newsletter on intellectual freedom

IFC ALA

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ALA opposes PATRIOT Act compromise

On February 9, four Republican Senators (John Sununu–NH; Lisa Murkowski–AK; Chuck Hagel–NE; and Larry Craig–ID), who had joined in the threat to filibuster the House Conference Report on the Reauthorization of the USA PATRIOT Act, announced that they had negotiated a compromise deal with the White House.

The deal enabled White House and the Republican Congressional leadership to garner enough votes to ensure passage of the reauthorization in the Senate. It was not certain where House Judiciary Committee chair James Sensenbrenner stood on the proposed changes.

The American Library Association quickly announced its opposition to the proposed compromise, which lacked the necessary strengthening of the standards (by requiring individualized suspicion) for obtaining a Section 215 order, and did not provide the recipient of a Section 215 court order meaningful opportunity to challenge the order or the attached gag order in a court of law.

The compromise included these changes:

- "Ability to challenge the gag order attached to a Section 215 order." The possibility only is available 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 or physical safety of any person." The certification of the government to these possibilities is to be taken as conclusive.
- Removal of the requirement that a recipient of an NSL inform the FBI of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the order. The proposal still requires the recipient to, upon the

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Kenton L. Oliver, Chair

in this issue

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violence in Mideast over controversial Danish cartoon

Protestors angry over Danish cartoons of the Prophet Muhammad clashed with Lebanese security forces February 4. An early morning march through downtown Beirut exploded into violence when a breakaway crowd surged toward a high-rise building that housed the Austrian and Danish Missions, chanting obscene anti-Danish slogans in Arabic and vandalizing cars, office buildings and a Maronite Catholic church nearby. Other protestors burned Danish flags and flags bearing images of the cross.

Lebanese security forces fired tear gas to disperse the crowd, but a group managed to make its way to the building, breaking windows and setting it on fire. The fire quickly spread through the building, and people jumped out of windows to escape the flames. Reuters reported that one person had died. A Dutch news photographer at the scene was beaten when several demonstrators mistook him for being Danish.

Demonstrators also attacked police officers with stones and set fire to several fire engines. Lebanese security forces regained control over the area within two hours, using water cannons and bullets fired over protestors' heads.

The day before, protestors set fire to the Danish and Swedish Missions in Damascus, Syria. In Gaza, Palestinians marched through the streets, storming European buildings and burning German and Danish flags. Protestors smashed the windows of the German cultural center and threw stones at the European Commission building, police said.

Iraqis rallying by the hundreds demanded an apology from the European Union, and the leader of the Palestinian group Hamas called the cartoons "an unforgivable insult" that merited punishment by death. Pakistan summoned the envoys of nine Western nations in protest, and Europeans took to the streets in Denmark and Britain.

Earlier, the foreign ministries in Iran and Iraq both summoned Danish diplomats to protest publication of the cartoons. Sudan joined Saudi Arabia and many other Muslim countries in a boycott of Danish products, and some international supermarket chains withdrew Danish dairy products from their stores in many Islamic countries. In Tunis, Arab interior ministers called on the Danish authorities to punish those who drew the cartoons.

At the heart of the protests were twelve caricatures of the Prophet Muhammad first published in Denmark's *Jyllands-Posten* in September and reprinted in European media in early February. One depicted the prophet wearing a turban shaped as a bomb with a burning fuse. The paper said it had asked cartoonists to draw the pictures because the media was practicing self-censorship when it came to Muslim issues. The drawings touched a nerve in part because Islamic law is interpreted to forbid depictions of Muhammad.

Carsten Juste, editor-in-chief of J*yllands-Posten*, said he had apologized for the "fact that the cartoons undeniably offended many Muslims." Despite the apology, the publication's offices in Copenhagen and in the northern town of Aarhus were evacuated after a bomb threat.

"At approximately three minutes past five, an English-speaking person gave a message that there would be a bomb attack at the *Jyllands-Posten* offices ten minutes after," Flemming Munch, a Copenhagen police spokesman, told reporters.

Magazinet, a Norwegian publication that reprinted some of the cartoons, also said that it "regretted if the drawings offended Muslims." Norwegian Prime Minister Jens Stoltenberg told a Norwegian news agency, "we will not apologize because in a country like Norway, which guarantees the freedom of expression, we cannot apologize for what the newspapers print. But I am sorry that this may have hurt many Muslims."

In Copenhagen, Anders Fogh Rasmussen, the Danish prime minister, sought a similar balance, saying: "I want to emphasize that in Denmark we attach fundamental importance to the freedom of expression, which is a vital and

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IFC report to ALA Council

The following is the text of the Intellectual Freedom Committee's report to the ALA Council, delivered January 25 by IFC Chair Kenton Oliver at the ALA Midwinter Meeting in San Antonio, Texas.

The ALA Intellectual Freedom Committee (IFC) is pleased to present this update of its activities. Under "Information," this report covers the seventh edition of the *Intellectual Freedom Manual,* Resolution in Support of Academic Freedom, Q&A on Labels and Rating Systems, RFID Implementation Guidelines for Libraries, Biometric Technologies in Libraries, *Festschrift* to Honor Gordon M. Conable, Digitization of Books, Intelligent Design v. Scientific Theory of Evolution, Control and Censorship of the Internet, and Cable and Video.

Under "Projects," this report covers both new and continuing projects. New projects include the Contemporary Intellectual Freedom Series, Law for Librarians and Trustees, Guidelines for Graphic Novels, and the "Radical, Militant Librarian" Button. Continuing projects include Confidentiality in Libraries: An Intellectual Freedom Modular Education Program, Lawyers for Libraries, the LeRoy C. Merritt Humanitarian Fund, and the 2006 Banned Books Week.

Information

Seventh Edition of the Intellectual Freedom Manual

The seventh edition of the Intellectual Freedom Manual was published this past December. With this updated edition, librarians continue to have practical support as they

maintain libraries as havens for the free exchange of ideas and information, and address wide-ranging challenges relating to privacy and censorship from government, special interest groups, and others. ALA members can purchase a copy online from ALA Editions for $46.80.

Resolution in Support of Academic Freedom

David Horowitz, founder and president of the Center for the Study of Popular Culture and editor of FrontPageMag.com, wrote the "Academic Bill of Rights" to ensure that professors do not indoctrinate students by making particular answers to controversial matters the goal of the instruction, but, instead, "make students aware of a spectrum of scholarly views on matters of controversy and opinion."

His ideal would seem to follow from the principles of academic freedom found in "The Principles of Tenure and Academic Freedom," written by the American Association of University Professors (AAUP). Horowitz, however, has been lobbying more than a dozen state legislatures to pass his "Academic Bill of Rights" because, he says, instead of following AAUP's principles of academic freedom, many professors act as "political advocates," expressing opinions in a "partisan manner on controversial issues irrelevant to the academic subject, and even grade students in a manner designed to enforce their conformity to professorial prejudices."

ALA Councilor Mark Rosenzweig drafted the resolution, coming up under your "New Business;" the Intellectual Freedom Round Table, the ALA Intellectual Freedom Committee, the ACRL Intellectual Freedom Committee, and other interested parties worked with Rosenzweig on a final draft and approved the final resolution.

Q&A on Labels and Rating Systems

One of the comments received by the Intellectual Freedom Committee during its review of all intellectual freedom policies, in preparation for the publication of the seventh edition of the *Intellectual Freedom Manual*, was from the ALA Committee on Professional Ethics (COPE). COPE suggested the IFC develop a Q&A on labels and rating systems. The committee agreed to undertake this project and has been working on such a document since its 2005 spring meeting.

The IFC sponsored an open hearing at this Midwinter Meeting to gather input from the profession and continue its development of this Q&A. The committee received many thoughtful comments from those in attendance.

After further discussion of the document, the IFC asked the Office for Intellectual Freedom to mount the Q&A on the OIF Web site. The committee will update the Q&A as warranted.

RFID Implementation Guidelines for Libraries

Since Council adopted the "Resolution on Radio Frequency Identification (RFID) Technology and Privacy Principles," and since nearly three hundred U.S. libraries are using, or are deciding whether to use, RFID technology, the IFC believed it was imperative that ALA help to develop guidelines for implementing these technologies in libraries. At its 2005 spring meeting, therefore, the IFC formed a subcommittee to develop guidelines. Prior to this Midwinter Meeting, the IFC distributed a draft for comments. These comments, and those gathered at the IFC-sponsored open hearing at this Midwinter Meeting, will be the bases for refinement of these guidelines. It is anticipated that a final draft will be distributed before the New Orleans conference.

Biometric Technologies in Libraries

Although the IFC began drafting a resolution on the use of biometric technologies in libraries at the 2005 Annual Conference, the Intellectual Freedom Committee, with the Office for Information Technology Policy, continued its discussion on the use of biometric technologies in libraries, and the privacy implications for library use. As a result of these discussions, further work on the resolution has been postponed.

Festschrift to Honor Gordon M. Conable

At the 2005 Midwinter Meeting, the Intellectual Freedom Round Table (IFRT), the Freedom to Read Foundation (FTRF), and the IFC began work on a festschrift to honor Gordon M. Conable. Topics from authors have been solicited, and chapters are currently being written. All proceeds will be donated to the Gordon M. Conable Fund of the Freedom to Read Foundation.

There is still time to submit a chapter proposal. Send proposals to Don Wood, Office for Intellectual Freedom, 50 East Huron Street, Chicago, IL 60611; dwood@ala.org.

Digitization of Books

Projects to digitize vast collections of books are well underway. For example:

- The Google Library Project involves the scanning and digitization of millions of published books from the collections of Stanford University, Harvard University, the University of Michigan, the New York Public Library, and The University of Oxford, from which Google plans to create an online, searchable database.
- The Google Book Search (formerly The Google Print Publisher Program) makes works available for Google to display excerpts or bibliographic information for online search.
- The Open Content Alliance (OCA) represents the collaborative efforts of a group of cultural, technology, nonprofit, and governmental organizations from around the world that will help build a permanent archive of

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FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council, delivered by FTRF President John Berry at ALA's Midwinter Conference in San Antonio, Texas January 23.

As President of the Freedom to Read Foundation (FTRF), I am pleased to report on the Foundation's activities since the 2005 Annual Conference.

Defending Privacy and Confidentiality

Current events—from Congress's reluctance to include meaningful protections for civil liberties in legislation renewing the USA PATRIOT Act, to the administration's repeated efforts to conduct domestic spying on its citizens—clearly indicate the need for FTRF to continue to make the defense of individual privacy one of its chief concerns. We must be both diligent and vigilant in defending our right to privacy in what we read and view. The Freedom to Read Foundation is proud to be a leader in this effort, providing support for the following legal actions filed to defend our privacy rights:

Doe v. *Gonzales*: This past September, a member of the American Library Association residing in Connecticut made the courageous decision to resist and challenge a National Security Letter (NSL) that required the ALA member to turn over names and other identifying information of every person who used a library computer on a particular day. That member, assisted by the American Civil Liberties Union (ACLU), filed suit in federal court, arguing that the FBI's power to issue an NSL without judicial review and under a seal of absolute secrecy violates the Constitutional guarantees of due process and free speech.

The plaintiff, "John Doe," also decided to challenge the gag order that prevented him, her, or it from speaking about being a recipient of an NSL. After a series of hearings on the case, Judge Janet Hall of the Federal District Court in Connecticut lifted the gag order, ruling that it irreparably harmed Doe by preventing him, her, or it from participating in the current debate regarding the renewal of the USA PATRIOT Act. But Judge Hall then entered a stay of her order, ruling that homeland security concerns required her to give the government an opportunity to appeal her decision.

The ACLU invited FTRF to take a central role in advancing the First Amendment arguments for removing John Doe's gag order. FTRF joined with the American Library Association, the American Booksellers Foundation for Free Expression (ABFFE), and the Association of American Publishers (AAP) to file an *amicus curiae* brief before the Second Circuit Court of Appeals. When the ACLU took the extraordinary step of filing an emergency application for relief before the United States Supreme Court, FTRF and the ALA joined to file an *amicus* brief that laid out the First Amendment argument in favor of overturning the stay. On October 7, 2005, Justice Ruth Bader Ginsburg denied that request, upholding the stay. The case remains with the Second Circuit Court of Appeals.

Meanwhile, also before the Second Circuit Court of Appeals is *Doe and ACLU* v. *Gonzales*, another legal action mounting a constitutional challenge to the laws authorizing the use of NSLs. In this case, "John Doe" is an Internet service provider challenging the government's authority to use NSLs to obtain users' confidential records. Like John Doe the librarian, John Doe the Internet service provider succeeded in the case before the trial courts, winning a determination that the NSL statute violates the Constitution. Because both cases presented identical issues of law, the Second Circuit Court of Appeals consolidated the cases, hearing oral arguments on both lawsuits on November 2, 2005.

We continue to monitor *Muslim Community Association of Ann Arbor* v. *Ashcroft*, the lawsuit mounting a facial challenge to Section 215 of the USA PATRIOT Act. Unfortunately, despite hearing oral arguments in December 2003, the District Court in Michigan has yet to rule in this important case, and we are still awaiting a decision.

Forensic Advisors, Inc. v. *Matrixx Initiatives, Inc*. challenges a subpoena seeking to discover the names of persons subscribing to an electronic newsletter published by Forensic Advisors, an independent financial research firm that analyzes corporate financial statements. FTRF joined with Public Citizen and other civil liberties and First Amendment groups to file an amicus brief that advances legal arguments supporting the right to read anonymously. We are waiting for a decision from the Maryland Court of Appeals.

Defending Access and the Freedom to Read

In order to act as informed citizens, we need to know and understand our elected leaders and their actions. Even historical records can inform our actions as voters, allowing us to understand the consequences of a past leader's decisions and to use that information to guide our future choices. Thus, the Foundation joins in efforts to preserve and to protect our access to government information and government records.

American Historical Association v. *National Archives and Records Adminstration* challenges Executive Order 13233, an order issued by President Bush that allows former presidents, former vice presidents, and their families to withhold the release of a president's records, even though the Presidential Records Act passed by Congress requires that such records be released no later than twelve years after a president leaves office. After the initial challenge to the law stalled, plaintiffs filed a renewed challenge in

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library insists FBI provide a warrant before seizing computers

Police and FBI officials rushed to the Newton (Massachusetts) Free Library January 18 after determining that an alleged threat against Brandeis University had been e-mailed from one of the library's computers. But Library Director Kathy Glick-Weil and Newton Mayor David Cohen were adamant that law-enforcement officers comply with state privacy law and obtain a search warrant before they seized the equipment.

Glick-Weil said that about fifteen police officers visited the library, including three FBI agents who "tried to convince us to let them have the computer," one of some twenty on the library's second-floor information technology center, without a warrant. The mayor worked with U.S. attorneys in getting the authorization, and the FBI returned to the library with the papers around 11:30 that night after the library had closed. Glick-Weil said they took three of the library's public computers.

Around noon, Brandeis University police had received an e-mail that contained a threat of some type of terrorist attack against the Heller School for Social Policy and Management, the *Boston Globe* reported January 26. Waltham Police Lieutenant Brian Navin said twelve university buildings and a nearby elementary school were evacuated but detectives found no explosives.

"The librarian acted responsibly and in accordance with legal and constitutional requirements," said Carol Rose, executive director of the ACLU of Massachusetts. "She was complying with the law, and we expect police officers and the FBI to do the same."

Massachusetts Board of Library Commissioners spokesperson David Gray said, "You cannot just go into a library and demand e-mail records. It's not like you're just looking at one person. You're exposing everyone who would have used that computer."

"I found the process encouraging," Glick-Weil said. "If law enforcement thinks it has probable cause, it can get a warrant in a timely fashion."

FBI agents said they could lawfully have seized the library's e-mail records, but decided not to, a bureau spokeswoman said. "For a threat kind of event, you don't necessarily need a warrant," said Gail Marcinkiewicz, of the FBI's Boston office. Warrants are usually time-consuming, she said. "If you wait, the emergency could turn into a crisis, and maybe a loss of life."

FBI agents involved decided not to invoke their right to seize the material, in order to "be cooperative and not inconvenience the library," Marcinkiewicz said. She would not say on what information they had based their decision, citing the ongoing investigation.

"The decision on the imminence of this threat was not determined by the city of Newton," said city spokesman Jeremy Solomon. "It was determined by the FBI," and Cohen's decision did not hinder their investigation.

Glick-Weil said FBI agents never told her they needed the information to prevent a terrorist attack. She disputed statements by an unnamed law enforcement official suggesting local officials had been uncooperative. Library technology staff helped investigators locate the computer from which the e-mail had been sent, she said.

"I feel I did everything I needed to do to protect the privacy of the people I need to protect, and to obey the law," Glick-Weil said.

During the afternoon encounter between library and law enforcement officials, FBI agents locked down the library building, briefly—"for about five minutes," she said.

Marcinkiewicz said the USA Patriot Act, an antiterrorism law allowing secret warrants to search library records, did not come into play in this case. Reported in: *American Libraries Online*, January 27; *Dail News Tribune*, January 26; *Chronicle of Higher Education* online, January 31. ☐

John Doe, employer win intellectual freedom award

The librarian known as plaintiff John Doe in *John Doe* v. *Gonzales*, along with Doe's unidentified employer, have been named the recipients of the 2005 Robert B. Downs Intellectual Freedom Award. The award is given by the faculty of the Graduate School of Library and Information Science at the University of Illinois at Urbana-Champaign.

Filed in August against U.S. Attorney General Alberto Gonzales, *Doe* v. *Gonzales* challenges the constitutionality of Section 505 of the USA Patriot Act, which allows the FBI to issue an administrative subpoena known as a National Security Letter without judicial oversight. Because Section 505 also gags those receiving a National Security Letter from revealing that fact, neither Doe nor his employer have reacted publicly to a November *Washington Post* story identifying him as George Christian of the Connecticut consortium Library Connection.

The plaintiffs lost an emergency appeal October 7 to have the gag order lifted so they could speak out about the ramifications of the Patriot Act during ongoing congressional debate regarding its reauthorization.

Since Doe and his employer cannot directly accept the award, Judith F. Krug stood in on their behalf January 21, during a reception at the 2006 ALA Midwinter Meeting in San Antonio. The library school and Greenwood Publishing Group cohosted the event. ☐

Google defies DOJ demand for search records

The Department of Justice sought a court order January 18 from the U.S. District Court of Northern California demanding that Google comply with its August 2005 subpoena for millions of randomly selected online search records held by the Silicon Valley–based search-engine firm. "We intend to resist their motion vigorously," Google Associate General Counsel Nicole Wong said, characterizing DOJ's demand as "overreaching."

The court filing indicates that the Justice Department is seeking a random sample of one million URLs findable in various Google databases, as well as "the text of each search string entered onto Google's search engine over a one-week period (absent any information identifying the person who entered such query)." Although many libraries routinely purge the cache of their patrons' online sessions, Google maintains server logs of all the searches its software conducts, according to the firm's privacy policy.

The filing also revealed that the DOJ had made similar records requests of three other search engines. MSN, Yahoo!, and AOL issued separate statements January 19 that they have complied to varying degrees.

DOJ officials assert they need the search records to develop a defense of the constitutionality of the Child Online Protection Act as instructed by the Supreme Court in 2004. The COPA trial, *ACLU* v. *Gonzales*, is scheduled to begin this summer before the U.S. Court of Appeals for the Third Circuit in Philadelphia.

Passed in 1998 but never enforced, COPA requires commercial websites to obtain proof of age from visitors before allowing them to view material considered harmful to minors. DOJ contends that the requested search histories would provide "a factual record in support of [the government's] contention that COPA is more effective than filtering software in protecting minors from exposure to harmful materials on the Internet."

Specifically, DOJ consultant and University of California at Berkeley statistics professor Philip B. Stark argued, reviewing users' search terms and retrieved URLs "will help . . . measure the effectiveness of content filters in screening HTM materials," although the filing does not explain how Stark would determine whether searches stripped of identifiable information were conducted on filtered machines.

Reacting to the DOJ requests, Rep. Edward Markey (D-MA) announced January 20 that he would introduce a bill requiring search-engine companies to purge personally identifiable information about their users after a reasonable period of time. "Internet search engines provide an extraordinary service, but the preservation of that service does not rely on a bottomless, timeless database that can do great damage despite good intentions," he said. Reported in: *American Libraries Online*, January 20. ☐

U.S. assailed over rights of terror suspects

Human Rights Watch asserted January 18 that the Bush administration had undertaken a deliberate strategy of abusing terror suspects during interrogations, in ways, the group said, that undercut broader American interests. The criticism drew an unusually direct rebuff from the White House.

''In the course of 2005, it became indisputable that U.S. mistreatment of detainees reflected not a failure of training, discipline or oversight, but a deliberate policy choice,'' the rights group said in a sweeping critique in its annual report. ''The problem could not be reduced to a few bad apples at the bottom of the barrel.''

The group said the United States' detainee practices, along with the accusations that torture has possibly taken place at secret camps, had, together with what it said was a tendency of some Europeans to put business ahead of rights concerns, produced a ''global leadership void'' in defending human rights.

But Scott McClellan, the White House spokesman, said he was ''rejecting the description of the United States.''

''When a group like this makes some of these assertions, it diminishes the effectiveness of that organization,'' he said. ''It appears to be based more on a political agenda than facts. The United States,'' McClellan added, ''does more than any country in the world to advance freedom and promote human rights.''

Human Rights Watch suggested that a special prosecutor be named to investigate abuses, and that Congress establish an independent inquiry panel.

The group has long focused its reports on countries considered the world's most repressive, and its latest report lists abuses in countries like Nepal, Uzbekistan and Sudan. But the report takes the United States to task because of its predominant role and its history of championing human rights abroad. ''Any discussion of detainee abuse in 2005 must begin with the United States, not because it is the worst violator but because it is the most influential,'' the report said.

The prisoner abuse scandals of recent years have harmed American efforts to advocate democracy and to promote respect for rights abroad, the group said. ''The willingness to flout human rights to fight terrorism is not only illegal and wrong; it is counterproductive,'' the report said. ''These human rights violations generate indignation and outrage that spur terrorist recruitment.''

In the past, American officials often cited the group's reports to make points about abuses abroad. But lately the focus has shifted. When the *Washington Post* last year reported accusations that there were secret CIA camps in Europe but, at the administration's request, did not identify the countries involved, Human Rights Watch angered American officials by identifying towns where it said prisoners had been held.

In arguing that detainee abuse has been part of deliberate policy, the group cited President Bush's vow, later rescinded, to veto a bill opposing ''cruel, inhuman, and degrading treatment,'' and Vice President Dick Cheney's efforts to exempt the CIA from the same bill.

In arguing that American actions have been counterproductive, the report noted that even when American authorities in November ''helped uncover and shut down an Iraqi Interior Ministry secret detention and torture center in Baghdad, the administration's actions won it little praise in light of its own practices in Iraq and elsewhere.'' Reported in: *New York Times*, January 19. □

UCLA alum pulls offer to buy lecture tapes

A twenty-four-year-old conservative alumnus who announced in January that he planned to pay students at the University of California, Los Angeles, to tape-record the lectures of left-leaning professors backed down after UCLA officials informed him January 19 that he would be violating school policy.

The alumnus, Andrew Jones, said he abandoned the plan to save his student supporters from possible legal action by the university, even though he believed they would be engaged in a "newsgathering" effort protected by the First Amendment. Jones said he is confident that students will volunteer to tape lectures or take detailed notes in an effort to expose their professors as liberal partisans who do not tolerate dissent in their classrooms.

But a UCLA official said that even without the monetary incentive, students who passed tapes of lectures to Jones would be in danger of sanctions by the university and possibly the professors who were recorded without permission.

"The only thing he's rescinded is the offer of money and not in any way the statement that students are encouraged to consult him," said Lawrence H. Lokman, assistant vice chancellor for university communications.

Responding to the university's statement, Jones said, "We will take whatever future action in consideration of UCLA's regulations and in consideration of our and our students' First Amendment rights."

Jones started a nonprofit group called the Bruin Alumni Association to combat what his Web site termed "UCLA's continued slide into political partisanship and indoctrination," enumerating a "Dirty Thirty" list of professors whose liberal leanings he considered egregious. The plan to pay students for documenting what those professors said in their classrooms generated national news media attention and prompted accusations of "witch hunting" from opponents.

Jones, a 2003 UCLA political science graduate and former president of the campus Republican group, had offered students $100 for tape recordings and lecture notes from a full quarter, $50 for just the handwritten notes and $10 for course handouts. At least three members of the Bruin Alumni Association's advisory board resigned after Jones posted details about the plan on his Web site.

Opponents of the plan, which include some conservatives, said that while the monetary incentive was one of the most offensive aspects of the plan, its essential nature remained intact. "He had gone over the line legally, but in terms of the repugnance, the sorts of things he said, the attempts to engage in character assassination and defaming people who have earned positions as tenured professors, that really hasn't changed," said Sondra Hale, a UCLA anthropology professor who is No. 6 on Jones's "Dirty Thirty" list.

The Bruin Alumni Association is essentially a one-man operation run out of Jones's apartment in Culver City. The organization's advisory board includes some prominent conservative names, but it has received only about $22,000 in donations since its inception last May. Jones worked briefly during and after college for the conservative activist David Horowitz, who has been lobbying state legislatures to pass an "Academic Bill of Rights" to protect students with minority viewpoints from partisan professors.

Horowitz said he fired Jones, accusing him of pressing UCLA students to file false reports that they had been physically attacked by leftist activists. Reported in: *New York Times*, January 24. □

fair use threatened, NYU survey asserts

New York University's Brennan Center for Justice released the results of a survey December 5 that says fair use and free expression are at risk. Marjorie Heins and Tricia Beckles of the center's Free Expression Policy Project examined 320 threatening letters from copyright holders deposited with Chilling Effects, a clearinghouse that monitors misuse of intellectual-property law on the Internet.

Will Fair Use Survive? Free Expression in the Age of Copyright Control reported that almost half of the cease-and-desist threats either stated weak copyright claims or involved Web sites with at least a possible free expression or fair use defense. The authors also conducted interviews with teachers and scholars who "expressed frustration with a clearance culture that locks images out of public view whenever an owner refuses permission or charges too high a price."

The report also referred to several sets of educational fair use guidelines developed since the Copyright Act of 1976 involving classroom copying, music, distance lean-

ing, interlibrary loans, off-air recordings of broadcast programs, digital images, and educational multimedia, but noted that these are often narrower than fair use law and often "prevent many teachers from copying material for their classes."

The authors suggested several recommendations for change, among them reducing penalties for infringement, creating a national legal support center with a network of pro bono attorneys available to defend alleged unfair users, and investigating sanctions against lawyers who send frivolous cease-and-desist letters.

"The more people in a community assert fair use," Heins said, "the more it will be recognized and the more difficult it will be for those who want to control every last quote or every clip used in a film." Reported in: *American Libraries Online*, December 16. □

spy court judge quits in protest

A federal judge resigned from the court that oversees government surveillance in intelligence cases in protest of President Bush's secret authorization of a domestic spying program. U.S. District Judge James Robertson, one of eleven members of the secret Foreign Intelligence Surveillance Court, sent a letter to Chief Justice John G. Roberts, Jr., December 19 notifying him of his resignation without providing an explanation.

Two associates familiar with his decision said that Robertson privately expressed deep concern that the warrantless surveillance program authorized by the president in 2001 was legally questionable and may have tainted the FISA court's work. Robertson was appointed to the federal bench in Washington by President Bill Clinton in 1994 and was later selected by then–Chief Justice William H. Rehnquist to serve on the FISA court.

Word of Robertson's resignation came as two Senate Republicans joined the call for congressional investigations into the National Security Agency's warrantless interception of telephone calls and e-mails to overseas locations by U.S. citizens suspected of links to terrorist groups. They questioned the legality of the operation and the extent to which the White House kept Congress informed.

Sens. Chuck Hagel (NE) and Olympia J. Snowe (ME) echoed concerns raised by Arlen Specter (R-PA), chairman of the Senate Judiciary Committee, who has promised hearings in the new year. Hagel and Snowe joined Democrats Dianne Feinstein (CA), Carl M. Levin (MI) and Ron Wyden (OR) in calling for a joint investigation by the Senate judiciary and intelligence panels into the classified program.

At the White House, spokesman Scott McClellan was asked to explain why Bush last year said, "Any time you hear the United States government talking about wiretap, it requires—a wiretap requires a court order. Nothing has changed, by the way. When we're talking about chasing down terrorists, we're talking about getting a court order before we do so." McClellan said the quote referred only to the USA Patriot Act.

Revelation of the program in December by the *New York Times* also spurred considerable debate among federal judges, including some who serve on the secret FISA court. For more than a quarter-century, that court had been seen as the only body that could legally authorize secret surveillance of espionage and terrorism suspects, and only when the Justice Department could show probable cause that its targets were foreign governments or their agents.

Robertson indicated privately to colleagues that he was concerned that information gained from warrantless NSA surveillance could have then been used to obtain FISA warrants. FISA court Presiding Judge Colleen Kollar-Kotelly, who had been briefed on the spying program by the administration, raised the same concern in 2004 and insisted that the Justice Department certify in writing that it was not occurring.

"They just don't know if the product of wiretaps were used for FISA warrants—to kind of cleanse the information," said one source, who spoke on the condition of anonymity because of the classified nature of the FISA warrants. "What I've heard some of the judges say is they feel they've participated in a Potemkin court."

Robertson is considered a liberal judge who has often ruled against the Bush administration's assertions of broad powers in the terrorism fight, most notably in *Hamdan* v. *Rumsfeld*. Robertson held in that case that the Pentagon's military commissions for prosecuting terrorism suspects at Guantanamo Bay, Cuba, were illegal and stacked against the detainees. Reported in: *Washington Post*, December 21. □

'little red book,' big fat lie

A student at the University of Massachusetts at Dartmouth admitted that he fabricated his claims of being interrogated by Department of Homeland Security officials for checking out Mao's Little Red Book from the university's interlibrary loan system. The twenty-two-year-old student's lies were uncovered by the *Standard-Times* of New Bedford, Massachusetts, which first broke details of his story on December 17.

Before recanting his tale, the student told the local newspaper that he had been visited a second time by officials from the Department of Homeland Security, "where two agents waited in his living room for two hours with his parents and brother while he drove back from a retreat in western Massachusetts. He said [that] he, the agents, his

parents and his uncle all signed confidentiality agreements that the story would never be told."

None of his new allegations were able to be confirmed, and he eventually told both his parents and at least one professor at the university that he had lied about the whole situation. The incident had prompted significant discussion among faculty members around the country, coming as it did amid revelations about domestic spying by the Bush administration.

Even before the new fabrications surfaced, the student's claims had raised suspicions among administrators at UMass–Dartmouth. A spokesman, John Hoey, said officials had grown increasingly skeptical of the student's original story, which involved federal agents visiting his parents' home to discuss a book "watch list." Hoey and others at the institution said that due to privacy issues, they would not release the student's name. The Department of Homeland Security adamantly denied that any of its officials had interrogated the senior.

"We investigate violations of the law, not individuals' reading habits," Jamie Zuieback, a spokeswoman for the department, said. She indicated that department officials had "serious questions about the veracity of the claims" made by the student and that the department "has no such thing as a book watch list."

Still, faculty members at the university, including Brian Glyn Williams, a professor of history who was the most vocal supporter of the student, continued to believe the allegations, saying that the senior had provided credible evidence to back up his claims. Before the student's recantation, Williams said that he had "absolutely no reason" to disbelieve the student but that, due to the strong denials by the Department of Homeland Security, he was determined to clarify the allegations.

Ultimately, it was Williams's persistent investigation of the matter—which included going to the student's home and speaking to his parents—that led to the truth.

"My investigation eventually took me to his house, where I began to investigate family matters," Williams told the *Standard-Times*. "I eventually found out the whole thing had been invented, and I'm happy to report that it's safe to borrow books." Reported in: insidehighered.com, December 28. □

First Amendment activist Frank Wilkinson remembered

National civil liberties leader Frank Wilkinson, who died January 2, was remembered January 28 as "the Johnny Appleseed of the First Amendment" at a packed memorial service at Holman United Methodist Church in Los Angeles.

Wilkinson "sowed seeds of liberty in every city of the country," said Kit Gage, director of the First Amendment Foundation, one of several groups her former colleague launched in his 91 years. Well into his 80s, Wilkinson gave nearly 200 speeches a year on First Amendment issues, fair housing and civil rights.

The son of a physician, he was born in Michigan and came to Los Angeles when he was eleven. He graduated from Beverly Hills High School and UCLA, and considered becoming a Methodist minister. But after seeing extreme poverty during a trip around the world, Wilkinson became an advocate of affordable, high-quality public housing.

A member of the Communist Party for more than thirty years, Wilkinson lost his job at the Los Angeles Housing Authority in the McCarthy era after refusing to answer questions about his political affiliations during a city hearing concerning housing in Chavez Ravine. But he continued his antipoverty work and was summoned before the House Un-American Activities Committee in 1958.

Rather than assert his Fifth Amendment right against self-incrimination, as others did, he refused to answer questions citing the First Amendment. His case went to the Supreme Court, where he lost, 5–4. He spent nine months in prison for contempt of Congress.

After his release in 1962, he dedicated himself to abolishing the House committee, which he considered un-American. The campaign succeeded—in 1975.

Wilkinson played a key role in other civil liberties battles over the next thirty years.

Assemblywoman Jackie Goldberg (D–Los Angeles), a leader of the Free Speech Movement at UC Berkeley, praised Wilkinson as a man "who inspired people because he was courageous. It's important to remember his life, but it's also important to pick up the torch," she said. "We should have a Frank Wilkinson Memorial Brigade. No meetings. Just a large e-mail list to do outrageous actions."

Although he achieved a great deal, including successfully suing the FBI for its 132,000-page file on him, "Frank had one unachieved goal at the end of his life—to chisel J. Edgar Hoover's name off the FBI building," said Ramona Ripston, executive director of the American Civil Liberties Union of Southern California, referring to the late FBI director.

Wilkinson loved music, a gift he passed to his children. At the service, his daughter, Jo, sang "Amazing Grace" and his son, Jeffrey, sang "Softer Than a Song," a tune by Wilkinson's grandson Joshua. Several speakers emphasized that Wilkinson loved to interact with young people.

Andrea McEvoy, a high school history teacher from Culver City said that when she first brought Wilkinson to one of her classes a few years ago to discuss his experiences, she was concerned about how a man in his eighties would do with a group of "sixteen-year-olds with the attention span of a music video." Within moments, though, Wilkinson had her students "on the edge of their seats," McEvoy said. "He taught them what fear can do to a country. They really

listened. Frank took over the semester. We never made it to Reaganomics," the teacher said, drawing laughter.

Wilkinson's family—including his stepchildren from his marriage to his second wife, Donna, who arranged the program—presented the personal side of a man they clearly loved and admired. They recounted that he gave them back rubs, sang lullabies—some with a distinctly political tilt—and typed their school papers.

Perhaps the most poignant remarks were offered by Wilkinson's sixty-year-old son, Tony, who recalled when the family was trailed by federal agents and their house was firebombed. But his father, "with thousands of others, helped to create this ocean of love that sustained us and carried us all, up and over our fears." Reported in: *Los Angeles Times*, January 29. ☐

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newsletter on intellectual freedom *online*

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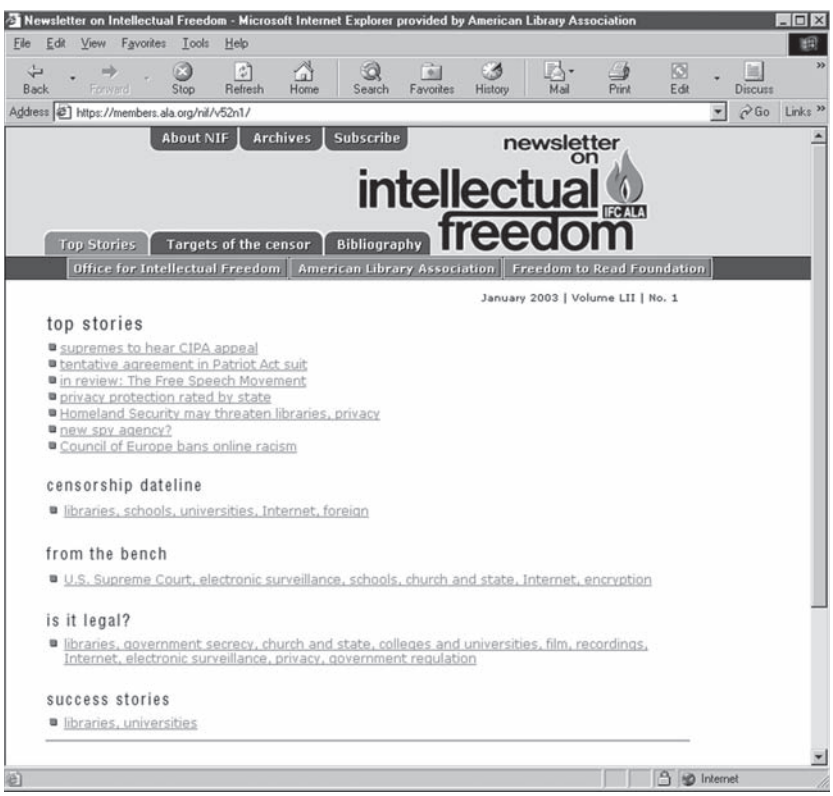
To celebrate the launch of the online version, for this first year only, a $50 subscription will entitle new and renewing subscribers to **both** the online and print editions.

The online version is available at www.ala.org/nif/. The *NIF* home page contains information on accessing the *Newsletter*, and links to technical support, an online subscription form, and the Office for Intellectual Freedom.



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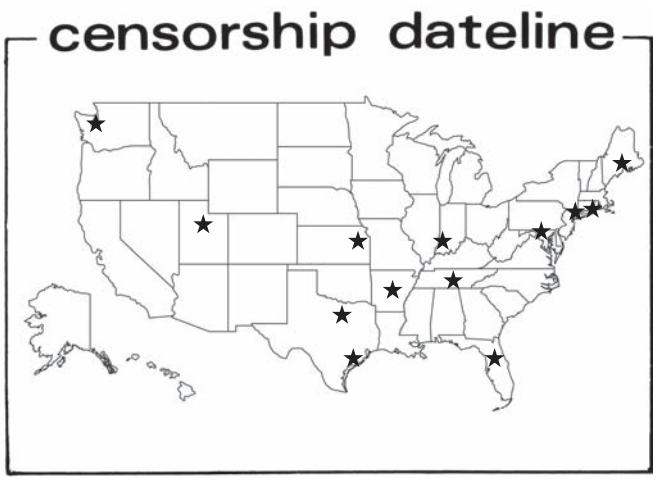


Groton, Connecticut

A Groton city council member called January 3 for restrictions on the use of internet workstations at the public library in light of a police investigation into whether a patron viewed and downloaded child pornography in December at a public-access terminal there. However, the library at which the incident is alleged to have taken place filters online access in compliance with the Children's Internet Protection Act—a fact that Groton Public Library Director Alan Benkert emphasized.

"All of our computers are supervised to the best of our abilities," Benkert said, adding, "We turn the screens toward the public areas so the staff can check them. We don't have any private places." In this incident, the policy seems to have worked: Groton Police Chief Kelly M. Fogg said the library called law enforcement after a staff member observed a patron "possibly viewing child pornography" on a computer in the adult area.

Declining to comment on the specific investigation, Benkert explained, "We try to buy the best filters we can afford and the programmers can write" but "filters work on words; they can't see pictures."

GPL's five-page usage policy sets the minimum age for onsite Internet access at nine, and only when accompanied by an adult. Until they reach sixth grade, youngsters may only surf on children's-area machines. Adult patrons can have filters turned off on request for bona fide research, per the Supreme Court's 2003 ruling.

"I can readily concur with the free-speech issue," city council member James L. Streeter said. Still, he maintained that the library was not doing enough because he has seen teens seated with adults in the adult-workstation area. He recommended restricting adults-only computers to "a separate room where the kids would not have any contact or have a chance to walk by." Reported in: *American Libraries Online*, January 6.

Ocala, Florida

Marion County Attorney Gordon Johnston has a new job: he is now the county's book reviewer. He wound up with that job after Marion County commissioners saw that their policy and procedures for addressing concerns about the appropriateness of books in the public library, was inadequate.

The commission considered an appeal of Library Director Julie Sieg's decision that the book *Lolita* was bought and placed correctly on the open shelves in the adult section of the public library. It voted 3–2 to uphold Sieg's ruling.

Commissioners Randy Harris and Stan McClain were the dissenting votes, not because they disagreed with Sieg's decision, but because, they said, they felt more action needed to be taken. "That motion, by itself, is inadequate to bring closure to the issue," Harris said after the meeting.

McClain said he agreed with Sieg "to the point she followed procedures," but, nevertheless, he voted against her decision. "That's correct," he said. "Because I wanted to move it one more step further and that's what we did."

That "one more step" was the commission's unanimous vote to have the county attorney review *Lolita*, the classic novel by Vladimir Nabokov that addresses the themes of pedophilia and incest, to determine if it meets the state law's definition of "unsuitable for minors."

Meanwhile, Terry Blaes, who filed the appeal, was left feeling that the commission sidestepped her concern that, perhaps, *Lolita* was unsuitable for children and unsuitable for the library or, at least, for the open shelves in the adult section of the library. "They dodged the issue of whether a book that they might consider unsuitable for minors ought to be removed from the adult section of the library," Blaes said after the appeal hearing. "They don't seem to be willing to consider whether parents are really responsible for either accompanying their children to the adult section or keeping their children in the children's section. Instead, they want the county attorney to decide whether a book is unsuitable for minors and, therefore, unsuitable for adult browsing in the library."

"There has been no decision whether that book is harmful for minors or not," Johnston said. He said there is no policy to address that. "That's why the policy is flawed as it is written. If they wanted something done, what they should do is request that the board change the policy," he

said, referring to Blaes and to Eddie MacCausland, who also filed an appeal of the *Lolita* decision.

Blaes had followed the procedures that exist for challenging a book. She filed a Statement of Concern about *Lolita* to the library director. The director and a committee the director appoints may only consider whether the book was purchased and placed on the shelves correctly. They may not determine book's appropriateness for children. So, Blaes appealed Sieg's decision, hoping to get the County Commission to determine whether the book is unsuitable for children and should be removed.

But the only matter the commission legally could address under the appeal was whether they agreed with Sieg's decision. Under the procedure, the commission could not address the issue of the suitability or unsuitability of the book for children and whether it should be removed from the library's shelves. So, they directed Johnston to make that determination, based on state law.

Despite the appeal, Blaes does not oppose Sieg's decision. Instead, Blaes wanted the commission to address the question of what it considers unsuitable for minors under the county's new "restricted access" policy. MacCausland, on the other hand, wanted *Lolita* in the restricted area, where children would not have access to it. He sent a three-page letter outlining his concerns, which the commission did not consider during the appeal.

Johnston said MacCausland's letter would not be admissible because Sieg did not see it before she rendered her decision, so it was not part of her decision, which was under appeal. The commission also halted Blaes from raising her concerns and limited her discussion to Sieg's decision, which she did not oppose.

Harris previously had accused Blaes of "playing games" and Blaes—a former member of the Library Advisory Board, which was dissolved by the commission—told the commissioners she had children and grandchildren who use the library. "To say that I don't see the importance of helping children to develop in a decent way is just not quite fair," Blaes said.

Harris challenged that statement, saying that Blaes has argued publicly that the "public library should be open to anyone and have access to any knowledge without any restrictions at all."

Blaes replied: "I have spoken in the past about keeping books in the library. I have never said I don't want to protect children, only that it's

up to the parent to provide that protection." She can appeal the commission's decision to circuit court. Reported in: *Ocala Star-Banner*, January 20.

Westminster, Maryland

The superintendent of Carroll County schools, whose ban of an award-winning book from the system's libraries prompted a protest from students and an outcry from several national groups, said January 10 that he would return the book to high school libraries, but not middle schools.

Nearly three months after banning *The Earth, My Butt and Other Big Round Things*, Superintendent Charles I. Ecker said he still objects to the book's use of profanity and its sexual references, but he decided that high school students are mature enough to read it. He said he had considered several factors in his decision, including numerous e-mails and letters from supporters and opponents of the ban, as well as the publisher's recommendation of the book for students 14 and older.

"One thing I hope to come out of this is that parents will be concerned or inquire about what their children are reading," Ecker said. "A lot of people may assume that if [a book] comes from the school library, there's nothing bad in it. Whether [their children] get it at school, the public library, or buy it at a bookstore, parents ought to be more involved in what their children are reading."

The book's New York–based author, Carolyn Mackler—who defends her book's use of profanity and sexual references as instruments that help teen readers see themselves in her stories—said that she was "thrilled to hear" of Ecker's decision.

"I applaud the superintendent for being open-minded and listening to the arguments on both sides," she said. "He made a brave and intelligent decision. However, I'm disappointed that the superintendent has chosen to ban *The Earth, My Butt and Other Big Round Things* from middle school libraries. Based on the many letters I've received from twelve- and thirteen-year-old girls who have told me [the book] has helped them feel better about themselves and their bodies, I believe this readership also needs access to honest books that encourage empowerment and healthy self-esteem."

High school students and librarians said they were pleased with Ecker's decision, agreeing that the book's language could be unsuitable for middle-schoolers.

"That's awesome," said Crystal Gardner, who spearheaded a petition drive in November at Winters Mill High in Westminster to protest Ecker's ban. "I see his point with not wanting middle school students to read it. But I thought it was irrational to take it away from high schools."

Gardner, who with two classmates collected nearly 350 signatures, said she had not submitted the petition to Ecker but felt their efforts had made a difference. "We kind of accomplished what we wanted," she said.

Anna Harvey, a junior at Westminster High, said that while she understands Ecker's concern that middle-schoolers might not be mature enough for the book, it "has a good message" for high school students. "It was probably the best decision," said Harvey, who read the 244-page book in two days last year.

Irene Hildebrandt, the school system's media supervisor, "wholeheartedly" supports Ecker's decision. "The real thing is that he gave thoughtful consideration," she said. "He took in all the input.

Mackler's book chronicles the experiences of Virginia Shreves, an overweight fifteen-year-old girl struggling to fit in at school and with her high-achieving family. The book explores teen romance, self-mutilation, date rape and eating disorders.

While Bonnie Kreamer, a librarian at Winters Mill High, said she was "ecstatic" about Ecker's decision, she is alarmed about another banned book. "I think people have forgotten that there were two books banned [this school year] from our shelves," she said. "I'm still concerned that there has been no decision on [*Born Too Short: The Confessions of an Eighth Grade Basket Case*, by Dan Elish]."

Kreamer said *Born Too Short* tells a story similar to Mackler's, but from a boy's perspective. "It's a teen book about a boy's growing pains," she said. "I'm extremely glad [about Mackler's book]. But I'm one who prefers that books not be banned at all."

David Rocah, an attorney with the American Civil Liberties Union of Maryland, said the organization is "heartened [Ecker] reconsidered his decision about this book," but he and others remain concerned about other banned books in Carroll.

"In our letter [to Ecker], we pointed out four other books that have been banned," Rocah said. "That's what's disturbing. There seems to be a pattern here of pulling books off the shelves."

Rocah was referring to *Born Too Short*; *Leaving Disneyland*, by Alexander Parsons; *Beet Fields*, by Gary Paulsen; and *Whistle Me Home*, by Barbara Wersba, which have been completely or partially banned in the past three years.

After hearing complaints from a student and a parent, Ecker ordered school librarians in mid-October to remove Mackler's book. Soon after the superintendent's action, school librarians met with Ecker, who agreed to reconsider the book. Ecker said he believes the story has a valuable lesson for parents and students.

"I wish I could require parents to read it with their kids because the book relates to families and how individuals feel about themselves," hesaid. "As I've said all along, the book does have a good message. But I also think the use of vulgar words and statements that are sexual in nature could've been left out."

Mackler said she knew of one other instance of her book being banned. A Brooklyn, N.Y., principal removed the book after objecting to its romantic scenes, she said. "I write realistic novels for teenagers, and I do my best to portray their realities by being true to the characters and narratives," Mackler said. "I can't write a realistic teen novel without including a character who is contemplating or acting upon their sexuality."

Mackler said she wrote the book to help teenagers—who she said are struggling to "make sense of their changing world"—and the profanity and sexual references are instruments that help readers see themselves in her stories.

"It's a much bigger story. . . . It's about the very basic issue of self-esteem," she said. "As an adult writing for young people, I am aware of my responsibility. I don't just throw in sexuality casually or irresponsibly."

"Mackler writes with such insight and humor (sometimes using strong language to make her point) that many readers will immediately identify with Virginia's longings as well as her fear and loathing," the American Library Assocation wrote in its review of the book.

The book, published in 2003, was named the 2004 Michael L. Printz Honor Book by the Young Adult Library Services Association, the American Library Association Best Book for Young Adults and the International Reading Association's 2005 Young Adults' Choice, among other accolades.

The parents who complained about the book said it was not appropriate for middle school pupils, said Irene Hildebrandt, the school system's media supervisor.

"That's always the tough part, because you have very young sixth-grade students and very mature eighth-grade students," Hildebrandt said. "So when you build a book collection, you're going to have this discussion, especially at the middle school level.

In response to the parents' concerns, the school system's reconsideration committee—a group of 12 students, parents, administrators, media specialists and a teacher—met to discuss the parents' appeal.

After reading the book and discussing it, the committee decided in October that the book should continue to be available at middle and high schools, said Hildebrandt, who oversees the reconsideration committee but does not vote. Parents were unhappy with the committee's decision and appealed to Ecker, Hildebrandt said.

After skimming passages of the book, Ecker ordered it removed from all of the county's school libraries in mid-October.

Alarmed by Ecker's decision, school librarians met with him to discuss his removal of a book they felt was relevant for teenagers. In Carroll, the staff at each school's library determines which books to put on its shelves. Five of the county's seven high schools and seven of its nine middle schools had copies of the book.

"The high school [librarians] met with Ecker . . . and told him we thought it was a bad precedent," said Bonnie Kreamer, media specialist at Winters Mill High in Westminster. "I'm sure the superintendent had all good intentions [when he ordered the books removed] and has the students' interests at heart, but I think this is not a precedent you want to set." Reported in: *Baltimore Sun*, December 8, January 11.

Friendswood, Texas

The community of Friendswood is neck deep in discussion about the novel *The Curious Incident of the Dog in the Night-Time*. Unfortunately, the discussion is not literary.

On January 23, Friendswood Mayor Kim Brizendine issued a proclamation declaring January 31 Galveston County Reads Day for "all citizens, teens to seniors." On January 27, he issued a press release that expressed concern about the content of the book people were encouraged to read.

Brizendine said he regretted endorsing the novel. He also said the Friendswood library board would be reviewing the placement of the book in the library.

On the night of the proclamation, the Galveston County Reads committee presented council members with the novel. Karen Stanley, chair of the committee, said it was an effort to join a national project promoting "one city, one book." The idea is to get everyone in a city—or in this case everyone in Galveston County—to read and discuss the same book. "What we're trying to do is promote community discussion," she said.

She might have gotten more than she bargained for. Friendswood council member John LeCour was not happy with the selection. He said the book could "pollute" young minds. "My main issue is the profanity in the book," he said. He said he had read most of the book. He said he felt the profanity did not add to the "intellectual value" of the topic. "I personally don't think it is good literature," he said. "I think it will be popular for fifteen minutes and then it will be forgotten."

The award-winning, best-selling book by Mark Haddon tells the story of an autistic teenager trying to solve the mystery of a dead dog he finds on his neighbor's lawn.

Councilman Chris Peden had not read the book, but said it was more than just profanity bothering him. He did note the profanity was not buried deep within the book. He said he was disturbed to read the "F" word on page 4. "Later in the book, the kid says there is no God and there is no life after death," he said. "Clearly, these are not ideas we should promote to kids. I am not saying the book should be pulled off the shelves. We just shouldn't be using taxpayers' dollars promoting and purchasing a book the community wouldn't approve of."

Stanley said no taxpayer money was used for the books the committee donated to the council and area libraries. Private donations fund the organization, she said.

Peden said he felt the book deals with issues young teens are not yet ready for. "We should give them wings, but they should be smaller when they are young," he said. "This is too much, too soon. We're talking about young children who are not mature enough to make proper decisions."

Peden said if he had to recommend a book for the Friendswood community, he would point to Booker T. Washington's *Up From Slavery*. He said it teaches character building and hard work. "A lot of liberal do-gooders say we should take the book in its entirety," he said. "That's like saying a man is a great deacon at his church, a great Little League coach, a great provider for his family, but he beats his wife. That is not a good man.

"The firestorm is all the liberal pacifists who are trying to make us out to be book burning, goose-stepping Nazis. That's not the case at all. There are plenty of books without profanity we could promote," Peden added. Reported in: *Galveston Daily News*, January 28.

Irving, Texas

Eight Irving school librarians dropped their challenge to a policy requiring middle school students to get written permission from their parents to check out a book about a teenage boy's recovery after being kidnapped and sexually abused by a man.

Irving school trustees had received copies of the award-winning *When Jeff Comes Home* and were planning to hear an appeal of the policy set by Superintendent Jack Singley at a public hearing January 23. But the board agreed January 9 to cancel the hearing and uphold the policy after the librarians decided to support Singley's ruling.

"After we did all of our research, we just decided it was better for right now to withdraw the appeal," said Heather Lamb, de Zavala Middle School library media specialist. "We're still going to fight for First Amendment rights, just not this battle."

Dana Foster filed a complaint about the book in September after her eleven-year-old daughter checked it out from the Travis Middle School library. Foster said she was disturbed by the cover and took it from her daughter before the girl could read it.

"I read the book and had concerns about the age appropriateness," said Foster, who teaches third grade at Lee Elementary in Irving. "I support the superintendent's decision. It allows for parents to be involved in their child's education and make those decisions."

After the district received her complaint, a committee of school administrators and librarians met and decided in October to keep the book in middle schools. Foster appealed again, and the superintendent created the consent policy, which was implemented in December. The librarians appealed and contacted author Catherine Atkins, requesting she prepare a statement in defense of the book that was published in 1999.

Atkins, an alternative education teacher in California, said she was disappointed the librarians dropped their appeal. "As a school employee myself, I understand the pressures, but I regret the loss of open access to *When Jeff Comes Home* in the Irving district," she said. "*When Jeff Comes Home* could be the right book for the right person at the right time, but without open access to it, a chance may be lost that it will reach the person who needs it."

In the book, sixteen-year-old Jeff is set free after two-and-a-half years of sexual abuse from a man who kidnapped him from a rest stop. The book includes flashbacks to sexual encounters and graphic language. Most of the

story is about how the boy heals after returning to his parents and his struggle to talk about the abuse.

Publisher G. P. Putnam's Sons recommends the book for readers thirteen and older, while the *School Library Journal* suggested it for readers in grades ten and above. *When Jeff Comes Home* was also named a best book for young adults by the American Library Association in 2000. Sam Houston State University library science professor Teri Lesesne said restricting access to one book makes it easier to do so to others.

"I hate to see one parent exercise this type of pressure," she said. "It's one parent who objected, and now it's restricted. Boy, that's scary to me. I'm a parent. What I would say is take it back to the library."

The Irving school district has six copies of the book available at Austin, Crockett, de Zavala and Travis middle schools. The book had been checked out forty-two times in the last three years from those schools. The parent consent rule does not apply to the seven copies at the district's high schools. Reported in: *Dallas Morning News*, January 11.

Tacoma, Washington

University Place school officials have removed a book about gay teens from the district's library shelves following parents' complaints. In banning *Geography Club*, Superintendent Patti Banks said she was alarmed by the "romanticized" portrayal of a teen meeting a stranger at night in a park after meeting the person—revealed to be a gay classmate—in an Internet chatroom. She said her decision was not due to the homosexual theme of the novel by Brent Hartinger of Tacoma.

"We want to send a strong consistent message to all our students that meeting individuals via the Internet is extremely high-risk behavior," Banks wrote in a letter November 2 to two parents who requested the book's removal. "To the extent that this book might contradict that message, I have determined it should not be in our libraries, in spite of other positive aspects (e.g., a strong anti-harassment theme)."

Parent Connie Claussen disagrees with Banks's decision and said she plans to appeal to the district school board. "It is about gay students. However, the most important part of the book is that it's about bullying, outcasts, about tolerance," she said. "This is a really good book for any student to read."

In the 2003 book, a teenager thinks he's the only gay student in his high school until he learns that his online, gay chatroom buddy is a popular athlete at his school. The teen meets others, and they form the school Geography Club, thinking the name will be so boring no one else will join.

Banks had *Geography Club* withdrawn from Curtis Junior High and Curtis Senior High school libraries after a University Place couple with children in both schools filed a written complaint October 21 asking the district to remove the book. They wrote that reading the book could result in a "casual and loose approach to sex," encourage use of Internet porn, and the physical meeting of people through chatrooms.

Curtis High librarian Judy Carlson helped Banks make the decision on the book, even though she had selected it for the library's collection based on reviews. Students often checked the book out, Carlson said, but after reading it, she felt it should have more strongly emphasized the dangers of meeting people through the Internet.

Although the novel had been challenged in other schools for its sexual content, Hartinger said this issue with his book is a first. "The reason gay teens are drawn to the Internet is that's a safe place to explore their identity without being harassed or bullied," Hartinger said. "It's ironic my book would be pulled for this reason, contributing to this atmosphere of silence and gay intolerance." Reported in: *Seattle Post-Intelligencer*, November 20.

schools

Orono, Maine

A novel being read by freshman English classes at Orono High School has been removed temporarily from the curriculum, pending its review. A parent complained January 26 about strong language and vivid descriptions used in Susanna Kaysen's *Girl, Interrupted* and requested that it be removed from the curriculum, Superintendent Kelly Clenchy said.

The superintendent reviewed excerpts from the book that the parent provided and decided that the issue required further consideration. He instructed as of Friday, January 27, that the book be removed temporarily from the classroom.

Girl, Interrupted is Kaysen's memoir of being hospitalized in a mental institution at age eighteen and diagnosed with borderline personality disorder. The book contains graphic descriptions of sexual acts and suicide, according to the superintendent.

In keeping with the school's policy on controversial material, Clenchy pulled the book from the class until it can be reviewed by a committee made up of the building principal, a teacher from the subject area of the material in question, the school librarian and a community member.

"I really don't think that we should be in the business of censorship," Clenchy said. "What we really need to do is make sure that the resources that we're using is aligning with our philosophy and the Maine Learning Results."

School board Chair Robert Swindlehurst explained that the review committee doesn't just look at specific excerpts from the reading, but must consider the book and subject matter as a whole. "[The review committee] wants to look

at the structure of the book, the reasons it's used in the classroom, [and] the materials behind it," he said.

Swindlehurst has been on the board for three years and said this was the first time the review process has been used in that time. The chair also said he wasn't sure when or if the policy ever had been used in the past.

Movie stars Angelina Jolie and Winona Ryder brought *Girl, Interrupted* into the limelight when they starred in the film version of Kaysen's story that was released in 2000.

"If the parents aren't pleased with the result, they can then petition the school committee," Swindlehurst said.

"To leave [the book] in the classroom without fully understanding why it was there wasn't doing justice, I don't think, to the children that we serve," Clenchy said. "Educating students is a partnership between the parents and the school, and they need to understand what we're doing and why we're doing it." Reported in: *Bangor Daily News*, February 7.

Brentwood, Tennessee

An anonymous letter arrived January 27 in the mailboxes of Brentwood Middle School parents asking them to sign a petition to have the novel *To Kill a Mockingbird* removed from Williamson County Schools.

The letter stated, "The school has a policy against profanity although the novel contains much profanity, thus contradicting the school's own policy." The letter includes seven instances of "profanity" in the book, including derogatory words for women. It also states "this book contains adult themes such as sexual intercourse, rape, incest." It contends that the book's use of racial slurs promotes "racial hatred, racial division, racial separation and promotes white supremacy."

The 1960 book by Harper Lee is about the trial of a black man wrongly accused of raping a white woman, as seen through the eyes of a young girl growing up in rural Alabama during the Depression.

Brentwood Middle parent Jeri Daniels said what struck her about the petition was that it was unsigned. It included a stamped envelope addressed to TKM Petition in Brentwood. "I think that's kind of chicken," she said. "I really trust the teachers at Brentwood Middle. It just upsets me. If they feel so strongly about it, why don't they say who they are?"

School board member Bill Peach said he didn't know who sent the letter but did say a board committee held a closed-door hearing "about a month ago" with a parent pertaining to the book. He would not name the parent. "Our policy provides for any child or parent who objects to an assigned reading (to be) given an alternative reading," he said.

Schools spokeswoman Carol Birdsong said a complaint had been filed and that the board would discuss it at its next work session. Reported in: *Nashville Tennessean*, January 28.

York, Ontario

The York Region District School Board has pulled a controversial children's book about the Middle East from the prestigious Silver Birch Awards reading program for older elementary school students, but the Toronto District School Board (TDSB) will continue to make the book available to its students.

The book, *Three Wishes: Palestinian and Israeli Children Speak,* by award winning author and antiwar activist Deborah Ellis, focuses on the testimony of Israeli and Palestinian children, and includes their views on everyday life and the Mideast conflict.

The Ontario Library Association (OLA) recently included the book as a nominee for its Silver Birch reading program, which is designed to encourage children in grades four, five, and six to read recreationally. School libraries stock the Silver Birch books and students can read them on their own, not as part of the school curriculum. At the end of the school year, children vote for their favourite fiction and nonfiction book.

The OLA describes *Three Wishes* as allowing "young readers everywhere to see that the children caught in this conflict are just like them, but living far more difficult and dangerous lives. Without taking sides, it presents an unblinking portrait of children victimized by the endless struggle around them."

Critics, however, argue the book presents a uniformly negative image of Israel, provides little context for young readers about a conflict whose details are beyond their understanding, and introduces students to Palestinian youths who aspire to be suicide bombers and kill Israelis.

The York Region board appeared to side with the critics. "We will not be using *Three Wishes* as part of the Silver Birch selection," said Robert Dunn, superintendent of education for the York Region District School Board. "We've reviewed the material. It's not compliant with our policies, and it's not appropriate for the age group for which it is intended."

Dunn said if schools wish to use it for older students, they should "use it with caution in accordance with our learning resources guides to activity."

Tim Gauntley, program coordinator for libraries and learning resources with the TDSB, said the school board believes the book is "completely appropriate" and has no plans to restrict its availability to student readers. All the books available in the Silver Birch program are optional, Gauntley noted, adding "choices are made by students consulting with librarians and teachers.

"The point is to empower children to make independent reading choices" and to discuss the books with teachers, librarians and other students, he said.

Sarah Burakowski, a special education and resource teacher in the York Region school system who brought the book to Dunn's attention, said the book is "slanted,

biased and inappropriate for children in grades four to six. If this was [geared for] students in high school with the appropriate background knowledge, I would have no problem with it."

Burakowksi, who has been a teacher for twenty-nine years, said the book demonizes the Israeli army and glorifies suicide bombers. She said children participating in the Silver Birch program are not equipped to understand the complexities of the Mideast conflict or make sense of some of the Palestinian children's stated desire to either become a suicide bomber or applaud a sister who became one.

In *Three Wishes*, several Palestinian children say they hope they will be able to one day kill Jews. One Palestinian girl, Wafa, twelve, complains about Israeli military checkpoints, saying "the Israeli soldiers treat us like dogs. They make us stand and wait for no good reason, just because they can. Killing an Israeli will make me feel glad. It will make me feel strong. I am tired of them making me feel small and weak. I want to feel strong and proud."

Another Palestinian girl, Maryam, eleven, said "there are women martyrs who do the suicide bombings. They are very brave. I have only one wish. I would like to go to heaven. Maybe in heaven there is happiness after we die. Maybe then."

Salam, the twelve-year-old sister of suicide bomber Aayat Al-Akhras, who killed herself, a security guard and seventeen-year-old Rachel Levy at a Jerusalem market, said she would have made her sister a special breakfast on the day of her attack, had she known about it. "I don't think it would hurt if I blew myself up. I don't think it hurt my sister. I think she was very brave, not scared at all. I think she was probably very happy," Salam said.

Though students can later discuss the book with a teacher, there is very little context and background given to explain the books, Burakowski said.

Similar concerns were voiced by a teacher/librarian in the Toronto school system, who did not want her name used. She said she and two non-Jewish teachers were concerned "that the children don't have enough knowledge of what is going on in the Middle East to figure out what is fact or opinion."

For instance, she said, one Palestinian girl asserts Israelis don't want her to do well in school. "That's not a fact, but it's something she's been taught to believe. I didn't feel, and neither did the other teachers, that the children here have the knowledge to understand the difference between opinion and fact."

Miriam Drazin, a teacher in York with twenty-five years experience, said the book presents "a very negative picture of Israel." One example she pointed to was a Palestinian child claiming Palestinians drink one cup of water versus four cups drunk by Israelis. "I think if you hand the book out kids, will accept it as fact. I found it is so negative. They each hate the other side. One child talks about being a martyr. Is that what we want our children to be reading about?"

Peggy Thomas, chair of the OLA's selection committee, said she did not agree the book demonizes the Israeli army. She rejected criticism the book was not age-appropriate, saying young children can understand the book's underlying message that hate is something that is taught. "I think that's something kids in grades four, five, and six will get," she said.

Thomas said the book does not take sides and the author, who she called "a remarkable human being," wanted to let the children speak for themselves. "What you have here is what the children have expressed to her," Thomas said. "What she's done here is given them a place to voice their responses to what their lives are like."

References by Palestinian youngsters to suicide bombers "could be dealt with by supportive teaching," she continued. "This is what the children are feeling. I think what Deborah Ellis' idea was was to show how an environment warps children's perceptions." Reported in: *Canadian Jewish News*, no date.

colleges and universities

Lawrence, Kansas

The University of Kansas religion professor, whose proposed course on the "mythology" of intelligent design sparked an uproar last November, said he was beaten up early December 5 by two men who were angry over his disparaging remarks about Christians.

The professor, Paul Mirecki, said his assailants were two white men between the ages of thirty and forty. They had been tailgating him in a large pickup truck. Both wore blue jeans, according to Mirecki, and one wore a red cap with a visor. They hit him with their fists and possibly with a metal object, the professor said. "I'm just shook up over the whole thing," Mirecki said. "My bruises are coming out a day later."

Mirecki declined to go into further detail about the attack or the extent of his injuries. But previously he said he had received hundreds of e-mail messages, many of which were angry and even threatening, in response to his comments about the course.

A spokeswoman for the Douglas County Sheriff's Office also declined to provide details, citing a continuing investigation. She did confirm that officers were searching for the two men Mirecki described.

Mirecki, who is chair of the religious-studies department at Kansas, had proposed a course called "Special Topics in Religion: Intelligent Design, Creationism, and Other Religious Mythologies." The title itself angered intelligent-design proponents, who objected to being lumped in with "other religious mythologies."

The professor also sent a message to a private e-mail discussion group in which he referred to fundamentalist Christians as "fundies" and wrote that the class would be "a nice slap in their big fat face." The message was leaked. Later, other messages that were insulting to Christians, and particularly Roman Catholics, came to light.

"We went through enough of the postings to know that there were other e-mails that damaged Professor Mirecki's suitability to teach the course," said Lynn Bretz, a spokeswoman for the university.

Mirecki canceled the course, saying that the publicity would make it impossible to teach.

Intelligent design is the notion that some aspects of living organisms are so complex that they could not have evolved according to the principles of evolution laid down by Charles Darwin one hundred fifty years ago, but must have been designed by some superior intelligence. Critics of intelligent design say it is little more than creationism, and is in any event not a scientific theory. Reported in: *Chronicle of Higher Education* online, December 7.

film

Sandy, Utah

A movie theater owned by Utah Jazz owner Larry Miller abruptly changed its screening plans and decided not to show the film *Brokeback Mountain*. The film, an R-rated Western gay romance story, was supposed to open at the Megaplex at Jordan Commons in Sandy, a suburb of Salt Lake City. Instead it was pulled from the schedule. A message posted at the ticket window read: "There has been a change in booking and we will not be showing *Brokeback Mountain*. We apologize for any inconvenience."

Cal Gunderson, manager of the Jordan Commons Megaplex, declined to comment.

The film, starring Heath Ledger and Jake Gyllenhaal, is about two cowboys who discover feelings for one another. The two eventually marry women but rekindle their relationship over the years. The movie's distributor, Focus Features, said that hours before opening, the theater management "reneged on their licensing agreement," and refused to open the film.

Gayle Ruzicka, president of the conservative Utah Eagle Forum, said not showing the film set an example for the people of Utah. "I just think (pulling the show) tells the young people especially that maybe there is something wrong with this show," she said.

Mike Thompson, executive director of the gay rights advocacy group Equality Utah, called it disappointing. "It's just a shame that such a beautiful and award-winning film with so much buzz about it is not being made available to a broad Utah audience because of personal bias," he said. Reported in: Associated Press, January 8.

broadcasting

Little Rock, Arkansas; Terre Haute, Indiana

NBC affiliates in Arkansas and Indiana decided to pull *The Book of Daniel* off the air January 6, becoming the first two stations to preempt the new drama. *The Book of Daniel* stars Aidan Quinn as an Episcopalian minister who struggles with an addiction to painkillers and a somewhat dysfunctional family. He's also seen occasionally speaking to a Jesus character whom only he sees.

The preemptions came as the Tupelo, Mississippi-based American Family Association (AFA) urged stations and advertisers to boycott the show, calling it "anti-Christian bigotry."

Both stations—KARK-TV, Little Rock, and WTWO-TV, Terre Haute, are owned by Irving, Texas-based broadcaster Nexstar. KARK announced January 4 that it wouldn't air the show "after careful consideration, watching the program and, most importantly, listening to our viewers and engaging them in dialogue."

On its Web site, KARK said the station heard from many viewers "who expressed their heartfelt opinions on both sides of the issue." Instead, WB Network affiliate KWBF-TV, owned by Equity Broadcasting, agreed to pick up the show and air it in its Friday slot (preempting a *Beauty and the Geek* repeat).

"While we respect (KARK's) position not to air this program, we are excited to provide an outlet for viewers here in central Arkansas," the station said.

Meanwhile, WTWO-TV also said it wouldn't air the show "due to e-mails and calls from viewers."

"Our relationship with NBC always provided for the right to reject programming," WTWO general manager Duane Lammers said in a statement. "I am reaffirming that right to let them know I will not allow them to make unilateral decisions affecting our viewers."

Lammers, who also is chief operating officer of Nexstar, used the preemption to criticize cable. "I want to draw attention to the worst offenders of indecency on television—the cable industry, which faces no decency regulations, nor a license renewal," he said.

In a statement, NBC stressed that *The Book of Daniel* was a fictional drama "about an Episcopalian priest's family and the contemporary issues with which they must grapple. We're confident that once audiences view this quality drama themselves, they'll appreciate this thought-provoking examination of one American family."

The preemptions are reminiscent of a move by several NBC affiliates in 2000 to dump the animated comedy *God,*

the Devil and Bob. In the end, twenty-two stations opted not to air *God,* which also came under fire from the AFA.

Meanwhile, the AFA also took issue with the positive portrayal in *The Book of Daniel* of the minister's gay son. That raised the ire of the Gay & Lesbian Alliance Against Defamation.

"It doesn't surprise me that the American Family Assn. would be afraid of this series—it shows a family that's both deeply religious and loving and accepting of their gay son," said GLAAD's entertainment director, Damon Romine. "Unless local affiliates want to send a message that they're willing to surrender their programming decisions to anti-gay religious extremists, they shouldn't be caving to these threats, either."

However, the show was canceled January 24 after three episodes. It had trouble attracting advertisers. Reported in: *Variety*, January 6.

New York, New York

The American Family Association just can't leave NBC alone. Weeks after it successfully mounted a campaign against the network's midseason show *The Book of Daniel,* the organization is going after Thursday night stalwart *Will and Grace* for an episode guest-starring Britney Spears as a Christian conservative sidekick to Jack.

In the episode, "Out TV," the fictional network that airs Jack's *Jack Talk* TV program is bought by a Christian TV network, and Spears' character is brought on to be Jack's new religious co-host. She introduces a cooking segment on the show called "Cruci-fixin's."

Randy Sharp, director of special projects for the American Family Association, which is based in Tupelo, Mississippi, and headed by Donald Wildmon, called the program a "direct attack on people of faith" from a network that "has a history of anti-Christian bigotry."

"They would not be making fun of Mohammed or Buddha," he said.

"It's almost sacrilegious. I wonder who is at the helm of NBC that they are not getting the message. NBC doesn't seem concerned that they are tanking because they are offending their viewers and running them off."

Sharp said NBC should be aware from its battle over *The Book of Daniel* and two years ago over *God, the Devil and Bob* that it is risking its audience. He also criticized a pre-Christmas *Saturday Night Live* skit that he said "ripped up sacred [Christmas] hymns."

While the AFA is clearly gloating over the *Book of Daniel* victory it claimed January 24 when the show was canceled after three episodes with virtually no outside advertisers, Wildmon's group will have a much tougher job taking on *Will and Grace,* an established show in its final season. Additionally, it's likely that few of Wildmon's supporters are regular watchers of the show. NBC didn't comment on the AFA's allegations.

"I don't think they'll have an impact on *Will and Grace,*" said Rino Scanzoni, chief investment officer at Mediaedge. "It's been around awhile. *The Book of Daniel* was an easier target because it was loaded with controversial issues, players and storylines."

The AFA's Sharp said the group hadn't seen the *Will and Grace* episode, but didn't have to. "We didn't see *The Book of Daniel* [when the group's campaign against the show was launched] and it was worse than we thought."

Sharp said the initial effort was aimed at NBC stations, but would be followed by efforts to get its members to contact the show's advertisers. "The good thing is that the advertisers are sensitive to the consumer base," he said.

Within days of AFA's announcement, NBC issued a press release, which read: "Some erroneous information was mistakenly included in a press release describing an upcoming episode of *Will and Grace* which, in fact, has yet to be written. The reference to "Cruci-fxins" will not be in the show and the storyline will not contain a Christian characterization at all."

In its own press release, AFA claimed victory: "Action by AFA Online supporters has caused NBC to pull the offensive segment scheduled for the April 6 episode of *Will and Grace*. In an attempt to confuse the public, the network issued an intentionally misleading statement which left the impression that AFA had lied to our supporters," the organization wrote. Reported in: AdAge.com, February 2; AFA Press Release, February 6.

foreign

Beijing, China

Microsoft shut the blog site of a well-known Chinese blogger who uses its MSN online service in China after he discussed a high-profile newspaper strike that broke out in Beijing. The decision was the latest in a series of measures in which some of America's biggest technology companies have cooperated with the Chinese authorities to censor Web sites and curb dissent or free speech online as they seek access to China's booming Internet marketplace.

Microsoft drew criticism last summer when it was discovered that its blog tool in China was designed to filter words like "democracy" and "human rights" from blog titles. The company said that it must "comply with global and local laws."

"This is a complex and difficult issue," said Brooke Richardson, a group product manager for MSN in Seattle. "We think it's better to be there with our services than not be there."

The site pulled down was a popular one created by Zhao Jing, a well-known blogger with an online pen name, An Ti. Zhao, thirty, also works as a research assistant in the Beijing bureau of *The New York Times*.

The blog was removed in late December from a Microsoft service called MSN Spaces after the blog discussed the firing of the independent-minded editor of *The Beijing News*, which prompted one hundred journalists at the paper to go on strike December 29. It was an unusual show of solidarity for a Chinese news organization in an industry that has complied with tight restrictions on what can be published.

The move by Microsoft came at a time when the Chinese government is stepping up its own efforts to crack down on press freedom. Several prominent editors and journalists have been jailed in China over the last few years and charged with everything from espionage to revealing state secrets.

Another research assistant for The New York Times, Zhao Yan (no relation to Zhao Jing), was indicted in December on charges that he passed state secrets to the newspaper, which published a report in 2004 about the timing of Jiang Zemin's decision to give up the country's top military post.

China closely monitors what people post on the Internet and the government regularly shuts Web sites and deletes postings that are considered anti-government. A spokeswoman for Microsoft said the company had blocked "many sites" in China. The MSN Spaces sites are maintained on computer servers in the United States.

Richardson of Microsoft said Zhou's site was taken down after Chinese authorities made a request through a Shanghai-based affiliate of the company.

The shutdown of Zhao's site drew attention and condemnation elsewhere online. Rebecca MacKinnon, a fellow at the Berkman Center for Internet and Society at Harvard Law School, wrote on her blog, referring to Microsoft and other technology companies: "Can we be sure they won't do the same thing in response to potentially illegal demands by an overzealous government agency in our own country?"

Robert Scoble, a blogger and official "technology evangelist" for Microsoft, took a public stand against the company's action. "This one is depressing to me," he wrote. "It's one thing to pull a list of words out of blogs using an algorithm. It's another thing to become an agent of a government and censor an entire blogger's work."

Another American online service operating in China, Yahoo!, was widely criticized in the fall after it was revealed that the company had provided Chinese authorities with information that led to the imprisonment of a Chinese journalist who kept a personal e-mail account with Yahoo!. Yahoo! also defended its action by saying it was forced to comply with local law.

Zhao is so well known as a blogger that he served as China's lone jury member last year in Germany for a world blog competition. A former computer programmer, Zhao worked as a journalist for a Chinese newspaper and as a research assistant for *The Washington Post* before joining *The New York Times* in 2003.

Zhao said he had kept a personal blog for more than a year and was regularly censored in China, even though he tried to be careful not to write about significant issues related to his work at the *Times*. He was apparently one of the first on the Internet to mention that several editors could be fired from *The Beijing News*. He said he posted something about possible firings on December 28.

Two days later, after the top editor there was dismissed, Reuters reported that about a hundred journalists had gone on strike over the dispute and added that several Chinese blogs and Internet chat rooms were discussing the issue. The report said Zhao had used his blog to urge readers to cancel their subscriptions.

I didn't even say I supported the strike," he said. "This action by Microsoft infringed upon my freedom of speech. They even deleted my blog and gave me no chance to back up my files without any warning." Reported in: *New York Times*, January 5.

Bangkok, Thailand

The government of Thailand has blocked access in that country to the Web site of Yale University Press. The move came in response to the site's publicity material for *The King Never Smiles: A Biography of Thailand's Bhumibol Adulyadej*, a book in which the author criticizes the king of Thailand. The government also will ban importation of the biography, which Yale is to publish in July.

At various times after an initial blockage of the Web site earlier this month, parts of it were viewable within Thailand. Now access is fully censored, with a notice that reads: "This Web site has been blocked by Cyber Inspector, the Ministry of Information and Communications Technology."

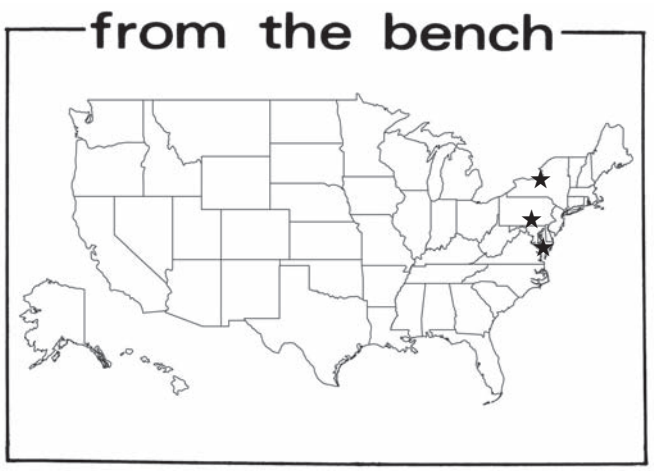
Complaints to the cyber inspector's office led to the action, said Kanawat Wasinsangworn, assistant minister of information and communications technology. He said the government had blocked the Web site because it criticized the king and the monarchy. Cyber-inspector officials are responsible for blocking any Web sites that may be deemed unfit for viewing in Thailand, Kanawat said.

The book's author, Paul M. Handley, a journalist, declined to comment, writing in an e-mail message that "Yale and I think it best I hold back on interviews until publication, when the book can speak for itself."

The Yale press did issue a statement defending the biography. While the book "has given cause for concern" to the Thai government, the press said, it is "dispassionate in tone and temperament, and has been thoroughly vetted both by leading scholars in the field and by the Yale University Press Faculty Committee."

The statement continued: "The author stands behind this book 100 percent, as does the press." The book, it said,

(continued on page 100)



U.S. Supreme Court

The Supreme Court agreed January 4 to allow for the transfer of Jose Padilla from a military brig to civilian custody to stand trial on terrorism charges, giving the Bush administration a victory in one round of the prolonged political and legal wrangling over Padilla's status under the law. The justices' order means that Padilla will be moved from a naval brig in South Carolina to a civilian jail in Miami to face charges that he conspired with Al Qaeda to commit terrorist attacks overseas.

The announcement was the latest twist in the complex tale of Padilla, a one-time Chicago gang leader who was arrested at Chicago's O'Hare Airport in May 2002. The authorities asserted that he was involved in a plot to explode a radioactive "dirty bomb" in some American city. His arrest, only months after the September 11 attacks, stoked an already fierce debate over the proper balance between national security and personal liberty in an age of terrorism.

Padilla, an American citizen, was held for more than three and a half years as an "enemy combatant," with no charges lodged against him until November. When his indictment was announced, the government made no mention of the "dirty bomb" plot inside the United States. Instead, Padilla was charged with fighting American forces alongside members of Al Qaeda in Afghanistan.

The United States Court of Appeals for the Fourth Circuit, in Richmond, Virginia, refused in December to allow Padilla to be transferred to civilian custody, declaring that the Bush administration gave the appearance of pushing for the transfer to prevent the Supreme Court from hearing the case and ruling on the government's ability to hold an American citizen like Padilla outside the civilian criminal justice system. The Justice Department assailed the ruling as an "unwarranted attack" on presidential discretion.

The clash between the Fourth Circuit and the administration was remarkable, since the circuit is regarded as perhaps the most conservative of the federal appellate courts and, therefore, generally an ally of the Bush White House. Indeed, in September, the Fourth Circuit affirmed President Bush's power to hold Padilla as an enemy combatant.

Padilla and his lawyers might have been expected to applaud the defendant's transfer to civilian custody. But they had asked the Supreme Court to block the transfer, at least for now, asserting that the government was trying to avoid Supreme Court review of the crucial underlying issue: whether the president has the authority to detain him as an enemy combatant.

"The government had the power to transfer Padilla from physical military custody for more than three years, yet only now does it deem swift transfer imperative," defense lawyers argued in a brief filed in late December.

They further argued that the issues underlying the case were grave ones, involving "the checks and balances that the framers erected to preserve America as a land of liberty under the rule of law," and thus ideal for quick Supreme Court review.

One of Padilla's lawyers, Donna Newman, said she was pleased at the Supreme Court's statement in its one-page order that the broader issues in the case would be weighed "in due course."

"That's fine," Newman said. "I don't think it's a bad day for us." Reported in: *New York Times*, January 4.

An online dating service that has been trying to market itself to students and employees at the University of Texas at Austin ran out of options January 9 when the U.S. Supreme Court turned down its request for a date. The justices didn't let the dating service down easily, either. The court merely announced that, among many other actions, it was refusing to consider the dating service's challenge to a university policy that blocks unsolicited e-mail notices from its network.

The dispute centered on whether the university had a right to filter from its network e-mail messages from LonghornSingles.com, a commercial dating service run by White Buffalo Ventures LLC. In 2003, Texas prevented e-mail messages sent by LonghornSingles.com from reaching about fifty-five thousand people at the university. White Buffalo, based in Austin, argued that the action was unconstitutional because it limited the company's free-speech and equal-protection rights. The company also said the university policy violated a federal antispam law.

A federal judge in March 2004 sided with the university and a federal appeals court upheld the ruling in August 2005. Reported in; *Chronicle of Higher Education* online, January 10.

The U.S. Supreme Court heard arguments December 6 over whether colleges can bar military recruiters from their campuses without jeopardizing their federal funds. Among the justices whose views could be discerned, a majority appeared to favor the government's arguments over those of the colleges.

The case, *Rumsfeld* v. *Forum for Academic and Institutional Rights,* pits the Defense Department against a coalition of thirty-eight law schools and law-school faculties in a fight over the constitutionality of a decade-old law that allows the federal government to withhold funds—millions of dollars, in some cases—from colleges that limit military recruiting.

The Defense Department argued that recruiting restrictions hamper its ability to bring talented lawyers into the Judge Advocate General's Corps, which handles legal affairs for the military. But the Forum for Academic and Institutional Rights, or FAIR, says the law, known as the Solomon amendment, infringed on their First Amendment rights by forcing them to "disseminate, carry, and host" the military's message and associate with an employer whose policy on hiring gay men and lesbians conflicts with their own antidiscrimination policies.

During oral arguments, E. Joshua Rosenkranz, a lawyer for FAIR, said the law imposed unconstitutional conditions on the receipt of federal funds by forcing law schools to choose between their university's aid and their constitutional rights. He added that the military had failed to provide "even a shred" of evidence that it needed equal access to recruit effectively.

"The government is demanding absolute parity, without regard to whether the military actually needs it," he said.

Paul D. Clement, the Justice Department's solicitor general, countered that the amendment's "equal access" requirement was a perfectly ordinary contractual condition, no different than the strings routinely attached to gifts and bequests. He noted that law schools remain free to criticize the military's policies and can even bar recruiters if they are willing to forgo federal funds.

That argument appeared to resonate with several of the justices, including the new chief justice, John G. Roberts. When Rosenkranz suggested that the amendment had compromised law schools' credibility on nondiscrimination, Chief Justice Roberts said that the reason students "don't believe you is because you're willing to take the money."

"What you're saying is that here is a message we believe in strongly, but we don't believe in it enough to give up $100 million," he said.

Rosenkranz replied that, under the doctrine of unconstitutional conditions, "you cannot put a speaker to that crisis of conscience."

Much of the discussion centered on the question of whether colleges' bans on military recruiting constitute speech or conduct. That distinction is critical. If the court views the bans as speech, as FAIR argues, then the Defense Department will have to prove that the law serves a "compelling government interest" and is as narrowly tailored as possible. If it views the bans as "expressive conduct"—that is, conduct with elements of speech—then the Pentagon must prove only that its recruiting would be less effective without the law.

Again, the justices appeared more sympathetic to the military's position. Two of them—Antonin Scalia and Anthony M. Kennedy—suggested that the act of denying access does not become speech simply because a law school announces in advance the motive for its actions. Chief Justice Roberts was unequivocal: "This is conduct," he said.

Justice David Souter disagreed, saying the law appeared to be directed at speech, not conduct. "If we're going to address the Solomon amendment, we're addressing exclusively a First Amendment speech issue," he said.

The Defense Department appealed the case to the Supreme Court last winter, after a federal appeals court in Philadelphia ruled in favor of FAIR, finding that the military had failed to show its recruiting needs justified the intrusion on law schools' First Amendment rights. The decision reversed a 2003 opinion by a federal judge who said that law schools were unlikely to prevail at trial.

Dozens of groups have filed briefs in the case. In its brief supporting the law schools, the American Association of University Professors argued that the Solomon Amendment interferes with academic self-governance. It said it worries that a Defense Department victory would further undermine academic freedom, compromising colleges' ability to govern themselves as they see fit.

The case also attracted the attention of Congress, which passed the Solomon amendment in 1994 and has expanded its reach several times since then. Some lawmakers fear that if the Solomon amendment is struck down, Congress could lose its ability to attach conditions to federal funds, the sacred "power of the purse." One of the amendment's original sponsors, Rep. Richard Pombo, a Republican from California, filed a brief supporting the Pentagon's position through the Mountain States Legal Foundation.

Meanwhile, a group of Harvard professors filed a brief arguing that the law, as written, applies "only to policies that single out military recruiters for special disfavored treatment, not evenhanded policies that incidentally affect the military." The brief says the government is demanding more than equity—it is demanding a special exemption from colleges' antidiscrimination policies.

The court briefly considered that argument, asking Clement whether the law schools are not simply providing the recruiters with the same access they would provide any

employer that discriminates on the basis of sexual orientation. Clement acknowledged that the military is requesting "access under circumstances that perhaps some other recruiter would be denied." However, he argued that "the military is not like any other employer" because its policy is "the result of a Congressional mandate."

There are limits, however, to the law professors' "statutory argument," legal analysts said. If the Supreme Court were to strike down the Solomon amendment on the grounds that the military had misread and misapplied the law, Congress could simply pass the law again, clarifying its intent.

For that reason, the court is "unlikely to punt" on the statutory argument, said Carter G. Phillips, a former assistant to the solicitor general, at a recent forum at Georgetown University's law school. "They won't go down that hill to come back up again," he predicted.

The court was expected to rule on the case by the end of its current term, in July. Justice Sandra Day O'Connor, who announced her retirement as soon as a successor was confirmed, took part in the arguments, but she had been replaced before the case was decided. The court may thus hold the case over for reargument after her successor, Justice Samuel Alito, is seated. Reported in: *Chronicle of Higher Education* online, December 7.

The Supreme Court agreed January 6 to try to define, more precisely than in the past, the emergencies that can justify a warrantless police entry into a private home.

The case is an appeal filed by the State of Utah from a Utah Supreme Court decision early last year that four Brigham City police officers violated the Fourth Amendment's prohibition against unreasonable search and seizure by entering a home to break up a fight.

The police, who went to the home in response to a neighbor's complaint about a loud party, did not have a warrant and did not announce their presence before walking through an open back door. They arrested three occupants for disorderly conduct, intoxication and contributing to the delinquency of a minor by allowing a teenager to drink.

The Utah trial court, appeals court and Supreme Court all ruled that the evidence of alcohol consumption could not be introduced at trial because of the illegal police entry.

Supreme Court precedents have established numerous exceptions to the Fourth Amendment's warrant requirement. Two are at issue in this case, *Brigham City* v. *Stuart*. One is an exception for "exigent circumstances," in which split-second judgments must be made by the police to prevent, for example, the destruction of evidence. The other is an "emergency aid" exception, in which the police are permitted to act immediately to prevent injury or to assist an injured person.

The Utah courts held that the circumstances of this case did not justify invoking either of the exceptions. The garden-variety altercation, visible to the police through a window, did not amount to an "exigent circumstance," the Utah Supreme Court said. It also said the police could not claim the "emergency aid" exception because they did not enter the home for the purpose of providing medical assistance.

In the state's appeal, Utah's attorney general, Mark L. Shurtleff, is arguing that the "subjective motivations of police officers" are irrelevant as long as the entry was "objectively reasonable." State courts are divided on how to apply either of the exceptions, the state's brief said. Reported in: *New York Times*, January 7.

schools

Dover, Pennsylvania

A federal judge ruled December 20 that a Pennsylvania school board's policy of teaching "intelligent design" in high school biology class is unconstitutional because intelligent design is clearly a religious idea that advances "a particular version of Christianity."

In the nation's first case to test the legal merits of intelligent design, Judge John E. Jones, III, dealt a stinging rebuke to advocates of teaching intelligent design as a scientific alternative to evolution in public schools. The judge found that intelligent design is not science, and that the only way its proponents can claim it is, is by changing the very definition of science to include supernatural explanations.

Eleven parents in Dover sued their school board a year ago when the board voted that ninth grade biology students should be read a brief statement saying there are "gaps in the theory" of evolution and that intelligent design is another explanation they should examine. The case is *Kitzmiller, et. al.* v. *Dover*.

The six-week trial in federal district court in Harrisburg gave intelligent design the most thorough academic and legal airing it has had since the movement's inception about fifteen years ago. The judge heard evidence from scientists in the forefront of the design movement, as well as scientists and other experts who are critics.

Intelligent design posits that biological life is so complex that it must have been originated by an intelligent source—without ever defining the identity of that source. But the judge said the evidence in the trial strongly proved that intelligent design is "creationism relabeled." The Supreme Court has already ruled that creationism, which relies on the Biblical account of the creation of life, cannot be taught as science in a public school.

In his opinion, the judge said he found the testimony of Barbara Forrest, a historian of science, very persuasive. She had presented evidence that the authors of an intelligent design textbook, *Of Pandas and People*, merely removed the word "creationism" from an earlier edition and substituted it with "intelligent design" after the Supreme Court's ruling in 1987.

"The evidence at trial demonstrates that intelligent design is nothing less than the progeny of creationism," Judge Jones wrote. "We conclude that the religious nature of intelligent design would be readily apparent to an objective observer, adult or child," he said. "The writings of leading ID proponents reveal that the designer postulated by their argument is the God of Christianity."

The lead defense lawyer for the school board, Richard Thompson, said it was "silly" for the judge to have issued such a sweeping judgment on intelligent design in a case that he said merely involved a "one minute statement" being read to students.

"A thousand opinions by a court that a particular scientific theory is invalid will not make that scientific theory invalid," said Thompson, the president and chief counsel of the Thomas More Law Center, a public interest firm that says it promotes Christian values. "It is going to be up to the scientists who are going to continue to do research in their labs that will ultimately determine that."

Opponents of intelligent design were delighted by the decision, but said it would not put an end to intelligent design or the efforts to teach it because it is only an opinion from one federal district court.

Eugenie Scott, executive director, National Center for Science Education, an advocacy group in Oakland, California, that promotes teaching evolution, said, "I predict that another school board down the line will try to bring intelligent design into the curriculum as the Dover group did, and they'll be a lot smarter about concealing their religious intent."

Even after courts ruled against teaching creationism and creation science, she said, "For several years afterward, school districts were still contemplating teaching creation science." Reported in: *New York Times*, December 21.

colleges and universities

Syracuse, New York

A New York appeals court on January 18 ordered Le Moyne College to reinstate Scott McConnell as a master's degree student in education. The court found that the Syracuse college violated McConnell's rights and the

(continued on page 100)

excerpt from ruling on intelligent design

Following is an excerpt from the ruling by Judge John E. Jones, III, that the policy of the Dover, Pa., school board to introduce intelligent design as an alternative to evolution violated the First Amendment to the United States Constitution.

"In making this determination, we have addressed the seminal question of whether intelligent design (ID) is science. We have concluded that it is not, and moreover that ID cannot uncouple itself from its creationist, and thus religious, antecedents.

"Both defendants and many of the leading proponents of ID make a bedrock assumption which is utterly false. Their presupposition is that evolutionary theory is antithetical to a belief in the existence of a supreme being and to religion in general. Repeatedly in this trial, plaintiffs' scientific experts testified that the theory of evolution represents good science, is overwhelmingly accepted by the scientific community, and that it in no way conflicts with, nor does it deny, the existence of a divine creator.

"To be sure, Darwin's theory of evolution is imperfect. However, the fact that a scientific theory cannot yet render an explanation on every point should not be used as a pretext to thrust an untestable alternative hypothesis grounded in religion into the science classroom or to misrepresent well-established scientific propositions.

"The citizens of the Dover area were poorly served by the members of the board who voted for the ID policy. It is ironic that several of these individuals, who so staunchly and proudly touted their religious convictions in public, would time and again lie to cover their tracks and disguise the real purpose behind the ID policy.

"With that said, we do not question that many of the leading advocates of ID have bona fide and deeply held beliefs which drive their scholarly endeavors. Nor do we controvert that ID should continue to be studied, debated, and discussed. As stated, our conclusion today is that it is unconstitutional to teach ID as an alternative to evolution in a public school science classroom.

"Those who disagree with our holding will likely mark it as the product of an activist judge. If so, they will have erred as this is manifestly not an activist court. Rather, this case came to us as the result of the activism of an ill-informed faction on a school board, aided by a national public interest law firm eager to find a constitutional test case on ID, who in combination drove the board to adopt an imprudent and ultimately unconstitutional policy.

"The breathtaking inanity of the board's decision is evident when considered against the factual backdrop which has now been fully revealed through this trial. The students, parents, and teachers of the Dover Area School District deserved better than to be dragged into this legal maelstrom, with its resulting utter waste of monetary and personal resources."

libraries

Antioch, California

The Bush administration has entered a local court case in support of a church that is challenging Contra Costa County's refusal to allow religious services in a community room of the Antioch public library. At issue is whether the Faith Center Church Evangelistic Ministries should be allowed to hold a four-hour meeting once every other month, during business hours, for religious discussion and prayer in the library.

When library officials vetoed the idea in 2004, citing a county policy against allowing religious activities in library meeting rooms, the church went to court and won an injunction from a federal judge. In December, lawyers for the Justice Department jumped in on the church's side, saying the county policy would unconstitutionally deny the evangelical group "the same opportunity to promote its activities that other community organizations enjoy."

In arguments filed with the U.S. Court of Appeals for the Ninth Circuit in San Francisco, the lawyers said the Supreme Court has ruled that government agencies must give Bible clubs and other religious groups the same access to public buildings as secular organizations. Barring worship services at the library while allowing social and political groups to meet violates the church's freedom of expression, said the Justice Department's civil rights division.

The court is considering the county's appeal of a ruling in May by U.S. District Court Judge Jeffrey White that ordered the county to let Faith Center Church Evangelistic Ministries hold its meetings at the library. White found that the county's policy was probably unconstitutional, and barred enforcement of it until the church's suit goes to trial. The Sacramento-based church has not asked to meet at the library since the judge's order took effect, said Deputy County Counsel Kelly Flanagan.

When the church sued in July 2004, Contra Costa County allowed library meeting rooms to be used for "educational, cultural and community-related" activities unless they were for religious purposes. The county narrowed the exception in December to prohibit only religious services. Defending its policy, the county argued that the constitutional requirement of equal access was satisfied by letting religious organizations meet in libraries, on the same basis as other groups. But that did not mean the county was obliged to allow prayer services, its attorneys said.

"The United States Supreme Court has taken great pains to avoid converting public buildings into houses of worship," the county's lawyers told the appeals court in written arguments. "No court has ever held that the government is constitutionally required to open its facilities, such as library meeting rooms, to pure religious worship services, as distinct from other religious activities."

They also argued that opening a public building to worship services, during business hours and without charging rent, would create a perception that the county was endorsing religion, in violation of the constitutional separation of church and state.

But the Bush administration, which has filed arguments in support of religious organizations elsewhere in disputes over public access, said there was no valid distinction between prayer services and the meetings that the county allowed at the library. "Religious worship by its nature involves educational, cultural and community aspects," the Justice Department said. "Religious worship is also communicative. . . . Hymns and prayers are expressions among believers, and to observers, of their common faith."

Noting that the Sierra Club and a local Democratic Party group are allowed to meet in the library room, the Justice Department said a reasonable observer would not conclude that the county was endorsing any political or religious views expressed in the meetings. Reported in: *San Francisco Chronicle*, December 3.

Dallas, Texas

A revised code of conduct being adopted at the Dallas Public Library and the city's recreation centers prohibits visitors from "emitting odors (including bodily odors or perfumes), which interfere with use of services by other users or the work staff." The code also prohibits sleeping, bathing, eating and drinking at the facilities. Library officials say the rules—similar to those implemented across the

nation—are meant to create a reader-friendly atmosphere. Others believe the no-shower, no-service policy targets a specific group: the poor and homeless who congregate in the city's center.

"They're just trying to push their weight around," said Paul Voorhees, a homeless man who spends much of his day reading and using the computer at the downtown library. "No one in Dallas wants the homeless hanging around their door, especially the city."

But Dallas library director Laurie Evans said the updated rules—the first revamping of the library's code of conduct in years—address behaviors, not people. The code also bans loud talking on cellphones, boisterous conversations, disruptive use of laptops and music players, smoking, sex, bare feet, hate speech, fighting and dozens of other activities. Some of those rules have been enforced for years.

"This is not about seeing how many people we can kick out of the library. Quite the opposite, it's about trying to see how many people we can get to come into our building," Evans said. "For me, this is all a part of customer service, and I do that for anyone who comes into our building."

"Who is to decide what odor is wrong or inappropriate?" Dallas homeless advocate James Waghorne asked.

Evans said her staff would be trained before the policy goes into effect, and will treat infractions on a case-by-case basis. The staff will address the odor issue only if others complain.

Waghorne said he doubted anyone would be ejected from the library because they reek of Chanel No. 5, even though the code says heavy perfumes are as taboo as poor hygiene. Because Dallas doesn't provide enough facilities for the homeless—many complain of broken bathrooms and clogged drains at the downtown Day Resource Center—the library can't expect its neediest patrons to be shower-fresh, he said.

"As long as they are not behaving in an improper manner, they have as much right as anyone to be in the library," said Waghorne, president of the Dallas Homeless Neighborhood Association. "There are resources there that are set up for everyone to use. If you don't have fifty cents to buy a newspaper, you can go to the library and read the want ads."

For years, visitors at the J. Erik Jonsson Central Library have complained about the homeless bathing in restrooms, loitering outside, panhandling or making patrons feel uncomfortable. Security guards and library personnel have repeatedly addressed the homeless issue, and in 2003, the downtown library began restricting the size of bags patrons can carry into the building and reporting people who litter.

Although the downtown library—with its plentiful seating, protection from the elements and shelved diversions—might seem an ideal refuge for the homeless, it was never meant to be a shelter, said Dallas City Council member Angela Hunt, who was briefed on the code changes. The homeless are welcome to use library facilities, but only as the facilities are intended, she said.

"These rules are meant to create a healthy environment for families and children and students and researchers and all the residents of Dallas," Hunt said.

Leslie Burger, president-elect of the American Library Association and director of the Princeton Public Library, said Dallas libraries aren't alone on the issue of homelessness. Dallas's new code of conduct mirrors policies adopted by library systems coast to coast. The Boston Public Library prohibits visitors with "offensive body odor or personal hygiene." The Chattanooga-Hamilton County Bicentennial Library in Tennessee says patrons with offensive odor "may be asked to leave." The Redwood City Public Library in California lists offensive odor under its list of unacceptable behaviors.

Houston's library system made headlines last April when the City Council approved an ordinance that prohibited "offensive bodily hygiene that constitutes a nuisance to others."

"If people can't take care of basic hygiene and are disturbing to the hundred or so people around them, then it's perfectly acceptable for the library to say, 'Will you please sit somewhere else?' or 'Will you consider coming back another day?'" Burger said.

Burger said similar codes have withstood legal scrutiny. A federal appeals court upheld a Morristown, N.J., library's right to expel a man in 1992 on the grounds that patrons can be evicted if their habits—and aroma—annoy others. The homeless man sued after he had been kicked out of the library several times for bad odor and behavior.

"The library's goal is served by its requirement that its patrons have nonoffensive bodily hygiene, as this rule prohibits one patron from unreasonably interfering with other patrons' use and enjoyment of the library," the appeals panel wrote. Reported in: *Dallas Morning News*, December 28.

schools

Elk Grove, California

Civil rights groups criticized the FBI and a suburban school district December 15 for allowing federal agents this fall to question a sixteen-year-old high school student who had doodled "PLO" on his binder two years ago. A pair of FBI agents interviewed Munir Mario Rashed, a junior at Calvine High School, about the Palestine Liberation Organization and whether he had pictures of suicide bombers stored on his cell phone.

Munir, a fourth-generation Palestinian American, said he told agents that the only photo he carried on his phone's screen was of a mosque. "I was scared," he said, recalling the September 27 meeting. "I didn't know what was going on or what I had done wrong."

The Lawyers Committee for Civil Rights and the Council on American-Islamic Relations of Sacramento sent

a letter of protest to the Elk Grove School District, complaining that administrators had violated a district policy requiring that parents be notified before law enforcement officials interview a student.

"He's certainly no terrorist," said Shirin Sinnar, one of the attorneys raising concerns about the incident. "This is just a high school student expressing support for a Palestinian group," Sinnar said. "For that to become the basis for an FBI interview two years later is pretty startling."

Attorneys representing the boy asked the district to take disciplinary action against high school administrators who they say failed to notify his parents and determine if any school official unilaterally reported the student to the FBI, which they characterized as a violation of district protocols.

Steven M. Ladd, Elk Grove Unified superintendent, said the district would investigate. "Obviously, we're taking this very seriously," he said. "At this point, we're looking into it and don't have any conclusions. But our district is committed to making sure all our kids feel comfortable."

FBI officials said they interviewed Munir after receiving a complaint about the doodle and allegations of pictures of suicide bombers. "Information concerning possible terrorist or threat activity, however benign, is reviewed by the FBI," Karen Ernst, a special agent in Sacramento, said in a written response.

Ernst said the agents asked Munir before the interview if he wanted a parent present and told him he didn't have to answer any questions. But she said the youth told the agents that he would talk to his parents later. Munir, however, said he went into the meeting assuming that his parents had been notified and wasn't aware until afterward that they hadn't been.

After a twenty-minute interview, Ernst said in the written statement, "the issues brought forth by the complainant were resolved, and no further action has been taken."

Jimmy Rashed, the youth's father, said: "I have no problem with the FBI talking to him—we have nothing to hide. But I have a problem with the school district not calling us."

The family suspects that the complaint came from a math teacher who confronted Munir during his freshman year over a reference to the PLO, scrawled in three-inch block letters on a binder. After the confrontation, Munir said, he protested to the principal and asked to be transferred from the class but was told it was too late in the year and he would have to stick it out.

That dispute dissipated and Munir said he had mostly forgotten about it, until he was called into the administration office in September. The youth said he grew concerned when two strangers in dark suits identified themselves as being from the FBI. "It was only maybe 10 minutes, but it seemed like forever," he said. Reported in: *Los Angeles Times*, December 16.

San Leandro, California

Five teachers at San Leandro High School refused to comply with a school district order to display a rainbow-flag poster in their classrooms that reads, "This is a safe place to be who you are," because they say homosexuality violates their religious beliefs, Principal Amy Furtado said.

The high school's Gay-Straight Alliance designed the poster, which includes pink triangles and other symbols of gay pride. In December the school board approved a policy requiring all district teachers to hang the posters in their classrooms. District officials said the poster is an effort to comply with state laws requiring schools to ensure students' safety and curb discrimination and harassment. They said too often teachers do not reprimand students who use derogatory slurs or refer to homosexuality in a negative way.

"This is not about religion, sex or a belief system," said district Superintendent Christine Lim, who initiated the poster policy. "This is about educators making sure our schools are safe for our children, regardless of their sexual orientation."

The San Leandro Unified School District has been embroiled in controversy over homosexuality in the past. In 1997, a parents group at the high school demanded that a gay teacher be fired after she came out to her class. In 2002, high school English teacher Karl Debro settled a lawsuit with the district for $1 million after he was disciplined for giving a lecture on racism and homophobia. A judge declared unconstitutional a district policy banning "controversial issues" from the classroom without a principal's approval.

Art teacher Tom Laughlin, who is gay and who oversaw the poster's design by students in the Gay-Straight Alliance, said he was surprised by the level of intolerance for homosexuality that he perceived when he started teaching at the high school five years ago. He said he recognized that it was critical when a student called him a "fag."

"There was a real need to do this," he said. "A lot of students didn't know about gay people in general."

Efforts to change the district's culture with a no-tolerance approach to teasing and harassment of gay students and employees began in 2003 with the hiring of Lim. In addition to the poster policy, gay students have toured the district's schools speaking to teachers about the harassment they've encountered. For the past two years, teachers have been required to attend annual three-hour sessions addressing the problems faced by gay and lesbian students in school and how to deal with students' homophobic comments.

Furtado said she is confident that every teacher eventually will comply with the district mandate. She said she intends to work with those teachers who have refused to ensure they comply with the order. "We work in a public school," she said. "I have no wish to change anyone's personal belief, but we want all kids to feel safe. That's where we have common ground."

Lim said she had not heard from any of the other schools in the district about whether teachers were refusing to display the posters. Reported in: *San Francisco Chronicle*, January 25.

Marietta, Georgia

The evolution controversy in this comfortable Atlanta suburb began with one boy's fascination with dinosaurs. "He was really into 'Jurassic Park,'" his mother recalled. The trouble was, "we kept reading over and over that 'millions and millions of years ago, dinosaurs roamed the earth,'" Marjorie Rogers continued. "And that's where I said, 'Hmm—wait a second.'"

Like others who adhere to a literal reading of the Book of Genesis, Rogers, a lawyer, believes that Earth is several thousand years old, while most scientists, basing their estimates on the radioactive decay of rock samples, say the planet is billions of years old. She soon began a quest to challenge what she sees as educators' blind faith in evolution. It evoked a groundswell of support from other residents of this affluent suburb of high-tech office parks and shopping malls, and it pushed the county school board to put warning labels on biology textbooks saying that evolution "is a theory, not a fact."

The measure effectively made Cobb County a battleground in the national debate on evolution because the textbook stickers, in turn, prompted a lawsuit in federal court from other parents who see the labels as an unwelcome intrusion of religious thought into public life.

But as both sides prepared to restate their arguments before a federal appeals court December 15, many others in Cobb County were having a different reaction: Not again.

The fast-growing suburb of about 650,000 people northwest of Atlanta has long shown a remarkable flair for high-profile social controversy. While other municipalities flirted with banning guns, leaders in Kennesaw, a city in northern Cobb, passed a law requiring heads of household to own a firearm and ammunition. In the '90s, county commissioners approved a resolution frowning on the "lifestyles advocated by the gay community"—which caused protests and led organizers of the 1996 Summer Olympics to move an event out of the county. Cobb has been to federal court over a Ten Commandments display at the county courthouse and is being sued over the number of invocations at county commission meetings that mention Jesus.

While elsewhere these sorts of social controversies often play out as a clash between urban and rural cultures, what interests political scientists and other onlookers is that the debates in Cobb County pit suburbanites against suburbanites.

The protagonists in the stickers case are typical. Rogers is a BMW-driving graduate of the University of Georgia who plays tennis twice a week and says her life is wrapped around caring for her two sons. Jeffrey Selman, the lead plaintiff in the case to remove the stickers, is a tech worker who belonged to the same tennis group and lives with his wife and son in a Colonial-style subdivision that backs up to a lake. Both moved to Cobb County from elsewhere: Rogers is a self-described "Navy brat," and Selman is Bronx-born. Neither had been involved in local politics before.

"Marjorie believes and follows blindly," Selman says over a meal at his favorite Chinese vegetarian restaurant. "I question. It's part of my culture. . . . My mother says, 'You got too much principle.' I say, 'Whose fault is that?'"

Cobb County Board of Commissioners Chairman Sam Olens said the controversies over social issues do not reflect typical values held there, but for household logistics, the county "tilts conservative." Indeed, Cobb is solidly Republican—62 percent of voters cast ballots for Bush in 2004—but there is enough political diversity to create strong and sometimes unexpected conflicts.

After the antigay resolution was passed, the board chairman's daughter held a news conference to say she is a lesbian—and to denounce the measure. The current county chairman, Olens, who is in the position of having to defend the commission prayers for invoking Jesus, is Jewish. He defended the prayers by saying that leaders from all the local houses of worship are invited to offer the invocation.

"My preference would be a nonsectarian prayer," he said. "But it's not my place to tell a minister how he should lead us in prayer."

While Cobb County is home to Kennesaw State University, a major facility for Lockheed Martin Corp. and numerous high-tech businesses, a substantial number of residents appear to have profound doubts about the scientific establishment's embrace of evolution, which the National Academy of Sciences described as "the central unifying concept of biology."

Wes McCoy, a teacher at North Cobb High School who had surveyed classes for a doctoral dissertation on teaching evolution, estimated that a third of students there are uncomfortable with the subject. "I'm sure they're told by their parents, 'Go ahead and listen to the lessons, but you don't have to believe them,'" said McCoy, who holds workshops for teachers on how to present evolution. "Some teachers aren't comfortable with it themselves."

When Cobb County turned to selecting new biology textbooks in late 2001, that widespread unease developed into parent anger that spurred the school board to action. Sparked by her son's interest in dinosaurs, Rogers read several books casting doubt on evolution science, including *Icons of Evolution*, by Jonathan Wells, and *Darwin on Trial*, by Phillip E. Johnson. Once she saw the textbooks under consideration, she was appalled.

"Humans are fundamentally not exceptional because we came from the same evolutionary source as every other species," she read from one during an interview. "That offends

me," she said. "That has no business being in a science textbook. That's religion."

She points to another passage, in *Biology: Concepts & Connections*, that she says is irreverent. The passage suggests that had human knees and spines been "designed" for our bipedal posture, rather than borrowed from four-legged ancestors, they probably would "be less subject to sprains, spasms and other common injuries." Finding fault with the design of humans exasperates her. "That's slamming God," she said.

Her disappointment with the texts led her to launch a petition drive among friends and church groups that netted 2,300 signatures. After a contentious meeting, the school board voted to affix the stickers to several textbooks, warning: "This textbook contains material on evolution. Evolution is a theory, not a fact, regarding the origin of living things. This material should be approached with an open mind, studied carefully, and critically considered."

Board members described it as a way of accommodating the divergent views in the community—to "safeguard" the feelings of the students—while continuing to teach evolution. But after hearing Selman's case, presented by lawyers from the American Civil Liberties Union, U.S. District Judge Clarence Cooper in January ordered the stickers removed.

An "informed, reasonable observer would interpret the Sticker to convey a message of endorsement of religion," he wrote. The sticker "sends a message to those who believe in evolution that they are political outsiders." The school board appealed. Reported in: *Washington Post*, December 11.

student press

Milwaukee, Wisconsin

Following a month of calls for censorship or punishment of the student newspaper, officials at the University of Wisconsin at Milwaukee refused to do so. But they created a special panel on the campus that will study the issue of violence against women.

The furor arose from a series of photographs that ran in *The Post*, the weekly student paper. The scenes in the photos were choreographed by the paper's photo editor, who posed in them, and they were shot by the arts and entertainment editor of *The Post*. They show the photo editor, Sara DeKeuster, being followed into a garage and attacked by a man, who forces her to have sex with him. The photos are not described as rape, but as "unexpected intercourse."

The photos infuriated many students on the campus. The women's center reported receiving calls from students who had been raped, and felt their experiences were being trivialized. Many students called for funds to the paper to be cut, but *The Post* receives no financial support from the university. Administrators announced the creation of the new panel, but had few details about it, after fending off calls to somehow punish the newspaper. Officials also noted that punishments could be legally questionable since Milwaukee is a public institution and has stated that it considers *The Post* to be independent.

Some of the anger on the campus was a result of an incident in 2004 when a group of male students painted themselves in black-and-white makeup and tried to scare women, including dragging one woman behind some bushes. In the wake of that incident—which the men defended as joking around—many women said that the campus had a problem with insensitivity to issues of rape.

Amy Phipps, a senior who is active in the UWM Campus Feminists, said she found the photos "really offensive and disgusting," and the newspaper spread shocked many women. Phipps said women who sue men for sexual harassment or who face rapists in court still must fight the argument "she wanted it," and that the newspaper "was saying that women want rape."

Phipps said that she understood the newspaper was independent, but questioned why the newspaper itself wasn't apologizing or changing its policies. She said if a newspaper ran a similar feature focused on a race-based attack, "someone would be losing a job over this."

Creating a panel to focus on issues of violence against women was a good idea, Phipps said. But she added "this is something that should have happened a long time ago," and said she was worried the new committee would just take attention away from the newspaper. Reported in: inside highered.com, January 3.

colleges and universities

Oakland, California

In a small room at the University of California's (UC) headquarters in downtown Oakland, UC counsel Christopher Patti sat beside a stack of textbooks proposed for use by Calvary Chapel Christian School in Riverside County—books UC rejected as failing to meet freshmen admission requirements. Biology and physics textbooks from Christian publishers were found wanting, as were three Calvary humanities courses.

"The university is not telling these schools what they can and can't teach," Patti said. "What the university is doing is simply establishing what is and is not its entrance requirements. It's really a case of the university's ability to set its own admission standards. The university has no quarrel with Christian schools."

The Association of Christian Schools International, which claims 4,000 member schools including Calvary Chapel and 800 other schools in California, disagrees. On August 24, it sued the university in federal court for

religious bias. The lawsuit marks a new front in America's culture wars, in which the largest organization of Christian schools in the country and the University of California, which admitted 208,000 freshmen this year, are accusing each other of trying to abridge or constrain each others' freedom.

Unlike recent court cases—such as the challenge to the school district's decision in Dover, Pennsylvania, to teach intelligent design or the decision by the Kansas Board of Education to teach that such things as the genetic code are inadequately explained by evolutionary theory—the suit against UC does not pit Darwinism against creationism and its intellectual offspring. Rather, by focusing on courses that Calvary Chapel planned to offer this fall—in English, history and social studies—courses that were turned down by UC, it sets competing interpretations of academic merit against each other.

"The university is in a way firing a shot over the bow," said Charles Haynes, a senior scholar at the First Amendment Center in Arlington, Virginia, "saying to Christian schools that they may have gotten away with this in the past, but no more. And that will have a chilling effect across the country."

In its suit, the association and its coplaintiffs objected "to government officials . . . dictating and censoring the viewpoints that may and may not be taught . . . (in) private schools. . . . (They) have rejected textbooks and courses based on a viewpoint of religious faith, for the first time in the University of California's history." The rejections, the suit asserted, "violate the freedom of speech of Christian schools, students and teachers."

On October 28, UC asked U.S. District Court Judge S. James Otero to dismiss the suit. The university was not "stopping plaintiffs from teaching or studying anything," it argued. "This lawsuit is really an attempt to control the regents' educational choices. Plaintiffs seek to constrain the regents' exercise of its First Amendment-protected right of academic freedom to establish admissions criteria."

"I think there's a good chance the judge may take (the suit) very seriously," Haynes said. "The implication is now all religious schools have to clean up their act if they want their students to get into the university."

Hollyn Hollman, a church/state attorney for the Baptist Joint Committee for Religious Liberty in Washington, D.C., said the plaintiffs face "a high burden . . . to prove they are being discriminated against," based on the rejection of a handful of courses alone. But Wendell Bird, lead attorney for the schools, believes, "This is a liberty case, the right of nonpublic institutions to be free. I'd be bringing the same case if the clients were Jewish or Buddhist. It's very troubling to the largest Christian school organization in the country because it restrains freedom and could spread. Many trends tend to start in California."

"The philosophic question is," said Christopher Lucas, a professor of higher education and policy studies at the University of Arkansas, "who has the legitimate right to exert pressure to shape curriculum?"

Bird's presence in the case is itself an indication of how it differs from the recent battles over evolutionary theory and of its importance to conservative Christians, because he is viewed as an eminence grise of the movement. In 1978, when he was a law student studying under Robert Bork—whose rejected nomination to the Supreme Court was an early battle in the culture wars—Bird published an influential article in the *Yale Law Journal*. In it, he laid out a strategy for using the courts to compel public schools to teach creationism alongside evolutionary theory.

Bird later argued, and lost, *Edwards* vs. *Aguillard*, before the Supreme Court. In that case, the justices overturned an attempt by Louisiana to give biblical creationism equal time in its public schools. Today, Bird considers the exclusion of creationism from public school classrooms a settled legal issue and said that he discourages others from bringing intelligent design cases. However, the Calvary Chapel case offered Bird and his allies fertile new ground for advancing the conservative Christian agenda in the public square. Theirs is the first lawsuit to question the university's discretion to establish courses required of all students seeking admission.

"The question here," Haynes said, "is whether a public university can disadvantage students from these schools because the science or English they took is not up to par. I wouldn't teach Emily Dickinson in a Christian context, but the point is they have the right to put it in the context of their faith."

Calvary Chapel students have been successful in gaining admittance to UC. In the last three years, said Patti at university headquarters, eighteen of twenty-five of its applicants have been admitted. He said he did not know how those students were faring in college.

Calvary Chapel says their students score better on standardized tests than California public school students. The school, in Murrieta (Riverside County), describes itself on its Web site as, "first and foremost a Christian school, which seeks to provide our student population with a Biblical world view."

The plaintiffs include six Calvary Chapel students. One is the president of the school's national honor society, another the quarterback of the football team. They were chosen, said a school lawyer, because they all had the grades and scores to qualify them for admittance to UC.

Patti said that neither Calvary Chapel, nor any other Christian school, was singled out in the curriculum review process. "The textbooks and courses weren't rejected on a religious faith objection. The university rejects 15 to 20 percent of all courses submitted the first time around. (The courses) simply didn't meet the university's academic standards."

Hollman, the church/state attorney, pointed out it was Calvary Chapel that did something new by proposing the

courses, "as opposed to the university changing its view of the school and the students. Is UC applying its academic requirements to these Christian schools and their students the same way they do to other schools? If so, UC will prevail and this lawsuit will go away."

But, "In this climate of culture wars," said Haynes of the First Amendment Center, "it may well be that the university is taking a closer look at classes they find to be problematic, at whether this kind of education prepares students for our universities. I'm not sure that's fair, or appropriate."

Among the courses turned down were a history class, "Christianity's Influence on America"; a social studies class, "Special Providence: Christianity and the American Republic"; and, most contentiously, an English course, "Christianity and Morality in American Literature." None is being taught because of the dispute. The English course would have included reading material from many major authors, from Hawthorne to Tolkien. The syllabus called it, "an intensive study in textual criticism aimed at elevating the ability of students to engage literary works." The primary text, published by A Beka Press, of Pensacola, Florida—whose biology text also was rejected—was to have been *American Literature: Classics for Christians*.

In turning down the English course, Sue Wilbur, the director of UC undergraduate admissions, checked two categories as "inadequate" on a standard form: "Lacking necessary course information," and "Insufficient academic/theoritical [sic] content." She added a note that said: "Unfortunately, this course, while it has an interesting reading list, does not offer a nonbiased approach to the subject matter." And she also commented that "the textbook is not appropriate." During the interview, Patti said the textbook was an anthology and that UC demands some full texts be read.

But Bird scoffed at the explanation in his soft Southern accent as a "post-hoc rationalization. Unless I can't read, there's no objection to its being an anthology."

In their suit, the schools argue that UC has accepted courses in "The Jewish Experience" and Islam, and also allowed courses in "Military History and Philosophy," "Gender, Sexuality and Identity in Literature" and "Children's Literature." These acceptances, they claimed, undercut the university's rationale in rejecting Calvary's history course as "too narrow/too specialized."

UC policy, Patti explained, was to make "a distinction between courses that study religion in an academic way and courses that are intended to instruct in religious faith." He seemed pleased to be asked how, based on the brief course submission forms, UC could distinguish between the two. "Here," he said, reading an excerpt from *Biology for Christian Schools*, which had been rejected as a text: "The people who have prepared this book have tried consistently to put the Word of God first and science second." If, "at any point God's Word is not put first, the author apologizes."

But in a court filing, the Christian schools replied that, "UC would not dare to claim there was no constitutional violation if it rejected courses because of their African American, or Latino heritage, or feminist or environmentalist perspective." And on its Web site, the Christian schools group says, "It's wrong to discriminate against Christians, essentially foreclosing opportunities at State Universities."

Ravi Poorsina, a university spokeswoman, disputed the criticism. "Their (students') ability to enter UC is not hindered," she said, explaining that other Calvary Chapel courses in the same academic fields did pass muster.

Another of the plaintiffs' lawyers, Robert Tyler, who has a son at Calvary Chapel, said the issue was simple fairness. "This is America. We have the right to send our kids to private schools, and have them study from a Christian perspective," he said. "The university has no right to tell any person of any faith they're not going to accept courses because they're taught from a Christian perspective. They have every right to look and see if it's sufficiently rigorous, sufficiently analytic. This is all about the changing landscape, the culture wars. I think it's pretty obvious. They've chosen sides." Reported in: *San Francisco Chronicle*, December 12.

Washington, D.C.

When most scholars have their grant applications rejected by the National Endowment for the Humanities, they shrug. Only a small minority of grants are approved, so there's no way any application can be a sure thing. But what about an application that earns the top possible rating from every member of a peer review panel?

When Marc Stein learned that his application had been rejected despite getting the best possible ratings, he started to investigate patterns at the NEH—and they led him to give a scathing talk at the annual meeting of the American Historical Association questioning the fairness of the NEH in dealing with his grant and others having to do with gay studies.

Saying that it was time to "name names," Stein reviewed the results of his inquiry, quoting from peer review comments he obtained, and the comments he received from NEH program officers. Stein also conducted a review of NEH fellowships and research awards and found recent years in which few or none of the projects had words like "gay," "lesbian," "queer" or various other words in their titles—even though such topics are quite common in the humanities.

Stein's talk, which he also published with more detail and footnotes online at the History News Network, was widely discussed at the history meeting, with other gay scholars saying that he had demonstrated that their work was being unfairly evaluated and excluded.

"It's absolutely appalling," said Leisa D. Meyer, chair of the AHA's Committee on Gay and Lesbian History and a professor of history and women's studies at the College of William and Mary. "It's really dangerous the way the NEH is held hostage."

In an interview, Erik Lokkesmoe, a spokesman for the endowment, said that Stein's assumptions were incorrect and that there was no bias against work in gay studies. "The only litmus test we have is excellence," he said, adding that he would encourage gay studies scholars to apply for NEH grants. His message to these scholars: "Please call our program officers. We welcome your applications. They will get full consideration."

One reason Stein's charges generated a lot of buzz at the history meeting is that he is a well respected scholar and his proposed topic concerned legal history, just the kind of work the NEH generally likes to support. Stein teaches history and is coordinator of the Sexuality Studies Program at York University, in Canada. He is the author of a book about gay Philadelphia and served as editor in chief of the three-volume *Encyclopedia of Lesbian, Gay, Bisexual and Transgender History in America*.

He applied in 2003 to the NEH for a project to be called "The U.S. Supreme Court's Sexual Revolution? 1965–1973." His thesis was a challenge to the conventional wisdom about the court during this period, which is seen by many as a time in which the justices expanded individual rights regarding sexuality. Stein proposed to compare a series of rulings—on topics such as birth control, interracial marriage, abortion, obscenity and gay rights—to show that the liberalism associated with the court was based on a "heteronormative supremacy" and did not go nearly as far as people believe.

When Stein's proposal was rejected, he didn't think much of it at first, but decided to take advantage of an offer in the rejection letter that he could seek copies of the evaluation letters for his project. When he did so, he found that the peer review panel had raved over his ideas. Comments such as "right on target," "ideal combination of solid research and a topic that has broad appeal" and "seems truly revisionary and significant" appeared in these reviews. Every panelist had ranked the proposal "excellent."

Stein said he assumed then that many projects had received such high rankings and that he lost out to equally highly judged proposals. But as he gathered more information, he found that while he was rejected, one project in American history that had failed to receive all "excellent" rankings had been approved for support. A recommendation to support his grant had been overturned by the NEH's council—a presidentially appointed panel—and by Bruce Cole, chairman of the NEH and the final arbiter on awards.

When Stein applied again, he received slightly lower ratings—with questions being raised about whether he had a "personal agenda." Stein was told by the NEH that Cole had decided that the "the negative concerns outweighed the positive" with regard to his grant application—and he was again rejected.

Somewhere in the process, Stein said, he appears to have been a victim of "flagging." That's the term for some grant applications being identified for particularly close scrutiny as they move up the chain for approval at the endowment. *The Chronicle of Higher Education* reported that Lynne V. Cheney, who led the endowment under President George H.W. Bush, had used flagging to limit support for projects that related to multiculturalism and that Cole had revived the practice under the second President Bush.

Lokkesmoe acknowledged that flagging is part of the process, but he stressed that Cole has followed the recommendations of staff members (who summarize the peer review panels) and the NEH's council almost all the time, using his veto power sparingly.

The peer review process is important but it is only one part of getting an NEH grant, Lokkesmoe said. "There are many criteria to look at on whether an application deserves to be funded," he said. Lokkesmoe said that confidentiality rules barred him from discussing the specifics of Stein's application but that bias against gay studies was not a factor and is not an issue at the endowment.

He noted that Cole is "not trying to fight the culture wars" and that the NEH has backed many grants that relate to diversity. Indeed Cole—who taught art history and comparative literature at Indiana University before coming to the NEH—is a well respected scholar and his relations with academic groups are much more friendly than Cheney's were during her tenure at the NEH. "It's a different time," Lokkesmoe said.

To Stein and others at the AHA meeting, however, the question remains about why proposals that go through a rigorous peer review process—in which the NEH selects the members of peer review panels—should be overturned by political appointees. At the AHA's business meeting, Stein's experience was cited as an example of what's wrong with the NEH and as an illustration of the thinking behind the AHA's statement last year on peer review.

It reads, in part: "Projects endorsed by peer review panels composed of competent, qualified, and unbiased reviewers that reflect a balance of perspectives should not be denied funding because of political, religious, or other biases of political appointees in the funding agencies."

Since the historians can't force the NEH to change its procedures, Stein cited his experience as an example of how to seek change. If you are rejected by the NEH, he urged the audience, get all the information you can, and if the results strike you as unfair, start sharing the information with others. Reported in: insidehighered.com, January 9.

South Bend, Indiana

The American Civil Liberties Union filed a lawsuit January 25 challenging a provision of the USA Patriot Act that was used to deny a visa to at least one prominent foreign scholar, Tariq Ramadan. The provision allowed the federal government to bar him, the ACLU asserts, solely because the Bush administration disapproved of his political views.

In August 2004, Ramadan, an influential professor of Islamic studies and philosophy whose home is in Geneva, Switzerland, was informed that the United States had revoked his visa, a step that prevented him from taking a tenured teaching position at the University of Notre Dame in South Bend.

Neither he nor Notre Dame was given an explanation. But a representative of the Department of Homeland Security said, at the time, the visa had been withdrawn on the basis of a provision of the Patriot Act that allows the government to deny a visa to anyone whom the government believes "endorses or espouses terrorist activity" or "persuades others" to do so.

In its complaint, filed in the federal district court in Manhattan, the ACLU said the government is using the provision broadly to deny entry to people whose political views it disfavors. "The government's use of the statute to exclude Professor Ramadan is illustrative of the statute's malleability and reach," the complaint states.

The ACLU filed the lawsuit on behalf of the American Academy of Religion, the American Association of University Professors, and the PEN American Center, and it also names Ramadan as a plaintiff. After his United States visa was revoked, Ramadan accepted a position as a visiting fellow at St. Antony's College of the University of Oxford.

"This concerns us directly," said Barbara DeConcini, executive director of the American Academy of Religion. "We had invited Professor Ramadan to give a plenary talk at our annual meeting," in November 2004, which he was unable to attend. The group has again invited him to its annual conference, scheduled for next November. "It harms us and our members not to be able to engage in free speech with international scholars of the world's religions," DeConcini said.

The plaintiffs decided to bring the lawsuit now in part because of a recent indication that the administration may not review its position on Ramadan anytime soon. Last September, in Switzerland, Ramadan applied again for a United States visa. Officials informed him that the application could be considered for two years before he received an answer.

Ramadan had been a frequent visitor to the United States before 2004, but has been unable to enter the country since then.

The lawsuit names as defendants the U.S. secretary of state, Condoleezza Rice, and the secretary of homeland security, Michael Chertoff. The complaint asks the court to declare that what the ACLU describes as the "ideological exclusion" provision of the Patriot Act is unconstitutional on its face and as applied in the case of Ramadan. The lawsuit also seeks an injunction preventing the government from relying on the provision to further exclude Ramadan or any other foreign national.

Over the years, some critics have accused Ramadan of supporting terrorism or anti-Semitism, but a panel of ten Notre Dame faculty members who thoroughly analyzed his published writings cleared him of allegations of extremism. For his part, Ramadan has repeatedly condemned terrorism in public statements. In August 2005, Ramadan accepted an invitation by Prime Minister Tony Blair of Britain to join a government panel examining the roots of extremism in Britain.

The ACLU's Melissa Goodman, one of two lead lawyers in the lawsuit, said the Patriot Act provision was being used to exclude foreigners for their opinions. "The government shouldn't be in the business of using laws to censor academic debate in the United States," she said.

In a related complaint brought under the Freedom of Information Act, a federal judge in New York on January 20 ordered the government to produce documents about the exclusion of foreigners under the provision at issue in the ACLU lawsuit. According to the judge's order, the Department of State must release documents by February 28, and the Department of Homeland Security and the Central Intelligence Agency must release documents by March 15. The request for documents was filed on March 16, 2005, by the ACLU, the American Association of University Professors, and the PEN American Center. Reported in: *Chronicle of Higher Education* online, January 26.

Boston, Massachusetts

Leaders of a gay students' group at Boston College asserted December 6 that college officials had canceled an AIDS fund-raising dance, and they accused the administration of discriminating against students on the basis of their sexual orientation. Administrators of the Roman Catholic institution, however, said they declined to approve the event because it did not appear to be open to all students.

Veronica Joseph, a leader of the Gay, Lesbian, Bisexual, and Transgender Leadership Council, said the group had planned to hold an event called "AIDS Benefit Gala, a Celebration of Diversity," on December 9, but that officials at Boston College canceled it two days before Thanksgiving.

Joseph, a junior who is a codirector of African American, Hispanic, Asian, and Native American issues for the council, said the dance would have been open not only to gay students and their partners, but to all students, whatever their sexual orientation. The council's leaders had hoped to sell around 400 tickets at $10 apiece, Joseph said, and had planned to contribute $3 from each ticket to the Boston Living Center, a community center for people with AIDS.

Joseph suggested that because of the institution's forthcoming merger with the Weston School of Theology, which will require Vatican approval, along with the Vatican's recent announcement that it would assume a tougher stance on homosexuality, "Boston College is

coming out and saying we can no longer support the gay lifestyle on campus."

John B. Dunn, the college's director of public affairs, said the event had never been approved and, therefore, had not been canceled. The college could not approve it, he said, because the council had presented it as "by and for gay students." Dunn also disputed Joseph's characterization of the administration's stance toward gay students.

"Gay students have always been welcomed and accepted at Boston College," he said. "As we have told the students, if they want to host a dance that is open to the entire community, we'd welcome it. But as a Catholic university we will not sanction an event that excludes students and promotes a specific lifestyle that is in conflict with church teaching." Reported in: *Chronicle of Higher Education* online, December 7.

Waltham, Massachusetts

Years of investigations and a lengthy trial failed to win any convictions against Sami Al-Arian, the professor who was fired by the University of South Florida in 2003 after he was indicted on charges of helping terrorist groups. In December, a federal jury in Florida cleared him of some charges and deadlocked on others.

While the evidence in the trial failed to convince jurors of Al-Arian's guilt, it is being used by a pro-Israel group in a campaign against Brandeis University for hiring a Palestinian scholar who was a participant in phone calls that were taped as part of the investigation into Al-Arian and his associates. The campaign against a university founded by Jewish leaders is the latest sign of how contentious it can be to work in Middle Eastern studies.

Khalil Shikaki, the scholar who is accused by critics of links to terrorist groups, had never been charged with anything and is known as a moderate. Brandeis officials and others said there is no credible evidence linking him to terrorism and he is a respected scholar being unfairly tarnished.

Shikaki is director of the Palestinian Center for Policy and Survey Research and much of his research is based on his polling of Palestinians. Unlike some Palestinian scholars, Shikaki has ties to Israeli institutions as well, and Brandeis officials noted that he recently helped a fund raising effort for Hebrew University in Jerusalem.

An article in the *New York Sun* publicized Shikaki's bit part in the Al-Arian trial and noted that he was heard in a wiretapped conversation with Sameeh Hammoudeh, an associate of Al-Arian's who was on trial with him and who was acquitted on all counts. In the conversation, Hammoudeh tells Shikaki: "If you please, do us a favor. There is an amount of money for orphans in Nablus." The U.S. government argued that "orphans" was code for the Palestinian Islamic Jihad.

Linda Moreno, one of Al-Arian's lawyers, called the government theory "nonsense," and she noted that the jury acquitted Hammoudeh on all charges—and might not have done so had its members believed that "orphans" referred to terrorists. Al-Arian and his codefendants argued that they were being tried for making statements that criticized the U.S. and Israeli governments or for providing funds to legitimate nonprofit groups.

"The money went to charity. Period. The money didn't go to terrorism or terrorists," Moreno said.

She called the attempts to link Shikaki to terrorism "rather desperate." Moreno said the phone call transcript was never used to charge Shikaki with any crime, and that the person it was used against was vindicated in court.

The Zionist Organization of America, however, based on the *Sun* article, called on Brandeis to "act" against Shikaki or face a boycott. "We urge Jewish donors and indeed all supporters of Brandeis to make their deep concern and shock at these revelations linking a Brandeis faculty member with foreign terrorists known to the University authorities and we also urge them to rethink their support for Brandeis if the University fails to address their concerns in a timely and appropriate manner," said Morton A. Klein, in a statement released by the association. "We particularly urge parents who are considering appropriate colleges for their children's studies to also consider directing them elsewhere if Brandeis does not address this serious issue."

Both the *Sun* article and the Zionist association statement noted that a Brandeis student was killed in Israel in 1995 by terrorists affiliated with the Palestinian Islamic Jihad. But supporters of Shikaki said that is irrelevant since he never helped that group.

Jehuda Reinharz, president of Brandeis, said through a spokesperson that there was no reason for him to take any action against Shikaki. "We live in a country where people are presumed innocent until proven guilty," he said. "If someone has real evidence, let them bring it forward. The university has full faith in law enforcement in America. In the future, if something arises we will act accordingly, but at this moment there is absolutely no evidence of any offenses."

Shikaki has been a popular teacher at Brandeis. An article in *The Justice*, the student newspaper there, noted that he taught a class last semester together with scholars from Israel and Egypt and quoted one student as calling the course "fantastic."

Zachary Lockman, who teaches modern Middle Eastern history at New York University, said he does not know Shikaki, but that the campaign against Brandeis is part of something larger. "I think there is definitely an assault under way against scholars of the Middle East and of Islam. It is organized in the sense that there are a number of groups and Web sites that have targeted various individuals and have sought to pressure the institutions where they work to silence them," Lockman said.

Lockman said NYU's administration has supported the academic freedom of scholars of the Middle East. But

Lockman, who is Jewish, said the campaigns against scholars who, like he does, sometimes criticize U.S. and Israeli policies, seem particularly strong at institutions with large Jewish donor bases.

These critical groups, Lockman said, make false accusations. He said he was once accused of supporting a boycott of Israeli colleges—something he said he would never do. "People will find ammunition if they want to," he said.

Universities need to respond forcefully when these events take place, he said. "Scholars and academic leaders need to make it clear that they will defend the principle of academic freedom," he said. "Universities are one of the few places where you can have a full and open discussion of these issues. If we allow these kinds of attacks to close down that space for free discussion, we'll be in worse shape." Reported in: insidehighered.com, January 20.

Pierre, South Dakota

The South Dakota House of Representatives on February 8 passed a bill that would require public colleges and universities to file annual reports on the steps they take to assure "intellectual diversity" on their campuses.

Supporters of the bill see it as a new approach to raising some of the same issues promoted by David Horowitz and supporters of the "Academic Bill of Rights." Anne Neal, president of the American Council of Trustees and Alumni, called the vote "a tipping point moment" that "offers the promise of a cultural transformation in American higher education."

Neal said that because the South Dakota legislation lacked some of the specificity of the Academic Bill of Rights, she believed it advanced the goals of promoting more ideological diversity without raising the academic freedom issues that many faculty members have expressed about the Horowitz approach. Neal called the South Dakota bill "a model" that she hoped to see considered elsewhere. She said it was consistent with principles that many colleges and academic groups have endorsed.

In South Dakota, however, academics were not pleased to have become part of the academic culture wars. "This is a national solution looking for a local problem and South Dakota isn't it," said Tad Perry, executive director of the South Dakota Board of Regents. Perry said that the state higher education system has grievance procedures available should any students or faculty members feel that they have suffered ideological bias. But Perry said these issues just don't come up in South Dakota, so there is no need to require colleges to prepare new reports or to leave administrators wondering how intellectual diversity will be measured.

He noted that backers of the bill distributed national studies of the political affiliations of professors. "What the hell does that have to do with anything? What's the logical extension of this argument? We're going to have quotas?" he asked. "I haven't done an analysis of people's political orientations—nor would I. It's totally inappropriate."

Perry said the bill did prompt him to check to make sure there were no reports of political bias becoming a problem, and to look at lists of speakers invited to campuses in the state. "You'd have a hard time finding a more balanced list," he said.

The legislation, which has not been considered in South Dakota's Senate, would require annual reports on how colleges promote intellectual diversity. The bill states that the reports "may" include information about how colleges study the state of intellectual diversity on campus, how intellectual diversity is considered in student evaluations, and how hiring and tenure policies assure intellectual diversity. The legislation does not specify any particular way to accomplish these goals.

Neal of the ACTA said that was key. "This bill is uniquely sensitive in keeping the issues within the institution," she said.

As to the views of South Dakota academics that they don't have problems for the bill to solve, Neal said if there are no problems, the reports shouldn't be difficult to prepare—and there is value in clearly stating policies on these issues.

The Academic Bill of Rights, by stating that faculty members should offer a range of views, has angered many professors, who believe that the language could be used to require a biology professor to teach intelligent design, for example. While the South Dakota legislation uses different language, it is receiving favorable attention from Students for Academic Freedom, the group that campaigns for the Horowitz approach.

Professors are not so favorably impressed. The Council of Higher Education, the National Education Association union for professors at public colleges in the state, analyzed the bill and noted a number of objections. The council said it shared the bill supporters' "desire to protect free speech," but found numerous problems with their approach to doing so.

Requiring the reports, the analysis said, would "take a great deal of time and money." In addition, it said many terms in the bill are vague, potentially opening the door to all kinds of debates and controversies. "What is 'balance'? What events, activities and free speech scenarios are supposed to be evaluated?" the faculty members asked.

Faculty members ended up having a similar reaction to this bill as many have had to the Academic Bill of Rights—seeing the legislation as a tool to subject professors to second guessing or unfair attacks. "How do faculty members protect themselves from biased attacks from students who may use faulty claims to challenge professors?" the analysis asked. "For example, could a student claim that biology teachers who do not spend half of their time covering intelligent design are limiting the 'free exchange

of ideas?' And, could faculty members feel pressured to cover outdated or peer-rejected theories out of a concern that they will be sanctioned? This opens the door to all sorts of claims on faculty."

While much of the debate over the South Dakota bill is similar to that over the Academic Bill of Rights, there is another difference. The Academic Bill of Rights attracted many hearings, but not a lot of floor voting. In South Dakota, the bill moved quickly from hearing to a House vote—and passed. Reported in: insidehighered.com, February 9.

political expression and government eavesdropping

Washington, D.C.

Two leading civil rights groups filed lawsuits January 17 against the Bush administration over its domestic spying program to determine whether the operation was used to monitor ten defense lawyers, journalists, scholars, political activists and other Americans with ties to the Middle East.

The two lawsuits, which were filed separately by the American Civil Liberties Union in Federal District Court in Detroit and the Center for Constitutional Rights in Federal District Court in Manhattan, were the first major court challenges to the eavesdropping program. Both groups seek to have the courts order an immediate end to the program, which the groups say is illegal and unconstitutional. The Bush administration has strongly defended the legality and necessity of the surveillance program, and officials said the Justice Department would probably oppose the lawsuits on national security grounds.

Justice Department officials would not comment on any specific individuals who might have been singled out under the National Security Agency program, and they said the department would review the lawsuits once they were filed.

Brian Roehrkasse, spokesman for the Justice Department, added that "the NSA surveillance activities described by the president were conducted lawfully and provide valuable tools in the war on terrorism to keep America safe and protect civil liberties."

The lawsuits seek to answer one of the major questions surrounding the eavesdropping program: has it been used solely to single out the international phone calls and e-mail messages of people with known links to Al Qaeda, as President Bush and his most senior advisers have maintained, or has it been abused in ways that civil rights advocates say could hark back to the political spying abuses of the 1960s and '70s?

"There's almost a feeling of déjà vu with this program," said James Bamford, an author and journalist who is one of five individual plaintiffs in the ACLU lawsuit who say they suspect that the program may have been used to monitor their international communications. "It's a return to the bad old days of the NSA," said Bamford, who has written two widely cited books on the intelligence agency.

Although the program's public disclosure by the *New York Times* in December generated speculation that it may have been used to monitor journalists or politicians, no evidence has emerged to support that idea. Bush administration officials point to a secret audit by the Justice Department last year that reviewed a sampling of security agency interceptions involving Americans and that they said found no documented abuses.

The Center for Constitutional Rights sued on behalf of four lawyers at the center and a legal assistant there who work on terrorism-related cases at Guantánamo Bay, Cuba, and overseas, which often involves international e-mail messages and phone calls. Similarly, the plaintiffs in the ACLU lawsuit include five Americans who work in international policy and terrorism, along with the ACLU and three other groups.

"We don't have any direct evidence" that the plaintiffs were monitored by the security agency, said Ann Beeson, associate legal director for the ACLU, "But the plaintiffs have a well-founded belief that they may have been monitored, and there's a real chilling effect in the fear that they can no longer have confidential discussions with clients or sources without the possibility that the NSA is listening."

One of the ACLU plaintiffs, Larry Diamond, a senior fellow at the Hoover Institute, said that a Stanford student studying in Egypt conducted research for him on political opposition groups, and he worried that communications between them on sensitive political topics could be monitored. "How can we communicate effectively if you risk being intercepted by the National Security Agency?" Diamond said.

Also named as plaintiffs in the ACLU lawsuit were the journalist Christopher Hitchens, who has written in support of the wars in Iraq and Afghanistan; Barnett R. Rubin, a scholar at New York University who works in international relations; Tara McKelvey, a senior editor at *The American Prospect*; the National Association of Criminal Defense Lawyers; Greenpeace, the environmental advocacy group; and the Council on American-Islamic Relations, the country's largest Islamic advocacy group.

The lawsuits over the eavesdropping program came as several defense lawyers in terrorism cases began challenges, arguing that the government may have improperly hidden the use of the surveillance program from the courts in investigating terrorism leads.

Bill Goodman, legal director for the Center for Constitutional Rights, said that in suing in federal court to block the surveillance program, his group believed "without question" that Bush violated the Foreign Intelligence

(continued on page 101)

libraries

Woonsocket, Rhode Island

A challenge to *It Stops With Me: Memoirs of a Canuck Girl*, by Charleen Touchette, at the Woonsocket Harris Public Library has been withdrawn, the book's publisher TouchArt Books reported December 20. "TouchArt Books is grateful for the authors, readers, and literary organizations who supported First Amendment Rights and the Freedom to Write and ensured *It Stops with Me* will be available at the Woonsocket Public Library for those readers who know they need to read it, and for those who don't know, but should," wrote editor Jacques Paisner.

Bard College President Leon Botstein, who stands beside banned authors Chinua Achebe and Toni Morrison, had advocated in writing for the banning of the book by Bard alumna Charleen Touchette. Botstein wrote the Bard Community December 19 to support Bard Professor Kim Touchette Weiss (1977) in her written request to ban a book at the Woonsocket library. The book was removed from library shelves in September 2005 after a challenge by her father.

President Botstein, who witnessed none of the events described in the book, advocated "restricting its access." He wrote, "If members of a family wish to harm one another, those actions should be kept private and should not draw in others by invoking matters of public policy."

Charleen Touchette wrote that "President Botstein's statement is a justification for keeping family violence a secret."

The editor of TouchArt Books, which published the book, stated: "It was not an easy decision for Charleen Touchette to tell her story. Her intent was not to hurt anyone, but to give hope to those who experience childhood trauma. The many people who have written that reading *It Stops with Me* transformed their lives testify to the importance of this book being in public libraries."

Martha J. Egan, Author and PEN International Member wrote: "As a child living in a small town and a home where violence was a part of my family's daily life, I can tell you that books helped me escape and bear with a situation I was powerless to change. A book like Charleen's would have given me hope and courage I so sorely needed . . . I hope the book will soon be back in a prominent place on the Woonsocket Public Library's shelves, where it belongs. This is a book and an author Woonsocket should support with pride!"

PEN American Center, on behalf of its 2,900 international members, and PEN USA, both advocates of the freedom to write worldwide, and Steve Brown of Rhode Island ACLU wrote to ask the Woonsocket Public Library Trustees to deny the request to ban *It Stops with Me: Memoir of a Canuck Girl* and return it to library shelves.

"By doing so, you will be upholding a fundamental principle of freedom: the right of all Americans to read, inquire, question, and think for themselves," wrote Hannah Pakula, Chair, Freedom to Write Committee, and Larry Siems, Director, Freedom to Write and International Programs, PEN American Center.

Judith F. Krug, director of the American Library Association's Office for Intellectual Freedom, and recipient of the PEN USA First Amendment Award, said, "Books duly selected must remain on library shelves."

It Stops with Me: Memoir of a Canuck Girl, invites readers into the provincial world of a French Canadian girl in Rhode Island who cannot tell anybody her family secrets. Years later, when she has her first daughter, she must relive her childhood to heal the future generations of her family. Reported in: PRWeb, December 22.

schools

Fresno, California

In a second defeat in a month for proponents of teaching "intelligent design" in public schools, a rural school district in Kern County agreed January 17 to stop a course that had included discussion of a religion-based alternative to evolution.

As part of a court settlement, Frazier Mountain High School in Lebec will terminate the course one week earlier

than planned, and the El Tejon Unified School District agreed never to offer such a course in its classrooms again.

The settlement came on the heels of a court battle in Dover, Pennsylvania, in which a U.S. district court judge rejected the school board's decision to teach intelligent design as part of a science course, ruling that it was a theological argument, and not science. The Lebec suit was the first legal challenge to teaching intelligent design in California.

Intelligent design holds that some biological aspects of life are so complex that they could not have evolved randomly, but rather, must have been produced by an unidentified intelligent cause, or designer.

The El Tejon school board had argued that its course, called "Philosophy of Design," was not science, but philosophy, and sought to explore cultural phenomena, including history, religion and creation myths. But a group of parents objected and sued, contending that the district was violating the constitutionally mandated separation of church and state. A hearing scheduled before a federal judge in Fresno was canceled as a result of the settlement.

"We see this as sending a signal to school districts across the country that you can't just change the title of a course from science to humanities and then proceed to promote religious theories as alternatives to evolution," said Ayesha N. Khan, legal director for Americans United for Separation of Church and State.

"You can teach students about historical, legal and cultural aspects, and about the controversy, but you cannot do so in a way that promotes a religious point of view," said Khan, whose Washington, D.C.–based watchdog group represented the Frazier Mountain High parents opposing the class.

El Tejon school Supt. John W. Wight said in a written statement that it had been "very difficult" for the school board to make its decision to halt the class. Neither the school board nor its employees "have promoted any religious belief in any academic setting," Wight said. "The idea was to have an open discussion of the different points of views on the origin of life, a philosophical exercise in critical thinking.

"We believe that in the right setting, social and cultural issues should be discussed and studied," he added. "They have educational value and require some academic freedom."

Khan said that the agreement followed extensive negotiations. "There was a lot of back and forth," the lawyer noted. "The main issue that had to be negotiated was the date that the course would end." The school district had been concerned about the course being cut short midstream, Khan said.

The course began January 3 and was scheduled to run for one month. The initial description said the class would examine evolution as a theory and to explore why the concept "is not rock solid." The class also sought to "discuss intelligent design as an alternative response to evolution." Wight said the course—which, according to the suit, met each day for three hours—would be discontinued on January 27.

Advocates for the teaching of intelligent design believe school officials in Lebec—a mountain community of about thirteen hundred people—had been intimidated into settling, to avoid the prospect of a costly suit. Wight acknowledged that, as a small school system with limited financial resources, the district "cannot afford to spend the amount of economic funds to defend the Philosophy of Design class in the court system."

"What you have here is a small school district that essentially got bullied into an overreaching settlement by Americans United," said Casey Luskin, an attorney for the Seattle-based Discovery Institute, a public policy think tank that promotes intelligent design. "They want complete censorship of intelligent design from state-run schools. It's a problem, because intelligent design is a science. It's not a religious point of view."

Luskin, who traveled to Lebec to advise the school board prior to the settlement, said his group actually opposed the Philosophy of Design course, because it was "mixing up" the theories of intelligent design and young-Earth or biblical creationism—a theory that insists there is scientific support for the biblical Book of Genesis being literally true.

But by promising to never again offer a course that promotes or endorses creationism, creation science or intelligent design, school officials had essentially "abdicated their constitutional right to present this scientific theory in schools," Luskin said.

Carl Tobias, a law professor at the University of Richmond in Virginia said the settlement might also dissuade other schools from introducing such classes, for fear of being sued.

Bent Frederiksen, whose ninth-grade son, Christian, fourteen, was among the students participating in the class, said ending the course violated his son's First Amendment rights because the course was being offered as an elective, and his son had a right to choose it.

He also noted that, according to his son, the course's teacher, Sharon Lemburg—a minister's wife—never tried to force her personal religious or spiritual beliefs on the students. But in an interview the day after the suit was filed, Lemburg said: "Did God guide me to do this? I would hope so."

Frederiksen will keep his legal options open. "I am still going to investigate whether there is a basis for a cross-complaint, or a new complaint," he said.

However, opponents argued that the course relied heavily on videos that presented religious theories as scientific ones.

None of the eleven parents originally opposed to the philosophy course could be reached Tuesday for comment. And according to Supt. Wight, one of the plaintiffs had been allowed to withdraw as a party. But Khan, the Americans United lawyer, said the plaintiffs were satisfied with the outcome.

"We accomplished precisely what we set out to accomplish, which was to have the course terminated as soon as possible, and get a commitment that the school district would not offer this course in the future," Khan said. Reported in: *Los Angeles Times*, January 18.

student press

Columbus, Ohio

Fears of censorship are over for the time being for student journalists at Columbus North High School. On January 23, the Bartholomew Consolidated School Corporation Board upheld the current school policy on how stories get published. The controversy came after a story on oral sex appeared in the *Columbus North Triangle*. In response to the article, board member Russell Barnard drafted a policy which would require the superintendent's okay for every story prior to publication.

To the relief of student journalists and their advisor, the board defeated the proposal 5–2. *Triangle* Editor Michelle Stawicki reacted to the vote. "It was always intended to inform and educate. And that's what the article did. And so it's great that we can continue to inform our students without being censored."

Kim Green is the journalism advisor. She had threatened to resign if the Barnard proposal passed. "I'm relieved. I would like to think that . . . we could move on. I don't know if that will be the case or not. We'll see. The kids have already moved on. The future is in wonderful hands with them. They are just fantastic. And so, I'm here for awhile. Some people may not like that, but I'm here for awhile. I'm here for these kids."

Some parents were still concerned about the controversial subject matter appearing in the student publication. For the future, they are asking that they be forewarned about any racy articles before they go to press. Reported in: wthr .com, January 23.

colleges and universities

Tallahassee, Florida

The combined efforts of faculty and students carried the day in defeating an "Academic Bill of Rights" introduced in the 2005 Florida Legislature. The bill was drafted by David Horowitz, a self-described "conservative" activist who receives funds from foundations to crisscross the nation and carry out campaigns to swing both the media and higher education in a rightwing direction. The bill would have made it illegal to introduce a controversial topic in class that is not directly pertinent to the subject matter. It also would be illegal to fail to provide "balance" when discussing a controversial issue. Students who found professors too controversial could have filed suit and sought a settlement against professors. In addition, the bill would have provided a path to state court for students who were unhappy about what they believed was grade discrimination for political or religious positions they held.

So far, Florida is the only state where an "Academic Bill of Rights" has made it out of committee and onto the floor of the legislature (HB 837). Horowitz was called as an "expert witness" to give testimony before the House committeeby the Republican leadership. They referred to him as "Dr. Horowitz," although he does not have a doctoral degree. (He did not correct them.) Horowitz's presentation consisted, largely, of a recitation of horror stories about faculty abuse of conservative students. He hammered on the point that the pervasive "liberal bias" in academe means that faculty feel free to use their classrooms as platforms for preaching their ideology and punishing students who disagree. He also claimed that the overwhelmingly liberal faculty on almost all campuses discriminate against conservative professors and blackball them in hiring and promotion decisions so that there is no "diversity" in viewpoints.

After Horowitz testified, the House permitted only one faculty member to testify in response. Three students opposed to the bill were given a chance to testify as well. Before the committee vote, those opposed to the bill said they were affected by faculty and student testimony. The lone Republican to vote against the bill, Rep. Larry Cretul, stated that all the students contacting him were against the bill. He said he could not vote for a bill that was supposed to benefit students when students were against it.

Even those initially in favor of the bill seemed to soften their positions after two hearings. Some wondered whether a nonlegislative solution involving the university presidents might be possible. The bill passed by a party-line vote (8–6), as almost all bills in the House do, with one Republican taking the unusual step of breaking with the majority.

At the last minute, the Republican leadership decided not to schedule the bill for a vote on the floor, although it passed two committees and went to the floor with party-line approval (with the exception of Rep. Cretul's vote). The testimony—covered extensively in the Florida press—and the ensuing public outcry nailed down the result. Attention to the bill dissuaded House leaders from pursuing the issue.

The Senate also responded to the public outcry and refused to hear the bill, although it was scheduled for a hearing before the Education Committee, which is a requirement for clearing the bill for a vote. It appeared on the calendar—and disappeared—without a hearing. This killed the bill for 2005.

Since Republicans hold a two-thirds majority in both houses, they could have passed the bill. They were, in fact, prepared to pass it earlier in the session. The public testimony in the House, covered in the state's newspapers and media outlets, clearly made a difference. If faculty had

not testified about the destructive effects of the bill, and if students had not told legislators they did not want this bill conditioning their lives in the classroom, the result would have been different.

If Florida's newspapers had not covered, in detail, the public debate over free speech in the classroom, the result could have been different. If the media had not reported on how few cases of discrimination against conservative students could actually be found in Florida, the result could have been different. With all of these pieces in place, faculty and students made the difference on a critical issue. Reported in: *United Faculty of Florida Update*, Summer 2005.

Philadelphia, Pennsylvania

A day after reporters and bloggers besieged the University of Pennsylvania with calls and criticism, university officials decided to drop all charges against a student who had posted pictures online of fellow students having sex against a dormitory window. The student, identified only as a junior who is majoring in engineering, had been charged with sexual harassment and misuse of university electronic resources after he posted pictures of the nude couple on his personal Penn Web site for a couple of weeks. One of the students in the pictures lodged a complaint about the pictures with the university's Office of Student Conduct.

Andrew B. Geier, a graduate student in experimental psychology who had volunteered to advise the engineering junior, said university officials announced their decision during a meeting December 1 to discuss the issue. He said the officials offered to drop the charges, but then asked for the engineering junior to apologize for posting the pictures online.

"I responded, 'There's only going to be one apology, and that's going to be from you to the student,'" Geier said. Neither party offered an apology, but the charges were dropped nonetheless, and Geier said he considered the matter settled.

University officials would not comment on the meeting or the issue, except to release this statement: "The University has decided not to pursue disciplinary proceedings. We are disturbed by the photographer's conduct in this matter. We are concerned about the wide dissemination of the intimate photos in a manner and to the extent that subjected another member of the Penn community to embarrassment and ridicule. We have asked the student photographer to apologize and sincerely hope he does."

"They don't have a case," said Geier.

He said that the couple had sex in the window of their high-rise dormitory room on at least three separate days, and that more than one student had taken pictures of them. Taking pictures of so public an event could not be considered harassment, he said, nor could posting those pictures on the Internet. Other students eventually learned the identity of the couple.

Alan Charles Kors, a professor of history at Penn, had also volunteered to represent the engineering junior. Kors is a free-speech advocate who is also cofounder and chairman of the Foundation for Individual Rights in Education, a nationally known free-speech organization. The foundation was not involved in this investigation.

Kors said this incident reminded him of the famous "water buffalo" controversy of 1993. In that case, also at Penn, a white male student, a freshman, yelled at five black female students, "Shut up, you water buffalo." The male student said that he was just reacting to the noise the five students were making during a celebration. But the female students argued that the comment was racist.

When the five students complained, the university charged the freshman with racial harassment. But as the national media focused attention on the case, many observers concluded that political correctness had run amok at the university. After several weeks of media scrutiny, the five students eventually backed down from the charges. Kors said Penn likely did not want to face weeks of negative publicity this time around.

But if it weren't for the titillating nature of the story, Kors said, it might not have been so broadly covered. Indeed, if it weren't for the willingness of the engineering junior to fight charges he thought were unfair, the media might never have known about the incident at all, said Kors.

Initially, the university's Office of Student Conduct asked the engineering junior to write a letter of apology and write an essay explaining why what he did was wrong. It also recommended that he be placed on disciplinary probation until graduation, a penalty that would create a permanent record of the incident.

"The student is vindicated with the outcome, certainly, but I don't know if you could say that I'm satisfied," Geier said. "The charges were ridiculous to begin with." Reported in: *Chronicle of Higher Education* online, December 5.

trademark

San Francisco, California

A lesbian motorcycle group in San Francisco declared victory December 8 in their fight for a federal trademark for the name "Dykes on Bikes." The U.S. Patent and Trademark office twice rejected the group's application on the grounds the term "dyke" was offensive and derogatory. The office reversed itself after the group's lawyers appealed, submitting hundreds of pages of additional material that they said showed the slang word does not disparage lesbians.

"The applicant came in at the last moment with a lot of evidence to show that the community did not consider it disparaging," said Lynne Beresford, a U.S. commissioner for trademarks.

Vick Germany, president of the San Francisco Women's Motorcycle Contingent, a.k.a. Dykes on Bikes, called the decision a huge victory. "The word dyke has been used to put us down, and we have taken that name and reclaimed it as a source of pride," Germany said.

The motorcycle club was founded nearly thirty years ago and has gained international recognition for leading the city's annual gay pride parade. The club began trying to codify its name because a woman in Wisconsin wanted to start a for-profit clothing company called Dykes on Bikes.

"When we found out about this, we said, 'No, no, no,'" said Germany, who rides a Suzuki Boulevard S50 with an 800-cc engine. "The name is associated with gay pride. It's not about making a commercial profit."

Brooke Oliver, the San Francisco attorney who handled the Dykes' case, said the group will use the trademark to continue its political and social activism. "This feels like a major change in the recognition of people's rights to be out and proud and call themselves what they want to," Oliver said.

The Dykes' original application was filed in 2003 and denied in 2004. The National Center for Lesbian Rights in San Francisco helped in the appeal, soliciting declarations from linguists, sociologists and psychologists.

Carolyn Dever, an associate professor of English and women's and gender studies at Vanderbilt University, compared the term to "queer."

"'Dyke' has been claimed by lesbians as a term of pride and empowerment, as a sign of the refusal to be shamed or stigmatized by lesbian sexuality and social identity and as a symbol of unity within lesbian communities past, present and future," Dever wrote in her declaration.

The San Francisco Board of Supervisors unanimously adopted a resolution last July urging the federal office to accept the application to trademark the name. Reported in: *San Francisco Chronicle*, December 9.

art

Pilot Point, Texas

Unlike many negotiated settlements, which are confidential in their terms and go unnoticed in the media, the settlement in *Miller* v. *City of Pilot Point, Texas, et al.* would not escape public view—not if plaintiff Wes Miller had anything to say about it. On November 11, gallery owner Miller invited a crowd of eager onlookers to witness what he considered his settlement victory over the city of Pilot Point and the Pilot Point Police Department, which he had sued for depriving him of his First Amendment right to free expression.

For more than two years, the police had threatened to arrest him for displaying harmful material to a minor if he persisted in exhibiting an outdoor mural on the exterior wall of his Pilot Point gallery. The mural, which Miller first displayed in June 2003, presented a variation on the Biblical story of creation, depicting Eve being offered the forbidden apple not by Satan but by the hand of God. The problem, at least for Pilot Point officials, was that Eve was nude—bare-breasted in all her Garden of Eden splendor.

Some Pilot Point residents praised the work, while many complained about it to the police. With the city's approval, the police took action against Miller in the form of a July 14, 2003, letter, threatening him with arrest and prosecution if he persisted in violating the statute. Rather than risk arrest, Miller had "Eve and the Apple" artist Justine Wollaston place mock crime-scene tape across Eve's allegedly harmful nipples and drape a banner with the words "Temporarily CENSORED" under the apple. A gusty wind, however, blew off the tape, and after a police visit, Miller again directed Wollaston to conceal Eve's breasts. This time the artist chose a bikini top made of artificial flowers, which she wired across Eve's chest to prevent further exposure to the elements and the people of Pilot Point.

The police seemed content with these wardrobe modifications. But Miller says still felt his First Amendment rights had been violated and planned to sue. "It was always my intention to fight this in any way possible," he said.

Meanwhile, Miller's cause generated a lot of media attention, both statewide and nationally, putting heat on Pilot Point, a town of four thousand residents in North Denton County. "I was lucky that the case was so appealing to so many people," he says. "It had First Amendment issues, a bit of religion, a bit of nudity, and then you mix in small town mentality and stir all that up with art."

After the national media bit on the story, the American Civil Liberties Union became interested in his case and arranged to secure the pro bono services of two Dallas attorneys, Fredrick "Lin" Medlin and Michael D. Napoli. On January 6, they filed Miller's federal civil rights suit in the Eastern District of Texas, asking for a declaratory judgment and injunctive relief, which would prevent the police and the city "from arresting and charging [Miller] for the display of the mural in its original form."

The city of Pilot Point and its police department filed their first motion to dismiss Miller's complaint on February 22, alleging, among other things, that Miller lacked standing and that his cause of action seeking a declaratory judgment and an injunction was not ripe. But Pilot Point City Attorney Ron Brown said, "We never got too far into the merits of the suit, when we decided it was in the best interest of the city to settle."

After ten months of contentious pretrial maneuvers and mounting legal bills, the Pilot Point officials agreed to let Miller display Eve "in all her original glory," said Miller, who quickly planned another media event—an unveiling, as he called it—to celebrate the settlement. Cautiously, he waited until after November 1, the date U.S. District Court Judge Richard Schell signed the judgment, which permanently enjoined the Pilot Point police from arresting Miller, if he restored Eve to her initially rendered self.

Champagne was uncorked as Wollaston ascended to the roof of the gallery. She took a pair of wire clippers and easily removed the flowered covering. Swinging the bikini top over her head, she tossed it down to the cheering crowd and said, "It's a terrific day to celebrate freedom of expression." Reported in: *Texas Lawyer*, December 5. ☐

(censorship dateline . . . from page 78)

"is a deeply researched, interpretive biography of King Bhumibol, covering the king's life, thinking, and ruling philosophy. It recasts post-1932 Thai political history to include the monarchy's role (which has been skirted and omitted by every other modern history of the country)."

Handley, who reported from Thailand for thirteen years, is one of the few reporters or scholars to attempt a detailed biography of Thailand's seventy-year-old monarch. King Bhumibol, who was born and raised in the United States before becoming his country's king, in 1946, is the world's longest-reigning current monarch—sixty years in June.

Thai bans on publications that criticize the monarch are not unprecedented. In 2002 the Thai police forbade the distribution of an issue of *The Economist* because they deemed it offensive to the king. Although the law authorizes punishments of up to fifteen years in prison for citizens who insult the monarchy, the penalties are little needed in a country where the king is widely revered.

To longtime observers of Thai politics, the government's actions are no surprise. Any criticism of the king or his family has long been considered a crime of lèse-majesté. Richard Hornik, a former executive editor of *AsiaWeek* and national economics correspondent of *Time* magazine, wrote in an e-mail message that "even the bravest or most foolhardy foreign and domestic journalists simply avoid writing anything negative about the royal family—and there's plenty to write. This has nothing to do with the current government. Any Thai government would have to 'follow a request from the Royal Police Bureau.'"

As it is described in the publicity material that led to the blocking of the Yale press's Web site, Handley's book is sure to raise hackles in that country. The book not only "tells the unexpected story of his life and sixty-year rule—how a Western-raised boy came to be seen by his people as a living Buddha," but also describes the Thai monarch as "a king widely seen as beneficent and apolitical" who is, in fact, "deeply political, autocratic, and even brutal."

The publicity material for the book also hints at royal intrigues, including an oft-aired theory that the king may have played some part in the death of his brother, King Ananda, in 1946. "When at 19 Bhumibol assumed the throne after the still-unsolved shooting death of his brother," continued the Yale announcement, "the Thai monarchy had been stripped of power and prestige. Over the ensuing decades, Bhumibol became the paramount political actor in the kingdom, crushing critics while attaining godlike status among his people."

While the Yale press's announcement of the book may have been sensationalist in tone, its official statement in response to the furor has conciliatory elements: "The title of the book refers, simply, to the Buddhist concept of uppeka, or equanimity, in the projection of the king's image," said the statement, adding that "the timing of publication is purely coincidental with this year's anniversary."

Ironically, the Thai government's actions against the Yale press followed by just two months a statement by King Bhumibol himself that he can, indeed, do wrong, and that he welcomed criticism. Thai publications have since become more daring in their exploration of the institution of the monarchy. Journalists and scholars, however, remain liable to official action. According to the Web site of the Ministry of Information and Communications Technology, "anyone can call ICT and complain about Web sites that don't look good, such as false advertising, Web sites selling sex, sites with violence or about Thailand's national security, or Web sites containing information critical of Thailand's royal family." Reported in: *Chronicle of Higher Education* online, February 8. ☐

(from the bench . . . from page 82)

institution's own policies when it kicked him out of the program a year ago.

McConnell was prevented from enrolling in the spring 2005 semester after Le Moyne officials became aware that he had written a class paper endorsing the use of corporal punishment in the classroom. The letter dismissing him from the program expressed "grave concerns regarding the mismatch between [McConnell's] personal beliefs regarding teaching and learning" and the college's philosophy.

While McConnell never retreated from his endorsement of corporal punishment—in certain instances—in the classroom, he also said that he would abide by the rules of any school in which he worked. He sued the college, charging that his rights had been violated because he was expelled without receiving the standard due process Le Moyne promises to its students.

Le Moyne argued that McConnell was never actually a student because he had been provisionally admitted to the program, contingent on his performance in the fall 2004 semester. The college said that McConnell was never formally switched from being a provisional to permanent student, so he was not entitled to the due process rights the college promises students.

While a lower court declined to get involved in the case, the appeals court rejected Le Moyne's argument. The court found that McConnell met all of the goals and that the letter offering him provisional admission made no mention of the need for his "personal goals" to match those of the program. As a result, the court ruled that McConnell was in fact a student and entitled to the rights the college gives to students.

Quoting other New York State judicial rulings, the court said: "When a university has adopted a rule or guideline establishing the procedure to be followed in relation to suspension or expulsion, that procedure must be substantially observed."

The appeals court decision did not comment on the controversy over McConnell's views on spanking.

Terence J. Pell, president of the Center for Individual Rights, which represented McConnell, called the ruling "tremendous," adding, "this school has procedures for expelling students, so if it wants to expel someone, it has to follow them."

Pell called the argument that McConnell wasn't fully a student "fraudulent" and said that he was pleased that the appeals court "saw right through it."

In a written statement, Le Moyne officials said they would abide by the ruling and that they had begun the process of appealing the decision to the New York Court of Appeals, the state's highest court.

The case is one among several in which students—backed by national conservative organizations—have complained in the last year about education professors who are more interested in students' political views than in their classroom performance. Reported in: insidehighered.com, January 19; *Chronicle of Higher Education* online, January 20. □

(is it legal?. . . from page 94)

Surveillance Act, which governs wiretaps, by authorizing the security agency operation. But Goodman acknowledged that in persuading a federal judge to intervene, "politically, it's a difficult case to make."

He added: "We recognize that it's extremely difficult for a court to stand up to a president, particularly a president who is determined to extend his power beyond anything envisioned by the founding fathers. That takes courage."

In a related suit, The Electronic Frontier Foundation (EFF) sued AT&T for helping the National Security Agency execute illegal warrantless wiretaps against American citizens.

AT&T Corp. (which was recently acquired by the new AT&T, Inc., formerly known as SBC Communications) maintains domestic telecommunications facilities over which millions of Americans' telephone and Internet communications pass every day. It also manages some of the largest databases in the world, containing records of most or all communications made through its myriad telecommunications services.

The lawsuit alleges that AT&T Corp. opened its key telecommunications facilities and databases to direct access by the NSA and/or other government agencies, thereby disclosing to the government the contents of its customers' communications as well as detailed communications records about millions of its customers, including the lawsuit's class members.

The lawsuit also alleges that AT&T has given the government unfettered access to its over three-hundred-terabyte "Daytona" database of caller information—one of the largest databases in the world. Moreover, by opening its network and databases to wholesale surveillance by the NSA, EFF alleges that AT&T violated the privacy of its customers and the people they call and email, as well as broken longstanding communications privacy laws.

The lawsuit further alleges that AT&T continues to assist the government in its secret surveillance of millions of Americans. Reported in: *New York Times*, January 17; boingboing.net, January 31.

Washington, D.C.

A year ago, at a Quaker Meeting House in Lake Worth, Florida, a small group of activists met to plan a protest of military recruiting at local high schools. What they didn't know was that their meeting had come to the attention of the U.S. military.

A secret four-hundred-page Defense Department document obtained by NBC News lists the Lake Worth meeting as a "threat" and one of more than fifteen hundred "suspicious incidents" across the country over a recent ten-month period. "This peaceful, educationally oriented group being a threat is incredible," said Evy Grachow, a member of the Florida group called The Truth Project.

"This is incredible," added group member Rich Hersh. "It's an example of paranoia by our government," he said. "We're not doing anything illegal."

The Defense Department document is the first inside look at how the U.S. military has stepped up intelligence collection inside this country since 9/11, which now includes the monitoring of peaceful antiwar and counter-military recruitment groups.

"I think Americans should be concerned that the military, in fact, has reached too far," said NBC News military analyst Bill Arkin.

A Department of Defense spokesman said all domestic intelligence information is "properly collected" and involves "protection of Defense Department installations, interests and personnel." The military has always had a legitimate "force protection" mission inside the U.S. to protect its personnel and facilities from potential violence. But the Pentagon now collects domestic intelligence that goes

beyond legitimate concerns about terrorism or protecting U.S. military installations, critics charge.

The DOD database obtained by NBC News includes nearly four dozen antiwar meetings or protests, including some that took place far from any military installation, post or recruitment center. One "incident" included in the database was a large antiwar protest at Hollywood and Vine in Los Angeles last March that included effigies of President Bush and antiwar protest banners. Another incident mentions a planned protest against military recruiters last December in Boston and a planned protest last April at McDonald's National Salute to America's Heroes—a military air and sea show in Fort Lauderdale, Florida.

The Fort Lauderdale protest was deemed not to be a credible threat and a column in the database concludes: "US group exercising constitutional rights." Two-hundred forty-three other incidents in the database were discounted because they had no connection to the Department of Defense—yet they all remained in the database.

The DOD has strict guidelines adopted in December 1982, that limit the extent to which they can collect and retain information on U.S. citizens. Still, the DOD database includes at least twenty references to U.S. citizens or U.S. persons. Other documents obtained by NBC News showed the Defense Department is clearly increasing its domestic monitoring activities. One DOD briefing document stamped "secret" concludes: "[W]e have noted increased communication and encouragement between protest groups using the [I]nternet," but no "significant connection" between incidents, such as "reoccurring instigators at protests" or "vehicle descriptions."

"It means that they're actually collecting information about who's at those protests, the descriptions of vehicles at those protests," said Arkin. "On the domestic level, this is unprecedented," he stated. "I think it's the beginning of enormous problems and enormous mischief for the military."

Some former senior DOD intelligence officials shared his concern. George Lotz, a thirty-year career DOD official and former U.S. Air Force colonel, held the post of Assistant to the Secretary of Defense for Intelligence Oversight from 1998 until his retirement last May. Lotz, who recently began a consulting business to help train and educate intelligence agencies and improve oversight of their collection process, believes some of the information the DOD has been collecting is not justified.

"Somebody needs to be monitoring to make sure they are just not going crazy and reporting things on U.S. citizens without any kind of reasoning or rationale," said Lotz. "I demonstrated with Martin Luther King in 1963 in Washington," he said, "and I certainly didn't want anybody putting my name on any kind of list. I wasn't any threat to the government," he added.

The military's penchant for collecting domestic intelligence is disturbing—but familiar—to Christopher Pyle, a former Army intelligence officer. "Some people never learn," he said. During the Vietnam War, Pyle blew the whistle on the Defense Department for monitoring and infiltrating antiwar and civil rights protests when he published an article in the *Washington Monthly* in January 1970.

The public was outraged and a lengthy congressional investigation followed that revealed that the military had conducted investigations on at least 100,000 American citizens. Pyle got more than 100 military agents to testify that they had been ordered to spy on U.S. citizens—many of them antiwar protestors and civil rights advocates. In the wake of the investigations, Pyle helped Congress write a law placing new limits on military spying inside the U.S.

But Pyle, now a professor at Mt. Holyoke College in Massachusetts, said some of the information in the database suggests the military may be dangerously close to repeating its past mistakes. "The documents tell me that military intelligence is back conducting investigations and maintaining records on civilian political activity. The military made promises that it would not do this again," he said.

Some Pentagon observers worry that in the effort to thwart the next 9/11, the U.S. military is now collecting too much data, both undermining its own analysis efforts by forcing analysts to wade through a mountain of rubble in order to obtain potentially key nuggets of intelligence and entangling U.S. citizens in the U.S. military's expanding and quiet collection of domestic threat data.

Two years ago, the Defense Department directed a little known agency, Counterintelligence Field Activity, or CIFA, to establish and "maintain a domestic law enforcement database that includes information related to potential terrorist threats directed against the Department of Defense." Then–Deputy Secretary of Defense Paul Wolfowitz also established a new reporting mechanism known as a TALON or Threat and Local Observation Notice report. TALONs now provide "nonvalidated domestic threat information" from military units throughout the United States that are collected and retained in a CIFA database. The reports include details on potential surveillance of military bases, stolen vehicles, bomb threats and planned antiwar protests. In the program's first year, the agency received more than five thousand TALON reports. The database obtained by NBC News is generated by Counterintelligence Field Activity.

CIFA is becoming the superpower of data mining within the U.S. national security community. Its "operational and analytical records" include "reports of investigation, collection reports, statements of individuals, affidavits, correspondence, and other documentation pertaining to investigative or analytical efforts" by the DOD and other U.S. government agencies to identify terrorist and other threats. Since March 2004, CIFA has awarded at least $33 million in contracts to corporate giants Lockheed Martin, Unisys

Corporation, Computer Sciences Corporation and Northrop Grumman to develop databases that comb through classified and unclassified government data, commercial information and Internet chatter to help sniff out terrorists, saboteurs and spies.

One of the CIFA-funded database projects being developed by Northrop Grumman and dubbed "Person Search," is designed "to provide comprehensive information about people of interest." It will include the ability to search government as well as commercial databases. Another project, "The Insider Threat Initiative," intends to "develop systems able to detect, mitigate and investigate insider threats," as well as the ability to "identify and document normal and abnormal activities and 'behaviors,'" according to the Computer Sciences Corp. contract. A separate CIFA contract with a small Virginia-based defense contractor seeks to develop methods "to track and monitor activities of suspect individuals."

"The military has the right to protect its installations, and to protect its recruiting services," says Pyle. "It does not have the right to maintain extensive files on lawful protests of their recruiting activities, or of their base activities," he argued.

"The harm in my view is that these people ought to be allowed to demonstrate, to hold a banner, to peacefully assemble whether they agree or disagree with the government's policies," former DOD intelligence official Lotz added.

Bert Tussing, director of Homeland Defense and Security Issues at the U.S. Army War College and a former Marine, said "there is very little that could justify the collection of domestic intelligence by the United States military. If we start going down this slippery slope it would be too easy to go back to a place we never want to see again," he said.

Some of the targets of the U.S. military's recent collection efforts said they have already gone too far. "It's absolute paranoia—at the highest levels of our government," said Hersh of The Truth Project. "I mean, we're based here at the Quaker Meeting House," said Truth Project member Marie Zwicker, "and several of us are Quakers."

The Defense Department refused to comment on how it obtained information on the Lake Worth meeting or why it considers a dozen or so antiwar activists a "threat." Reported in: msnbc.com, December 14.

Colorado Springs, Colorado

The names and license plate numbers of about thirty people who protested three years ago in Colorado Springs were put into FBI domestic-terrorism files, the American Civil Liberties Union Foundation of Colorado said December 8. The Denver-based ACLU obtained federal documents on a 2002 Colorado Springs protest and a 2003 antiwar rally under the Freedom of Information Act.

ACLU legal director Mark Silverstein said the documents show the FBI's Joint Terrorism Task Force wastes resources generating files on "nonviolent protest."

"These documents confirm that the names and license plate numbers of several dozen peaceful protesters who committed no crime are now in a JTTF file marked 'counterterrorism,'" he said. "This kind of surveillance of First Amendment activities has serious consequences. Law-abiding Americans may be reluctant to speak out when doing so means that their names will wind up in an FBI file."

FBI Special Agent Monique Kelso, the spokeswoman for the agency in Colorado, disputed the claim the task force wastes resources gathering information on protesters. "We do not open cases or monitor cases just based purely on protests," she said. "It's our job to protect American civil rights. We don't surveil cases just to do that. We have credible information."

The documents cover the June 2002 protest of the North American Wholesale Lumber Association convention at The Broadmoor hotel and an antiwar protest at Palmer Park in February 2003, the ACLU said. The FBI files contain the names and license-plate numbers of thirty-one people at the 2002 protest, Silverstein said. Activists accused the lumber association, a trade organization of about six hundred fifty forest products and building-material wholesalers, of destroying endangered forests and needlessly logging on public land. A few of the activists were arrested after sneaking onto The Broadmoor's roof to unfurl a forty-five-foot banner.

The FBI documents indicated agents planned surveillance in Denver where protesters gathered to carpool to Colorado Springs for the 2003 antiwar protest at Palmer Park, the ACLU said. FBI agents also collected information on three Web sites that listed details of the planned protest, the ACLU said. The file was classified as domestic terrorism and acts of terrorism, Silverstein said.

"The FBI is unjustifiably treating nonviolent public protest as though it were domestic terrorism," Silverstein said. "The FBI's misplaced priorities threaten to deter legitimate criticism of government policy while wasting taxpayer resources that should be directed to investigating real terrorists."

The 2003 rally was part of an International Day of Peace to oppose

possible U.S. military action against Iraq. Protesters gathered at Palmer Park and outside Peterson Air Force Base. Nearly three dozen protesters at both locations were arrested for failing to disperse. About thirty protesters at the park obstructed traffic and blocked Academy Boulevard, which was shut down for about an hour. Some sat down in the northbound lanes and wrote messages in chalk on the street. Others stood in front of cars in the southbound lanes. Dozens of police officers used tear gas and pepper spray to disperse the crowd. Reported in: *Colorado Springs Gazette*, December 9.

New York, New York

Undercover New York City police officers have conducted covert surveillance in the last sixteen months of people protesting the Iraq war, bicycle riders taking part in mass rallies, and even mourners at a street vigil for a cyclist killed in an accident, a series of videotapes show. In glimpses and in glaring detail, the videotape images reveal the robust presence of disguised officers or others working with them at seven public gatherings since August 2004.

The officers hoist protest signs. They hold flowers with mourners. They ride in bicycle events. At the vigil for the cyclist, an officer in biking gear wore a button that said, "I am a shameless agitator." She also carried a camera and videotaped the roughly fifteen people present.

Beyond collecting information, some of the undercover officers or their associates are seen on the tape having influence on events. At a demonstration last year during the Republican National Convention, the sham arrest of a man secretly working with the police led to a bruising confrontation between officers in riot gear and bystanders.

Provided with images from the tape, the Police Department's chief spokesman, Paul J. Browne, did not dispute that they showed officers at work but said that disguised officers had always attended such gatherings—not to investigate political activities but to keep order and protect free speech. Activists, however, said that police officers masquerading as protesters and bicycle riders distort their messages and provoke trouble.

The pictures of the undercover officers were culled from an unofficial archive of civilian and police videotapes by Eileen Clancy, a forensic video analyst who is critical of the tactics. She gave the tapes to the *New York Times*. Based on what the individuals said, the equipment they carried and their almost immediate release after they had been arrested amid protesters or bicycle riders, the *Times* concluded that at least ten officers were incognito at the events.

In New York, the administration of Mayor Michael R. Bloomberg persuaded a federal judge in 2003 to enlarge the Police Department's authority to conduct investigations of political, social and religious groups. "We live in a more dangerous, constantly changing world," Police Commissioner Raymond W. Kelly said. Before then, very few political organizations or activities were secretly investigated by the Police Department, the result of a 1971 class-action lawsuit that charged the city with abuses in surveillance during the 1960s. Now the standard for opening inquiries into political activity has been relaxed, full authority to begin surveillance has been restored to the police and federal courts no longer require a special panel to oversee the tactics.

Browne, the police spokesman, said the department did not increase its surveillance of political groups when the restrictions were eased. The powers obtained after September 11 have been used exclusively "to investigate and thwart terrorists," Browne said. He would not answer specific questions about the disguised officers or describe any limits the department placed on surveillance at public events.

Jethro M. Eisenstein, one of the lawyers who brought the lawsuit thirty-fout years ago, said: "This is a level-headed Police Department, led by a level-headed police commissioner. What in the world are they doing?"

For nearly four decades, civil liberty advocates and police officials fought over the kinds of procedures needed to avoid excessive intrusion on people expressing their views, to provide accountability in secret police operations, and to assure public safety for a city that has been the leading American target of terrorists.

To date, officials said no one has complained of personal damage from the information collected over recent months, but participants in the protests, rallies and other gatherings say the police have been a disruptive presence.

Ryan Kuonen, thirty-two, who took part in a "ride of silence" in memory of a dead cyclist, said that two undercover officers—one with a camera—subverted the event. "They were just in your face," she said. "It made what was a really solemn event into something that seemed wrong. It made you feel like you were a criminal. It was grotesque."

Clancy, a founder of I-Witness Video, a project that collected hundreds of videotapes during the Republican National Convention that were used in the successful defense of people arrested that week, has assembled videotape of other public events made by legal observers, activists, bystanders and police officers.

She presented examples in October at a conference of defense lawyers. "What has to go on is an informed discussion of policing tactics at public demonstrations, and these images offer a window into the issues and allow the public to make up their own mind," Clancy said. "How is it possible for police to be accountable when they infiltrate events and dress in the garb of protesters?"

The videotapes that most clearly disclosed the presence of the disguised officers began in August 2004. What happened before that is unclear.

Among the events that have drawn surveillance is a monthly bicycle ride called Critical Mass. The Critical Mass rides, which have no acknowledged leadership, take place in many cities around the world on the last Friday of the month, with bicycle riders rolling through the streets to promote bicycle transportation. Relations between the riders and the police soured last year after thousands of cyclists flooded the streets on the Friday before the Republican National Convention. Officials say the rides cause havoc because the participants refuse to obtain a permit. The riders say they can use public streets without permission from the government.

In a tape made at the April 29 Critical Mass ride, a man in a football jersey is seen riding along West 19th Street with a group of bicycle riders to a police blockade at 10th Avenue. As the police begin to handcuff the bicyclists, the

man in the jersey drops to one knee. He tells a uniformed officer, "I'm on the job." The officer in uniform calls to a colleague, "Louie—he's under." A second officer arrives and leads the man in the jersey—hands clasped behind his back—one block away, where the man gets back on his bicycle and rides off.

Another arrest that appeared to be a sham changed the dynamics of a demonstration. On August 30, 2004, during the Republican National Convention, a man with vivid blond hair was filmed as he stood on Twenty-third Street, holding a sign at a march of homeless and poor people. A police lieutenant suddenly moved to arrest him. Onlookers protested, shouting, "Let him go." In response, police officers in helmets and with batons pushed against the crowd, and at least two other people were arrested.

The videotape shows the blond-haired man speaking calmly with the lieutenant. When the lieutenant unzipped the man's backpack, a two-way radio could be seen. Then the man was briskly escorted away, unlike others who were put on the ground, plastic restraints around their wrists. And while the blond-haired man kept his hands clasped behind his back, the tape shows that he was not handcuffed or restrained.

The same man was videotaped a day earlier, observing the actress Rosario Dawson as she and others were arrested on 35th Street and Eighth Avenue as they filmed *This Revolution,* a movie that used actual street demonstrations as a backdrop. At one point, the blond-haired man seemed to try to rile bystanders.

After Dawson and another actress were placed into a police van, the blond-haired man can be seen peering in the window. According to Charles Maol, who was working on the film, the blond-haired man is the source of a voice that is heard calling: "Hey, that's my brother in there. What do you got my brother in there for?"

After Browne was sent photographs of the people involved in the convention incidents and the bicycle arrests, he said, "I am not commenting on descriptions of purported or imagined officers."

The federal courts have long held that undercover officers can monitor political activities for a "legitimate law enforcement purpose." While the police routinely conduct undercover operations in plainly criminal circumstances—the illegal sale of weapons, for example—surveillance at political events is laden with ambiguity. To retain cover in those settings, officers might take part in public dialogue, debate and demonstration, at the risk of influencing others to alter opinions or behavior.

The authority of the police to conduct surveillance of First Amendment activities has been shaped over the years not only by the law but also by the politics of the moment and the perception of public safety needs. In the 1971 class-action lawsuit, the city acknowledged that the Police Department had used infiltrators, undercover agents and fake news reporters to spy on yippies, civil rights advocates, antiwar activists, labor organizers and black power groups.

A former police chief said the department's intelligence files contained a million names of groups and individuals—more in just the New York files than were collected for the entire country in a now-discontinued program of domestic spying by the United States Army around the same time. In its legal filings, the city said any excesses were aberrational acts.

The case, known as *Handschu* for the lead plaintiff, was settled in 1985 when the city agreed to extraordinary new limits in the investigation of political organizations, among them the creation of an oversight panel that included a civilian appointed by the mayor. The police were required to have "specific information" that a crime was in the works before investigating such groups. The *Handschu* settlement also limited the number of police officers who could take part in such investigations and restricted sharing information with other agencies.

Over the years, police officials made no secret of their belief that the city had surrendered too much power. Some community affairs officers were told they could not collect newspaper articles about political gatherings in their precincts, said John F. Timoney, a former first deputy commissioner who is now the chief of police in Miami.

The lawyers who brought the *Handschu* lawsuit say that such concerns were exaggerated to make limits on police behavior seem unreasonable. The city's concessions in the *Handschu* settlement, while similar to those enacted during that era in other states and by the federal government, surpassed the ordinary limits on police actions.

"It was to remedy what was a very egregious violation of people's First Amendment rights to free speech and assemble," said Jeremy Travis, the deputy police commissioner for legal affairs from 1990 to 1994.

On September 12, 2002, the deputy police commissioner for intelligence, David Cohen, wrote in an affidavit that the police should not be required to have a "specific indication" of a crime before investigating. "In the case of terrorism, to wait for an indication of crime before investigating is to wait far too long," he wrote. Cohen also took strong exception to limits on police surveillance of public events.

In granting the city's request, Charles S. Haight, a federal judge in Manhattan, ruled that the dangers of terrorism were "perils sufficient to outweigh any First Amendment cost."

New guidelines say undercover agents may be used to investigate "information indicating the possibility of unlawful activity"—but also say that commanders should consider whether the tactics are "warranted in light of the seriousness of the crime."

Clancy said those guidelines offered no clear limits on intrusiveness at political or social events. Could police officers take part in potluck suppers of antiwar groups, buy drinks for activists? Could they offer political opinions for broadcast or publication while on duty but disguised as civilians? Reported in: *New York Times*, December 22.

Akron and Cleveland, Ohio

The American Civil Liberties Union of Ohio requested information January 24 from the government about whether it spied on two antiwar groups and an attorney for a man suspected of terrorism connections. ACLU officials said that members of the antiwar groups want to know whether two meetings were attended by government agents. One meeting was last year in Akron by the Northeast Ohio American Friends Service Committee, a Quaker organization, and the another was in 2004 in Cleveland by the Northeast Ohio Antiwar Coalition.

The ACLU filed Freedom of Information Act requests with the Department of Defense, Justice Department, the FBI and police seeking records that document any collection of information about the groups. Gary Daniels, the ACLU's litigation coordinator, said the ACLU became involved because the groups were included on a Defense Department classified database of information about suspicious people and activity inside the United States as reported by NBC News (see page 101).

The ACLU also requested information about several people, including Akron lawyer Farhad Sethna, based on his association with the American Friends Service Committee. Sethna said he hopes the request will shed light on whether the government spied on his conversations with a client, Ashraf Al-Jailani, who recently was sent back to his native Yemen after being jailed three years on suspicions that he associated with suspected terrorists.

"The only way we would be involved in gathering specific or credible information was if a group was involved in criminal activity," FBI spokesman Bill Carter said.

"I want to ensure that the government has respected my attorney-client privilege, and if proof is found that the government has violated this privilege, then I will take every step permitted under the law," Sethna said.

Jeffrey Gamso, Ohio AFL-CIO legal director, said he wants to find out whether the Defense Department's Counterintelligence Field Activity database has records of other Ohio groups or individuals and if ACLU meeting rooms were bugged. "Of course I suspect that they are going after Farhad (Sethna) in part because of his representation of Al-Jailani. That's not the basis in which we are pursuing these things today. We are just acting on what we have gleaned so far," Gamso said. Reported in: *Akron Beacon-Journal*, January 24.

Internet

Washington, D.C.

Dozens of federal agencies are tracking visits to U.S. government Web sites in violation of long-standing rules designed to protect online privacy. From the Air Force to the Treasury Department, government agencies are using either "Web bugs" or permanent cookies to monitor their visitors' behavior, even though federal law restricts the practice.

The Pentagon said it wasn't aware that its popular Defenselink.mil portal tracked visitors—in violation of a privacy notice—and said it would fix the problem. So did the Defense Threat Reduction Agency and the U.S. Chemical Safety and Hazard Investigation Board.

"We were not aware of the cookies set to expire in 2016," a Pentagon representative said. "All of the cookies we had set with WebTrends were to be strictly (temporary) cookies, and we are taking immediate action." WebTrends is a commercial Web-monitoring service.

The practice of tracking Web visitors came under fire when the National Security Agency was found to use permanent cookies to monitor visitors, a practice it halted after inquiries from the Associated Press. The White House also was criticized for employing WebTrends' tracking mechanism that used a tiny GIF image.

A 2003 government directive says that, in general, "agencies are prohibited from using" Web bugs or cookies to track Web visitors. Both techniques are ways to identify repeat visitors and, depending on the configuration, can be used to track browsing behavior across nongovernment Web sites too.

"It's evidence that privacy is not being taken seriously," said Peter Swire, a law professor at Ohio State University, referring to the dozens of agencies tracking visitors. "The guidance is very clear." While working in the Clinton administration in 2000, Swire helped to craft an earlier Web tracking policy.

To detect which agencies engage in electronic tracking, CNET News.com wrote a computer program that connected to every agency listed in the official U.S. Government Manual, and then evaluated what monitoring techniques were used. The expiration dates of the cookies detected ranged from 2006 to 2038, with most of them marked as valid for at least a decade or two.

Many agencies appeared to have no inkling that their Web sites were configured to record the activities of users. "When the agency set up ColdFusion on our Web server, we set the software to its default value," said William Alberque, a spokesman for the Defense Threat Reduction Agency. "The default value, as you saw, creates individual session cookies that can last on your computer for either thirty years or until you delete them."

While the practice of setting permanent cookies is generally prohibited, it's usually not clear how they're being used. In the worst case, they could be used to invade privacy by correlating one person's visits to thousands of Web sites. They also can be as innocuous as permitting someone to set a Web site's default language.

Not all monitoring of Web visitors is prohibited. The 2003 directive provides an exception for federal agencies that have a "compelling need," clearly disclose the track-

ing and have approval from the agency head. In addition, the directive does not apply to state government Web sites, court Web sites or sites created by members of Congress.

Probably the most intrusive type of tracking comes from third-party cookies set by commercial vendors. Such cookies permit correlation of visits to thousands of Web sites. A visitor to the Pentagon's Web site could be identified as the same person who stopped by Hilton.com and HRBlock .com—because both of those companies are WebTrends customers.

For its part, WebTrends says it does not correlate that information. "There are companies that tried to do that in the past and got a lot of bad public exposure," said Brent Hieggelke, WebTrends' vice president of corporate marketing. "We do not track cross-site traffic," Hieggelke said. "We do not offer any services that let you understand cross-domain traffic at unrelated sites at all."

Privacy advocates tend to be leery of such third-party cookies, however, warning that a change in company management or ownership could result in a policy shift, or that a security breach would expose Web browsing habits. "If WebTrends has the ability to link the White House visit to the commercial site visit, then that does look like persistent tracking," said Swire, the Ohio law professor. "It would be useful to have a third-party audit of that."

Statcounter.com is another Web-statistics program, used by the Commerce Department and the Energy Department, which also sets third-party cookies. The Dublin, Ireland-based company says it does not correlate information from multiple Internet sites. "We do not sell any information to third parties," said its U.S. representative. "All we're interested in gathering is information that can tell (a Webmaster) what area the visitor comes from, what they looked at, what they went back to, data that shows how their sites are used."

During the Clinton administration, the White House's Office of Management and Budget published initial guidelines for federal Web sites in June 1999. That ten-page document gave federal agencies three months to post "clearly labeled and easily accessed" privacy policies on their sites and suggested model language.

Then came a public flap over the tracking technologies employed by the White House's antidrug site Freevibe.com. Shortly afterward, the White House published a directive restricting agencies from using any sort of "cookies" or other "automatic means of collecting information" at their sites except in narrow circumstances. The latest, 2003, directive continued the restriction on permanent (sometimes called persistent) cookies but permitted temporary ones that last only as long as the browser window is open.

Failure to follow the rules has plagued government agencies before. In 2001, the Defense Department's Inspector General reviewed the agency's 400 sites and found "persistent" cookies on 128 of them. The Central Intelligence Agency admitted in 2002 that it had also been using the proscribed cookies without proper clearance, and it stripped them from its sites.

The level of compliance with the rules appears to have changed little since a 2000 General Accounting Office survey, which revealed that at least a dozen agencies were still using cookies in apparent violation of the rules.

Many of the cookies appearing on the errant Web sites were generated by ColdFusion, the popular Web authoring tool. When the software creates certain types of cookies, it automatically assigns them a default "persistent" setting, which sets them to expire about thirty years in the future, said senior project manager Tim Buntel.

ColdFusion's software architects encourage Web developers to use an application that allows them to manage and make changes to the cookie settings as they see fit, Buntel said, adding that "any ColdFusion application can be built completely without any cookie use."

Representatives at several agencies said they were astonished to see cookies on their Web sites, and they blamed their Web designer's lack of understanding of ColdFusion's default settings.

The Defense Threat Reduction Agency immediately altered the settings on discovering that its ColdFusion developers had neglected to tweak the defaults. "We never have kept a database of any such information," said spokesman William Alberque.

"Frankly, I don't think anybody here even realized they existed, but now they do, and we'll follow up on it," said Daniel Horowitz, a spokesman for the U.S. Chemical Safety and Hazard Investigation Board.

One Smithsonian Institution Web staffer, who initially denied the existence of persistent cookies detected by CNET News.com on the National Air and Space Museum's site, said that ColdFusion settings were probably to blame. "Regardless, I can assure you that we are not currently using or distributing cookie information," the representative said.

A few others, including the Federal Reserve Bank System and the U.S. Institute of Peace, said they're independent agencies that are not bound by the 2003 directive from the Office of Management and Budget (OMB). "We are not a government agency," said Calvin Mitchell, senior vice president at the Federal Reserve Bank of New York. "We try to fulfill the spirit of certain government regulations as we can, but we're not obliged to follow those."

A White House official suggested a different interpretation. "When it comes to federal government Web sites, the policy is clear, and so anything that ends in a .mil or a .gov would fall underneath the federal policy as outlined in the OMB guidance," said David Almacy, the White House's Internet director.

Only one federal agency contacted appeared to comply fully with the directive. The National Institute of Dental and Craniofacial research says it received the necessary permission in January 2005 to enable cookies on its Web site for a

survey. The cookies, which expire in one month, are used to avoid asking the same people to complete the survey.

The White House says that because it only uses a 1-pixel–by–1-pixel image that loads from WebTrends' site, it complies with the 2003 directive from the Office of Management and Budget. "There are no cookies being placed either on the Web site, from the White House or from WebTrends," Almacy said. "No personal information was gleaned, no cookies were being used, but OMB guidance is pretty clear. The White House Web site is and always has been in compliance with OMB guidance." Reported in: news.com, January 5.

access to information

Washington, D.C.

The National Geospatial-Intelligence Agency (NGA) will remove most of its aeronautical data and publications from public view in the next two years. That means public mapmakers and librarians will no longer have access to many of the most detailed aeronautical charts and data of the world. But they can still get maps with a scale of 1-to-250,000 to 1-to-5 million because they are less detailed.

NGA said it took this action primarily because of the growing number of international source providers claiming intellectual property rights. Mapmakers and librarians said Australia, which has the best maps for Indonesia—an important battleground in the war on terrorism—insisted that NGA no longer publish for public access the aeronautical charts and data Australia produces, pays for and shares with the agency.

"The removal of this aeronautical data from general public access will assure the continued availability of information vital to national security," said James Clapper, NGA director and a retired Air Force three-star general, in a statement.

NGA said the decision does not affect government agencies and authorized government contractors, and aviators can still get charts and data from the Federal Aviation Administration. The FAA said its nautical data and publications will continue to be publicly available.

NGA will remove the worldwide Digital Aeronautical Flight Information File (DAFIF) that comes in a CD-ROM format from public sale in January 2006 and stop distributing it via the Internet in October 2006. The agency will also stop selling versions of the Flight Information Publications that cover airspace outside the United States in October 2006 and remove other versions that contain information about U.S. airspace in October 2007.

NGA said it believes it has reached a compromise with librarians and mapmakers by making available some of its aeronautical charts and data, including two maps that librarians use for research and education. The agency also gave them 22 months to adjust to the change and took six months to listen and respond to their comments, said Jim Mohan, an NGA spokesman. However, many mapmakers and librarians are still critical of the decision.

"A very bad precedent has been set whereby the introduction of any copyright-protected material renders a massive public-domain database off-limits to the public," said Kent Lee, president and chief executive officer of East View Cartographic.

"NGA could have offered a redacted version of the databases and stripped DAFIF of its Australian-supplied data so they could be kept public and available," said Patrice McDermott, deputy director of government relations at the American Library Association.

Matt Francis, a spokesman for the Australian Embassy in the United States, said Airservices Australia, a government-owned organization, operates as a corporation and sells charts and data to worldwide customers. He said Airservices Australia published the changes to its aeronautical data licensing arrangements, which started in September 2003.

"The corporation is concerned that in the absence of a licensing system, commercial redistributors who sell the data to airlines and other customers are not bound by controls intended to ensure the data remains accurate as those customers use it," according to a press release issued by Airservices Australia in July 2003. Reported in: fcw.com, December 12.

copyright

Washington, D.C.

The U.S. Copyright Office proposed a solution January 31 to the vexing problem of "orphan" works—older materials that people are reluctant to republish because they cannot track down the copyright owners. But the office's recommendation, backed by publishers, was unlikely to please archivists or scholars.

In a 133-page report, the office said that people who republish orphan works should pay "reasonable compensation" if the owners of the material surface and demand payment for the use of their materials. The copyright office said its recommendation could be accomplished by amending the Copyright Act.

But recognizing that many orphan works are republished online, the proposal also said that if "nonprofit institutions like libraries, museums, and universities" immediately stop using orphan works when contacted by copyright owners, the institutions should not have to pay anything for the copyright infringements.

The copyright office also recommended that would-be publishers of orphan works first conduct a "reasonably diligent search" to locate the owners of the works.

Librarians, scholars, and museum directors frequently seek to republish orphan works for archival, research, and preservation purposes. They told copyright-office representatives at hearings last summer that nonprofit educational and cultural institutions should not be required to pay anything if copyright owners subsequently come forward, or should pay no more than a set amount—typically between one hundred and five hundred dollars—per work infringed.

Public Knowledge, an advocacy group that seeks to ease copyright restrictions, said the copyright office had done little to help scholars. They still could face infringement suits—and large payouts—should the copyright-office recommendation become law, the group said.

"We're not in a lot better shape than we were when we first started," said Gigi B. Sohn, president of Public Knowledge. "If the purpose of this exercise was to get more certainty and more orphan works in circulation, that's not going to happen." She noted that the copyright office's interpretation of what is "reasonable compensation" for a work that is infringed is based on what a suddenly surfacing copyright owner would have received if he or she had negotiated with someone in advance over the use of the work. Under the copyright office proposal, the courts would have to determine the appropriate compensation for each such copyright violation, said Sohn.

Allan R. Adler, a lawyer and lobbyist for the Association of American Publishers, said the copyright office's recommendation regarding compensation to copyright owners is precisely what his group wanted. Reported in: *Chronicle of Higher Education* online, February 2.

trademark

Harrisburg, Pennsylvania

The distinctive chocolate bar on the dust jacket of a new book about the founder of the Hershey Co. violates its trademark, the candy maker said in a federal lawsuit. The company wants an injunction to prevent publisher Simon & Schuster, Inc., from using Hershey-owned images to market *Hershey: Milton S. Hershey's Extraordinary Life of Wealth, Empire and Utopian Dreams*, scheduled to appear in January.

Hershey spokeswoman Stephanie Moritz said the company is concerned that consumers may think it "authorized, sponsored or approved" the book. It wants to prevent Simon & Schuster from distributing the dust jacket. "Hershey does not object to the content of defendant's book, or to the mere use of the word 'Hershey' in the title of the book," according to the lawsuit. "However, defendant has designed and adopted a dust jacket for the book which extensively uses Hershey's well-known marks and trade dress beyond any manner permissible under law."

The jacket also depicts a Hershey's Kiss, a subtitle in a font similar to the paper wrapper inside a Kiss, and two older Hershey advertising images.

Simon & Schuster filed a document opposing Hershey's request for an injunction and restraining order, saying the Hershey symbols on the cover are "artistically relevant" to the book's subject and not expressly misleading. "Trademark laws are designed to protect the public from likelihood of confusion, not to protect the monopolistic goals of a company that—for whatever reason—appears not to like the fact that a book has been published about its founder without its imprimatur," the publisher said. More than half the eighteen-thousand-copy initial print run has been shipped, and the company said it would harm its relationship with booksellers to stop filling orders or to recall copies.

The 305-page book, by New York writer Michael D'Antonio, recounts the life of Milton Hershey, who built the company into a manufacturing behemoth and used his wealth to endow what is today a multibillion-dollar trust devoted to the health and education of children. In addition to the injunction, the lawsuit also seeks money damages, and Simon & Schuster-paid "corrective advertising" to counter the alleged negative effects of its actions. Hershey wants the publisher to recall all advertising and other items that violate its trademark and pay its legal costs. Reported in: *Fort Wayne Journal-Gazette*, December 25. □

(compromise. . . from page 57)

request of the Director of the FBI, identify anyone else to whom a disclosure is made (or to whom the recipient is intending to disclose).

- Language asserting that libraries, when functioning in their traditional roles—including providing Internet access, are not subject to NSLs. 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 receivewire or electronic communications." The FBI has repeatedly asserted that all libraries that provide Internet access come under this definition. So, it is very unclear whether this section as now written provides any real protection to libraries.

ALA President Michael Gorman, expressing concern about the lack of protections in the compromise, said, "It hardly seems constitutional that there is still no individualized

suspicion requirement and that a recipient of a subpoena must wait a full year to challenge a gag order.

We're glad to see that there is still a four-year sunset provision for Section 215, which will allow oversight again in four years, but disappointed that the negotiators just did not go far enough."

"The fig leaf of the alleged remedy for library patrons is the change which restricts the use of National Security Letters to obtain records on traditional library services, including use of the Internet, but this does not provide clear protection."

Currently, Section 215 of the USA PATRIOT Act gives the FBI vastly expanded authority to search business records, including the records of bookstores and libraries. The FBI may request the records secretly, and is not required to prove that there is "probable cause" to believe the person whose records are being sought has committed a crime or is in contact with a terrorist. The bookseller or librarian who receives an order is prohibited from revealing it to anyone except those whose help is needed to produce the records.

Executive Director of the ALA Washington office, Emily Sheketoff said of the compromise, "We appreciate the supporters from both sides of the aisle who tried to properly balance the civil liberties concerns. Unfortunately, the White House prevailed and the Senators who negotiated this bill were unable to address the very real concerns in Section 215—the standard for its use and the ability to meaningfully challenge these orders in a court of law."

ALA continued to call on Congress to pass the SAFE Act, which would help cure many of the problems that are left unfixed in this new proposal.

"This is an accommodation that I think we can be proud of," one of the four senators, Chuck Hagel of Nebraska, said of the compromise, adding that the changes to the bill "makes it relevant, makes it realistic, makes it workable and protects both our rights and our national security interests."

The deal focused on three particular areas. The new measure would give recipients of subpoenas the right to challenge an accompanying judicial order not to discuss the case publicly, though they would have to wait one year. In the meantime, they would have to comply with the subpoena. That would prevent the FBI from demanding the names of lawyers consulted by people who receive secret government requests for information and prevent most libraries from being subject to those requests.

Congressional and other critics said the changes were cosmetic.

"A few insignificant changes just doesn't cut it," Senator Russell D. Feingold, Democrat of Wisconsin, said in a statement. "I cannot support this deal, and I will do everything I can to stop it."

The administration would still have the power to obtain information about terror suspects who use libraries to gain access to the Internet by seeking that information not directly from libraries, but from their Internet service providers.

"This agreement clarifies crucial national security tools without weakening them and provides additional civil liberties protections," said a spokesman for the Justice Department, Brian Roehrkasse.

With the White House and Senate Republicans in accord, the bill was likely to be approved by the House. The question was whether enough Democrats would support the compromise to give Republicans, who have fifty-five seats in the Senate, the sixty votes necessary to put it up for a vote. Two Democrats supported the earlier measure and another two, Richard J. Durbin of Illinois and Dianne E. Feinstein of California, said they would support the latest version.

"It is a substantial improvement," Sen. Feinstein said. "There are three basic changes. They are specific. They do improve the bill. I think it's important to get this done."

As the fight over the PATRIOT Act played out over the last several months, the original law, passed after the September 11, 2001, attacks, was extended to March 10. The bill, which greatly expanded the government's surveillance and investigative powers, has since its passage provoked intense debate about the balance between protecting national security and civil liberties.

The original bill included sixteen provisions that were scheduled to expire at the end of 2005. The Senate and House passed differing measures to make those provisions permanent. But when the competing bills were reconciled into a new version, Sununu, Hagel and the two other Republicans, Larry E. Craig of Idaho and Lisa Murkowski of Alaska, balked, forcing the temporary extension and prodding Sununu into negotiations with the White House.

Passage would make several major components of the act permanent.

The compromise does not, however, address one of their chief complaints, that the revised bill would allow the government to obtain private records of Americans with just loose connections to a terrorism investigation. Sununu and the others had originally insisted that the government prove a direct connection. In its current version, the bill simply says the records have to be relevant to a terrorism investigation, a standard that Feingold said was "not adequate protection against a fishing expedition."

Durbin, the lone Democrat to appear with Sununu and the others at a news conference on the compromise, disagreed, saying, "As Senator Sununu has said, we've made progress here, significant progress, progress that moves us in the right direction, protecting basic civil liberties at a time when we are dealing with a war on terrorism." Reported in: ALA Press Release, February 10; *New York Times*, February 10. □

(cartoon. . . from page 59)

indispensable part of a democratic society. This being said I would like to stress as my personal opinion that I deeply respect the religious feelings of other people. Consequently, I would never myself have chosen to depict religious symbols in this way."

In a statement February 3, the White House condemned the attacks on the embassies, saying, "We stand in solidarity with Denmark and our European allies in opposition to the outrageous acts in Syria today." At the same time, the White House criticized the Syrian government for not protecting the embassies better.

Rasmussen stated repeatedly that he cannot apologize for his country's free press. But other European leaders tried to calm the storm. Chancellor Angela Merkel of Germany said she understood Muslims were hurt—though that did not justify violence. "Freedom of the press is one of the great assets as a component of democracy, but we also have the value and asset of freedom of religion," Merkel told an international security conference in Munich.

The Vatican deplored the violence but said certain provocative forms of criticism were unacceptable. "The right to freedom of thought and expression cannot entail the right to offend the religious sentiment of believers," the Vatican said in its first statement on the controversy.

Foreign Secretary Jack Straw of Britain, who criticized European media for reprinting the caricatures, said there was no justification for the violence in Damascus.

"This was a worst-case scenario, a nightmare scenario," said Thomas May, the Danish consul general in Dubai. "I don't think anyone in their wildest imagination would have expected an escalation like what we have seen."

Lebanese Muslim leaders condemned the attacks and appealed for calm. Lebanon's grand mufti, Muhammad Rashid Kabbani, denounced the violence, saying there were infiltrators among the protestors trying to "harm the stability of Lebanon." Muhammad Khalil, an Islamic teacher from Akkar, in northern Lebanon, and an organizer of the march, said: "The burning of buildings and the destruction of cars is unacceptable. This was supposed to be a peaceful demonstration, but people who love God and Muhammad are becoming overwhelmed by their anger." Reported in: *New York Times*, February 1, 5, 6. □

(IFC. . . from page 60)

multilingual digitized text and multimedia content. Content in the OCA archive will be accessible soon through this website and through Yahoo!

- HarperCollins will create a searchable digital library of its own works.

The IFC discussed the digitization of books in relation to its affect on libraries and librarianship and will continue monitoring these and other related projects as they develop.

Intelligent Design v. Scientific Theory of Evolution

At the 2000 ALA Midwinter Meeting, the IFC wrote a resolution, adopted by the Council, urging the ALA to endorse the AAAS "Statement on the Kansas State Board of Education Decision on the Education of Students in the Science of Evolution and Cosmology," and to support the AAAS call for action to restore evolution and cosmology to the Kansas state education standards and assessments. In November 2005, the Kansas State Board of Education adopted new science-curriculum standards for the state's 445,000 public school students that openly question Darwinian theory.

The IFC discussed the issue of intelligent design v. scientific theory of evolution and formed a subcommittee to address this and the larger concerns related to "fairness" and "balance."

The IFC has invited Barry Lynn, executive director of Americans United for Separation of Church and State, to speak in New Orleans on why preventing the teaching of intelligent design in science classes is not a free-speech issue.

Control and Censorship of the Internet

The UN's World Summit on the Information Society (WSIS) met in Tunis, Tunisia, November 16–18, 2005, to discuss, among other issues, the controversy over who should control the Internet.

Representatives of the world's governments agreed to let the United States control the technology that runs the Internet. Under the agreement, however, a new group was formed, the Internet Governance Forum (IGF). This new group, convened by United Nations Secretary General Kofi Annan, would begin operations in the first three months of 2006. The IGF is free to take up any Internet issue (for example, cybercrime, spam, freedom of expression, and multilingualism). The U.S. has shown a willingness to engage in discussions on the subject.

The IFC discussed the implications of this summit, as well as other issues related to control and censorship of the Internet, such as the Convention on Cybercrime, which was approved by the Senate, and which may further endanger Americans' privacy and civil liberties, and may place the FBI's surveillance apparatus at the disposal of other nations with much less respect for individual liberties.

Cable and Video

Congress and the FCC are attempting to tone down cable fare they judge as indecent. Jack Valenti is urging lawmakers to let the cable industry come up with its own solution.

The Family Entertainment Protection Act, sponsored by Senators Hillary Rodham Clinton and Joseph

Lieberman, will prohibit the sale of inappropriate video games to minors.

These and other efforts to curb cable and video indecency and violence, as they relate specifically to intellectual freedom in libraries, continue to be topics monitored by the IFC.

Projects

Contemporary Intellectual Freedom Series

The majority of printed works addressing intellectual freedom and privacy issues in the library tend to be academic or compilations of policies and articles like the *Intellectual Freedom Manual*, 7th Ed. While these references make excellent resources for the academic, the professional librarian, or the student conducting in-depth research, few works provide practical, easy-to-access guidance on intellectual freedom and privacy issues to a broader audience that can include front-line librarians, library workers, LIS students, library volunteers, and members of the general public.

This project will create a series of three publications containing the practical application of intellectual freedom principles in public libraries, academic libraries, and school libraries. Each publication will employ a nontraditional format, using contemporary design, and perhaps a bit of humor, to attract the eye and encourage the targeted audiences to browse the work. The text will use plain, accessible language to discuss intellectual freedom concepts via a series of case studies that will both illustrate and teach a particular intellectual freedom or privacy concept. The reader will be able to jump into the work at any point or find a case study to address a current problem or issue of concern.

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

Law for Librarians and Trustees

OIF has received a grant for this forthcoming project to "train the trainers" in basic law related to intellectual freedom in libraries. The project's goal is to train state IFC chairs, chapter directors and representatives from state libraries, and trustees. The project is by invitation only and will be held in Chicago in April.

Guidelines for Graphic Novels

OIF, the National Coalition Against Censorship, and the Comic Book Legal Defense Fund are developing an introduction to graphic novels for librarians. It is scheduled to be available at the 2006 ALA Annual Conference.

"Radical, Militant Librarian" Button

In recognition of librarians' efforts to help raise awareness of the overreaching aspects of the USA PATRIOT Act, OIF is offering librarians an opportunity to proudly proclaim their "radical" and "militant" support for intellectual freedom, privacy, and civil liberties.

To order the button, contact OIF at 1-800-545-2433, ext. 4220, or order online using the Radical, Militant Librarian Button Secure Online Order Form at www.ala.org/oif/radicalbutton.htm.

Inspiration for the button's design came from documents obtained from the FBI by the Electronic Privacy Information Center (EPIC) through a Freedom of Information Act (FOIA) request. The request elicited a series of e-mails in which FBI agents complained about the "radical, militant librarians" while criticizing the reluctance of FBI management to use the secret warrants authorized under Section 215 of the USA PATRIOT Act. Of course, in part because of the efforts of "radical militant librarians" arguing on behalf of their users' right to read freely, without government interference or surveillance, Congress voted to extend its debate on the renewal of the USA PATRIOT Act.

OIF sells the "Radical, Militant Librarian" buttons for $2.00 (1–10 buttons); $1.50 (11–50 buttons); and $1.25 (51 or more). All proceeds support the programs of the office.

Confidentiality in Libraries: An Intellectual Freedom Modular Education Program

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

Lawyers for Libraries

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

Since 2002, seven regional training institutes have been held in Boston, Chicago, Dallas, San Francisco, Washington, D.C., Atlanta, and Seattle. The Texas Library Association will hold a Lawyers for Libraries preconference in Houston, on April 25, 2006, during its annual conference. To date, over 200 attorneys, trustees, and librarians have attended these trainings, and an e-list has been created to allow for ongoing communication.

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

As OIF continues to sponsor institutes, more and more attorneys are learning about the intricacies of First Amendment law as applied to libraries, and the country's

library users can be more secure knowing that their rights will continue to be vigorously protected.

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

LeRoy C. Merritt Humanitarian Fund

At the 2005 Annual Conference, the LeRoy C. Merritt Humanitarian Fund celebrated its thirty-fifth anniversary. The Merritt Fund is stronger than ever, and continues to assist librarians who have been harmed in their jobs due to discrimination or their defense of intellectual freedom.

2006 Banned Books Week

ALA's annual celebration of the freedom to read—Banned Books Week (BBW)—begins September 23 and continues through September 30, 2006; it marks BBW's

Resolution on the USA PATRIOT Act reauthorization

The following is the text of a resolution passed by the ALA Council, January 25, at the ALA Midwinter Meeting in San Antonio, Texas.

WHEREAS, the American Library Association (ALA) is committed to preserving the privacy rights of all library users, library employees, and persons living in the U.S.; and

WHEREAS, the most sacred duty of the U.S. government and its officials is to preserve, protect, and defend the Constitution of the United States and so protect the civil liberties of all U.S. persons; and

WHEREAS, freedom of thought is the most basic of all freedoms and is inextricably linked to freedom of inquiry; and freedom of inquiry can be preserved only in a society in which privacy rights are rigorously protected; and

WHEREAS, ALA opposes any proposal by government that suppresses the free and open exchange of knowledge and information or that intimidates individuals exercising free inquiry; and

WHEREAS, ALA is on record opposing and calling for revision of provisions of the USA PATRIOT Act (PL 107-56) that fail to ensure the privacy rights of library users, library employees, and U.S. persons; and

WHEREAS, certain courageous members of the U.S. Congress have recognized the public's concerns about civil liberties and the extent of police powers exercised in the fight against terrorism and are negotiating among different versions to reauthorize sections of the Act that otherwise soon will expire; now, therefore be it

RESOLVED, That the American Library Association (ALA) urges the U.S. Congress to amend those provisions of the USA PATRIOT Act (PL 107-56) due for reauthorization only in a manner that safeguards the privacy rights and constitutionally protected civil liberties of all library users, library employees, and U.S. persons; and be it further

RESOLVED, That ALA urges Congress to amend Section 215 of the USA PATRIOT Act to

- require law enforcement officials to show individualized suspicion that items pertain to a foreign power or its agent, a person in contact with a suspected agent, or a suspected agent who is the subject of the investigation; and
- require records or other items to be described with sufficient particularity to allow them to be identified—reducing the danger that the FBI will engage in fishing expeditions in library or bookstore records; and
- require the FISA Court to make a finding that these facts have been sufficiently demonstrated; and
- allow a recipient of a FISA records search order to consult with an attorney or other person necessary to comply with the request, to challenge the records search order, and to challenge the gag order; and be it further RESOLVED, That ALA urges Congress to amend Section 505 to
- allow a recipient of a National Security Letter (NSL) to challenge the request in U.S. District Court; and
- allow a recipient of an NSL to challenge the gag order in U.S. District Court; and
- require law enforcement officials to show individualized suspicion that items pertain to a foreign power or its agent, a person in contact with a suspected agent, or a suspected agent who is the subject of the investigation; and
- require prior court review of NSL demands for intelligence gathering purposes; and be it further

RESOLVED, That ALA urges that Section 215 have a sunset date of no more than four years; and be it further

RESOLVED, That ALA urges that a sunset date of no more than four years be added to Section 505; and be it further

RESOLVED, That ALA urges Congress to intensify its oversight of the use of the PATRIOT Act as well as other government surveillance and investigation that limit the privacy rights of library users, library employees, and U.S. persons; and be it further

RESOLVED, That ALA reasserts its commitment to the rights of inquiry and free expression of all library users, library employees, and U.S. persons and opposes limitations and chilling effects on these rights.

twenty-fifth anniversary. This year's theme—Read Banned Books: They're Your Ticket to Freedom—highlights that intellectual freedom is a personal and common responsibility in a democratic society. More information on the twenty-fifth BBW can be found at www.ala.org/bbooks.

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

resolution in support of academic freedom

The following is the text of a resolution adopted by the ALA Council January 25 at the ALA Midwinter Meeting in San Antonio, Texas.

WHEREAS, academic institutions provide a forum for the robust exchange of a diversity of ideas; and

WHEREAS, libraries in academic institutions guarantee that a wide array of ideas that promote academic discourse are available; and

WHEREAS, academic institutions have in place long-standing representative democratic structures for review and redress of grievances; and

WHEREAS, most academic institutions follow the 1940 American Association of University Professors (AAUP) "Statement of Principles on Academic Freedom and Tenure" and their libraries follow the "Freedom to Read Statement," the "Library Bill of Rights," the "Code of Professional Ethics for Librarians," and the "Core Values of Librarianship" that are consonant with the 1940 AAUP statement; and

WHEREAS, these statements are effective safeguards of academic freedom and embrace the free expression rights and responsibilities laid out in the First Amendment; and

WHEREAS, an "Academic Bill of Rights" (ABOR) by the Center for the Study of Popular Culture, a self-described conservative nonprofit organization, is being introduced in legislatures and academic institutions; and

WHEREAS, this "Academic Bill of Rights" would impose extra-academic standards on academic institutions, directly interfering in course content, the classroom, the research process, and hiring and tenure decisions; and

WHEREAS, this "Academic Bill of Rights" applies principles other than relevant scholarly standards, as interpreted and applied by the academic profession; now, therefore, be it

RESOLVED, That the American Library Association reaffirms the principles of academic freedom embodied in the American Association of University Professors' "Statement of Principles on Academic Freedom and Tenure" (1940); and be it further

RESOLVED, That the American Library Association opposes any legislation or codification of documents like the "Academic Bill of Rights" (ABOR) that undermine academic and intellectual freedom, chill free speech, and/or otherwise interfere with the academic community's well-established norms and values of scholarship and educational excellence.

(FTRF . . . from page 61)

November 2005 and FTRF, as it did in 2002, has filed an *amicus* brief in support of the plaintiffs. The brief argues that the Presidential Records Act is a more balanced means of managing the release of presidential documents, and that the executive order interferes with these procedures established by Congress.

FTRF also is a participant in other legal actions seeking to protect and defend intellectual freedom and the First Amendment:

The King's English, Inc. et al. v. *Shurtleff* is the Foundation's most recent lawsuit challenging state restrictions on Internet content. The lawsuit challenges a Utah statute that expands the reach of that state's "harmful to minors" law by giving the Utah attorney general the authority to create a public registry of Web sites deemed "harmful to minors." Once the site is listed, the law requires Internet service providers to bar access to those sites. FTRF is a plaintiff, bringing the suit in partnership with ABFFE, AAP, the ACLU, the Comic Book Legal Defense Fund, and several local plaintiffs. The Utah attorney general has filed a motion to dismiss our complaint; it remains pending before the trial court.

Ashcroft v. *American Civil Liberties Union* (formerly *ACLU* v. *Reno*): When the Supreme Court upheld the injunction barring enforcement of the Child Online Protection Act (COPA) in June 2004, it returned our lawsuit to the District Court in Philadelphia for a trial to determine whether COPA's "harmful to minors" restrictions are the least restrictive means of achieving the government's goal of protecting children from accessing sexually explicit materials online. Discovery is ongoing and a trial date is set for June 2006.

As part of this discovery process, the Justice Department recently subpoenaed Google, AOL, Yahoo!, and MSN for millions of records of user search queries. While three of the search engine companies complied—at least to some extent—with the subpoenas, Google resisted, citing its users' privacy, trade secrets, and the burden of assembling the requested information. On January 18, 2006, the Justice Department filed suit in federal court in California to force Google's compliance (see page 63). FTRF will continue to monitor developments in this case.

Lyle v. *Warner Brothers Television Productions* is a lawsuit filed by a writers' assistant for the Friends television show. She asserts that the banter and sexual jokes shared between the show's writers during writers' conferences subjected her to a hostile work environment, even though none of the banter or jokes were aimed at her. An intermediate appellate court in California has ruled that the plaintiff can pursue her claim in the courts unless the producers can demonstrate that the banter was "creatively necessary" to the show. FTRF has joined in an *amicus curiae* brief in support of the show's producers. The brief asks the California Supreme Court to overturn the decision on the grounds that the "creative necessity" test eliminates the First Amendment protections extended to the creative and editorial processes that bar government intrusions into the creative process.

Finally, it is a truism that you cannot win them all, and so I regret to report that two of the Foundation's cases have concluded without a ruling upholding the First Amendment values we believe to be so important in each case.

The first of these cases is *Chiras* v. *Miller*, a legal action filed here in Texas to challenge the Texas State Board of Education's decision to reject a textbook, *Environmental Science: Creating a Sustainable Future*. According to the complaint filed by author Daniel Chiras and a group of students and parents, the Board rejected the textbook because it believed it was "anti-Christian" and "anti-free enterprise." The District Court dismissed the case, holding that the school board can reject a textbook if they disagree with the author's viewpoint if such discrimination is "reasonably related to legitimate pedagogical concerns." Plaintiffs appealed that decision to the Fifth Circuit Court of Appeals, which handed down its decision affirming the District Court's dismissal of the plaintiffs' case on December 12. FTRF joined in an *amicus* brief supporting the author and the students.

In ruling against the plaintiffs, the Fifth Circuit relied upon its conclusion that the school board possessed broad discretion to establish and control curriculum for the public schools, and that the board's purchase and selection of textbooks failed to create a public forum for the author. It also rejected students' First Amendment claims on the grounds that the right to receive information does not extend to the selection of books for the classroom. The plaintiffs are currently deciding whether they will appeal to the Supreme Court.

The second lawsuit, *Yahoo!, Inc*. v. *La Ligue Contra Le Racisme et L'Antisemitisme (League Against Racism and Antisemitism*), has been on our docket for several years. The case addresses monetary penalties and criminal sanctions imposed by French courts against Yahoo! for allowing Nazi-related book excerpts and auction items to be posted to its U.S. Web sites. Although such postings violate French law, they are fully protected speech under the First Amendment. Yahoo! filed suit in California to obtain a ruling on the validity of the French courts' orders in light of its users' First Amendment rights.

At trial, the District Court judge ruled that the First Amendment barred any enforcement of the French court's order in the U.S. But on January 12, 2006, the judges sitting on the Ninth Circuit Court of Appeals reversed the lower court's decision in an *en banc* decision, with three judges ruling that the court did not have jurisdiction over the two French groups who had filed suit against Yahoo! and three other judges ruling that the controversy was not "ripe" for review, as the French groups had not yet tried to collect any of the fines from Yahoo! As only five of the eleven judges believed both that the case was ripe and that the court had jurisdiction, the case was dismissed without prejudice. Yahoo! must now decide if it will appeal the decision to the Supreme Court. FTRF was an *amicus* in the initial suit and in the appeal.

Fundraising and Membership

At its Midwinter Meeting, the FTRF Board of Trustees voted to undertake the steps necessary to establish a new membership structure. While individual membership would remain unchanged, institutional membership dues will be raised to encourage libraries, organizations, and other corporate entities to support the Foundation's work at a higher level. The Board expects to have the new membership structure in place by our Annual Conference meeting in June.

I am very pleased to report that the Freedom to Read Foundation hosted a successful fundraiser on Sunday evening that featured author Sandra Cisneros, who read from her latest novel, *Caramelo*. Over one hundred people came to hear from one of our most distinguished authors and have her sign their books and chat for a while. With the assistance of sponsors EBSCO and Random House, the Foundation raised a significant sum to support its initiatives on behalf of intellectual freedom.

Finally, I want to ask once again for your personal support of the Freedom to Read Foundation. The cause is worthy, and the work is important. To become a member of the Freedom to Read Foundation, please send a check to:

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

You can also use a credit card to join the Foundation. Call 1-800-545-2433 ext. 4226 or visit us online at www.ftrf.org/joinftrf.html to use our online donation form.

SUPPORT THE FREEDOM TO READ

intellectual freedom bibliography

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NEWSLETTER ON INTELLECTUAL FREEDOM
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