaware of any events. None have been brought to my attention."

The lack of a policy was brought up by a librarian, Finnerty said. He decided the library should consider whether it wanted to develop one. Children under 13 use the Children's Library, where there are no R-rated movies, he said. But teenagers use the main library, where the young adult section is located. "This is where you could get into some sticky areas," Finnerty said.

R-rated movies make up about five percent of the Albright Memorial Library's collection of about 20,000 movies. Movies account for about 30 percent of the library's total circulation, compared to about 49 percent for print material. Recorded books and audio compact discs round out the circulation numbers.

Finnerty said CDs wouldn't be included in any restriction because the library does not buy anything with a parental advisory.

It's not just the Albright Library that lacks a policy. Leah Rudolph, director of the Abington Community Library, said her library doesn't have one, either. Abington probably would follow Scranton's lead on the issue since the seven Lackawanna County libraries use the same card system, she said.

Court cases have held that it's unconstitutional for government institutions like libraries to use voluntary rating systems to restrict access to materials, American Library Association official Deborah Caldwell-Stone said. She said further that the Motion Picture Association of America's private rating system is not based on firm standards; it is only meant to be a guideline for parents.

"The parents should be making the choices for their kids," she said, adding the association believes libraries should give information to parents so they can make wise decisions on what their children watch.

Regarding the constitutional issue, Finnerty said he rejected the notion that libraries are a government institution. The library could be sued whether they have a policy or not, he said. An irate parent could sue if a child rented an R-rated movie by saying the library did not exercise prudence, he added. However, the Scranton Library is a public library and as such is funded by government funds, fitting most legal definitions of a government agency.

He also cited a 2000 Pennsylvania library study on the issue where thirty-four libraries were surveyed. Of those responding, fourteen solved the problem by refusing to rent any movies to those under eighteen and seventeen libraries had a "wide open" rental policy, he said. A couple of others used the Motion Picture rating system, he said. Finnerty said the libraries that responded were not identified.

Glenn Miller, Pennsylvania Library Association executive director, said the state association has no guidelines on circulating R-rated movies to those under age seventeen. "It is an issue that comes up from time to time," Miller said, cautioning that putting libraries in the position of parent can be a "start down that slippery slope" of censorship.

Libraries, Miller said, are better off with greater access to materials while using "common sense" and relying on parental involvement. He added local library boards are best equipped to deal with the issue.

Brian Lenahan, chair of the Scranton library board and a legal committee member, took a cautious approach. While he wouldn't want his young children renting an explicit movie, Lenahan said he's no big fan of censorship. Movies, however, are easier to deal with than books because there's a rating system already in place, he said. Reported in: *Scranton Times-Tribune*, March 30.

Fort Vancouver, Washington

The board of the Fort Vancouver Regional Library District voted 4–3 at its February 13 meeting to require filters on all library computers. The rule also prohibits any patron, regardless of age, from viewing pornography online, library officials announced.

The decision came some four months after the library district failed to win a 60 percent supermajority for a 44-million-dollar capital-improvement bond issue. The measure had attracted a tantalizingly close 59.37 percent yes vote, and subsequent feedback solicited by the library resulted in several hundred people requesting a more stringent filtering policy than the four-year old one that filters a minor's access unless a parent exercises an opt-out provision.

Nonetheless, board member Jack Burkman, who proposed the policy change, insisted before the February 13 vote that he was not motivated by voter sentiment but because "it's critical the library be friendly to families. We might pick up a point or two," he noted, but "we'll alienate some people and lose a point or two."

Board chair Jerry King, former Vancouver city attorney and opponent of the new policy, had argued, "There are valid reasons to watch porn in a library." His remarks were met with gasps from onlookers, one of whom shouted, "It's a matter of right and wrong!"

In a prepared statement, Library Executive Director Bruce Ziegman expressed hope that library officials could now "refocus our energies on the 2006 strategic plan priorities, which include getting full benefit out of the district's electronic resources and addressing facility needs." Reported in: *American Libraries Online*, February 17.

schools

Costa Mesa, California

A middle school student faced expulsion for allegedly posting graphic threats against a classmate on the popular MySpace.com Web site, and twenty of his classmates were suspended for viewing the posting, school officials said. Police were investigating the boy's comments about his classmate at TeWinkle Middle School as a possible hate crime, and the district was trying to expel him.

According to three parents of suspended students, the invitation to join the boy's MySpace group gave no indication of the alleged threat. They said the MySpace social group name's was "I hate (girl's name)" and included an expletive and an anti-Semitic reference.

A later message to group members directed them to a nondescript folder, which included a posting that allegedly asked: "Who here in the (group name) wants to take a shotgun and blast her in the head over a thousand times?" Because the creator of a posting can change its content at any time, it's unclear how much the students saw.

"With what the students can get into using the technology we are all concerned about it," Bob Metz, the district assistant superintendent of secondary education, said. Metz said the students' suspensions in mid-Febuary were appropriate because the incident involved student safety. Some parents, however, questioned whether the school overstepped its bounds by disciplining students for actions that occurred on personal computers, at home and after school hours. Reported in: Associated Press, March 2.

Bennett, Colorado

A Bennett music teacher said her school district has turned down a buyout offer and is apparently preparing to terminate her for showing first-, second- and third-graders part of a video introduction to the famed opera *Faust*.

"They want me to be quiet and take responsibility and walk away," said Tresa Waggoner, a teacher at Bennett Elementary. "They're treating me terribly wrong. I can't even fathom this."

If the Bennett School District's board does vote to fire her, she pledged to sue the district and try to generate as much publicity as possible about what she sees as unfair treatment.

Waggoner had invited Opera Colorado to perform a comic opera for students. In preparation she showed her students a twelve-minute segment from *Who's Afraid of Opera?*, which she checked out of the school library, to introduce them to the concept. The segment included scenes from *Faust*, the 1859 opera by French composer Charles Gounod, using sock puppets to tell the story about how a man suffers when he sells his soul to the devil.

Parents accused Waggoner, a singer who has issued two Christian music albums, of being anti-Christian and a devil worshiper, and some parents demanded that she be fired. It ignited an uproar that refused to die in the prairie town thirty miles east of Denver. Some parents said their children were traumatized by the appearance of a leering devil in the video as well as such objectionable elements as a man appearing to be killed by a sword in silhouette and an allusion to suicide.

The day after an article on the controversy ran in the *Denver Post* on January 29, Waggoner was placed on paid administrative leave pending an investigation. Articles on the debate appeared in newspapers across the country as well as on Web sites such as artsjournal.com, and discussions of it have taken place on blogs, including dailykos.com.

Waggoner said that, at the district's request, she prepared a list of her buyout terms, including the removal of disciplinary documents from her file, letters of recommendation, pay for the rest of this school year and next, and reimbursement of her legal fees. She is worried that negative publicity generated by the incident might prohibit her from working as a teacher anywhere in Colorado. "So I don't think it is too much to ask for them to pay for my next year's contract," she said.

According to Waggoner, the board refused her buyout terms and some of its members were insisting she be fired.

"Do we look like bumpkins?" asked a cringing Town Board member, Rich Pulliam. Reported in: *Denver Post*, February 24; *This is True*, March 12.

Annapolis, Maryland

The two scenes depicting the rape of an eight-year-old cover only eleven paragraphs in a book of nearly three hundred pages. But they're enough for a group of parents to press school administrators to yank Maya Angelou's *I Know Why the Caged Bird Sings* from the county's freshman English curriculum.

Many of the roughly seventy-five people who showed up at a county Citizens Advisory Committee meeting March 23 said the book's rape scenes and other mature content are too advanced for ninth-graders. "Our objective is to have it off of the required list," said Diane Schmincke, the mother of a freshman at Broadneck High School. "We are not at all trying to ban the book."

Their effort was the latest round in the long-running debate over Angelou's 1969 autobiography. It depicts

her life growing up in the 1930s and 1940s as an African American.

Caged Bird became required reading for county ninth-graders in 1997, but an Edgewater couple soon complained. School officials pulled it, and a panel of administrators and community members lifted the ban several months later. An appeal to the Board of Education was rejected. The debate resurfaced in January after Schmincke complained. The CAC asked administrators to take another look at books with questionable content in the county English curriculum.

Administrators said *Caged Bird*, like all books in the curriculum, was fully vetted by a committee of parents, teachers, community members and students. "Once it goes through that process, it is our professional obligation to defend its use," said Anelle R. Tumminello, the school system's coordinator of English.

A freshman English class syllabus is sent home for parents to read at the beginning of each year. It warns them of mature themes in *Caged Bird*. Parents also can ask to have their kids read another book instead.

Parents are asked to sign a form giving their permission to read the books, but a Broadneck High teacher said that many students don't hand in the signed form and read the book anyway.

Parents also complained that the syllabus doesn't go far enough in telling parents about the questionable content. Others said such themes in high school books can be a gateway to pornography. "As a guy, when I was that age, those kinds of books made me excited," one man shouted from the audience.

Tumminello disagreed with those who said *Caged Bird* can corrupt their students. But she agreed to take another look at the book's description on the syllabus.

Supporters of the ban vowed to press on with their protest and petition administrators to have the book banned from the curriculum.

"They nodded their heads and they seemed to agree with some of the things, but (there was) no indication of any change," Schmincke said.

Students at the meeting didn't want the book banished from the curriculum, saying warnings of sexual excitement are overblown. "I think they kind of exaggerate it a bit," said Taylor Skord, a Broadneck High junior. Reported in: *The Capital*, March 27.

St. Clair Shores, Michigan

A presentation by two Lakeview High School students trying to warn classmates about the dangers of putting personal information on the Internet led to their teacher being escorted from the St. Clair Shores building because administrators thought pictures used in the project were too risqué.

The segment, roughly eight minutes, that was broadcast to the entire school February 28 on its in-house TV network featured pictures students in the district had posted on MySpace.com. They showed students drinking, posing provocatively or partially nude, and in one case kissing a vodka bottle.

Devon Fralick, the teacher who approved the project, was not at the school the next day and declined to comment when reached at her home. District officials would not discuss her status, and representatives of the teachers union did not return calls on the matter.

"The point of the presentation was to show that kids are being irresponsible when posting their profiles," said Neil Willoughby, seventeen, a junior at the school who helped put together the presentation.

But Lakeview Public Schools Superintendent Sandra Feeley Myrand apologized to students and staff who were offended and said in a written statement that "the message of the piece . . . was lost because of the selection of photographs, language and music that were included."

MySpace, introduced a little more than two years ago, is an online community where members can network. But it has come under media scrutiny in recent months, with reports that the site has been used by students to make anonymous threats and bully others, and by online predators.

Realizing that some students were not aware of the dangers, Willoughby and classmate Scott Sobanski, sixteen, created a presentation for a broadcasting class. "Mrs. Fralick said it was a bit risque, but maybe that's what's needed to hit home with teenagers," Willoughby said. Not long after the presentation was shown, Fralick was escorted from the building.

"It's ludicrous," Willoughby said. "I think that if anyone should take the heat for this, it should be me."

The district mailed a letter from Principal Bob duBois to the homes of every high school student, telling parents that "appropriate action will be taken."

"It's not fair what they're doing to the teacher," sophomore Shannon Close, fifteen, said. "All that was shown was already on the Internet."

Willoughby said he hoped that, if anything, students will be more responsible when posting pictures or personal information on the Web. The faces—and in some cases, body parts—of students were distorted in the presentation, but some students said they feared classmates would be disciplined over the photos.

"I think it could've been done a different way," sophomore Stephanie Love, 15, said. "It should've been shown, but it could have been edited better." Reported in: *Detroit Free Press*, March 2.

Fulton, Missouri

A central Missouri high school drama teacher whose spring play was canceled after complaints about tawdry content in one of her previous productions will resign rather than face a possible firing. "It became too much not to be

able to speak my mind or defend my students without fear or retribution," said Fulton High School teacher Wendy DeVore.

DeVore's students were to perform Arthur Miller's *The Crucible*, a drama set during the seventeenth-century Salem witch trials. But after a handful of Callaway Christian Church members complained about scenes in the fall musical *Grease* that showed teens smoking, drinking and kissing, Superintendent Mark Enderle told DeVore to find a more family-friendly substitute.

DeVore chose Shakespeare's *A Midsummer Night's Dream*, a classic romantic comedy with its own dicey subject matter, including suicide, rape and losing one's virginity.

DeVore, thirty-one, a six-year veteran teacher, said administrators told her that her annual contract might not be renewed. "Maybe I need to find a school that's a better match," she said.

Publicity over the drama debate, including a front-page story in *The New York Times*, cast an unflattering light on Fulton as an intolerant small town, several of DeVore's colleagues said. "We have become a laughingstock," teacher Paula Fessler told *The Fulton Sun*. Reported in: Associated Press, March 18.

student press

Champaign, Illinois

The editor of *The Daily Illini*, the independent student newspaper at the University of Illinois at Urbana-Champaign, was fired for violating company policies when he decided to publish the controversial cartoons of the Prophet Muhammad that have infuriated Muslims around the world, the newspaper's publisher announced March 14. The cartoons first appeared in a Danish newspaper last fall.

The Daily Illini's editor in chief, Acton H. Gorton, was terminated because he failed to properly discuss the publication of the cartoons with the staff before they ran last month, said Shira A. Weissman, who is serving as one of the paper's interim editors in chief. The newspaper's bylaws state that inflammatory material must be discussed in the newsroom before publication and that the publisher, the Illini Media Company, must be notified so it can be prepared for any reaction to the material, she said.

Gorton, however, said the policy is meant to apply to outside advertisements and letters to the editor.

Gorton and the opinions-page editor, Chuck Prochaska, were suspended with pay on February 14, when the board convened a committee of five senior staff members "to investigate the editors' decision-making and the communication surrounding the February 9 publication of an editor's note and the Danish *Jyllands-Posten* cartoons," according to a statement released by the Illini Media Company.

The suspensions followed a staff meeting about the issue. "There was a lot of anger" toward the editors, said Weissman, a senior who is majoring in journalism. "We were just looking for an apology, and they didn't give one."

The page containing the cartoons had been shown to some editors after it was completed, but with no opportunity for discussion about the publication of the material, said Weissman, who was not shown the page.

The publisher's Board of Directors decided to terminate Gorton, Weissman said, but left the decision about Prochaska's employment to her and Jason C. Koch, the other interim editor. She and Koch invited Prochaska to return to the staff, she said, but he declined.

Gorton, a senior communications major, said he had hired a lawyer and planned to sue the board for defamation and unlawful dismissal. He said he never had an opportunity to meet with the student committee and was given thirty minutes to explain his actions to the board. He said he used only ten minutes and was not asked any questions.

"This is really an issue of trying to restrict my freedom of speech," Gorton said. "I was punished for putting my column out there."

The *Daily Illini's* publication of the cartoons prompted outrage among Muslims in Urbana-Champaign. Muslim students and others held a protest on the main quadrangle saying they were stunned and hurt by the *Daily Illini's* publication of the images that had stirred so much violence and caused so much pain in other parts of the world.

"This has gotten crazy," said Gorton, twenty-five, the suspended editor-in-chief who decided to run six of the twelve cartoons even though he said he found them "bigoted and insensitive." Gorton received many calls for his resignation but also a deluge of praise, including comments of support from students as he walked on campus. "We did this to raise a healthy dialogue about an important issue that is in the news and so that people would learn more about Islam. Now, I'm basically fired."

Most major American newspapers have not published the cartoons, which were first published in a Danish newspaper last September. But on college campuses, student journalists are still grappling with the decision, saying the choice of most of the nation's newspapers makes theirs even more crucial. Editors at some student publications at the University of Wisconsin, Harvard University, Northern Illinois University and Illinois State University have published some of the cartoons.

The decisions have set off a painful clash, seemingly pitting two of the values so often embraced in university environments—freedom of speech and sensitivity to other cultures—directly against each other.

At Harvard University, a conservative newspaper published the images. The *Harvard Salient* ran them with an editorial commentary called "A pox (err, jihad) on free expression." The commentary said that "it is shameful that these cartoons have led to the arson of embassies, death

threats, and demands that 'whoever insults the prophet, kill him.'" The editorial predicted that Islam would eventually go through a "maturing process," part of which would be "not catering to sensitivity borne of fear of death that has plagued many would-be critics of radical Islam."

The *Salient* also published two examples of "truly vile" anti-Jewish cartoons that have appeared in the Arab press.

Khalid Yasin, president of the Harvard Islamic Society, called the newspaper's action "inflammatory and offensive." Yasin, a junior majoring in applied mathematics and economics, said that Muslim students at Harvard had been pleased that American newspapers have not printed the cartoons, and so were disappointed to have a university publication print them.

"We don't want to talk about this as a free speech issue," he said. "We acknowledge that there is a legal right to free speech, but because you have the right to do something doesn't mean you have the obligation. It's not what's legal, but what is decent."

Other student newspapers, including those at the University of North Carolina at Chapel Hill, Arizona State University and the University of Arizona, have published their own cartoons that comment on or refer to the controversial cartoons.

The issue has prompted letters to the editor, community meetings and public forums. Officials at the University of Wisconsin organized a forum in Madison after *The Badger Herald* ran one of the cartoons, one that portrayed Muhammad with a turban in the shape of a bomb.

"Universally, we found the cartoon to be repugnant," said Mac VerStandig, the editor in chief of *The Badger Herald*. "But we believe that there was a certain endangerment of free speech here, especially given the general prudishness of the American press. We believe our readers are mature enough to look at these images."

In Champaign on the morning of February 9, angry phone calls began within hours of *The Daily Illini's* hitting the stands. The cartoons were printed on the opinions page beside a column by Gorton explaining why he was publishing them. Shaz Kaiseruddin, a third-year law student and president of the Muslim Student Association, said she awoke to a phone call from an angry colleague.

"I was in disbelief that they would do this," Kaiseruddin, 24, said. "That our own student-based newspaper would be so ignorant and disrespectful."

Producing any image of Muhammad is considered blasphemous by many Muslims, and reproducing such anti-Muslim images, she said, revealed no understanding of the pain that would carry. Students met to plan a response.

Richard Herman, the chancellor of the university, sent a letter criticizing the newspaper, which is published independently. In part, it said, "I believe that the *D.I.* could have engaged its readers in legitimate debate about the issues surrounding the cartoons' publication in Denmark without publishing them. It is possible, for instance, to editorialize about pornography without publishing pornographic pictures."

In the days that followed, the newspaper ran an apology, held conversations with Muslim students and promised more complete, nuanced coverage on the issue. "We need to start fixing our image," said Weissman. "We're being viewed as being hateful."

But among students many said they were angry not because the newspaper had published the images but because it was now doubting that choice. "I was absolutely crushed to see that the editors were removed," said Cody Kay, 18. "What happened to freedom of speech? If we start saying we can't look at things, what's next? Our books?"

Weissman said she would not have printed the cartoons. Others said they might choose to run them, but only with plenty of context, explanation of the controversy and perhaps a guest column from a member of the Muslim student group.

Gorton said he wished he had discussed the issue more with his staff. And he would have printed more context, more explanation, something *The Northern Star*, Northern Illinois's student newspaper, did when it published the cartoons a few days later.

Derek Wright, the editor in chief of *The Northern Star*, said his newspaper included a front-page editorial explaining the choice to run the twelve images, as well as an article about them, student reaction and a column from a Muslim student leader. "There really hasn't been as much outcry as we might have expected," Wright said.

Either way, Gorton said he still would have printed the images. "My first obligation is to the readers," he said. "This is news." Reported in: *New York Times*, February 17; *Chronicle of Higher Education* online, March 16; insidehighered.com, February 16.

Radford, Virginia

Muhammad isn't the only figure who can set off a debate about religious sensitivities and free speech. At Radford University, a student cartoon called "Christ on Campus" is entertaining some students, but offending others—and the administration is calling in student journalists to discuss the matter. The cartoon has been published throughout the academic year, but discussion of it intensified amid the public debates over the Danish cartoons of Muhammad, which have recently spread to American colleges.

At Radford, a publicly supported institution, Christian Keesee said he started the cartoon because "no one ever does a cartoon about Jesus" and he wondered "if I could go there." A Pentecostal, Keesee said he views the cartoons as "pro-Christianity." The weekly feature appears in *Whim*, an online magazine produced by Radford students.

Keesee said he is particularly proud of the "commercialism vs. religion" theme of his Christmas edition of the cartoon, which shows Santa and Jesus fighting and in which

Santa stabs Jesus. Keesee said that his seriousness about the messages of Jesus inspired the cartoon. *Whim* allows readers to comment on the cartoons, and reactions to this one included a range. The work was called "disgusting" and full of "hate" and also praised as insightful, funny, and the cartoonist's best work ever.

Several of the cartoons explore issues of responsibility—why God would have allowed Katrina to harm so many people in New Orleans, why students think God can solve all of their problems without helping themselves, etc. While a number of the cartoons are not obviously pieces that would upset religious Christians, the uproar over others is less surprising. One cartoon features Jesus being asked by a woman he has been kissing whether he has a condom, while another shows Jesus trying to ignore a gay couple. In a cartoon relevant to the recent uproar over images of the Muslim prophet, Jesus is playing poker with the devil and various non-Western deities, one of whom may be Muhammad.

Keesee said that those who have objected to his work "are too quick to judge the cartoon because it's not a picture of Jesus with Bible scripture next to it." He said he believes his non-traditional portrayals of Jesus are consistent with Christian belief. "Jesus was a regular guy and by drawing him like that, I think people can relate."

Not everyone at Radford is relating.

Norleen Pomerantz, vice president for student affairs, said she requested a meeting with Keesee and his editors because of complaints the university has received. Pomerantz said the university has not tried to censor or punish, but that the cartoon raises issues.

"We do respect the rights of the students and the student-controlled media to express themselves. That's important," she said. But Pomerantz said "we also want students to be aware of other people's sensitivities and taste and journalistic standards that they have to adhere to." Pomerantz said she hoped the meetings with students would be "a learning experience" for them.

Keesee said he would meet with administrators, but that he was "shocked" to be called on to defend his cartoons to university officials. "I'm trying to explore issues," he said, adding that once he started making Jesus a regular in his cartoon, he decided the cartoons "should make a point." Reported in: insidehighered.com, February 27.

colleges and universities

San Diego, California

The oral sex-loving fictional characters of the WB's *The Bedford Diaries,* a sexually charged series about students attending a fictional New York City college, have got nothing on Steven York, a real-life recent graduate of the University of California at San Diego. With a little help from a porn actress, he set off lasting campus debates after literally letting it all hang out on a student TV program.

Last fall, York decided to take on what he called an uptight administration, not in tune with students. He had long enjoyed poking fun at the follies of administrators and faculty members through his student-produced *Koala TV* show, but in October he stepped things up a notch, hiring an adult film actress and producing a video of them performing mutual masturbation and oral sex, as well as having intercourse.

The video aired twice on the university's student-run television station before administrators cut the broadcast feed, which is operated through the Triton Cable network. The station could be viewed through closed-service television by nearly 8,000 students living on campus, most of whom are freshmen and sophomores.

"This incident, where we had a student air a hard-core pornographic video, illuminated to the campus that we had a resource that we should be able to decide how to manage and administer," said Gary R. Ratcliff, acting assistant vice chancellor of student life at the university. "Steve York wouldn't have been on our radar if he didn't try to push the limits."

The limits of what could be broadcast on the station, however, have been somewhat hard to define, since administrators haven't had control over its content since the station's founding in the 1990s. The station was initially set up and funded through a charter by the student government. When York's broadcasts first aired, administrators requested that the student government take actions to prevent the airing of graphic sex and nudity, and they obliged.

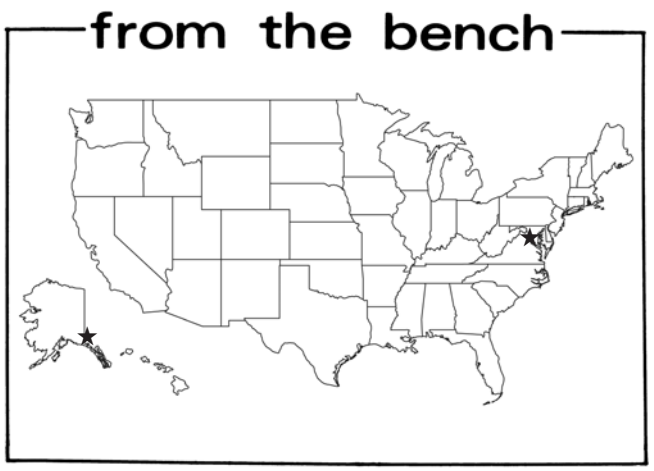
But the sexcapades didn't end there. York and several students affiliated with the station were able to garner enough signatures to have a special referendum earlier this year, letting the student body vote to decide whether or not they felt graphical depictions should be allowed to air on the station between the hours of 10 P.M. through 6 A.M. A majority voted against the ban, effectively preventing the student government from enforcing more stringent regulations. Since that time, some members of the student government, including its current president, Christopher Sweeten, have opposed administrators' efforts to enact control over the station.

"We have a charter that we believe in," said Andrew Tess, a station manager at the university's student-run television station. "And the administration hasn't cared at every step of this situation."

Some students have argued, too, that if campus residents are going to be forced to pay for the cable services, the university should offer a way to opt out of the service entirely.

Further angering Tess, York and other students is a new policy that Ratcliff drafted with the assistance of university lawyers. The policy states that "broadcasts of indecent

(continued on page 155)



U.S. Supreme Court

The U.S. Supreme Court on February 17 announced that it would rehear a case involving the rights of public employees, suggesting to many that the court was tied following the departure of Sandra Day O'Connor, but without the vote of Justice Samuel A. Alito, Jr. The case does not directly relate to higher education, but some faculty groups have feared that a ruling could significantly limit the free expression rights of professors at public institutions.

At issue is a dispute over statements made by Richard Ceballos, a deputy district attorney in Los Angeles. Ceballos was demoted and transferred after he told his supervisors that he believed a deputy sheriff had made false statements in seeking a warrant. Ceballos then sued and as his suit has gone through the judicial process, it has taken on much broader issues than whether Ceballos was treated unfairly. Some of the issues concern the immunity of state and local governments from being sued.

But one issue central to the Ceballos case is whether public employees have the right to speak out on matters of public concern. The U.S. Court of Appeals for the Ninth Circuit ruled that they have such a right. But when the Supreme Court agreed last year to hear the case, academic groups grew worried that the justices could reverse the Ninth Circuit's decision in a way that could seriously hurt public college faculty members.

Of particular concern to faculty members is that the statements Ceballos made apparently angered his superiors related directly to his work. If Ceballos loses in the Supreme Court, some fear, public college faculty members could lose protection to take controversial stands about their areas of scholarly expertise.

"The most valuable contributions that most university scholars and teachers make to public debate and understanding typically derive from their academic disciplines or fields of expertise," says a brief recently filed with the U.S. Supreme Court by the American Association of University Professors and the Thomas Jefferson Center for the Protection of the First Amendment. "Thus, any suggestion that 'matters of public concern' may not encompass job-related expression of professors would undermine the special protections the Court has given academic freedom for the past fifty years."

As is the Supreme Court's custom when it orders a rehearing in a case, it did not explain why it was doing so. But legal reporters in numerous publications noted that when a new Supreme Court justice arrives, the votes of the justice who was replaced no longer count if the decision has not been issued. Typically, the Supreme Court will go ahead and release decisions in which that vote was not decisive, but rehearings are likely when the departing judge leaves a 4–4 tie. In this case, the rehearing may not be great news for the faculty groups, given Justice Alito's history of supporting state and local government actions. Reported in: insidehighered.com, February 21.

The U.S. Supreme Court declined February 21 to hear the appeal of student journalists whose dean had insisted on reviewing their newspaper before publication—a move that defenders of press freedoms portrayed as a blow to student journalism.

The case, *Hosty* v. *Carter*, involved three student reporters at Governors State University, in Illinois, who in 2000 wrote articles in *The Innovator*, the student newspaper, that harshly criticized the university's administration. A dean at the university, as the newspaper's publisher, then demanded to review, prior to printing, all future issues of the paper. The students refused that demand and sued the university.

Margaret L. Hosty, Jeni S. Porche, and Steven P. Barba, who wrote for and edited the newspaper, sued Patricia Carter, dean of student affairs and services, as well as the university, its Board of Trustees, and several other parties. A trial-court judge dismissed all but Carter as defendants in 2001, but allowed the students to pursue their suit against her. A three-judge panel of the U.S. Court of Appeals for the Seventh Circuit later upheld that ruling.

But in 2005, the full Seventh Circuit court overturned those decisions and ruled that Ms. Carter was entitled to qualified immunity. In their opinion, the appellate judges cited *Hazelwood* v. *Kuhlmeier*, a 1988 Supreme Court ruling that gave high-school administrators the authority to censor publications by their students.

In a petition to the U.S. Supreme Court, the Governors State students invoked a footnote in the 1988 decision

that reserved the question of whether college officials had similar authority. "We need not now decide whether the same degree of deference is appropriate with respect to school-sponsored activities at the college and university level," Justice Byron White wrote in the 1988 opinion.

The students pointed out in their petition that college students have historically been considered by the courts to be more mature than high-school students and, therefore, should be subject to less restraint by administrators on their First Amendment freedoms. They noted that "the vast majority of high-school students are minors, while virtually all college and university students are adults," and argued that high-school instructors serve a custodial role while university officials should expose students to a broad marketplace of ideas.

The students also maintained that a college newspaper's purpose is to offer "the university community the ability to receive news and information about the university uncensored by the institution itself." They worried that the Seventh Circuit's decision, if let stand, would have "profound implications for freedom of expression in higher education" by allowing regulations on student speech to proliferate unchecked on campuses across the country.

The Illinois attorney general, representing Governors State in a brief to the Supreme Court, called concern over a potential onslaught of restrictions "premature at best and illogical at worst." Nothing in the Seventh Circuit's decision indicates "that colleges will be more likely to impose more and greater restrictions on speech," the attorney general, Lisa Madigan, wrote. She explained that the court's decision recognized *The Innovator* as a public forum, with its own editorial freedom, but maintained that because of confusion over the law, Carter could not be held responsible for attempting to regulate it.

Madigan also argued that the *Hosty* case—whose central issue became whether Carter was entitled to immunity from paying monetary damages, rather than whether *The Innovator* could be censored by university officials—was not the right vehicle for resolving the question, "however interesting and important," of *Hazelwood's* application to higher education.

For now, the Seventh Circuit's ruling is law only in the states covered by that circuit, which are Illinois, Indiana, and Wisconsin. But now that the Supreme Court has let stand that ruling, other courts may cite it as precedent and extend its holdings to student journalists in other states, if college officials choose to take advantage of the *Hosty* decision and seek greater control over their student publications.

The high court's decision not to hear the appeal "may be interpreted as a green light by some college administrators," said Mark Goodman, executive director of the Student Press Law Center, which supported the students' appeal. Thirty organizations, including press-freedom groups and university journalism departments, had joined in filing three briefs on behalf of the students.

Goodman said he considered it unlikely that "any other federal courts will buy the Seventh Circuit's reasoning." But ultimately, he said, "what the courts do is way less important than what colleges and universities do as a result of this decision."

"The inclination to censor is already there," he added. The *Hosty* case "may embolden administrators to take steps that they may not otherwise have taken, because they'll think that legally they can defend them," he said. "And they're going to have to," he said, "because we and other advocates of the First Amendment will come after them."

Over the past several months, the Student Press Law Center has encouraged student journalists, particularly those at public universities in the Seventh Circuit's jurisdiction, to request that their administrators designate their publications as public forums, officially recognizing their editorial freedom. University officials have already made such designations at Illinois State University, the University of Southern Indiana, and the University of Wisconsin at Platteville, Goodman said, and several other institutions are working to do the same.

At the University of Louisiana at Monroe, however, administrators in January subjected the student newspaper, *The Pow Wow*, to a new policy of prior review, Goodman's group reported. His group also criticized a leaked memo from Christine Helwick, general counsel of the California State University System, to presidents of the system's twenty-three campuses. The memo, written in June 2005 after the Seventh Circuit's decision, said that "CSU campuses may have more latitude than previously believed to censor the content of subsidized student newspapers."

Helwick said that she was merely reporting the court's decision without making any policy recommendations. "The students have used the memo to suggest that somehow I am enthusiastic about the outcome, and that is not true," she said. "We have never censored anything."

Helwick also pointed out that editorial control is not necessarily in the university's interest. "Once you exercise control, you expose yourself to liability," she said. Colleges with hands-off policies for their student publications will generally not be held accountable for those publications' content.

Still, said Goodman, the power to censor is tempting. If administrators "have the authority to dictate what students will or won't publish, inevitably they're going to use that authority not in the public's interest or in the readers' interest, but in the interest of the university's reputation," he said.

As long as the *Hosty* decision stands, "any student organization that gets even a penny of student activity fees could find itself affected by this ruling," he said. A student art show, literary magazine, or even faculty speech could all be censored, he said. "It's a very scary prospect."

Jim Killam, adviser at Northern Illinois University's student newspaper, said that he was "trying not to have a doomsday reaction." He maintained, as he did three

years ago when he conducted an official review of the Governors State controversy for the Illinois College Press Association, that Carter had acted illegally, but he added that he was "a little bit relieved in some ways that this case didn't go forth."

The case had been muddied, he said, by the monetary-damages question. But now that the decision stands, he said, "somebody may test it, and maybe we'll have a better test case as a result of it."

For the time being, how much the law lets college administrators regulate student expression remains unclear. In a 1989 case involving the University of Massachusetts, the U.S. Court of Appeals for the First Circuit declared *Hazelwood* inapplicable to college newspapers. Other cases have followed similar logic, and the *Hosty* decision stands outside the mainstream, said Goodman.

The Student Press Law Center will "fight to ensure that censorship doesn't become a way of life on college and university campuses," he said. "If nothing else we are going to be more vigilant in monitoring student-press freedom."

"You can't teach journalism in an American democracy and have a censored press. That would be a great tool if you were trying to prepare students for life in China," he said. Reported in: *Chronicle of Higher Education* online, February 21, 22.

Anti-abortion groups gained a victory in the Supreme Court February 28 as the justices ruled, 8–0, that abortion clinics cannot rely on federal laws against racketeering and extortion to prevent demonstrations against abortions.

The opinion by Justice Stephen G. Breyer turned on two words. The justices ruled that clinics could not use the decades-old Hobbs Act, which outlaws the obstruction of commerce by "robbery or extortion," to stymie protesters.

"Physical violence unrelated to robbery or extortion falls outside the Hobbs Act's scope," Justice Breyer wrote. To try to use the act as the National Organization for Women and other abortion-rights advocates have done "broadens the Hobbs Act's scope well beyond what case law has assumed," he wrote.

Moreover, the ruling noted, Congress specifically addressed the needs of abortion clinics and their patients in 1994, when it passed legislation that makes it a federal crime to attack or blockade abortion clinics, their operators or their patrons. By its actions in 1994, Congress suggested that the much older Hobbs Act did not address anti-abortion protests, Justice Breyer wrote.

Justice Samuel A. Alito, Jr., did not take part in the ruling. He took his seat on the court after the case, *Scheidler* v. *National Organization for Women*, was argued last November 30.

The ruling marked the third time the justices have addressed the long-running dispute over how federal law applies to blockades of abortion clinics. The Hobbs Act, enacted in 1946 to supersede a 1934 anti-racketeering statute, specifically outlaws the obstruction of commerce "by robbery or extortion." Two violations of the Hobbs Act, in turn, can demonstrate a "pattern of racketeering activity" that entitles victims to triple damages under the 1970 Racketeer Influenced and Corrupt Organizations Act, or RICO.

In the 1980's, the National Organization for Women (NOW) and two abortion clinics sued Operation Rescue and the Pro-Life Action League under the Hobbs Act. In 1994, the Supreme Court ruled unanimously that abortion clinics could use that statute, but that they had to prove in court that the actions of protesters were part of a "pattern of racketeering activity."

But later, after the anti-abortion groups won in the lower federal courts, the Supreme Court reversed its own ruling, holding in 2003 that the protesters' behavior around clinics did not amount to extortion, or trying to obtain another's property through real or threatened "force, violence or fear."

The justices found in the 2003 ruling that the 117 specific acts described in the lawsuit did not meet that definition, and they sent the case back to the United States Court of Appeals for the Seventh Circuit. But instead of dismissing the suit, the Seventh Circuit kept it alive on the basis of four additional actions of protest that the Supreme Court had not reviewed, and it ordered the Federal District Court in Chicago to determine whether those four actions might fall under the Hobbs Act.

In their latest appeal to the Supreme Court, Joseph Scheidler, the national director of the Chicago-based Pro-Life Action League, and his allies argued that the Seventh Circuit had misread the 2003 Supreme Court ruling and ought to have dismissed the entire lawsuit.

"I am mystified that I had to go to the trouble and expense of appearing before the Supreme Court three times," Scheidler said. He said NOW had refused to acknowledge defeat and had persuaded the Seventh Circuit to keep the case alive "in spite of the Supreme Court's clear mandate to end it" in 2003.

Scheidler's lawyer, Thomas Brejcha, called the ruling "not just a victory for pro-life activists, but for anyone who chooses to exercise his First Amendment rights to effect social change." Reported in: *New York Times*, February 28.

The U.S. Supreme Court on March 6 upheld the law that allows the federal government to withhold funds from colleges that limit military recruiting, but sidestepped the question of whether the law interferes with academic freedom.

In a twenty-one-page opinion written by Chief Justice John G. Roberts, Jr., the court rejected arguments that colleges have a First Amendment right to exclude recruiters whose hiring practices conflict with their own antidiscrimination policies. The court's ruling was a victory for the Department of Defense, which had argued that recruiting restrictions hampered its ability to bring talented lawyers into the Judge Advocate General's Corps, whose members act as prosecutors, defense attorneys, and legal advisers in the military.

The decision dealt a final blow to efforts by a coalition of law schools to strike down the Solomon Amendment, the twelve-year-old law that allows the government to penalize colleges that limit recruiting. Law schools have contended that the statute infringed on their constitutional freedoms of speech and association by forcing them to convey the military's message and to assist an employer that discriminates against gay men and lesbians.

The founder of the coalition, Kent Greenfield, a law professor at Boston College, said the ruling was a setback. However, he added, "we're confident that in the long run, we'll win that larger civil-rights struggle" over the military's "don't ask, don't tell" policy, which bars openly gay men and lesbians from serving.

But Daniel D. Polsby, dean of George Mason University's School of Law, who wrote a brief supporting the government's position, said the decision proved that "there was really no First Amendment case there to speak of. This was essentially a self-indulgent exercise on the part of a law-school industry that has grown increasingly isolated and alienated from the mainstream of American law," said Polsby.

Congress passed the Solomon Amendment, named for its sponsor, Gerald B. H. Solomon, then a Republican Congressman from New York, in 1994. For several years, many law schools complied with the law by providing minimal access to military recruiters. But in late 2001, the military did an about-face, ordering law schools to provide the military with access "equal in quality and scope" to that given other employers. Congress codified that policy in 2004, while expanding the categories of financial support that could be denied to violators.

In its ruling, the court dismissed the First Amendment claims of opponents to the Solomon Amendment, but ignored the academic-freedom arguments raised in an *amicus* brief filed by the American Association of University Professors. In that brief, the AAUP argued that Congress exceeded its authority when it used the amendment to prohibit conduct in areas outside the scope of a particular spending program. For example, under the Solomon Amendment, the government can withhold National Institutes of Health funds from the biology department, even if it is only the law school that is prohibiting military recruiters.

Kathleen M. Sullivan, a constitutional-law professor at Stanford University, who wrote the AAUP brief, said that Supreme Court's omission leaves the academic-freedom argument "alive for potential use in future challenges" of spending conditions, including the Solomon Amendment.

The Supreme Court's decision on the Solomon Amendment, *Rumsfeld* v. *Forum for Academic and Institutional Rights*, overturned a 2004 ruling by the U.S. Court of Appeals for the Third Circuit, which found the military had failed to show that its recruiting needs justified the intrusion on law schools' constitutional rights.

In its ruling, the appeals court cited a 2000 decision by the U.S. Supreme Court, *Boy Scouts of America* v. *Dale*, that allowed the Boy Scouts to exclude a gay assistant scoutmaster.

Last winter the Defense Department appealed the 2004 ruling to the Supreme Court, which heard arguments in December. During those arguments, E. Joshua Rosenkranz, who argued for the law-school coalition, said the Solomon Amendment imposed unconstitutional conditions on federal funds by forcing law schools to choose between federal aid and their constitutional rights.

Paul D. Clement, the Justice Department's solicitor general, replied that the amendment's requirement that colleges provide access to recruiters was an ordinary contractual condition, no different from the strings routinely attached to gifts and bequests. He noted that law schools remained free to criticize the military's policies and could even bar recruiters from their campuses if they were willing to forgo federal funds.

In its 8–0 ruling, the Supreme Court sided with the government, finding that Congress did not exceed constitutional limits on its power when it passed the law. Justice Samuel A. Alito, Jr., the court's newest member, did not take part.

"The Solomon Amendment neither limits what law schools may say nor requires them to say anything," Justice Roberts wrote for the court. "Law schools remain free under the statute to express whatever views they may have on the military's congressionally mandated employment policy, all the while retaining eligibility for federal funds."

The justices noted that the court has given particular deference to lawmakers in cases involving Congress's power "to raise and support armies."

In overturning the appeals court's decision, the justices said that the Solomon case was not like the Boy Scouts case because military recruiters are not members of law schools in the way that troop leaders are part of the Boy Scouts. Rather, the court said, recruiters are outsiders who come onto a campus for a limited purpose. The law schools' effort to cast themselves in the same light as the Boy Scouts "plainly overstates the expressive nature of their activity . . . while exaggerating the reach of our First Amendment precedents," Justice Roberts wrote.

Much of the ruling centered on the arcane question of whether law schools' bans on military recruiting constitute speech or conduct. If they were speech, as the law-school coalition argued, then the Defense Department would have had to prove that the law served a "compelling government interest" and was "as narrowly tailored as possible"—a very high standard to meet.

But if, as the military maintained, the bans were "expressive conduct"—that is, conduct with elements of speech—then the Pentagon would have had to prove only that its recruiting would be less effective without the law. Again, the court sided with the Defense Department, find-

ing that law schools are not speaking when they play host to interviews and recruitment receptions.

The ruling's unanimity was one of its most remarkable features, given that the free-speech and nondiscrimination arguments made by the law schools were considered likely to appeal to the court's more liberal members. Mark C. Rahdert, a constitutional scholar at Temple University, said he was not surprised that the court had deferred to the military. The Supreme Court has long taken a "more restrictive view of First Amendment rights when those rights collide with military needs," he said.

He said he was stunned, however, that the court had found that Congress could have directly required universities to admit military recruiters, instead of making it a condition of receiving federal money. That position implies that Congress could pass a law requiring all universities—even those that forsake federal funds—to accommodate military recruiters.

Although the federal dollars at risk go to universities, law schools have been at the center of the controversy because their students are highly sought after for positions in the military. Law schools also tend to be more emphatic about extending their antidiscrimination policies to employers who recruit on their campuses. Still, a majority of law schools are now complying with the law, and only three law schools have had their federal funds cut off: New York Law School, Vermont Law School, and William Mitchell College of Law. All three are free-standing law schools and receive little or no federal money.

Dozens of groups filed briefs in the case. Among them was a group of Harvard University professors, who contended that the Defense Department had misinterpreted the law to require preferential treatment for recruiters. Their statutory argument held that the law had been written to apply "only to policies that single out military recruiters for special disfavored treatment, not evenhanded policies that incidentally affect the military."

The Supreme Court rejected that argument, finding that the law had been written to ensure military recruiters the same access as employers who comply with a law school's nondiscrimination policy.

The case also attracted the attention of Congress. Some lawmakers had worried that if the Solomon Amendment had been struck down, Congress could lose its ability to attach conditions to federal funds. One of the amendment's original sponsors, Rep. Richard Pombo, a Republican from California, applauded the Supreme Court's decision. "Universities that denied recruiters on their campus were not only limiting opportunities for their own students, but in doing so did a disservice to our military men and women," he said in a statement. "They played politics and lost."

But Greenfield, of the law-school coalition, said the ruling does have one element that appeals to him: It reaffirmed the rights of law schools to disavow, and even denounce, military recruiting. In the past, the military has complained about protests on law school campuses, he said.

"The opinion doesn't take our First Amendment arguments honestly, but it does protect our ability to protest going forward," he said. "We may see more protests against military recruiters than we ever have before." Reported in: *Chronicle of Higher Education*, March 17.

The U.S. Supreme Court ended a two-year legal battle March 6 when it declined to hear an appeal of a lawsuit challenging the constitutionality of a sculpture at Washburn University that some considered anti-Catholic.

A bronze bust of a sneering, corpulent Roman Catholic clergyman wearing a bishop's hat, or miter, that many said resembled a penis infuriated Catholic groups when it was displayed as part of the Kansas university's temporary outdoor art exhibit during the 2003–04 academic year. At the base of the sculpture, called "Holier Than Thou," the artist included a statement saying that, at age seven, he was "scared to death" at encountering this face in a dark confessional booth.

Roman Catholics protested the sculpture's display. Initially, the archbishop of Kansas City, Kansas, asked the university to remove it. Washburn, a public institution, declined to do so. Then a professor and a student sued. Thomas O'Connor, a biology professor who has since retired, and Andrew Strobl, who was a student at the time, accused Washburn of violating their rights under the establishment clause of the First Amendment by exhibiting a statue hostile to Roman Catholicism.

In February 2004, the U.S. District Court in Kansas City, Kansas, rejected the lawsuit, ruling that the sculpture enhanced the university's educational experience and that, when viewed within an artistic context, would not be seen by a reasonable observer as an endorsement by the university of anti-Catholic sentiment. That decision was upheld in July 2005 by the U.S. Court of Appeals for the Tenth Circuit. O'Connor and Strobl then sought a Supreme Court review of the case.

As is customary, the U.S. Supreme Court did not issue an explanation for its refusal to hear the appeal.

A lawyer for the plaintiffs expressed disappointment at the court's action. "The establishment clause requires the government to be neutral on matters dealing with religion," said Robert J. Muise, a lawyer for the Thomas More Law Center, a national, nonprofit, Christian-oriented law firm. He said he regretted that the Supreme Court had declined the opportunity to clarify the clause's applications to antireligious material. "It's certainly been used by those who oppose religion to remove things like the Ten Commandments and Nativity scenes," he said.

"When the school itself made clear that an anti-Jew or anti-black or anti-gay-or-lesbian statue would never make its way on campus, but yet an anti-Catholic statue is perfectly OK, and somehow promotes their educational values at this university, that's quite disconcerting," Muise said.

Robb Jones, senior vice president and general counsel for claims management at United Educators Insurance, applauded the court's decision, saying that the university should be granted the same artistic freedoms as an art museum. Otherwise, he said, universities would be "looking over their shoulders anytime they made any kind of artistic decision that could remotely implicate religious, cultural, or political issues that could have offended people." United Educators provides insurance to more than eleven hundred member colleges, schools, and related organizations.

"We are pleased the issue is finally resolved," Jerry B. Farley, Washburn's president, said in a written statement. "The sculpture has been gone for almost two years. As we said from the beginning, we regret that the sculpture offended anyone, for that was never the intent. We hope that the resolution of this issue allows us to strengthen our normal fine relationship with all involved." Reported in: *Chronicle of Higher Education* online, March 7.

Pennsylvania went before the Supreme Court March 27 to defend its policy of denying most newspapers, magazines and photographs to its most incorrigible prison inmates against claims that the restriction violates the First Amendment. The policy is one of the most restrictive in the country.

The federal appeals court in Philadelphia ruled last year that prison officials had to provide some objective evidence to show that the policy actually accomplished the twin goals they claimed for it: improved security and "behavior modification" of recalcitrant inmates. The appeals court's 2–1 ruling set aside a federal district court's judgment for the state, leading to Pennsylvania's Supreme Court appeal. Justice Samuel A. Alito, Jr., then a member of the appeals court, was the dissenter on the three-judge panel. He left the Supreme Court bench when the argument began, and will not take part in the case, *Beard* v. *Banks*.

The case is a class-action lawsuit that began when the prison authorities seized a copy of *The Christian Science Monitor*, to which an inmate, Ronald Banks, had a subscription. The lower courts looked at the policy as a whole, and did not scrutinize its application to individual inmates.

The argument in the Supreme Court was more lopsided than the eventual decision might be. Jere Krakoff, a lawyer from Pittsburgh representing the inmates who had brought the lawsuit, was making his first Supreme Court argument and appeared nonplused by questions from the justices that more experienced lawyers would have taken in stride.

"I'm obviously not framing my argument in a way that's getting my point across," Krakoff said at one point in a discouraged tone. At another point, he offered, "My brief may be more coherent than I am today."

If Krakoff was discouraged, the justices who were sympathetic to his legal position, or who at least wanted his position to be articulated, appeared frustrated, intervening to the extent of putting words in his mouth. For example, Krakoff got into a discussion with Chief Justice John G. Roberts, Jr., about an exception in Pennsylvania's policy that permits inmates to have religious newspapers and law-related reading matter in their cells. One of the state's explanations for the general no-newspaper rule was that inmates might set fire to newspapers. Krakoff, trying to show that, given the exceptions, the policy made little sense, observed that "The *Jewish Forward* can burn as quickly as *The New York Times*."

"Now you're making your clients' situation worse," Chief Justice Roberts said. He said the state had been willing to take "a more circumscribed approach" in exempting the religious and legal papers.

Justice Ruth Bader Ginsburg intervened at this point, addressing Krakoff. "I thought you were saying that as a security concern, it doesn't hold up, because the materials they are allowed to have in their cells could be put to the same end," she said.

Later, nearing the end of his allotted thirty minutes, Krakoff told the justices that he would sit down rather than continue. But he was kept on his feet by justices who had more questions.

Seeking to summarize as the red light came on to signal that his time was up, Krakoff observed that some of the hard-core inmates in the special prison unit under discussion would eventually complete their sentences and go back into society, deprived of knowledge of what had been going on in the world. "They could read about ancient wars in the Bible, but not about the war in Iraq," he said. "It's not a healthy situation."

Pennsylvania's lawyer, Louis J. Rovelli, executive deputy state attorney general, received his share of skeptical questions but appeared generally unfazed by them, as did Jonathan L. Marcus, an assistant United States solicitor general who also argued on the state's behalf.

Justice Ginsburg asked Rovelli to explain why the policy permitted inmates to order paperback books from the prison library while prohibiting newspapers and magazines. "The rationality of that line escapes me," she said.

Rovelli replied that paperbacks were "small and compact and much more difficult to use as weapons" by the "worst of the worst" inmates to whom the policy applies. About forty inmates fit into this category at any one time, housed in a special "long-term segregation unit" in the state prison at Fayette.

Chief Justice Roberts asked: "Is a paperback copy of *War and Peace* less dangerous?" It was a "difficult line to draw," Rovelli acknowledged, while turning his concession into an opening. That was where the expertise of prison officials, to which judges should defer, came in, he said.

He explained that the policy was "guided by the experience of prison administrators," who had observed the "high value" that prisoners placed on access to newspapers and magazines. These were, therefore, removed to give prisoners an incentive to change their behavior in order to gain a transfer to a lower-security area of the prison.

This was a justification that the appeals court had found insufficient in the absence of any evidence that it worked or had "any basis in real human psychology," the majority opinion said. The majority added that far from disregarding Supreme Court precedents requiring deference to prison administrators' judgment, it was simply trying to determine "whether an asserted goal is logically connected to the prison regulation."

If the Supreme Court agrees, the case will go back to U.S. District Court in Pittsburgh for a trial. A 4–4 tie, in Justice Alito's absence, would have the effect of affirming the appeals court's ruling.

Justice David H. Souter told Rovelli that the state's behavior-modification theory appeared to justify depriving inmates of access to legal papers. Questioning the state's approach, Justice Souter said: "Tell them, 'No, you may not receive any legal material because it's something you very much want to do.' Can the state do that?"

It could, the state's lawyer replied, as long as the prisoner was left with other means of access to court, including the unlimited visits from lawyers that the policy permits for these high-security inmates. Any prisoner who was deprived of a meaningful access to court, a right to which the Supreme Court has given constitutional protection, could bring another lawsuit challenging the policy "as applied," Rovelli said. Reported in: *New York Times*, March 28.

As the justices of the Supreme Court took their seats March 28 to hear Osama bin Laden's former driver challenge the Bush administration's plan to try him before a military commission, one question—perhaps the most important one—was how protective the justices would be of their jurisdiction to decide the case. The answer emerged gradually, but by the end of the tightly packed ninety-minute argument, it was fairly clear: highly protective.

At least five justices—Stephen G. Breyer, Ruth Bader Ginsburg, Anthony M. Kennedy, David H. Souter and John Paul Stevens—appeared ready to reject the administration's argument that the Detainee Treatment Act, passed and signed into law after the court accepted the case in November, had stripped the court of jurisdiction.

It was less certain by the end of the argument how the court would then go on to resolve the merits of the case, a multipronged attack on the validity of the military commissions themselves and on their procedures. Lawyers for the former driver, a Yemeni named Salim Ahmed Hamdan, who is charged with conspiracy, also argue that he cannot properly be tried before any military commission for that crime because conspiracy is not recognized as a war crime.

Solicitor General Paul D. Clement was on the defensive throughout his argument. His stolid refusal to concede that any of the government's positions, on the jurisdictional as well as ultimate questions of the case, might present even theoretical problems provoked the normally soft-spoken Justice Souter into an outburst of anger.

What appeared to trouble Justice Souter most was Clement's discussion with Justice Stevens about whether Congress's removal of the federal courts' jurisdiction to hear *habeas corpus* petitions from detainees at the naval base at Guantánamo Bay, Cuba, amounted to "suspending" the writ of *habeas corpus*. Suspending *habeas corpus* is an action, limited by the Constitution to "cases of rebellion or invasion," that Congress has taken only four times in the country's history. *Habeas corpus* is the means by which prisoners can go to court to challenge the lawfulness of their confinement, and its suspension is historically regarded as a serious, if not drastic, step.

Clement's position was that Congress had not in fact suspended *habeas corpus*, but that it might constitutionally have done so given "the exigencies of 9/11." Addressing Justice Stevens, the solicitor general said, "My view would be that if Congress sort of stumbles upon a suspension of the writ, that the preconditions are satisfied, that would still be constitutionally valid."

Justice Souter interrupted. "Isn't there a pretty good argument that suspension of the writ of *habeas corpus* is just about the most stupendously significant act that the Congress of the United States can take," he asked, "and therefore we ought to be at least a little slow to accept your argument that it can be done from pure inadvertence?"

When Clement began to answer, Justice Souter persisted: "You are leaving us with the position of the United States that the Congress may validly suspend it inadvertently. Is that really your position?"

The solicitor general replied, "I think at least if you're talking about the extension of the writ to enemy combatants held outside the territory of the United States ——"

"Now wait a minute!" Justice Souter interrupted, waving a finger. "The writ is the writ. There are not two writs of *habeas corpus*, for some cases and for other cases. The rights that may be asserted, the rights that may be vindicated, will vary with the circumstances, but jurisdiction over *habeas corpus* is jurisdiction over *habeas corpus*."

Justice Breyer, in his questioning of Clement, practically begged the solicitor general to endorse an alternative approach that would allow the court to avoid "the most terribly difficult and important constitutional question of whether Congress can constitutionally deprive this court of jurisdiction in *habeas corpus* cases."

The alternative at hand was the one offered by Hamdan's lawyer, Neal Katyal, a law professor at Georgetown University. That was to interpret the Detainee Treatment Act as applying only prospectively, stripping federal courts of hearing future cases brought by the detainees but allowing the Supreme Court to continue with at least this one.

The argument was a textual one, based on a slight change in wording from the measure originally proposed by Senator Lindsey Graham, Republican of South Carolina, to the version the Senate eventually passed after Senator Carl Levin, Democrat of Michigan, and others raised objections

to taking the Hamdan case away from the Supreme Court.

Graham, who filed a brief in this case, and the administration maintain that the change was immaterial. But the justices appeared ready to embrace the ambiguity if it would allow them to retain jurisdiction and proceed with the case.

Only eight justices will vote in the case, *Hamdan* v. *Rumsfeld*. Chief Justice John G. Roberts, Jr., is not sitting, because he was a member of the three-judge panel of the federal appeals court that rejected Hamdan's challenge to the military commissions in a decision last July.

Of the other members of the court, Justice Antonin Scalia appeared most supportive of the administration. He intervened several times to offer Clement a helping hand, something the solicitor general rarely needs but accepted gratefully.

For example, Justice Kennedy was questioning Clement on the government's position that even if the court had jurisdiction, it should abstain from ruling on the validity of the military commission until after Hamdan's trial. Justice Kennedy said he found the argument troubling, pointing out that Hamdan was arguing that because the commissions lacked the procedures required by the Geneva Conventions, they were invalid. "The historic office of *habeas corpus* is to test whether or not you're being tried by a lawful tribunal," Justice Kennedy said. "And he says, under the Geneva Convention, as you know, that it isn't."

Clement replied that Hamdan could raise that argument later, before the military commission itself. He predicted that the argument would fail and said that in any event, there was no reason "why that claim has to be brought at this stage."

Justice Scalia then jumped in to support the solicitor general. "In the normal criminal suit," he said, "even if you claim that the forum is not properly constituted, that claim is not adjudicated immediately." Justice Scalia went on: "We don't intervene on *habeas corpus* when somebody says that the panel is improperly constituted. We wait until the proceeding's terminated, normally."

Justice Kennedy objected. "Is that true?" he asked. "If a group of people decides they're going to try somebody, we wait until that group of people finishes the trial before the court intervenes to determine the authority of the tribunal?"

"With respect, Justice Kennedy, this isn't 'a group of people,' " Clement replied. "This is the president invoking an authority that he's exercised in virtually every war that we've had."

Along with Justice Scalia, Justice Samuel A. Alito, Jr., also appeared to support the argument that the court should allow the trial to go forward. Justice Clarence Thomas alone asked no questions.

Clement argued that the detainee law would allow a detainee to argue in federal court, after a conviction by a military commission, that the commission's procedures were illegal or unconstitutional. Justice Ginsburg then asked him to "straighten me out." She said, "I thought it was the government's position that these enemy combatants do not have any rights under the Constitution and laws of the United States."

"That is true, Justice Ginsburg," the solicitor general answered.

Hamdan's lawyer, Katyal, appeared to get traction with his argument that conspiracy, with which Hamdan and nine other detainees awaiting military commissions have been charged, is not an appropriate crime for a trial before a military commission. If a majority agrees, this might provide a narrow way of resolving the case.

In many respects, the argument marked a resumption of the encounter between the court and the Bush administration two years ago, in cases that led to the court's rejection of the administration's claim to broad authority to proceed without judicial oversight. The administration was once again seeking "fundamentally open-ended authority," the "blank check" the court had rejected then, Katyal said. Reported in: *New York Times*, March 29.

schools

Juneau, Alaska

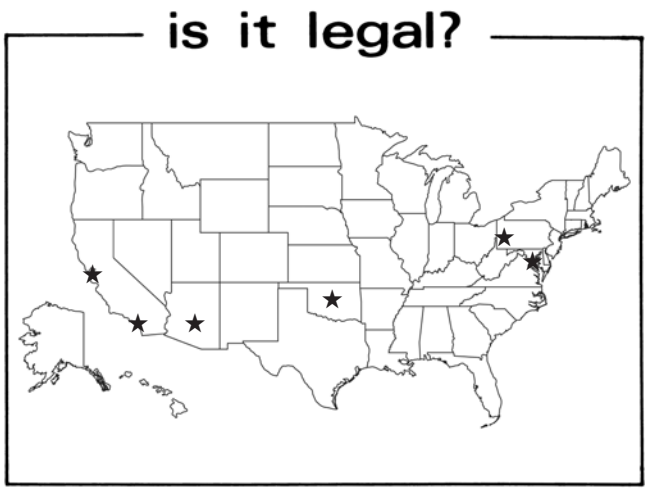
A high school principal violated a student's constitutional rights by suspending him for ten days after the boy held up a banner reading "Bong Hits 4 Jesus" at a televised parade near campus, a federal appeals court has ruled. The principal said the teenager's words—which the boy later called a meaningless phrase meant only to attract the cameras at the parade in Juneau—were a pro-marijuana message that clashed with school district policy. Regardless, the U.S. Court of Appeals for the Ninth Circuit in San Francisco said March 10 that the student had a right to express himself as long as he didn't disrupt the school or its educational mission.

"A school cannot censor or punish students' speech merely because the students advocate a position contrary to government policy," Judge Andrew Kleinfeld said in the 3–0 ruling. He said the U.S. Supreme Court established that principle in 1969 when it ruled that a fifteen-year-old Iowa girl had the right to wear a black armband in class to protest the Vietnam War. Later rulings have upheld administrators' authority to censor school newspapers or punish students for lewd or disruptive remarks without undermining their basic right of free speech, Kleinfeld said.

The student's lawyer, Douglas Mertz, said the ruling applied beyond schools to any government official who tries to "punish citizens for making expressions of free speech with which the official disagrees."

The case arose in January 2002, when a torch relay for

(continued on page 160)



libraries

Oklahoma City, Oklahoma

On March 15, the Oklahoma House passed by a 60–33 vote a bill that prohibits local funding authorities and library boards from funding their public libraries unless the libraries have "place[d] all children and young adult materials that contain homosexual or sexually explicit subject matter in a special area [and limited] distribution . . . to adults only." The bill also specifies that the state library must withhold funds from noncompliant public libraries.

Introduced in February by Rep. Sally Kern (R-Oklahoma City), HB 2158 defines homosexual subject matter as "content that relates to the recruiting and advocating of same gender sexual relationships" and sexually explicit subject matter as "content that describes or depicts sexual conduct . . . so that a prurient interest in sex is promoted." The latter definition specifically exempts material that "merely mentions or references sexual conduct."

If enacted, HB 2158 would also mandate the establishment of a State Library Material Content Advisory Board to "annually develop a recommended list of child and young adult materials that contain homosexual or sexually explicit subject matter" for distribution to every library in the state. The board, appointed by the respective leaders of the state house and senate, would be comprised of four legislators, four parents of minor children, and four teachers.

"The Oklahoma Library Association is very much in opposition to this legislation," OLA President Jeanie Johnson said, citing two of the association's four legislative goals—supporting unrestricted access and preserving local library control. "To add another special collection, you have to find some place to put it," Sapulpa Public Library Director Karla Shaffer said, referring to the dearth of extra space in many small public libraries statewide.

Also expressing concern about the bill, Gov. Brad Henry said "I don't want government to do anything to intrude upon the rights of parents." However, Kern, who last year spearheaded a nonbinding resolution urging librarians to establish adults-only sections similar to those HB 2158 would mandate, characterized libraries as "usurping the role of parents" unless they segregate some materials. "Our society is obsessed with sex," she said. "And I will tell you this: The American Library Association is out to sexualize our children."

The voluntary guidelines have been adopted by the state's two largest library systems, Oklahoma City and Tulsa, but officials said small libraries may have a hard time complying. "We're really concerned about it," said Jeanie Johnson. "The idea that we would restrict books really restricts freedoms."

Preliminary estimates indicate it will cost $826,000 to renovate small public libraries to create special areas for the material, Johnson said. There are more than two hundred public and special libraries in Oklahoma.

Bill Young, spokesman for the State Department of Libraries, said the regulations tie compliance to the distribution of library funds by the state's seven-member library board. "We don't want to overburden smaller libraries. But we will follow the law if it is the law," Young said.

Kern said she wants a special shelving policy to shield children from language and behaviors they are not mature enough to understand. "It's protecting the future of our children," she said. "Sex is not bad. Sex is not wrong. It's the misuse of it."

Kern said the measure will encourage libraries to ensure that parents know the content of children's books before a child reads them. She said children exposed to sexual material without parental guidance often engage in risky behavior later. "I'm not a Nazi. I believe in free speech," Kern said. "But for every right we have, there is a responsibility."

The measure passed the house appropriations and budget committee 14–4 and was sent to the full house for a vote. Democratic representative Ray McCarter debated against the measure. "What she's trying to do is put these rules in where they can't be accomplished," McCarter said. He said there is no practical way to segregate books from reading areas because of space limitations. "We'll just shut down a whole bunch of small libraries out there." He also said it is not the legislature's role to decide what books children should have access to. "Their parents are the ones who

should be making these decisions for them. We shouldn't be shoving things down their throat."

Prior to the House vote, Kern distributed to her fellow legislators several excerpts from books she said were found in local libraries. The excerpts were from books that contained homosexual or sexually explicit references, and the state representative remarked, "The average citizen does not have a clue what is in the library," she said.

Last year, Kern asked the Oklahoma City Metropolitan Library Commission to place the book *King and King* and similar books in the adult section. She made the request after receiving complaints from two constituents who objected to the book's content. *King and King* is a children's tale about a prince who shuns princesses in favor of another prince. Reported in: advocate.com, March 10; *American Libraries Online*, March 17.

government surveillance

Washington, D.C.

The Federal Bureau of Investigation found apparent violations of its own wiretapping and other intelligence-gathering procedures more than a hundred times in the last two years, and problems appear to have grown more frequent in some crucial respects, a Justice Department report released March 8 said. While some of these instances were considered technical glitches, the report, from the department's inspector general, characterized others as "significant," including wiretaps that were much broader in scope than approved by a court and others that were allowed to continue for weeks or sometimes months longer than was authorized.

In one instance, the FBI received the full content of 181 telephone calls as part of an intelligence investigation, instead of merely the billing and toll records as authorized, the report found. In a handful of cases, it said, the bureau conducted physical searches that had not been properly authorized.

The inspector general's findings came at a time of fierce Congressional debate over the program of wiretapping without warrants that the National Security Agency has conducted. That program, approved by President Bush, is separate from the FBI wiretaps reviewed in the report, and the inspector general's office concluded that it did not have the jurisdiction to review the legality or operations of the NSA effort.

But, the report disclosed, the Justice Department has opened reviews into two other controversial counterterrorism tactics that the department has widely employed since the September 11 attacks. In one, the inspector general has begun looking into the FBI's use of administrative subpoenas, known as National Security Letters, to demand records and documents without warrants in terror investigations. Some critics maintain that the bureau has abused its subpoena powers to demand records in thousands of cases.

In the other, the Office of Professional Responsibility, a Justice Department unit that reviews ethics charges against department lawyers, has opened inquiries related to the detention of twenty-one people held as material witnesses in terror investigations.

As with the FBI's use of administrative subpoenas, civil rights advocates assert the Justice Department has abused the material witness statute by holding suspects whom it may not have enough evidence to charge. The new ethics inquiries are reviewing accusations that department officials did not take some material witnesses to court within the required time, failed to tell them the basis for the arrest or held them without any attempt to obtain their testimony as supposed witnesses in terror investigations, the inspector general said.

Representative John Conyers, Jr., of Michigan, ranking Democrat on the House Judiciary Committee, characterized the report as "yet another vindication for those of us who have raised concerns about the administration's policies in the war on terror." Conyers said that "despite the Bush administration's attempt to demonize critics of its antiterrorism policies as advancing phantom or trivial concerns, the report demonstrates the independent Office of Inspector General has found that many of these policies indeed warrant full investigations."

For its part, the FBI said in a statement it had been quick to correct errors in intelligence-gathering procedures when they were discovered and that "there have been no examples by the FBI of willful disregard for the law or of court orders."

The inspector general's review grew out of documents, dealing with intelligence violations, that were released last year under a Freedom of Information Act request by the Electronic Privacy Information Center, a private group in Washington. The inspector general then obtained more documents on violations and included an eleven-page analysis of the problem as part of a broader report on counterterrorism measures.

The inspector general reviewed 108 instances in which the FBI reported violations to an oversight board in the 2004 and 2005 fiscal years.

"We're always looking to bring the number of violations down," John Miller, chief spokesman for the bureau, said, "but given the scope and complexity of national security investigations, that's a relatively small number."

The inspector general's review found that reported violations under the Foreign Intelligence Surveillance Act, which governs some federal wiretaps, accounted for a growing share of the total, having risen to 69 percent last year from 48 percent in 2004. The duration of the violations also grew in some crucial areas, the review found. Two of those areas were the "overcollection" of intelligence—going beyond the scope approved by the court in authoriz-

ing a wiretap—and "overruns," in which a wiretap or other intelligence-gathering method was allowed to continue beyond the approved time period without an extension.

The review found the average amount of time overcollections and overruns were allowed before they were discovered and corrected rose to thirty-two days last year from twenty-two in 2004. In most cases, the FBI was found to be at fault, while about a quarter of the time a "third party," usually a telecommunications company, was to blame, the data showed.

In taking issue with some of the findings, FBI officials said the data were skewed by a number of exceptionally long violations; one wiretap lasted 373 days. Reported in: *New York Times*, March 8.

Washington, D.C.

A Pentagon intelligence agency that kept files on American anti-war activists hired one of the contractors who bribed former Rep. Randy "Duke" Cunningham (R-CA) to help it collect data on houses of worship, schools, power plants and other locations in the United States.

MZM, Inc., headed by Mitchell Wade, also received three contracts totaling more than two hundred fifty thousand dollars to provide unspecified "intelligence services" to the White House, according to documents obtained by Knight Ridder.

MZM's Pentagon and White House deals were part of tens of millions of dollars in federal government business that Wade's company attracted beginning in 2002. MZM and Wade, who pleaded guilty last month to bribing Cunningham and unnamed Defense Department officials to steer work to his firm, are the focus of ongoing probes by Pentagon and Department of Justice investigators.

In February 2003, MZM won a two-month contract worth $503,144.70 to provide technical support to the Pentagon's Joint Counter-Intelligence Field Activity, or CIFA. The top-secret agency was created five months earlier primarily to protect U.S. defense personnel and facilities from foreign terrorists.

The job involved advising CIFA on selecting software and technology designed to ferret out commercial and government data that could be used in what's called a Geospatial Information System. A GIS system inserts information about geographic locations, such as buildings, into digital maps produced from satellite photographs.

According to a "statement of work," the data that CIFA was interested in obtaining included "maps, street addresses, lines of communication, critical infrastructure elements, demographic and other pertinent sources that would support geocoding and multi-level analysis."

Geocoding involves assigning latitudes and longitudes to locations, such as street addresses, so they can be displayed as points on maps. Such tools increasingly are being used by U.S. corporations and law enforcement agencies.

MZM was to "assist the government in identifying and procuring data" on maps, as well as "airports, ports, dams, churches/mosques/synagogues, schools (and) power plants," said the statement of work. "In many cases, the government already owns such data, and for reasons of economy, government-owned data is preferred," said the statement. It isn't clear why U.S. intelligence agencies couldn't do the work themselves.

Navy Cmdr. Gregory Hicks, a Pentagon spokesman, said MZM began working on the project in October 2002, when the agency was created. Its job was to help the agency integrate technology into its "information architecture to help CIFA use available (satellite) imagery, which is produced legally by other commercial and government agencies," Hicks said. "GIS software . . . is designed to allow integration of geographic and imagery data with threat information to provide complex analytic products," he said. "Not knowing the location of key infrastructure and points of interest, such as bridges, chemical plants, schools, parks, and even religious facilities, as they relate to threat information, could significantly affect the accuracy of such analysis and plans and lead to disastrous results."

He was unable to discuss further details of CIFA's dealings with MZM, citing the ongoing investigations into Wade's dealings with the Pentagon.

CIFA recently came under fire following disclosures that it maintained information on individuals and groups involved in peaceful anti-war protests at defense facilities and recruiting offices. The information was stored in a database that was supposed to be reserved for reports related to potential foreign terrorist activity.

In a March 8 letter to Sen. Patrick Leahy (D-VT), a senior Pentagon official said a review of the Cornerstone database had identified 186 "protest-related reports" containing the names of 43 people that were mistakenly retained in the database. "These reports have since been removed from the Cornerstone database and refresher training on intelligence oversight and database management is being given to all CI (counter-intelligence) and intelligence personnel," said the letter from Robert W. Rogalski, an acting deputy undersecretary of defense.

The disclosure that CIFA was storing information on anti-war activities added to concerns that the Bush administration may have used its war on terrorism to give government agencies expanded power to monitor Americans' finances, associations, travel and other activities.

The administration's domestic eavesdropping program and FBI monitoring of environmental, animal rights and anti-war groups have also fueled such fears. The administration contends that its programs are legal and insists that they're designed to ensure civil liberties while protecting national security.

Wade, who faces up to twenty years in prison, was one of four men charged in the Cunningham case. Cunningham, who resigned from Congress in November after serving for

fifteen years, was sentenced to eight years and four months in prison in March. Reported in: Knight Ridder, March 17.

Pittsburgh, Pennsylvania

The American Civil Liberties Union and the ACLU of Pennsylvania released new evidence March 14 that the Federal Bureau of Investigation is conducting investigations into a political organizations based solely on their anti-war views. Two documents released by the groups reveal that the FBI investigated gatherings of the Thomas Merton Center for Peace & Justice just because the organization opposed the war in Iraq. Although previously disclosed documents show that the FBI is retaining files on anti-war groups, these documents were the first to show conclusively that the rationale for FBI targeting is the group's opposition to the war.

"It makes no sense that the FBI would be spying on peace activists handing out flyers," said Jim Kleissler, Executive Director of the Thomas Merton Center for Peace & Justice. "Our members were simply offering leaflets to passersby, legally and peacefully, and now they're being investigated by a counter-terrorism unit. Something is seriously wrong in how our government determines who and what constitutes terrorism when peace activists find themselves targeted."

According to the documents, the FBI initiated a classified investigation into the activities of the Thomas Merton Center, noting in a November 2002 memo that the center "holds daily leaflet distribution activities in downtown Pittsburgh and is currently focused on its opposition to the potential war on Iraq." The synopsis of the document is provided to "report results of investigation on Pittsburgh anti-war activities." The FBI memo points out that the Merton Center "is a left-wing organization advocating, among many political causes, pacifism."

"All over the country we see the FBI monitoring and keeping files on Americans exercising their First Amendment rights to free expression," said Mary Catherine Roper, a staff attorney with the ACLU of Pennsylvania. "These documents show that Americans are not safe from secret government surveillance, even when they are handing out flyers in the town square—an activity clearly protected by the Constitution."

The documents came to the ACLU as a result of a national campaign to expose domestic spying by the FBI and other government agencies. The ACLU has filed Freedom of Information Act requests in twenty states on behalf of more than one hundred fifty organizations and individuals. In response to these requests, the government has released documents that reveal monitoring and infiltration by the FBI and local law enforcement, targeting political, environmental, anti-war and faith-based groups.

"From the FBI to the Pentagon to the National Security Agency, this administration has embarked on an unprecedented campaign to spy on innocent Americans," said Ann Beeson, Associate Legal Director of the national ACLU. "Investigating law-abiding groups and their members simply because of their political views is not only irresponsible, it has a chilling effect on the vibrant tradition of dissent in this country," she said. Reported in: ACLU Press Release, March 14.

government secrecy

Washington, D.C.

In a seven-year-old secret program at the National Archives, intelligence agencies have been removing from public access thousands of historical documents that were available for years, including some already published by the State Department and others photocopied years ago by private historians.

The restoration of classified status to more than 55,000 previously declassified pages began in 1999, when the Central Intelligence Agency and five other agencies objected to what they saw as a hasty release of sensitive information after a 1995 declassification order signed by President Bill Clinton. It accelerated after the Bush administration took office and especially after the 2001 terrorist attacks, according to archives records.

But because the reclassification program is itself shrouded in secrecy—governed by a still-classified memorandum that prohibits the National Archives even from saying which agencies are involved—it continued virtually without outside notice until December. That was when an intelligence historian, Matthew M. Aid, noticed that dozens of documents he had copied years ago had been withdrawn from the archives' open shelves.

Aid was struck by what seemed to him the innocuous contents of the documents—mostly decades-old State Department reports from the Korean War and the early cold war. He found that eight reclassified documents had been previously published in the State Department's history series, "Foreign Relations of the United States."

"The stuff they pulled should never have been removed," he said. "Some of it is mundane, and some of it is outright ridiculous."

After Aid and other historians complained, the archives' Information Security Oversight Office, which oversees government classification, began an audit of the reclassification program, said J. William Leonard, director of the office. Leonard said he ordered the audit after reviewing sixteen withdrawn documents and concluding that none should be secret.

"If those sample records were removed because somebody thought they were classified, I'm shocked and disappointed," Leonard said in an interview. "It just boggles the mind."

If Leonard finds that documents are being wrongly reclassified, his office could not unilaterally release them.

But as the chief adviser to the White House on classification, he could urge a reversal or a revision of the reclassification program.

A group of historians, including representatives of the National Coalition for History and the Society of Historians of American Foreign Relations, wrote to Leonard February 17 to express concern about the reclassification program, which they believe has blocked access to some material at the presidential libraries as well as at the archives.

Among the fifty withdrawn documents that Aid found in his own files is a 1948 memorandum on a CIA scheme to float balloons over countries behind the Iron Curtain and drop propaganda leaflets. It was reclassified in 2001 even though it had been published by the State Department in 1996.

Another historian, William Burr, found a dozen documents he had copied years ago whose reclassification he considers "silly," including a 1962 telegram from George F. Kennan, then ambassador to Yugoslavia, containing an English translation of a Belgrade newspaper article on China's nuclear weapons program.

Under existing guidelines, government documents are supposed to be declassified after twenty-five years unless there is particular reason to keep them secret. While some of the choices made by the security reviewers at the archives are baffling, others seem guided by an old bureaucratic reflex: to cover up embarrassments, even if they occurred a half-century ago.

One reclassified document in Aid's files, for instance, gives the CIA's assessment on October 12, 1950, that Chinese intervention in the Korean War was "not probable in 1950." Just two weeks later, on October 27, some 300,000 Chinese troops crossed into Korea.

Aid said he believed that because of the reclassification program, some of the contents of his twenty-two file cabinets might technically place him in violation of the Espionage Act, a circumstance that could be shared by scores of other historians. But no effort has been made to retrieve copies of reclassified documents, and it is not clear how they all could even be located.

"It doesn't make sense to create a category of documents that are classified but that everyone already has," said Meredith Fuchs, general counsel of the National Security Archive, a research group at George Washington University. "These documents were on open shelves for years."

The program's critics do not question the notion that wrongly declassified material should be withdrawn. Aid said he had been dismayed to see "scary" documents in open files at the National Archives, including detailed instructions on the use of high explosives. But the historians say the program is removing material that can do no conceivable harm to national security. They say it is part of a marked trend toward greater secrecy under the Bush administration, which has increased the pace of classifying documents, slowed declassification and discouraged the release of some material under the Freedom of Information Act.

Experts on government secrecy believe the CIA and other spy agencies, not the White House, are the driving force behind the reclassification program.

"I think it's driven by the individual agencies, which have bureaucratic sensitivities to protect," said Steven Aftergood of the Federation of American Scientists, editor of the online weekly *Secrecy News*. "But it was clearly encouraged by the administration's overall embrace of secrecy."

National Archives officials said the program had revoked access to ninety-five hundred documents, more than eight thousand of them since President Bush took office. About thirty reviewers—employees and contractors of the intelligence and defense agencies—are at work each weekday at the archives complex in College Park, Maryland, the officials said.

Michael J. Kurtz, assistant archivist for record services, said the National Archives sought to expand public access to documents whenever possible but had no power over the reclassifications. "The decisions agencies make are those agencies' decisions," Kurtz said.

Though the National Archives are not allowed to reveal which agencies are involved in the reclassification, one archivist said on condition of anonymity that the CIA and the Defense Intelligence Agency were major participants.

A spokesman for the CIA, Paul Gimigliano, said the agency had released twenty-six million pages of documents to the National Archives since 1998 and it was "committed to the highest quality process" for deciding what should be secret. "Though the process typically works well, there will always be the anomaly, given the tremendous amount of material and multiple players involved," Gimigliano said.

Anna K. Nelson, a foreign policy historian at American University, said she and other researchers had been puzzled in recent years by the number of documents pulled from the archives with little explanation. "I think this is a travesty," said Nelson, who said she believed that some reclassified material was in her files. "I think the public is being deprived of what history is really about: facts."

The document removals have not been reported to the Information Security Oversight Office, as the law has required for formal reclassifications since 2003. The explanation, said Leonard, the head of the office, is a bureaucratic quirk. The intelligence agencies take the position that the reclassified documents were never properly declassified, even though they were reviewed, stamped "declassified," freely given to researchers and even published, he said. Thus, the agencies argue, the documents remain classified—and pulling them from public access is not really reclassification.

Leonard said he believed that while that logic might seem strained, the agencies were technically correct. But he said the complaints about the secret program, which

prompted his decision to conduct an audit, showed that the government's system for deciding what should be secret is deeply flawed.

"This is not a very efficient way of doing business," Leonard said. "There's got to be a better way."

On March 2, Archivist of the United States Allen Weinstein announced several initiatives he has implemented as part of the ongoing investigation into the withdrawal of previously declassified records at the National Archives. These steps include:

- Imposition of a moratorium on other agency personnel identifying for withdrawal for classification purposes any declassified records currently on the public shelves at the National Archives until the audit, conducted by the National Archives Information Security Oversight Office, is complete.
- A "summit" with national security agencies involved with these withdrawal efforts. The purpose of this meeting is to ensure the proper balance of agency authority to restore classification controls where appropriate and the Archivist's obligation to ensure maximum access to archival records consistent with law, regulation and common sense.
- A call upon affected agencies to join the Archivist in committing the necessary resources to restore to the public shelves as quickly as possible the maximum amount of information consistent with the obligation to protect truly sensitive national security information from unauthorized disclosure.
- Initiation of a review of National Archives internal processes for implementing agency classification/declassification decisions and the implementation of improvements to ensure that the National Archives is a catalyst for timely public access.
- Directing the Information Security Oversight Office to develop, in consultation with affected agencies, clear and concise standardized guidance, with an appropriately high threshold, that will govern the withdrawal of records from the open shelves for classification purposes. This guidance will be promulgated prior to allowing future removal of any records from the open shelves for classification purposes and will be publicly available.
- Requesting the recently constituted Public Interest Declassification Board, consistent with their charter, to independently advise the Archivist on this issue.

On March 14, the Archives declined to give a House of Representatives oversight subcommittee details on the program because the Pentagon ruled that the reasons for the program should remain secret. Weinstein told the House Subcommittee on National Security, Emerging Threats, and International Relations that NARA is conducting an audit to determine how many records were withdrawn from the public, why they were withdrawn, and whether reclassification was appropriate. He added that a final report would be available within sixty days.

The subcommittee's chair, Rep. Chris Shays (R-CT), called the secrecy "silly and absurd" and compared reclassification with "trying to put toothpaste back in the tube." He criticized the Bush administration for keeping information secret by adding Sensitive But Unclassified (SBU) designations to many documents–a category for which no uniform classification exists across federal agencies and which provides notice to an agency that a public document should be carefully scrutinized before it is released through a Freedom of Information Act (FOIA) request.

Shays also told agency representatives that he was bothered by information revealed in a previous hearing, not open to the public, that the Department of Defense has overclassified 50 percent of its records, while other agencies have 50–90 percent overclassification rates.

Department of Defense Undersecretary Robert Rogalski told subcommittee members that any one of the DOD's 2.5 million employees has the authority to classify a document as SBU, according to a report by the nonprofit Reporters Committee for Freedom of the Press. Thomas Blanton, executive director of the National Security Archive (NSA), a group based at George Washington University that uses FOIA to compile information on international affairs, told Shays that the DOD should limit the authority to designate SBU information.

The NSA released the results of its own audit of government classification practices at the hearing, finding twenty-eight different and uncoordinated agency policies on SBU designations, "none of which include effective oversight or monitoring of how many records are marked and withheld, by whom, or for how long."

Subcommittee member Dennis Kucinich (D-OH) said Congress should use its authority to keep the administration from improperly classifying public records. "Our nation is neither safer nor more open," he said. "We need to take another look at the laws and regulations that guide classification policy, for I believe the current system is out of control." Reported in: *New York Times*, February 21; U.S. Newswire, March 2; *American Libraries Online*, March 17.

Washington, D.C.

The White House said March 17 that it will discipline two government employees who masqueraded as journalists while scouting locations for a presidential visit to the Gulf Coast. A Mississippi couple whose home was destroyed by Hurricane Katrina said two men who later identified themselves as Secret Service agents pretended to be Fox News journalists when surveying their neighborhood in advance of a March 8 visit from President Bush.

The men arrived on March 3 at the site of the beachfront home that Jerry and Elaine Akins are rebuilding.

"They didn't show any cards or anything," Elaine Akins said. "They just came up and said they were with the media, and then they said they were with Fox. They just talked to us and asked us about rebuilding our house. Then, after everything was over with, they approached us and they were laughing, and they said: 'You know, we really weren't with Fox. We're government, Secret Service men.'"

Ken Lisaius, a White House spokesman, said the employees were out of bounds. "This incident has been brought to our attention, and this is clearly not appropriate, nor is it part of our standard operating procedures," he said. "The individuals involved will be verbally reprimanded."

Tom Mazur, a spokesman for the Secret Service, said he did not know who the men were but they were not Secret Service officials. "I checked with our people down there in Mississippi who were involved in the advance, and it was not Secret Service people who identified themselves as members of the media," Mazur said. "We wouldn't do that."

Asked whether he could confirm where the employees worked, Lisaius simply reiterated his earlier statement.

Akins said the men were friendly and looked around the home site for about twenty minutes. The following week, Bush flew to the small, working-class town. He appeared with Mississippi Gov. Haley Barbour (R) outside the Akins home to call attention to federal efforts to aid in reconstruction.

"Our job and our purpose is to help people like the Akins rebuild," Bush said.

The men eventually revealed their identities and displayed blue lapel pins bearing the presidential seal. Akins said she did not mind that the men temporarily misled her about their identities. "What could they do?" she said. "They couldn't walk up and tell us who they were, because then we would have been a lot more suspicious about the president coming."

"We didn't know" about Bush's visit "until about an hour before the president actually got there," she added. "I think they handled it great." Reported in: *Washington Post*, March 18.

colleges and universities

Tucson, Arizona

When faculty leaders talk about the various versions of the Academic Bill of Rights circulating among state legislators, many single out a bill in Arizona as the worst of all. The legislation there would require public colleges to provide students with "alternative coursework" if a student finds the assigned material "personally offensive," which is defined as something that "conflicts with the student's beliefs or practices in sex, morality or religion."

On February 15, the bill starting moving, with the Senate Committee on Higher Education approving the measure—much to the dismay of professors in the state.

The Arizona bill goes beyond the measures that have been pushed in other states—in fact, it goes so far that David Horowitz, the '60s radical turned conservative activist who has pushed the Academic Bill of Rights, opposes the measure. "It doesn't respect the authority of the professor in the classroom," he said. "This authority does not include the right to indoctrinate students or deny them access to texts with points of view that differ from the professor's. But it does include the right to assign texts that make students feel uncomfortable."

Horowitz's opposition to the bill is of little comfort to professors in Arizona. Although the legislation has a long way to go before it could become law, the idea that the Senate committee charged with overseeing colleges would approve the measure is upsetting to academics. They also are angry because the evidence cited by lawmakers to support the bill appears to be based on a misreading of an acclaimed novel.

Local news coverage of the session at which the bill won committee approval quoted Sen. Thayer Verschoor as citing complaints he had received about *The Ice Storm*, a novel by Rick Moody that was turned into a film directed by Ang Lee. "There's no defense of this book. I can't believe that anyone would come up here and try to defend that kind of material," Verschoor said at the hearing. Other senators spoke at the hearing, the newspaper reported, against colleges teaching "pornography and smut."

Actually, there are plenty who would defend teaching *The Ice Storm*, including the professor whose course appears to have set off Verschoor. The course—at Chandler-Gilbert Community College—was "Currents of American Life," a team-taught course in the history and literature of the modern United States. The literature that students read is selected to reflect broad themes of different eras, according to Bill Mullaney, a literature professor. For example, students read John Steinbeck's *Cannery Row* and Tim O'Brien's *The Things They Carried*.

The Ice Storm was a logical choice for teaching about the 1970s, Mullaney said, because the novel looks at suburban life at a crucial point in that decade: the collapse of the Nixon administration. While two families' lives are dissected, Watergate is always in the background and the relationship between private morality and public scandal is an important theme.

Adultery is central to the novel and one of its most famous scenes involves a "key party," in which couples throw their car keys in bowl, and then pull out keys to decide which wife will sleep with which husband (not her own) after the party. From comments at the Senate markup of the bill, it seems clear that lawmakers had heard about the wife swapping, but Mullaney and others doubt that they actually read the book. If they had, they might have

realized that Moody's portrayal of '70s culture is far from admiring.

"The book is a satire of this culture," Mullaney said. "There are these incredible moments of human connection that get through the morass of '70s culture. But if you read the section on wife swapping, it's showing how empty and unfulfilling and morally corrupt it is. So for these legislators to believe that this book is condoning wife swapping, the sad part is that they are passing this bill and they haven't read the book." (Privately, some faculty members less charitable than Mullaney think that the legislators may have read the book and just not understood it.)

Chandler-Gilbert officials said Mullaney and all of their professors take a number of steps that indicate they do respect students' rights to avoid certain material. Mullaney, for example, had a reference on his syllabus to the controversial nature and "adult themes" of some works, and he draws students' attention to that reference on the first day, when they have time to switch courses or sections. In the case of the student whose complaint apparently set off the bill, however, he ignored the warning and demanded an alternate book several weeks into the course, saying he hadn't paid attention when Mullaney noted the material earlier. The student's mother also called the college president (although the student is over eighteen).

Mullaney said he respects the right of students to decide which courses to take, but students can't dictate books to be taught. "This is totally unworkable in the classroom," he said. "If you have students demanding alternative books, and one student is reading one book, and one another, and one another—it doesn't make any sense in terms of how you teach."

If the bill became law, he added, professors would have to avoid controversial books so they wouldn't risk losing control of their reading lists. "I joke that what I'll do is just teach *To Kill a Mockingbird*—all the time," he said.

Faculty and administrative groups are opposing the bill. Janice Reilly, president-elect of the Maricopa Community College District Faculty Association, said the bill "very much infringes on academic freedom." Reilly, a professor of counseling at Mesa Community College, said "students have their own personal responsibilities" to pick courses, and expecting professors to alter courses "hurts other students," who want the emphasis on the original material.

Arizona State University also has come out against the bill. A statement from the university said the bill is "overreaching" and "informal processes" deal with any problems that come up with students who are uncomfortable with material. The university said it hoped further discussions with legislators could produce a solution that deals with their concerns while also "protecting the academic enterprise." Reported in: insidehighered.com, February 17.

Pomona, California

Miguel Tinker-Salas, a professor of Latin American history at Pomona College, had two unexpected guests during his office hours March 7. Mixed in with the line of about five students were two detectives from the Los Angeles County Sheriff's Department, one of whom, according to a business card he gave Tinker-Salas, works for the Joint Terrorism Task Force, a Federal Bureau of Investigation collaboration with local detectives. According to Tinker-Salas, the detectives said they wanted to "develop a profile of the Venezuelan community in the United States."

Tinker-Salas, who provided business cards and cell phone numbers for the detectives that the two left during their visit, described the twenty-minute encounter as pervaded by "verbal jostling." Tinker-Salas said one of the men had a folder, in which he had Tinker-Salas's profile from the Pomona Web site, among other papers. Tinker-Salas specializes in contemporary Venezuelan and Mexican politics, as well as issues related to oil in Venezuela.

"They praised my academic credentials," Tinker-Salas said. "Why are you really here?" he said he asked the visitors. "What is your level of education to have an opinion on my credentials?"

The detectives then asked questions for which answers are publicly available, Tinker-Salas said. "They asked if there's a Venezuelan consulate in L.A. and if I have relations to it. They asked things like, how many Venezuelans are there in L.A. and in the U.S.," Tinker-Salas said. "There is no Venezuelan consulate in L.A. I interpreted this as a fishing expedition."

Tinker-Salas has been an outspoken critic of U.S. foreign policy in Venezuela, most recently about the "inoculation strategy" that Secretary of State Condoleezza Rice said is an attempt to form "a united front against some of the kinds of things that Venezuela gets involved in." The professor said he guessed that his prominence, particularly in the news media, drew the detectives to his door.

According to an e-mail, Tinker-Salas wrote to colleagues about the visit, the detectives "were especially interested in whether or not I had been approached by anyone in the Venezuelan government or embassy to speak up on Venezuelan related matters."

Before they came into Tinker-Salas's office, the detectives roamed the hallway a bit, according to Tinker-Salas and students present, and talked to a few students. "They asked [the students outside Tinker-Salas's door] what courses he's teaching, do they like him," said John Macias, a graduate student at the Claremont Graduate University who is taking Tinker-Salas's Latin America Since Independence course. Macias said that the detectives didn't identify themselves to the students, but that, though they were not in uniform, "they were obviously older. . . . They stood out."

(continued on page 163)

sure from Seaman parents to change how evolution is taught. Children aren't required to read *Our Family Tree: An Evolution Story*, and evolution instruction mostly occurs at the high school level. "It's such a small part of our curriculum, I don't see it as an issue," Mathes said.

The decision by board members followed a vote in February in which the Seaman board refused to remove the Newbery Medal winning book *The Giver* from the library at Rochester Elementary. The parent who made the complaint said she merely wanted the book removed from the "sixth-grade literary choice circle"—a teacher-created list of books that students can read and discuss in class.

After that February denial, board members asked district staff to review policies and practices regarding library books. School employees presented board members with a letter teachers can use to inform parents if they are using a book in their classroom that has previously been challenged. But Mathes recommended that board members make the letter optional for teachers and principals.

"We don't think you should make this mandatory," Mathes said. "Again you have to be careful about policying yourself to death."

Apparently agreeing, board members quickly moved on with little discussion and no action on the issue. Reported in: *Topeka Capitol-Journal*, March 14.

library

Topeka, Kansas

Seaman Unified School District 345 school board members for the second time in two months refused March 13 to remove a book from an elementary school library. Board members also declined to require teachers to notify parents when a book used in their classrooms had been challenged.

"Some things are best left to the judgement of the teachers," said board member Ann Minihan.

The challenged material was an illustrated children's book about the scientific theory of evolution: *Our Family Tree: An Evolution Story*.

A parent requested that the book be removed from Indian Hills Elementary School's library and placed in a professional reading library used by teachers. Board members unanimously rejected the request, following the recommendation of a district committee. Minihan, who served on that committee, said it wasn't clear why the parent wanted the book removed.

Evolution, however, remains a touchy subject for many parents. The Kansas State Board of Education late last year voted to include criticisms of evolution in the state's standards for teaching science.

Despite the request to remove the evolution book, superintendent Mike Mathes said he has heard little pres-

schools

Sacramento, California

A tumultuous chapter in California textbook history reached a climax in March when the state Board of Education rejected demands from some Hindu groups for many changes in new textbooks' treatments of ancient India. The 8–0 vote with two abstentions followed a passionate ninety-minute public hearing March 8 and capped months of other hearings and intensive lobbying by activists and scholars that attracted national attention.

"What is at stake here is the embarrassment and humiliation that these Hindu children (in America) continue to face because of the way textbooks portray their faith and culture," said Jihane Ayed of Ruder Finn, a New York-based public relations firm representing the Vedic Foundation and Hindu Education Foundation. The foundations say Hinduism is tarnished by textbook portrayals of the untouchable caste and inferior status of women in ancient India more than 2,500 years ago. They also object to depictions of Hinduism as polytheistic and the inclusion of the theory that an Aryan migration played a key role in the development of Indian civilization.

Other Hindu Americans applauded the Board of Education.

The conflict arose as the board of education underwent its once-every-six-years textbook adoption process for

history and social science textbooks for grades K–8 in public schools.

"What one person considers historically accurate, another person views as a racist text," board member Ruth Green told the packed hearing room in Sacramento.

Janeshwari Devi, Vedic Foundation projects director, said the board's action "leaves a lot of inconsistencies, distortions and negative slants in the books."

The two foundations submitted about five hundred proposed changes, and more than 80 percent were not approved, Devi said. The Department of Education's curriculum director, Thomas Adams, told the board the approved changes included the ones that all parties agreed to, such as removing "Where's the Beef" as the title of a section about India.

Anu Mandavilli, a representative of Friends of South Asia, a group that includes Hindus and that opposed the controversial changes sought by the Hindu foundations, called the board's action "a big victory for secular history."

"The board stood up to threats of lawsuits and voted in favor of historical accuracy instead of strong tactics by community groups," she said.

Deborah Caplan, a lawyer representing the Hindu American Foundation, told the board it violated the law during the approval process and would be sued if it adopted the recommendations forwarded by the Department of Education staff and a board subcommittee vote. It was those recommendations the board essentially adopted.

California textbook battles are not new, but this year's dispute attracted extra attention, and the process was delayed several months. The Department of Education received more submissions than ever before, with eleven publishers in April offering history and social studies textbooks and supplementary materials for sixth grade, when ancient India is usually taught in California.

"We've literally been deluged with reams of comment," said Rebecca Parker, an administrator for the Board of Education. "Schools need these materials. Publishers are really worried about having time to do all the printing."

Nine publishers were approved to publish sixth-grade textbooks for next fall. The two Hindu foundations sought changes in all nine textbooks offered by the publishers.

Islamic and Jewish organizations also lobbied the state during the adoption process. The leading Islamic watchdog of textbooks, the Islamic Council on Education, urged changes in descriptions of Muhammad and early Islam. A Jewish group called the Institute for Curriculum Services also sought many changes. In the Houghton Mifflin and McDougal Littell textbooks, for example, the group sought removal of a reference to early Hebrews believing they were "God's chosen people" because the phrase is often used to denigrate Jews.

But the groups that were most vociferous in the final stages were the Vedic Foundation and Hindu Education Foundation, who say they speak for the Hindu American mainstream, a claim that is disputed.

Critics, including many U.S. scholars and many American Hindus, say the two foundations are linked to right-wing nationalist Hindu movements in India. "The proposed revisions are not of a scholarly but a religious-political nature," Harvard Sanskrit Professor Michael Witzel said in a November 8 letter to the Board of Education that was co-signed by forty-seven scholars of India.

Even though the board resisted many of the changes sought by activist groups this time, the conflict could still impact future textbooks with publishers being tempted to soften the content on their own initiative, said Stanford University professor of education Sam Wineburg.

"Publishers will tread on this territory ever more lightly," Wineburg said, noting that publishing companies are private, profit-driven multinational companies.

Adding fuel to a long-running debate, adversaries battled over whether historical accuracy is sacrificed on the altar of political correctness and whether textbooks promote negative stereotypes of religious and ethnic groups.

"The result," said Gilbert Sewall, director of the American Textbook Council, "is textbook editors censor themselves. They fall all over themselves to try to cater to one pressure group." Reported in: *San Francisco Chronicle*, March 10.

San Antonio, Texas

A suburban San Antonio school board has reversed the superintendent's ban of a critically acclaimed science fiction novel. By a 5–2 vote on March 23, the Judson school district board overruled Superintendent Ed Lyman's ban of the novel *The Handmaid's Tale*, by Margaret Atwood, from an advanced placement English curriculum. The vote came after nearly three hours of public comment, including that of Judson High School students.

"If we do ban *The Handmaid's Tale* because of sexual content, then why not ban *Huckleberry Finn* for racism? Why not ban *The Crucible* for witchcraft? Why not ban *The Things They Carried* for violence, and why not ban the Bible and argue separation of church and state?" Judson senior Craig Gagne told trustees.

Lyman had banned the book after a parent complained it was sexually explicit and offensive to Christians. In doing so, he overruled the recommendation of a committee of teachers, students and a parent. The committee appealed the decision to the school board.

Board Vice President Richard LaFoille said he didn't see how trustees could uphold the ban. "You kids want this book, I'm going to give it to you," he told the audience of nearly two hundred, most of them high school students.

The 1985 novel is a story of an environmentally blighted United States after a coup. Civil war rages as a

fundamentalist Christian regime revokes all women's rights and presses the few who remain fertile into sexual slavery. The book, which has been adapted as a motion picture, has been a part of Judson's advanced placement English curriculum for about ten years. The College Board exams given to advanced placement students for college credit include questions about the book.

Lyman said that he believed the book does not meet community standards. He said he would not want his own children to read it. Reported in: *Houston Chronicle*, March 24.

colleges and universities

Pierre, South Dakota

The South Dakota Senate in February rejected legislation that would have required the state's public colleges to report annually on steps they had taken to ensure intellectual diversity and the free exchange of an array of ideas on their campuses. The senators defeated the measure, HB 1222, by a vote of 18–15. Eight Republicans joined all ten of the state's Democratic senators in opposing the bill, which passed the South Dakota House of Representatives earlier in the month, forty-two to twenty-six. Both chambers of the Legislature are controlled by Republicans.

Lawmakers who backed the measure had argued it would make clear that the Legislature values intellectual diversity, which the bill defined as "the foundation of a learning environment that exposes students to a variety of political, ideological, and other perspectives." The measure's supporters, who were mostly Republicans, said the legislation would allow for better oversight of how well the state's campuses were protecting diverse views.

The American Council of Trustees and Alumni, a national education group that advocates academic freedom and a traditional curriculum, also supported the bill and had offered guidance in crafting the legislation. Anne D. Neal, president of the trustees' group, said she "regretted" the legislation's defeat. She said the bill would have ensured that South Dakota institutions were taking concrete steps to prevent viewpoint discrimination and to ensure a robust exchange of ideas on their campuses.

Higher-education officials in South Dakota opposed the intellectual-diversity measure. They argued that its adoption would have conveyed the inaccurate message that the state's institutions had problems that required political interference to solve.

Robert T. (Tad) Perry, executive director of the South Dakota Board of Regents, which governs the state's public colleges, said his board already has adequate reporting systems and grievance procedures in place to protect diverse views on campuses.

"This was a national solution looking for a local problem to solve," Perry said. He also criticized the legislation for being cast in a way that he said "carried with it a political agenda and an ideological agenda."

Debate over the South Dakota bill came as Republican lawmakers in several state legislatures have introduced a measure, the "academic bill of rights," that seeks to ensure that college students' views are protected and promotes intellectual diversity on campuses. Although the legislation is worded so as to protect a range of views, many of its advocates have backed it on the basis of a belief that college students with conservative beliefs are often treated unfairly. Reported in: *Chronicle of Higher Education*, February 27.

(censorship dateline . . . from page 136)

language or material are prohibited between the hours of 6:00 A.M. and 10:00 P.M." (During the daytime hours, such content wouldn't be allowed to be aired due to Federal Communications Commission rules.) Under the policy, the term "indecent language or material" has the same meaning as the current definition used by the FCC.

According to the FCC, indecent language or material, in context, depicts or describes sexual or excretory activities or organs in terms patently offensive as measured by contemporary community standards for the broadcast medium.

The policy would also give Joseph W. Watson, the vice chancellor of student affairs, the power to cut the station's feed without "notice, to halt or prevent suspected violations of this policy."

"I think it's conceivable that the policy will be enacted," said Ratcliff. "And the station's signal will soon be reactivated."

York isn't convinced that the administrators will win this battle. He sees the creation of the policy as a way to highlight what he calls "the power hungry bureaucrats in the California education system." He and others plan a publicity campaign to get alumni to support their efforts. Students also have said that they have contacted legal representation in the event that the university attempts to enact the policy.

Toni Urbano, president of the Association of Higher Education Cable Television Administrators, said universities would be wise to review their policies regarding student-created media before such scenarios develop. At New York University, where Urbano manages the institution's television station, she said the student station has long operated under FCC guidelines.

"As more and more cases like this UCSD scenario come about, I'm sure more universities are going to be proactive about how to monitor what goes out on their stations," says Urbano. Reported in: insidehighered.com, March 30.

New York, New York

Amid apparent security concerns, New York University decided to edit a panel discussion on the Danish cartoons of Muhammad. The NYU Objectivist Club organized its "Free Speech and the Danish Cartoons" panel for March 29. The program description said the panel would discuss topics like "Why the cowardly and appeasing response of many Western governments—including our own—will only invite further aggression." The club originally planned both to display the cartoons and to provide some tickets to the event to people not affiliated with NYU.

On March 27, however, Robert Butler, NYU's director of student activities, sent an e-mail to panel organizers informing them that the panel must either be closed to the public, or the cartoons must not be displayed. "Safety [is] always a concern when a controversial program is held on campus," read Butler's e-mail. "After consulting with Jules Martin (VP for Public Safety) regarding the campus climate and controversy surrounding the cartoons we are going to require that this event be open only to members of the NYU community." Butler added that, if the cartoons are displayed, about seventy-five non-NYU guests who had asked to attend should be told not to come.

John Beckman of NYU said that the university preferred to have the students choose not to display the cartoon, thus maintaining the ability to invite outside audience members. "The reason for our preference was that an important group in our Muslim community made it clear that they found the display of the cartoons deeply offensive," Beckman said. Initially, however, the Objectivist Club took door number two: keep the cartoons, and close the panel to the general public. But hours before the event, the club changed its tune, and decided not to display the cartoons.

Student members of NYU's Islamic Center circulated e-mails planning a protest before the club decided not to go with the cartoons. Maheen Farooqi, president of the Islamic Center, said in an e-mail that "we at the Islamic Center are all for discourse and dialogue and we would encourage the Objectivist Club to partake in whatever discussion they would like." But any depiction of Muhammad is sacrilege in the Muslim faith, and the center did not think the cartoons were a necessary part of that discussion.

Farooqi added that the Islamic Center "would not encourage racism in any shape or form, and to us and many others, these cartoons are racist and we adamantly oppose their display."

Greg Lukianoff, president of the Foundation for Individual Rights in Education, said NYU should never have gotten involved with managing the event. "Depicting disturbing events or images so you can discuss them is never considered to be the same thing as endorsing the image," Lukianoff said. "These might very well be the most newsworthy cartoons in American history."

Beckman noted that the university never planned to block the display of the cartoons, only to limit the event to the NYU community if the cartoons were displayed "with an eye towards ensuring that event goes forward without disruption." Reported in: insidehighered.com, March 30.

Lancaster, Pennsylvania

When the semester started, Stephen E. Williams was teaching history at the Lancaster branch of Harrisburg Area Community College. But early in the semester, he stopped showing up, and his students received calls confirming the reason why: He had used the word *fuck* in class.

Officially, administrators at the college would not say why Williams was suspended or why the institution recently reached an agreement under which the tenure-track (but non-tenured) professor ceased to be an employee. But students in his classes started getting calls from officials soon after he left, asking if they had heard him swear in class.

The problem for Williams may be that their answer was yes, although students also reported great admiration for Williams, and a number complained about his removal as their professor.

Donald Dodson, Jr., who had taken several courses from Williams, called him "an excellent teacher," and said the periodic profanity was part of his "blue collar approach" and a "conversational teaching style." Williams, Dodson said, uses this style to reach out to students. Dodson said that he's among the many students who take every course Williams offers—even though he gives tough exams.

As for the swearing, Dodson said it is something that isn't constant and is never directed at an individual. "It's just part of his style," he said.

Dodson, who is thirty-seven and just back from military service in Iraq, said it was relevant that Williams doesn't teach in a high school, but in a community college where students aren't young innocents. "I know what things are like out there," he said, and a little profanity is part of life. To those offended, he said his message would be: "Get used to it—that's the way life is."

Michael Essig, an adjunct instructor in English at the college, also said it was important to remember the context in which Williams taught. "We're not dealing with children here," he said. "To me, this is about free speech and academic freedom," Essig said. Since Williams was removed, he said, other professors have "had to wonder, 'if it could happen to him, could it happen to me?'"

Patrick M. Early, executive director of public relations at the college, said he couldn't comment on Williams, except to say that he was no longer an employee and that there had been a "mutual resolution of the situation." Early also said that Williams had the opportunity for a hearing involving peers, but opted for a settlement.

Speaking generally, Early said, "we feel that academic freedom is essential to a high quality environment, but the use of profanity when it is not directly connected to the subject matter is something that is not covered by academic

freedom." Early said that the use of profanity would be OK in cases such as where the words are part of the lyrics of a song being studied.

Roger Bowen, general secretary of the American Association of University Professors, agreed that profanity should not generally be used in classroom instruction. But he said some sense of perspective was needed when it is, and a student complaint about profanity should be a time for a faculty member to be warned, not suspended. Bowen noted that Vice President Cheney had used the same profanity on the Senate floor and "he didn't get fired."

Dodson also raised the question about perspective. He noted that when he was serving in Iraq, he learned about the comments that Ward Churchill, the controversial University of Colorado professor, made about 9/11.

Said Dodson: "If Ward Churchill can say whatever the heck he wants, a professor should be able to use some profanity from time to time, especially if it helps him teach and get through to the students." Reported in: insidehighered .com, March 8.

broadcasting

Washington, D.C.

The government proposed a record fine of $3.6 million against dozens of CBS stations and affiliates March 15 in a crackdown on what regulators called indecent television programming. The Federal Communications Commission said a network program, *Without a Trace,* that aired in December 2004 was indecent. It cited the graphic depiction of "teenage boys and girls participating in a sexual orgy." The proposed fine was among decisions from the agency stemming from more than three hundred thousand complaints it received concerning nearly fifty TV shows broadcast between 2002 and 2005.

Rejecting an appeal by CBS, the FCC also upheld its previous $550,000 fine against twenty of the network's stations for the Janet Jackson "wardrobe malfunction" at the Super Bowl two years ago. These were the first fines issued under FCC Chairman Kevin Martin, clearing a backlog of investigations into indecency complaints. The commission issued no fines last year.

"The number of complaints received by the commission has risen year after year," said the FCC's Martin. "I share the concerns of the public—and of parents, in particular—that are voiced in these complaints."

Among some 300,000 viewer complaints received between February 2002 and March 2005, the FCC zeroed in on the most substantive, which involved nearly fifty television broadcasts. The agency determined that six, including a segment of Martin Scorsese's critically acclaimed documentary *The Blues,* which aired on PBS, violated indecency standards. They drew fines ranging from $15,000 to $220,000.

Others fined included the WB and NBC's Telemundo in addition to licensees Sherjan Broadcasting and Aerco Broadcasting.

The FCC determined that four other TV shows violated indecency standards but did not merit fines and that seventeen others also provoking viewer complaints did not violate any standards.

According to veteran communications and First Amendment attorney John Crigler, the package sent a new message to broadcasters: "You have no place to hide," he said.

"Martin wanted to make an impact, and he will," Crigler added. "If there was any doubt as to where he was going with indecency, this should end it. He's eliminating a lot of the defenses broadcasters have used."

For instance, broadcasters have often pixilated naked private parts, but the ruling against an episode of *The Surreal Life 2,* which featured copious amounts of pixilated female breasts, made clear the effort was not sufficient.

"Despite the obscured nature of the nudity," the commission wrote in its decision, "it is unmistakable that partygoers are exposing and discussing sexual organs as well as participating in sexual activities."

"Innuendo is actionable," Crigler said, signaling a change in previous FCC approaches to indecency.

But the agency also is trying to appear reasonable. Fines were only issued to stations that had drawn viewer complaints, unlike before, when all stations airing offending material were fined, regardless of whether viewers complained.

"Our commitment to an appropriately restrained enforcement policy . . . justifies this more limited approach towards the imposition of forfeiture penalties," the agency wrote.

The National Association of Broadcasters declined to comment. However, NBC said in a statement, "The FCC's decision to fine NBC Universal's Spanish-language independent television station for airing a movie that has been repeatedly broadcast over the past dozen years is not supported by law or the FCC's prior rulings." NBC also promised to go to court if the agency stands by its decision.

"CBS continues to disagree with the FCC's finding that the 2004 Super Bowl was legally indecent," the network said in a statement. "CBS also strongly disagrees with the FCC's finding that *Without a Trace* was indecent. The program, which aired in the last hour of primetime and carried a 'TV14' V-chip parental guideline, featured an important and socially relevant storyline warning parents to exercise greater supervision of their teenage children. The program was not unduly graphic or explicit, and we will pursue all remedies necessary to affirm our legal rights."

Parents Television Council, which has waged a voluble campaign against broadcast indecency, hailed the decisions. "We applaud the FCC for upholding the substantial fine against CBS for Janet Jackson's indecent exposure during the 2004 Super Bowl, for finding the graphic

sexual content in *The Surreal Life 2* to be indecent and for clarifying whether utterances of the F-word and S-words are indecent," said the council's executive director Tim Winter. "Finally, we wholeheartedly endorse the FCC actions to protect Spanish-speaking children and families from indecent broadcasts. The public airwaves belong to all Americans without regard to their primary language."

Responding to other complaints, the commission found that Fox Television Network violated decency standards during the 2003 Billboard Music Awards. During the broadcast, actress Nicole Richie uttered the "F" word and a common vulgarity for excrement.

"Each of these words is among the most offensive words in the English language," the FCC said. But it declined to issue a fine against Fox because at the time of the broadcast existing precedent indicated the commission would not take action against isolated use of expletives, the FCC said.

The commission also declined to fine Fox or its stations for the 2002 Billboard Music Awards, in which Cher uttered the "F" word. Martin, a Republican, has long advocated a tough stand against indecency violators. Before becoming chairman last year, he complained in several cases that the agency should be fining broadcasters based on each offensive utterance, not each program. That way, the FCC could find several violations in a program. Martin is also on record supporting legislation to increase the maximum fine an indecency violation could draw. The current maximum is $32,500 per incident, but some lawmakers have called for boosting the penalty to as high as $500,000.

There was overwhelming support for hiking fines in the months after the Jackson exposure two years ago, but legislation has fizzled in Congress. Reported in: Associated Press, March 15; *Variety*, March 15.

Washington, D.C.

FCC indecency complaints for first quarter 2006 were expected to at least triple the number for fourth quarter 2005, thanks to a campaign against the NBC drama *Las Vegas.* By the FCC's count, it had received about 134,300 complaints about *Las Vegas* alone by the end of February. In contrast, the commission received 44,109 complaints against all shows for the three months ended December 31, which was up from the 26,185 filed for the previous quarter.

Contributing to that fourth-quarter total had been the Mississippi-based American Family Association, which filed numerous complaints about the NBC drama *Book of Daniel,* which the network pulled after a few episodes. Then AFA sent an alert to members asking them to complain about a February 6 *Las Vegas* episode that featured a scene in a strip club.

AFA said it filed more than 170,000 complaints, but the FCC count was only for a several-week window in February.

FCC Deputy Chief of the Consumer and Governmental Affairs Bureau Jay Keithley said the bureau could not determine whether all the *Vegas* complaints were about the AFA's target episode but "sufficient review" confirmed that the majority concerned the February 6 broadcast.

Ironically, AFA was the subject of its own indecency gripes. Some of its members complained about the *Las Vegas* clip included in the e-mail to illustrate the show. AFA pledged henceforth to pixelate the "indecent" bits in future alerts.

The campaign has the show's creator seeing red. "They complained about the scene, but then they put the clip on their Web site where any kid can download it and see it," said Gary Scott Thompson. "How is that consistent with their message? My kids found it online easily, thanks to this group, but I wouldn't let them watch my show because of its rating."

"We started hearing our strip-club scene was all over the Web," he continues. "It was showing up on a bunch of different Web sites. So we backtracked it and realized it had been copied from [the AFA]."

Thompson dismissed the idea that AFA pushed *Daniel* off the schedule. "They think they influenced *Book of Daniel* going off the air? Guess what? It was the ratings, it wasn't them. People didn't want to watch that show."

But that doesn't mean NBC isn't paying attention, he said: "They asked us to be careful what we write and what we shoot. That doesn't mean we are going to." The network had no comment.

The Parents Television Council, another watchdog group, led the way in rallying members to flood the FCC with indecency complaints over shows that offend its members. But in the wake of PTC's success with e-mail campaigns, AFA vowed last fall to ramp up its complaints, including putting calls for action in church bulletins. Reported in: *Broadcasting and Cable*, March 13.

New York, New York

Concerned about the recent decision by the Federal Communications Commission to fine television networks for material deemed indecent, the WB network broadcast a new drama in late March that it censored over the objections of the program's creator.

But first, the network offered the uncut version of the pilot episode on its Web site—a further example of the new strategies network television may be pursuing, both to escape government-imposed restrictions and to find alternative ways of reaching viewers. It was the first time a network has offered on another outlet an uncut version of a program it was forced to censor.

The show, *The Bedford Diaries,* was created by Tom Fontana, whose long résumé includes award-winning shows like *St. Elsewhere* and *Homicide* for network television and the far more graphic prison drama *Oz* for HBO, a pay-cable channel with no content restrictions.

The pilot episode of *The Bedford Diaries,* which concerns a group of college students attending a class on human sexuality, had already been accepted by WB's standards department. After the March FCC decision to issue millions of dollars in fines against broadcast stations (see page 157), however, the network's chairman, Garth Ancier, contacted Fontana and asked him to edit a number of specific scenes out of the show, including one that depicted two girls in a bar kissing on a dare and another of a girl unbuttoning her jeans.

"I said no," Fontana said. "I told him I found the ruling incomprehensible. He said the censor would do the edit."

The decision, several network executives said, could represent a further step in the spread of alternative means for television programs to reach viewers, including iPods and computers. It could also increase the risk that network television will be seen as passé by some of its audience, especially younger viewers.

"The message here is that they'll be forced to go alternative ways of looking at shows if they want to see the real thing," Fontana said. "It's like they're telling people that broadcast television now has much less interesting stuff than you see on the Web or cable."

WB executives acknowledged that the decision to censor Fontana's new show was entirely driven by concerns raised by the fines the FCC levied against television stations for broadcasting programs it called indecent. The commission ordered by far the biggest fine, $3.6 million, for 111 stations affiliated with or owned by CBS, for an episode of the crime drama *Without a Trace* that contained a scene depicting teenagers engaged in sex. CBS protested the fine and said the show was not indecent.

Fontana praised Ancier for being "a thorough professional and complete gentleman" about the issue. He said he had no problem at all with WB's decision, conceding that the network had to do what it believed was necessary to avoid being fined. But he added, "In more than twenty years in the business, this is the most chilling thing I've ever faced."

In a statement, Ancier said: "The WB takes its responsibility as a broadcast network very seriously and we have always been mindful of the FCC's indecency rules. While we believe that the previous uncut version of 'The Bedford Diaries' is in keeping with those rules, out of an abundance of caution, we decided to make some additional minor changes to the premiere episode of the series, which is set to debut next Wednesday, March 28. We also decided to make the original version available on the Internet at TheWB.com, which allows those interested in seeing the producer's creative vision to do so while at the same time recognizing the special rules that apply to the broadcast medium."

In a telephone interview, Ancier said the network respected the effort Fontana had made to produce a show that was both creatively interesting and socially responsible. "Our feeling was that Tom had worked very hard with our standards people and they came up a final edit of the show which we all had found acceptable," he said.

Network executives said the industry was still working through what impact the threat of heavy fines from the FCC will have on the content of coming shows. One senior network program executive said it would now be unlikely that a show with the subject matter of *The Bedford Diaries* would be ordered by a network.

Asked whether this might lead to the diversion of more network programming to other distribution outlets, Ancier said: "It's a really good question. I just don't know." Reported in: *New York Times*, March 23.

foreign

Beijing, China

Chinese authorities are determined to stop "harmful information" from spreading through the Internet, but the controls it places on Web sites and Internet service providers in mainland China do not differ much from those employed by the United States and European countries, a senior Chinese official responsible for managing the Internet said February 14.

The official, Liu Zhengrong, who supervises Internet affairs for the information office of the Chinese State Council, or cabinet, did not dispute charges that China operates a technologically sophisticated firewall to protect the ruling Communist Party against what it treats as Web-based challenges from people inside China and abroad. But he sought to place the massive Chinese efforts to control the Web in the best possible light, stressing repeatedly that Chinese Internet minders abide strictly by laws and regulations that in some cases have been modeled on American and European statutes.

"If you study the main international practices in this regard you will find that China is basically in compliance with the international norm," he said. "The main purposes and methods of implementing our laws are basically the same."

The briefing was one of the few times any senior official has spoken in detail about China's management of the Internet. Officials assigned to enforce the government's media controls operate behind closed doors and rarely make public statements about their work.

The Internet policies of China have come under closer scrutiny abroad after Google and Microsoft acknowledged helping China censor information available through Web searches and blogs, and Yahoo! has been accused of providing data that helped convict dissidents who used its e-mail accounts.

Liu said the major thrust of the Chinese effort to regulate content on the Web was aimed at preventing the spread of pornography or other content harmful to teenagers and

children. He said its concerns in this area differ minimally from those in developed countries.

Human rights and media watchdog groups maintain that Chinese Web censorship puts greater emphasis on helping the ruling party maintain political control over its increasingly restive society. Such groups have demonstrated that many hundreds of Web sites cannot be easily accessed inside mainland China mainly because they are operated by governments, religious groups or political organizations that are critical of Chinese government policies or its political leaders.

Liu said that Chinese Internet users have free rein to discuss many politically sensitive topics and rejected charges that the police have arrested or prosecuted people for using the Internet to circulate views.

Human rights groups argue, and Chinese court documents show, however, that legal authorities have cited e-mail communications and postings on domestic and foreign Web sites as evidence against Chinese dissidents accused of "incitement to overthrow the state" and "leaking state secrets."

Liu objected to what he suggested were biased criticisms of Chinese Internet controls that ignored similar restrictions that foreign governments and private companies impose on their own Web sites. He cited, for example, statements on Web sites run by the *New York Times* and the *Washington Post* that reserve the right to delete or block content in reader discussion groups that editors determine to be illegal, harmful or in bad taste. Chinese media Web sites are also monitored in that way, he said.

"Major U.S. companies do this and it is regarded as normal," Liu said. "So why should China not be entitled to do so?"

Journalists and Web site operators in China say that domestic news and discussion sites must ban a long list of topics deemed off limits by party officials or face penalties. Such controls appear to have only superficial similarities to attempts by private companies in the United States and Europe to monitor content on Web sites they operate.

Liu also said the powers that the Bush administration gained under the PATRIOT Act to monitor Web sites and e-mail communications and the deployment of technology called Carnivore by the FBI, which allows it to scrutinize huge volumes of e-mail traffic, are examples of how the United States has taken legal steps to guard against the spread of "harmful information" online.

"It is clear that any country's legal authorities closely monitor the spread of illegal information," he said. "We have noted that the U.S. is doing a good job on this front."

The Bush administration has maintained that its efforts to monitor online communications pertain mainly to preventing terrorist attacks.

Liu said there are now 111 million Chinese Web users and that in the past five years, China has expanded the bandwidth available to connect with overseas Web sites nearly 50-fold to 136,000 megabits per second, underscoring its strong commitment to allow its citizens to gather information and interact with people around the world. The number of Web sites that mainland Chinese users cannot access amounts to a "tiny percentage" of those available abroad, he said. Reported in: *New York Times*, February 14.

(from the bench . . . from page 144)

the Winter Olympics was passing by the Juneau-Douglas High School campus and students were let out of class to watch it. Joseph Frederick, an eighteen-year-old senior, stood on the sidewalk and unfurled his banner as TV camera crews approached. Principal Deborah Morse crossed the street, grabbed and crumpled the banner, and told Frederick he was suspended for promoting illegal drug use.

After appealing unsuccessfully to the school board, Frederick sued, seeking removal of the suspension from his records, a declaration that his rights had been violated and damages. A federal judge ruled against him, but the appeals court overruled that decision.

Frederick's appeal drew support from the Student Press Law Center, the *Village Voice* newspaper and the First Amendment Project in Oakland. Sonja West, a lawyer for those organizations, said their chief concern was the federal judge's conclusion that the banner was school-sponsored expression, which would allow the school to control its content, like an official school newspaper.

The appeals court's disagreement with that conclusion "reaffirms the idea that for a school to simply allow students to express themselves during school hours does not mean the school is endorsing the message," West said.

Mertz said Frederick, now a student at the University of Idaho, would seek to end the case with an order prohibiting the school board from punishing students for nondisruptive speech. Reported in: *San Francisco Chronicle*, March 13.

government surveillance

Washington, D.C.

Five judges who served on the secret court that approves domestic spying warrants endorsed a proposal March 28 that would require judicial review of the National Security Agency's warrantless surveillance program.

Judge James Robertson, who served on the secret court until he quit, apparently in protest of the program, wrote Congress to support a proposal to have the court oversee the program. In a highly unusual appearance on Capitol Hill, four other federal judges, who no longer serve on the secret court, also backed the proposal.

The endorsements were the most recent development in the debate over the legality of the NSA program and whether Congress should alter and monitor it more carefully—ideas the White House has largely resisted.

The proposal strikes "a reasonable approach to meeting both the need for national security and for protecting Americans' civil liberties," said William Stafford, a federal judge in Florida who sat on the secret court until 2003.

The bill, sponsored by Sen. Arlen Specter, a Pennsylvania Republican, would have the secret court review the program to decide whether the president has the authority to continue it. Specter's bill would also require future surveillance in the United States to be approved by the secret court, but the government could identify one suspected terrorist to gain permission to spy on a whole network.

Senate Democrats, however, expressed concern that the president would not comply with the measure if it became law.

The Foreign Intelligence Surveillance Act of 1978 requires the government to obtain a warrant before spying on people in the United States and established a secret court to approve such warrants.

The NSA program authorizes warrantless surveillance of people in the United States who are suspected of having connections to al-Qaida. The White House contends that the president has the authority to pursue the program under a congressional resolution passed in the wake of the September 11 attacks and under constitutional wartime powers.

The four judges said Congress has the power to authorize the president to spy on Americans without a warrant, but were wary of the president's authority to do it on his own. Robertson, a federal judge in the District of Columbia, declared his support for Specter's bill.

"Seeking judicial approval for government activities that implicated Constitutional protections is, of course, the American way," he wrote in a letter to the senator. But he said sensitive material should be handled by a small group of judges, such as the eleven-member secret court. Robertson suggested adding a requirement that the secret court review the NSA surveillance program every forty-five days.

John Keenan, a federal judge in New York who served on the secret court until 2001, said Specter should expand the provision in current law allowing warrantless surveillance in an emergency for three days to seven days.

The court operates in absolute secrecy. Yesterday's public testimony was "unprecedented," said Steven Aftergood, who runs the government secrecy project at the Federation of American Scientists.

Specter cast doubt on the fate of a hearing to examine a proposal by Sen. Russ Feingold, a Wisconsin Democrat, to censure the president, whom he accuses of violating the 1978 law. Reported in: *Baltimore Sun*, March 29.

Internet

San Francisco, California

A federal judge said March 14 he intends to require Google, Inc., to turn over some information to the Department of Justice in its quest to revive a law making it harder for children to see online pornography. U.S. District Court Judge James Ware did not immediately say whether the data will include search requests that users entered into the Internet's leading search engine.

The legal showdown over how much of the Web's vast databases should be shared with the government has pitted the Bush administration against Google, Inc., which resisted turning over any information because of privacy and trade secret concerns. The Justice Department downplayed Google's concerns, arguing it doesn't want any personal information nor any data that would undermine the company's thriving business.

A lawyer for the Justice Department told Ware that the government would like to have a random selection of fifty thousand Web addresses and five thousand random search requests from Google, a small fraction of the millions the government originally sought. The government believes the requested information will help bolster its arguments in a pornography case in Pennsylvania, in which the ACLU and others are challenging the constitutionality of the Children's Online Protection Act.

The case has focused attention on just how much personal information is stored by popular Web sites like Google and the potential for that data to attract the interest of the government and other parties. Although the Justice Department said it doesn't want any personal information now, the victory would likely encourage far more invasive requests in the future, said University of Connecticut law professor Paul Schiff Berman, who specializes in Internet law.

The erosion of privacy tends to happen incrementally, Berman said. While no one intrusion may seem that big, over the course of the next decade or two, you might end up in a place as a society where you never thought you would be.

Google seized on the case to underscore its commitment to privacy rights and differentiate itself from the Internet's other major search engines Yahoo!, Inc., Microsoft Corp.'s MSN and Time Warner, Inc.'s. America Online. All three say they complied with the Justice Department's request without revealing their users' personal information. Cooperating with the government "is a slippery slope and it's a path we shouldn't go down," Google Cofounder Sergey Brin told industry analysts.

Even as it defied the Bush administration, Google recently bowed to the demands of China's Communist government by agreeing to censor its search results in that country so it would have better access to the world's fastest growing Internet market. Google's China capitulation has

been harshly criticized by some of the same people cheering the company's resistance to the Justice Department subpoena.

The Justice Department initially demanded a month of search requests from Google, but subsequently decided a week's worth of requests would be enough. In its legal briefs, the Justice Department indicated it might be willing to narrow its request even further. Reported in: Associated Press, March 14.

publishing

San Francisco, California

A judge refused a request by baseball star Barry Bonds' lawyers March 24 to freeze the profits of a new book alleging that the Giants slugger used steroids. Bonds' lawyers argued that the book, *Game of Shadows*, written by two *San Francisco Chronicle* reporters, was based on illegally obtained grand jury transcripts. Because grand jury proceedings are confidential, they contended, possession of the transcripts is illegal, and any resulting profits should be turned over to the federal government.

The authors should not be allowed to "take money earned from a criminal enterprise," attorney Allison Berry Wilkinson said during a fifty-minute hearing in San Francisco Superior Court. "They can speak as much as they like on this topic. They just can't make a profit."

Judge James Warren said the suit raises "serious First Amendment issues," and he questioned the assertion by Bonds' lawyers that they weren't trying to stop publication of the book. But Warren said the only issue that needed to be decided was Bonds' request to appoint a receiver immediately to monitor sales of the book and take custody of all profits. The judge said he saw no legal justification for any such action.

"There is no irreparable harm demonstrated" by allowing the authors and the publisher to collect proceeds from sales of the book, Warren said. He said the profits could be accounted for and redirected if Bonds won the suit.

Bonds' lawyers had said that the baseball player would distribute any profits turned over by the courts to charities for low-income youths. In court, however, they said the money should go to the federal government because it is the rightful owner of the transcripts.

Bonds' suit, based on his claim that the authors and publishers are profiting from illegal acts, is still alive. Lawyers for the *Chronicle* and its reporters said they would ask Warren to dismiss the case and order Bonds to pay their legal fees and costs, under a California law punishing suits that seek to stifle free expression.

"We're confident that we're going to prevail in this case. It's absolutely meritless," said Jonathan Donnellan, attorney for the Hearst Corp., which owns the newspaper.

Earlier in the day, Bonds' lawyers asked a federal judge to hold the authors and publisher of the book in contempt of court.

Game of Shadows, by Mark Fainaru-Wada and Lance Williams, went on sale March 23. The book examines the Bay Area Laboratory Co-Operative, or BALCO, and its illicit supplying of performance-enhancing drugs to athletes. Bonds, the book alleges, started taking steroids in 1999 and was still using them in 2001, when he hit a record 73 home runs. The book and previous newspaper articles by the same reporters were based partly on transcripts of confidential testimony by Bonds and others before a federal grand jury investigating BALCO. The investigation led to the indictments and guilty pleas of four people, including the lab's owner, Victor Conte, and Bonds' trainer, Greg Anderson. No athletes were indicted.

Bonds has repeatedly denied knowingly using steroids or any other illegal drugs. His Superior Court suit does not challenge the contents of the book, only the way the information was gathered. But in a letter to U.S. District Court Judge Susan Illston, Bonds' lawyer Wilkinson assailed what she called "the distorted and unreliable evidence being used by these authors."

"We are confident that when the public learns that allegations written by the authors as fact are based on unsupported fabrications by extortionists and demonstrated liars, the public will fully understand the extent to which they have been misled," Wilkinson wrote. She did not elaborate.

The letter asked the judge, who presided over the BALCO criminal cases, to begin contempt-of-court proceedings against the book's authors; the publisher, Gotham Books; and the *Chronicle* and *Sports Illustrated*, which have published excerpts. Wilkinson said Illston should consider ordering all of them to surrender any profits from their publication, the same action Bonds is seeking in Superior Court.

Federal law prohibits only the leaking of a grand jury transcript and not its publication by an outsider. But Bonds' lawyers argued that the reporters had broken the law by receiving transcripts that had been illegally disclosed and using them for profit. "Grand jury proceedings have been harmed," Wilkinson told Warren. "The authors can accuse Mr. Bonds in the court of public opinion of all kinds of misconduct, using material that was illegally obtained."

Lawyers for the reporters and their publisher countered that journalists have a right, recognized by state and federal courts, to publish grand jury information they obtain. "There's never been a prosecution of a reporter for publishing leaked documents," said Donnellan, the Hearst Corp. lawyer. He said the disclosures by the reporters, in more than eighty articles over three years, had stimulated international debate over drug use in sports and led to a congressional investigation and new major league baseball policies against steroid use.

Bonds' lawsuit also violates a 2004 California ballot measure that allowed private citizens to sue under the

state's unfair competition law only if they had been victims of the allegedly illegal practices, said Theodore Boutrous, lawyer for Gotham Books. He said Bonds could not qualify as a victim—even if his allegations of wrongdoing were proved—because he has not claimed that he suffered any legal harm from the authors' use of grand jury material. Reported in: *San Francisco Chronicle*, March 24.

(is it legal? . . . from page 152)

Macias was outside his professor's office when the interview took place, and he recounted it much the same way as Tinker-Salas did, including when the detectives asked Tinker-Salas if he's a U.S. citizen. Tinker-Salas was born in Venezuela, and is a U.S. citizen. Macias said he also noticed one of the detectives took a keen interest in "Boondocks" and "La Cucaracha" comic strips—both of which take jabs at the government regularly—posted outside Tinker-Salas's office door. Macias, who was annoyed that the detectives cut to the front of the office hours line, said that Tinker-Salas mentioned the encounter to his class two days later. "I'm pretty sure they would know if there's a consulate in L.A.," Macias said. "I think they just did it to arouse suspicion."

Jonathan Knight, director of the Department of Academic Freedom and Governance at the American Association of University Professors, said it isn't that worrisome for the FBI to talk to faculty members about their expertise or to solicit advice, but this was different. "These kinds of inquiries," Knight said in an e-mail, "focused on what a faculty member teaches, the sources for his ideas, and what students have to say about the content of classroom presentations, are fraught with risk for the free exchange of ideas."

Knight noted that the Joint Terrorism Task Force's mission is to detect and prevent terrorism, and to prosecute terrorists. Tinker-Salas said the detectives told him he is not the target of an investigation. Tinker-Salas also said the only other Venezuelan faculty member, in the math department, was not contacted.

David Oxtoby, president of Pomona, sent an e-mail message March 9 to students and faculty members about the detectives' visit. "I am extremely concerned about the chilling effect this kind of intrusive government interest could have on free scholarly and political discourse," Oxtoby wrote. "I am also concerned about the negative message it sends to students who are considering the pursuit of important areas of international study, in which they may now feel exposed to unwarranted official scrutiny." Oxtoby added that Pomona is consulting with legal advisers about the most effective way to register "a strong official protest about this intrusion into our scholarly and educational activities, and we will take appropriate action as soon as their advice is received."

Said Tinker-Salas: "They also wanted to know where the Venezuelan community congregates. The largest Venezuelan community is in Miami. They know that. One would expect that if they want to ask about my expertise, they would set up an appointment." Reported in: insidehighered.com, March 13.

Denver, Colorado

Colorado's two largest universities have joined the fight against a federal ruling that would allow law enforcement to more easily wiretap campus e-mail and Internet use—and could cost colleges millions of dollars. "It makes people like me want to get the bottle of Rolaids out," said Patrick Burns, associate vice president for information and instructional technology at Colorado State University.

The Communications Assistance for Law Enforcement Act, approved by Congress in 1994, required telephone companies to build their lines so that law enforcement could more easily and cheaply wiretap them. But since then, more and more people have traded in traditional telephones for cell phones, e-mail and Voice over Internet Protocol, in which phone calls are made via the Internet. That prompted the FBI and the U.S. Department of Justice to ask the Federal Communications Commission last fall to extend the act to places that provide access to the public Internet, such as college campuses. It also would apply to cities that provide Internet access, libraries and commercial providers, though it's universities that have expressed the loudest opposition so far.

While law enforcement has the ability now to wiretap e-mail and Internet use, it often takes too long to set up or isolate the target, and some communications are being lost, the FBI and Department of Justice argued in their petition to the FCC.

"The importance and urgency of this task cannot be overstated," they said. "These problems are real, not hypothetical, and their impact on the ability of federal, state and local law enforcement to protect the public is growing with each passing day."

The FCC agreed, and ordered the changes by spring 2007. While the exact requirements of the FCC's order remain unclear, many colleges say the worst-case scenario would require all switches and routers on their networks to be changed. There also would be costs for training staff.

"Depending on what it was, (the cost) could be extremely significant," said Leonard Dinegar, University of Colorado vice president of administration and interim chief of staff.

Neither CU nor CSU have put a cost on their potential changes yet. But the University of Wisconsin recently replaced all its routers and switches, Dinegar said, and it spent $18 million.

The American Council on Education, which represents about 1,800 colleges and universities, estimates the cost nationwide would be close to $7 billion. Individual colleges

have put the total cost at between $9 million and $15 million, ACE Vice President Terry Hartle said.

ACE is appealing the FCC's decision, and both CU and CSU have filed letters supporting ACE. Other organizations, such as the Electronic Privacy Information Center and the American Civil Liberties Union, are opposing the ruling on civil liberties and other legal grounds.

EPIC believes that if law enforcement wants the law changed, the Congress–not the FCC–needs to approve it, staff counsel Sherwin Siy said. He also said the ruling chips away at the public's expectation of privacy. It would allow authorities to see, in real time, who you e-mail from your Palm Pilot, the words you enter in a Google search or Web sites you visit.

"It's showing an increasing desire to create a system and to create a world that not only allows surveillance, but that is built for surveillance," Siy added.

CU and CSU say they aren't as bothered by the civil liberties question. Both universities turn over information about Internet and phone use when presented with proper subpoenas, they said. But that happens so infrequently—both Dinegar and Burns said they get perhaps one request a year—that it hardly seems worth the major investment the FCC ruling could require.

"It's not really a problem for higher ed. So why go to all this expense for so little gain?" Burns said. Reported in: *Rocky Mountain News*, February 20.

University Park and Philadelphia, Pennsylvania

Two college students in Pennsylvania have filed federal lawsuits against Pennsylvania State and Temple Universities, alleging that the public institutions have "speech codes" that violated their First Amendment rights. The Alliance Defense Fund, a conservative, Christian legal-advocacy group in Arizona that is representing the students, filed the lawsuits in two U.S. District Courts in Pennsylvania on February 22.

"The goal here is to open up free speech for all students," said David A. French, a lawyer for the group and head of its new Center for Academic Freedom. French is a former president of the Foundation for Individual Rights in Education, a watchdog group that has fought to do away with what it has described as speech codes on college campuses.

Since "the eyes of the academic world" have been focused on Pennsylvania as a result of academic-freedom hearings being held throughout the state, French said, "we wanted to open this latest round of speech-code litigation in Pennsylvania." He testified in September before a committee of state lawmakers who were holding those hearings. He said that the lawmakers should examine university speech codes, but they have focused on institutions' academic-freedom policies instead.

French's group filed its lawsuit against Penn State on behalf of Alfred J. Fluehr, a sophomore and political-science major at the University Park campus. According to the complaint, the university "has implemented an Orwellian speech-code policy that is vague, overbroad, and suppresses the discussion of controversial viewpoints." The complaint focused on the university's harassment and intolerance policies, and said its speech code is partly enforced by a reporting system that encouraged students to inform on each other if they say or do anything "intolerant."

"Penn State does not have a speech code," Tysen Kendig, a university spokesman, responded. The university "recognizes and vigorously protects the free-speech rights of all members of the university community."

The heart of the complaint against Temple centers on the claims of Christian M. DeJohn, a master's candidate in military and American history and a sergeant in the Pennsylvania National Guard. DeJohn contends that two Temple professors who seemed to him to be biased against the military engaged "in a campaign of retribution and retaliation that would actively thwart his ability to complete his graduate degree." According to the complaint, DeJohn's relationship with Richard H. Immerman and Gregory J. W. Urwin, both tenured history professors, began to deteriorate after he objected to "antiwar e-mails" that Immerman circulated in the history department and to Urwin's classroom "diatribes against the United States military in Iraq and the alleged failures of President Bush."

The complaint says the professors discriminated against DeJohn by refusing to approve his master's thesis and delaying his graduation three times. DeJohn told lawmakers about his case during an academic-freedom hearing at Temple in January. The day after his testimony, however, history professors testified that DeJohn had yet to earn his degree because of poor academic work.

Urwin said federal privacy regulations forbid him to speak about the academic progress of a specific student. But he directed a reporter to his Web page, which features pictures of him participating in historical reenactments and his scholarship as a military historian. "It's not the credentials of some antimilitary wacko, as I'm being depicted," he said. Reported in: *Chronicle of Higher Education* online, February 24.

church and state

Naples, Florida

If Domino's Pizza founder Thomas S. Monaghan has his way, a new town being built in Florida will be governed according to strict Roman Catholic principles, with no place to get an abortion, pornography or birth control. The pizza magnate is bankrolling the project with at least $250 million and calls it "God's will."

Civil libertarians say the plan is unconstitutional and are threatening to sue.

The town of Ave Maria is being constructed around Ave Maria University, the first Catholic university to be built in the United States in about forty years. Both are set to open next year about 25 miles east of Naples in southwestern Florida. The town and the university, developed in partnership with the Barron Collier Co., an agricultural and real estate business, will be set on 5,000 acres with a European-inspired town center, a massive church, and what planners call the largest crucifix in the nation, at nearly sixty-five feet tall. Monaghan envisions 11,000 homes and 20,000 residents.

During a speech last year at a Catholic men's gathering in Boston, Monaghan said that in his community, stores will not sell pornographic magazines, pharmacies will not carry condoms or birth control pills, and cable television will have no X-rated channels.

Homebuyers in Ave Maria will own their property outright. But Monaghan and Barron Collier will control all commercial real estate in the town, meaning they could insert provisions in leases to restrict the sale of certain items.

"I believe all of history is just one big battle between good and evil. I don't want to be on the sidelines," Monaghan, who sold Domino's Pizza in 1998 to devote himself to doing good works, said in a recent *Newsweek* interview.

Robert Falls, a spokesman for the project, said attorneys are still reviewing the legal issues and Monaghan had no comment in the meantime.

"If they attempt to do what he apparently wants to do, the people of Naples and Collier County, Florida, are in for a whole series of legal and constitutional problems and a lot of litigation indefinitely into the future," warned Howard Simon, executive director of the American Civil Liberties Union of Florida.

Florida Attorney General Charlie Crist said it will be up to the courts to decide the legalities of the plan. "The community has the right to provide a wholesome environment," he said. "If someone disagrees, they have the right to go to court and present facts before a judge."

Gov. Jeb Bush, at the site's groundbreaking in February, lauded the development as a new kind of town where faith and freedom will merge to create a community of like-minded citizens. Bush, a convert to Catholicism, did not speak specifically to the proposed restrictions.

"While the governor does not personally believe in abortion or pornography, the town, and any restrictions they may place on businesses choosing to locate there, must comply with the laws and constitution of the state and federal governments," Russell Schweiss, a spokesman for the governor, said.

Frances Kissling, president of the liberal Washington-based Catholics for a Free Choice, likened Monaghan's concept to Islamic fundamentalism. "This is un-American," Kissling said. "I don't think in a democratic society you can have a legally organized township that will . . . try to restrict the constitutional rights of citizens." Reported in: Associated Press, March 1.

newspapers

Lancaster, Pennsylvania

In an unusual and little-known case, the Pennsylvania Attorney General's Office has seized four computer hard drives from a Lancaster newspaper as part of a statewide grand-jury investigation into leaks to reporters. The dispute pits the government's desire to solve an alleged felony—computer hacking—against the news media's fear that taking the computers circumvents the First Amendment and the state Shield Law. The state Supreme Court declined to take the case, allowing agents to begin analyzing the data.

"This is horrifying, an editor's worst nightmare," said Lucy Dalglish, executive director of the Reporters Committee for Freedom of the Press in Washington. "For the government to actually physically have those hard drives from a newsroom is amazing. I'm just flabbergasted to hear of this."

The grand jury is investigating whether the Lancaster County coroner gave reporters for the *Lancaster Intelligencer Journal* his password to a restricted law enforcement Web site. The site contained nonpublic details of local crimes. The newspaper allegedly used some of those details in articles. If the reporters used the Web site without authorization, officials say, they may have committed a crime.

The reporters' lawyer, William DeStefano, and the coroner, Gary Kirchner, disagreed over whether Kirchner had given them permission to access the site.

DeStefano said that although he didn't know whether any of the reporters used the Web site, "evidence has been presented to the attorney general which makes it clear that the county coroner, an elected official, invited and authorized the paper or reporters access to the restricted portion of the Web site. . . . If somebody is authorized to give me a password and does, it's not hacking."

The coroner said that he had not "to my knowledge" provided the password or permission to the reporters. "Why would I do that?" Kirchner said. "I'm not sure how I got drawn into something as goofy as this."

State agents raided Kirchner's home outside Lancaster in February and took computers, he said. He said he had had no other contact with authorities since.

Grand-jury investigations are secret. But some details trickled out when a lower-court judge in Harrisburg, Barry Feudale, held hearings to consider the newspaper's motion to stop the state from enforcing its subpoena for the hard drives.

Officials said the Internet histories and cached Web-page content retained on the newspaper's computer hard drives

could contain evidence of a crime—unauthorized use of a computer. To properly search the computers, state lawyers argued, they needed to haul them to a government lab in Harrisburg.

Senior Deputy Attorney General Jonelle Eshbach argued that this was not a case of a journalist's right to protect a source but an attempt to use the First Amendment to shield a crime. "We know the source," she said. It is a password-protected Web site, she said, essentially "a bulletin board in a locked room, and it is getting into that locked room and seeing the bulletin board that makes this a crime."

At the hearing, another lawyer for the newspaper, Jayson Wolfgang, said the search was illegal, and troubling. "The government simply doesn't have the ability or the right, nor should it, in a free democracy, to seize the work-product materials, source information, computer hard drives, folders with paper, cabinet drawers of a newspaper," he argued.

Feudale ruled February 23 that the state could seize the computers but view only Internet data relevant to the case. The judge also ordered the agent who withdraws the data to show them to him first—before passing them to prosecutors—to ensure that the journalists' other confidential files are not compromised. The ruling was stayed pending appeal to the State Supreme Court.

In the newspaper's appeal, DeStefano argued that the ramifications of allowing government officials to have control over a newspaper's computers, no matter the restrictions imposed, are frightening. "Permitting the attorney general to seize and search unfettered the workstations will result in the very chilling of information," DeStefano wrote. "Confidential tips, leads, and other forms of information will undoubtedly dry up once sources and potential sources learn that Lancaster Newspapers' workstations were taken out of its possession and turned over to investigations."

In response, the state argued that "the newspaper has not produced one shred of evidence that the computer hard drives contain information protected from disclosure."

In a one-page order March 8, the Supreme Court declined to hear the case on procedural grounds, freeing the state to examine the hard drives. Reported in: *Philadelphia Inquirer*, March 13.

political expression

Vista, California

A San Diego County woman sued her former employer, accusing her manager of firing her on the spot when she saw the woman's car had a bumper sticker advertising a progressive talk radio station. The suit also alleged that, after seeing the sticker, the employer commented that the woman could be a member of al-Qaida.

In a civil suit filed at the county courthouse February 21 in Vista, Linda Laroca is targeting both her former manager, Beverly Fath, and the company she briefly worked for last year, Advantage Sales and Marketing, Inc. Laroca, who was hired by the company as a sales representative, is seeking lost wages and damages for wrongful termination for violations of both public policy and the state labor code. She also is claiming state constitutional violations and emotional distress.

The California labor code prohibits employers from controlling or directing the political activities of employees.

According to Laroca's suit, the bumper sticker in question read only: "1360 Air America Progressive Talk Radio." The nationwide syndicated radio programming from left-wing Air America, which describes itself as "progressive entertainment talk radio" features show hosts such as comedian and author Al Franken. The network programming is carried locally by radio station KLSD 1360 AM.

In her claim, Laroca asserts that on October 8, three weeks after she started working for the marketing company, Fath called her on a Saturday and requested they meet at a nearby grocery store parking lot so Laroca could pass on some documents Fath needed. During the brief encounter, Laroca charges, the manager pointed to the bumper sticker—only one on Laroca's car—and remarked that it was a new sticker and called it "that Al Franken left-wing radical radio station." Laroca alleged in her suit that Fath then told her, "The country is on a high state of alert. For all I know, you could be al-Qaida." A stunned Laroca laughed nervously at the statement, the suit alleged, and then was dealt "the final blow" when Fath fired her on the spot. Reported in: *North County Times*, March 8.

Albuquerque, New Mexico

Sen. Jeff Bingaman (D-NM) asked Veterans Affairs Secretary James Nicholson for a thorough inquiry into his agency's investigation of whether a Veterans Administration nurse's letter to the editor criticizing the Bush administration amounted to "sedition."

Merely opposing government policies and expressing a desire to change course "does not provide reason to believe that a person is involved in illegal subversive activity," Bingaman said. He argued that such investigations raise "a very real possibility of chilling legitimate political speech."

Laura Berg, a clinical nurse specialist for fifteen years, wrote a letter in September to a weekly Albuquerque newspaper criticizing how the administration handled Hurricane Katrina and the Iraq War. She urged people to "act forcefully" by bringing criminal charges against top administration officials, including the president, to remove them from power because they played games of "vicious deceit." She added: "This country needs to get out of Iraq now and return to our original vision and priorities of caring

for land and people and resources rather than killing for oil. . . . Otherwise, many more of us will be facing living hell in these times."

The agency seized her office computer and launched an investigation. Berg is not talking to the press, but reportedly fears losing her job. Bingaman wrote: "In a democracy, expressing disagreement with the government's actions does not amount to sedition or insurrection. It is, and must remain, protected speech. Although it may be permissible to implement restrictions regarding a government employee's political activities during work hours or on government premises, such employees do not surrender their right to freedom of speech when they enlist in government service."

Berg signed the letter as a private citizen, and the V.A. had no reason to suspect she used government resources to write it, according to the American Civil Liberties Union of New Mexico, which asked the government to apologize to Berg for seizing her computer and investigating her.

V.A. human resources chief Mel Hooker said in a November 9 letter that his agency was obligated to investigate "any act which potentially represents sedition," the ACLU said.

Peter Simonson, executive director of the ACLU of New Mexico, said: "We were shocked to see the word 'sedition' used. Sedition? That's like something out of the history books." In a press release, Simonson also said: "Is this government so jealous of its power, so fearful of dissent, that it needs to threaten people who openly oppose its policies with charges of 'sedition'?" Reported in: *Editor and Publisher*, February 11.

(PATRIOT Act . . . from page 120)

of a Section 215 order to "any person to whom disclosure is necessary to comply with such order." It also explicitly allows a recipient to consult an attorney and to obtain legal advice or assistance "with respect to the production of things in response to the order;" and also allows disclosure to "other persons as permitted" by the Director of the FBI or the Director's designee.

Further, there is now no requirement that a recipient of a Section 215 order inform the FBI of the identity of an attorney to whom disclosure was or will be made. But, upon the request of the Director of the FBI, a recipient is required to identify anyone besides an attorney to whom a disclosure is made or will be made.

Challenges: The reauthorization legislation allows a recipient to challenge a Section 215 order. But that challenge can occur only in a special "petition review panel" of the FISA court—and challenges can only be filed in order to determine the "lawfulness" of the order. It is not clear why a FISA review panel would find that a FISA judge issued an unlawful order.

The reauthorization legislation also allows a Section 215 order recipient to challenge the gag order attached to the subpoena. But recipients may challenge only after one year. And the FISA judge may only overturn the gag if: the government does not certify and the judge finds that there is no reason to believe that the disclosure "may endanger the national security of the U.S., interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life of physical safety of any person."

The certification of the government to these possibilities is to be taken as conclusive.

Minimization Requirements: The statute now requires the Attorney General to adopt "specific minimization procedures" that: are "reasonably designed in light of the purpose and technique of" a Section 215 order "to minimize the retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;" and "require that non-publicly available information, which is not foreign intelligence information, shall not be disseminated in a manner that identifies any United States person, with such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance."

Reports: The reauthorized PATRIOT Act requires that the Department of Justice submit unclassified reports annually in April to the House and Senate Committees on the Judiciary, the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence.

These reports will include information on the total number of orders either granted, modified, or denied when the application or order involved the production of library circulation records, library patron lists, book sales records, or book customer lists; as well as firearm sales records; tax return records; educational records; or medical records containing information that would identify a person.

It also requires the DOJ to report "to Congress" in April of each year a report on: the total number of applications made for orders approving requests for the production of tangible things; and the total number of such orders that were granted, modified, or denied. It appears that the latter reports will be unclassified.

Audit: The Inspector General of the Department of Justice is now required to perform a comprehensive audit of the effectiveness and use, including any improper or illegal use, of the investigative authority provided to the FBI under Title V of the Foreign Intelligence Surveillance Act of 1978 (Section 215 of the USA PATRIOT Act amended Section 501 of the Foreign Intelligence Surveillance Act of 1978).

Section 505—Standards: The reauthorized PATRIOT Act now includes language asserting that libraries, when

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functioning in their traditional roles—including providing Internet access—are not subject to National Security Letters. However, the language states that libraries are subject if the library "is providing the services defined under" Section 2510(15) of title 18, which says "electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications." A colloquy conducted by Senators Sununu and Durbin on February 16, 2006, clarified the legislative history and intent of the provision: "a library that has Internet access, where a person can find an Internet e-mail service, is not a communications service provider; therefore, it would not fall under the purview of the NSL provision in 18 U.S.C. 2709."

Disclosure: The reauthorized PATRIOT Act allows disclosure of receipt of a National Security Letter to "any person to whom disclosure is necessary to comply with such order." It also explicitly allows a recipient to consult an attorney and to obtain legal advice or assistance "with respect to the production of things in response to the order;" and also allows disclosure to "other persons as permitted" by the Director of the FBI or the Director's designee.

Following the language of the SAFE Act, the law now says that if the Director of the FBI or his designee (in a position not lower than Deputy Assistant Director at the Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director), certifies that disclosure of a National Security Letter would harm national security, interfere with an investigation, interfere with diplomatic relations, or endanger life or physical safety, receipt of the Letter may not be disclosed to other than those persons to whom disclosure is necessary to comply with such order, or to an attorney to obtain legal advice or assistance with respect to the request. Persons to whom disclosure is made are subject to the same non-disclosure provisions.

The statute establishes new penalties for "knowingly and with intent to obstruct an investigation or judicial proceeding" by violating the gag order. Penalties include a prison term of up to five years. However, language in the original legislation establishing a penalty of up to one year in prison for "knowingly and willfully" violating the gag order was removed.

Challenges: A recipient of a National Security Letter is allowed to challenge the request in a U.S. District Court. The court may set aside the NSL order if it is "unreasonable" or "oppressive," or "otherwise unlawful."

The statute now allows a challenge to the gag order in a U.S. District Court. However, if the government certifies that a challenge would harm national security, interfere with an investigation, interfere with diplomatic relations, or endanger life or physical safety, that certification must be treated as "conclusive." If a year has elapsed since issuance of the order, the issuing official must recertify—but certification is still conclusive.

Enforcement: The law allows the government to go to a U.S. District Court to seek enforcement of the NSL, makes violation of the enforcement order punishable as contempt, and states that the court must close any contempt hearing to the extent necessary to prevent the unauthorized disclosure of a request.statement of Senator Russ Feingold on final passage of the PATRIOT act reauthorization

The following is the text of a statement delivered by Sen. Russ Feingold (D-WI) on the Senate floor March 2:

Mr. President, in a few minutes, the Senate will conclude a process that began over a year ago by reauthorizing the PATRIOT Act. I will have a few closing remarks but first I want to take this opportunity to thank the extraordinary staff who have worked on this bill for so long. These men and women, on both sides of the aisle, have worked extremely hard and they deserve to be recognized. I ask unanimous consent that a list of their names be printed in the Record after my remarks.

Mr. President, beginning in November when we first saw a draft of the conference report, I have spoken at length about the substance of this bill. I hoped that when we started the task of reauthorizing the PATRIOT Act at the beginning of last year, the end product would be something that the whole Senate could support. We had a real chance to pass a bill that would both reauthorize the tools to prevent terrorism and fix the provisions that threaten the rights and freedoms of innocent Americans. This conference report, even as amended by the bill incorporating the White House deal that we passed yesterday, falls well short of that goal. I will vote no.

Protecting the country from terrorism while also protecting our rights is a challenge for every one of us, particularly in the current political climate, and it is a challenge we all take seriously. I know that many Senators who will vote for this reauthorization bill in a few minutes would have preferred to enact the bill we passed without a single objection in July of last year. I appreciate that so many of my colleagues came to recognize the need to take the opportunity presented by the sunset provisions included in the original PATRIOT Act to make changes that would better protect civil liberties than did the law we enacted in haste in October 2001.

Nevertheless, I am deeply disappointed that we have largely wasted this opportunity to fix the obvious problems with the PATRIOT Act.

The reason I spent so much time in the past few days talking about how the public views the PATRIOT Act was to make it clear that this fight was not about one Senator arguing the details of the law. This fight was about trying to restore the public's trust in our government. That trust has been severely shaken as the public learned more about the PATRIOT Act, which was passed with so little debate in 2001, and as the administration resisted congressional oversight efforts and repeatedly politicized the reauthorization process. The revelations about secret warrantless surveillance late last year only confirmed the suspicions of many in our country that the government is willing to trample the rule of law and constitutional guarantees in the fight against terrorism.

The negative reaction to the PATRIOT Act has been overwhelming. Over four hundred state and local government bodies passed resolutions pleading with Congress to change the law. Citizens have signed petitions, library associations and campus groups have organized to petition the Congress to act, numerous editorials have been written urging Congress not to reauthorize the law without adequate protections for civil liberties. These things occurred because Americans across the country recognize that the PATRIOT Act includes provisions that pose a threat to their privacy and liberty—values that are at the very core of what this country represents, of who we are as a people.

In 2001, we were viciously attacked by terrorists who care nothing for American freedoms and American values. And we as a people came together to fight back, and we are prepared to make great sacrifices to defeat those who would destroy us. But what we will not do, what we cannot do, is destroy our own freedoms in the process.

Without freedom, we are not America. If we don't preserve our liberties, we cannot win this war, no matter how many terrorists we capture or kill.

That is why the several Senators who have said at one time or another during this debate things like, "Civil liberties do not mean much when you are dead" are wrong about America at the most basic level. They do not understand what this country is all about. Theirs is a vision that the founders of this nation, who risked everything for freedom, would categorically reject. And so do the American people.

Americans want to defeat terrorism, and they want the basic character of this country to survive and prosper. They want to empower the government to protect the nation from terrorists, and they want protections against government overreaching and overreacting. They know it might not be easy, but they expect the Congress to figure out how to do it. They don't want defeatism on either score. They want both security and liberty, and unless we give them both—and we can, if we try—we have failed.

This fight is not over Mr. President. The vote today will not assuage the deep and legitimate concerns that the public has about the PATRIOT Act. I am convinced that in the end, the government will respond to the people, as it should. We will defeat the terrorists, and we will preserve the freedom and liberty that make this the greatest country on the face of the earth. ☐

(coalition . . . from page 123)

of student perspectives," while economics and business classes "appear to be more sensitive to whether student perspectives are compatible with those of the academic discipline."

In economics and business classes, the study found, conservative students earned better grades. It also found that conservative students were likely to graduate with higher GPAs in those courses than liberal students who entered college with similar SAT scores.

According to the study, conservative students might have an advantage over their peers in such courses because the conservative students might view the courses as more relevant to their future careers and, therefore, might be motivated to work harder.

Also, the study notes, conservative students might be "more comfortable" with such subjects "because making money is more likely to be a personal goal for them than for liberal students." Moreover, in economics and business courses, "teaching methods and classroom structure might be more amenable to conservative than liberal students, for example, by emphasizing competition over cooperation."

But the study's authors said that liberal students are unlikely to face discrimination from conservative faculty members in such courses. To discriminate against liberal students, professors would need to know the political views of individual students in what are typically large classes; it's unlikely that professors would know their students that well, Kemmelmeier said. He added that many professors who teach big courses don't grade their students' papers themselves—teaching assistants do.

Kemmelmeier and his colleagues acknowledged that instructors sometimes do grade students to reward or punish them for behavior not at all related to their academic performance. Further, they did not deny that conservative students—and sometimes liberal students—feel sidelined by their professors' views, if those views are openly expressed. "I'm not yet clear that this means the professor will really grade them down," Kemmelmeier said. "I find it plausible, but I've seen no evidence of it." Reported in: *Chronicle of Higher Eduation* online, March 16, 30; CNSNEWS.com, March 20; insidehighered.com, March 20. ☐

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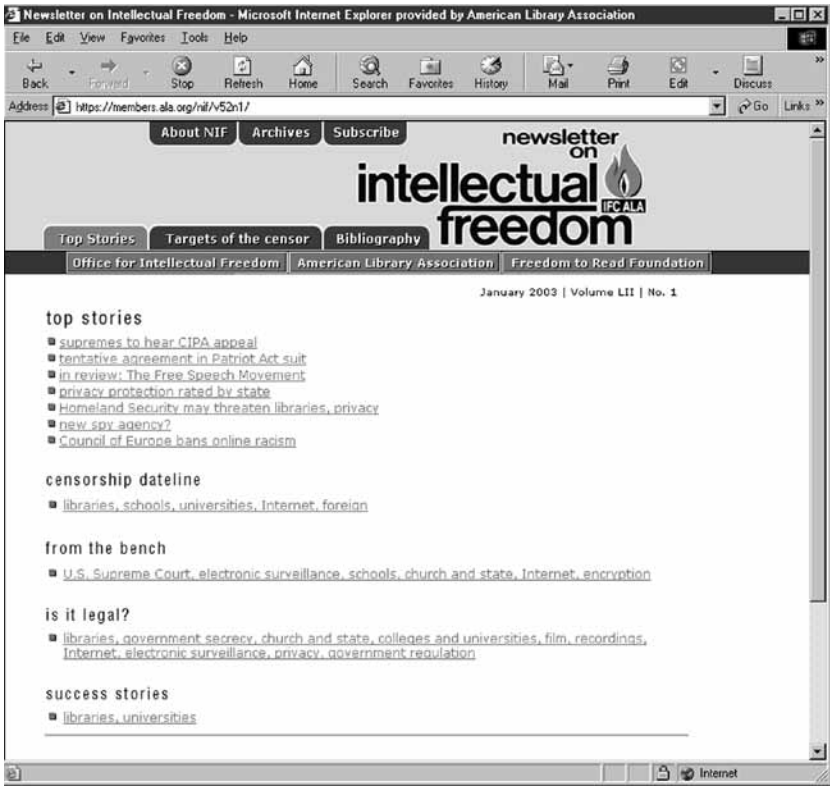

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