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PATRIOT Act agreement under fire

UPDATE: The following story was completed in early December. On December 14, the House approved 251–174 a compromise bill reauthorizing the PATRIOT Act, but a bipartisan threat to filibuster the same bill prevailed in the Senate December 16, as the bill's supporters there could get only fifty-two of the sixty votes necessary to overcome it, Then, shortly before the Newsletter *went to press, the Senate on December 21 voted to extend the PATRIOT Act for six months. The move effectively killed a House Senate compromise that would have made fourteen of the provisions permanent and extend the other two including Section 215, which facilitates FBI access to business and library records, for seven years. The next day the House agreed to extend the Act, including the controversial provisions, but for only five weeks. Hence another showdown over the provisions is expected in late January.*

A tentative Congressional agreement reached November 16 to renew two controversial provisions of the USA PATRIOT Act set to expire this year came under fire from civil liberties advocates and some members of Congress. As the *Newsletter* went to press, it was uncertain whether the agreement would be approved. Critics said the compromise means the government can continue using the provisions to chip away at Americans' privacy and free-speech rights.

A bipartisan group of senators threatened November 17 to filibuster the compromise because of continuing concerns about the amount of authority it would give the government. The compromise was reached in a conference committee responsible for resolving differences between the PATRIOT Act bills passed by the two houses.

The controversial provisions are Section 215, known as the library provision, and Section 505, which concerns National Security Letters. Together, they have broadened the Federal Bureau of Investigation's ability to order businesses and organizations to turn over a variety of documents, such as computer and library records. In addition, those who receive the orders are not allowed to discuss them with anyone.

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periodicals

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library search provision reversed

A victory for U.S. Rep. Bernard Sanders in June prohibiting federal agents from obtaining library records under the USA PATRIOT Act was reversed in November. Sanders, a Vermont Independent, successfully attached a provision to a spending bill last summer that blocked the FBI from using funds to obtain reading lists from libraries. The provision, which passed 238–187, was later stripped from the bill during conference, and the House passed the spending bill in November 397–19.

"This is the latest heavy-handed tactic by House leaders to prevent me and other members of the House from restoring important constitutional protections for Americans' privacy," Sanders said.

Although the PATRIOT Act provision had been removed, Sanders voted for the spending bill, which provides $61.8 billion for various federal agencies, including the Justice Department.

Sanders has been a leading critic of Section 215 of the PATRIOT Act, the chapter of the sweeping terrorist-fighting law passed days after the attacks of September 1 1, 2001, that permits federal agents to secretly obtain private records from libraries and elsewhere. The law bars librarians from revealing the disclosure of records. And agents have relative freedom to ask for them, received in secretive courts rather than before publicly operating judges.

Sanders is pursuing other methods to limit the reach of the law, which he says threatens civil freedoms. As Congress moves toward re-authorizing sixteen elements of the PATRIOT Act, including Section 215, Sanders has pressed lawmakers to shorten the law's reach. For instance, he was instrumental in forming a coalition of more than 160 lawmakers. The group is opposing House recommendations to reauthorize Section 215, virtually unchanged, for ten years.

Sanders, instead, urged the conference committee to adopt the Senate version, which would require the FBI to show relevance between the library documents being sought and a terrorism investigation. Under the Senate version, Section 215 also would sunset in four years and fall under tighter congressional oversight, with the Justice Department reporting on agents' activities in libraries.

"The Senate language will help ensure that Big Brother is not reading over our shoulders," Sanders said. Reported in: *Brattleboro Reformer*, November 15. □

Pennsylvania voters oust school board

All eight members up for re-election to the Pennsylvania school board that was sued for introducing the teaching of "intelligent design" as an alternative to evolution in biology class were swept out of office November 8 by a slate of challengers who campaigned against the intelligent design policy. Among the losing incumbents on the Dover board were two members who testified in favor of the intelligent design policy at the recently concluded federal trial on the Dover policy: the chairwoman, Sheila Harkins, and Alan Bonsell.

The election results were a repudiation of the first school district in the nation to order the introduction of intelligent design in a science class curriculum. The policy was the subject of a trial in U.S. District Court that ended November 4. A verdict by Judge John E. Jones, III, was expected by early January.

"I think voters were tired of the trial, they were tired of intelligent design, they were tired of everything that this school board brought about," said Bernadette Reinking, who was among the winners.

The election will not alter the facts on which the judge must decide the case. But if the intelligent design policy is defeated in court, the new school board could refuse to pursue an appeal. It also could withdraw the policy, a step that many challengers said they intended to take.

"We are all for it being discussed, but we do not want to see it in biology class," said Judy McIlvaine, a member of the winning slate. "It is not a science."

The vote counts were close, but of the sixteen candidates, the one with the fewest votes was Bonsell, the driving force behind the intelligent design policy. Testimony at the trial revealed that Bonsell had initially insisted that creationism get equal time in the classroom with evolution.

One incumbent, James Cashman, said he would contest the vote because a voting machine in one precinct recorded no votes for him, while others recorded hundreds. He said that school spending and a new teacher contract, not intelligent design, were the determining issues. "We ran a very conservative school board, and obviously there are people who want to see more money spent," he said.

One board member, Heather Geesey, was not up for re-election.

The school board voted in October 2004 to require ninth-grade biology students to hear a brief statement at the start of the semester saying that there were "gaps" in the theory of evolution, that intelligent design was an alternative and that students could learn more about it by reading a textbook *Of Pandas and People,* available in the high school library.

The board was sued by eleven Dover parents who contended that intelligent design was religious creationism in new packaging, and that the board was trying to impose its religion on students. The parents were represented by lawyers from the American Civil Liberties Union, Americans United for Separation of Church and State, and a private law firm, Pepper Hamilton LLP.

Responding to the vote, conservative Christian televangelist Pat Robertson told Dover citizens that they had rejected God by voting their school board out of office for supporting "intelligent design" and warned them not to be surprised if disaster struck.

Robertson, a former Republican presidential candidate and founder of the influential conservative Christian Broadcasting Network and Christian Coalition, has a long record of similar apocalyptic warnings and provocative statements. Last summer, he hit the headlines by calling for the assassination of leftist Venezuelan Present Hugo Chavez, one of President George W. Bush's most vocal international critics.

"I'd like to say to the good citizens of Dover: if there is a disaster in your area, don't turn to God, you just rejected Him from your city," Robertson said on his daily television show broadcast from Virginia, *The 700 Club*.

"And don't wonder why He hasn't helped you when problems begin, if they begin. I'm not saying they will, but if they do, just remember, you just voted God out of your city. And if that's the case, don't ask for His help because he might not be there," he said.

The 700 Club claims a daily audience of around one million. It is also broadcast around the world translated into more than seventy languages.

In 1998, Robertson warned the city of Orlando, Florida that it risked hurricanes, earthquakes and terrorist bombs after it allowed homosexual organizations to put up rainbow flags in support of sexual diversity. Reported in: *New York Times*, November 9; Reuters, November 10. □

overzealous filters hinder research

The Internet-content filters most commonly used by schools block needed, legitimate content more often than not, according to a study by a university librarian. Her report was presented at the American Association of School Librarians (AASL) conference in Pittsburgh in October.

Better communication between technology staff and classroom teachers is the key to ensuring that school and library Internet filters, installed as part of a federal effort to protect children from inappropriate online content, do not preclude students from accessing legitimate educational materials, the new study found.

Presented October 8, the study chronicled the difficulties confronted by two educationally diverse groups of English students assigned to conduct term-paper research with filtered Internet access in a high school media center. Using the experiences of this school as a typical example, the study's author, Lynn Sutton, director of the Z. Smith Reynolds Library at Wake Forest University in North Carolina, found that Internet filters are apt to block legitimate educational content. Tech-savvy students, meanwhile, argue that administrators should have more faith in their judgment and ability to deal with inappropriate content, and they blame the school—not their teachers—for prohibiting them from conducting sound, unbiased research, the report said.

The U.S. Department of Education estimates that 90 percent of K–12 schools employ some sort of Web filtering technology in adherence to guidelines set forth as part of the Children's Internet Protection Act, the five-year-old law that requires libraries to install filters or surrender federal funding, including eRate discounts on telecommunications services and Internet access. But, based on her findings, Sutton reported filters overstep their bounds in many cases. Whether teachers simply are too busy to follow up with technology staff to request access to legitimate sites, or—worse—technology staff aren't responsive enough to the needs of classroom teachers, educationally useful sites too often aren't removed from these filters' block lists, despite the ability of administrators to remove them at the local level.

"Even at risk of losing federal funds, school districts should carefully consider whether filtering is necessary—or necessary at all grade levels," Sutton wrote. "If the decision is made to filter, communication among students, teachers, librarians, and technology administrators is critically important to minimize the negative effects of filtering."

Sutton, who conducted the study as part of a doctoral dissertation, wrote that students were "frustrated, annoyed, and angry" when blocked by Internet filters in their schools, especially when attempting to access content sought in relation to classroom assignments.

As part of the study, Sutton interviewed two distinctly diverse classes of English students: an advanced rhetoric class and a basic composition class. Both had been assigned to conduct term-paper research using Internet-connected computers in the school library. Prohibited through a confidentiality agreement from revealing the name of the school she performed her observations in, Sutton could say only that it was a large suburban institution in Michigan with more than 1,500 students.

In almost all instances, she said, students experienced both "underblocking" and "overblocking" of online content. Underblocking, explained Sutton, is when inappropriate content somehow sneaks past the school's Web filter. Overblocking is when legitimate educational content is blocked because it is deemed inappropriate by the technology.

"The majority of students felt that the school's Internet filter hindered their work in doing Internet research for their papers," Sutton wrote in her report. In interviews conducted during her stint with the advanced rhetoric class, Sutton said, twelve of fourteen students complained that the filters presented "a hindrance to their research."

"Students were upset that they weren't being given enough credit for how to handle these types of things," added Sutton, who said she received a similar response from students in the lower-level composition course. In many cases, she said, students told her that much of the content they're prohibited from viewing in school they encounter in their daily lives, either at home or elsewhere. What's more, she found, when students can't access the information they need, many of them are savvy enough to get around the protections.

"Students in the study were adept at getting around the filters," she pointed out. When confronted with a blocked Web

site, she said, students confessed to a number of tactics for getting to the content anyway. Depending on the technology, she said, students simply switched Web browsers, changed their browser settings—or even waited until they got home to conduct their research.

"They would say, 'Why am I even doing this here?'" said Sutton. For students who have computers at home, she explained, sometimes it's just easier to find what they need online when the filters aren't an impediment to what they perceive as their academic freedom.

For students who don't have online access from home—or some other venue outside of school—the problem is more severe, she said. "When you have a digital divide, some kids only have filtered access from school on a wide variety of issues—from abortion, to sex education, to world history," Sutton explained, citing a common criticism of Internet filtering. "The real problem," she added, "is that the school is only letting through one view of society that the school deems appropriate for children to see. And that . . . is discrimination."

But that doesn't mean filters are useless, she said. On the contrary, Sutton noted, students in the basic composition course, while annoyed with the filters, also agreed they were necessary. In fact, eight of thirteen students told her that despite the hindrance presented by Web filters, the technology itself was needed to protect schools from the liabilities associated with allowing students to view inappropriate content, including online pornography and other lewd materials, while at school.

Instead, the problem seems to lie in how the technology is administered and applied. It's a problem she attributes mainly to a lack of communication between administrators and busy classroom teachers, many of whom, she said, don't take enough time to understand how the filters work. In many cases, teachers simply accept the technology as an inconvenience and don't actively work to solve the problem, which can be done to some degree merely by adjusting the filter settings.

"There was a significant disconnect between the district's technology administrators and the classroom, which resulted in an undercurrent of frustration and hopelessness at effecting change," Sutton wrote in her report.

During interviews with school technology staff, Sutton said, it became clear that a major problem with school-installed Web filters isn't the technology itself, which can be adjusted, but rather that the school technology director often is not informed of the challenges faced in the classroom.

Too often, "the technology director just installs the filter," she said. "He isn't aware of the problems people are having. And no one ever tells him."

Aside from working with technology staff to adjust the filter settings so more relevant content gets through, Sutton suggested that teachers and administrators also poll their students for advice. Students, she noted, are full of ideas. The ones she interviewed for her report suggested that administrators and teachers work together to devise different filter settings for different age groups of students; that they use a filter for a trial period before purchasing it to make sure it fits the needs of the school; that they consider installing pop-up blockers as an alternative to constrictive filtering devices; and that administrators consider giving teachers and librarians more control over the filters, perhaps allowing them to turn the devices on and off based on the nature of the project and the level of supervision afforded each individual student.

In then end, Sutton said, it's up to school leaders to decide "whether the filter is creating more harm than good." Reported in: eSchool News Online, October 13. ☐

Rhode Island libraries ease Internet restrictions

Rhode Island's public libraries have revised their Internet filter settings in response to a report by the state's ACLU affiliate that found some libraries discouraged or barred access to constitutionally protected material.

Kathryn Taylor, president of the statewide consortium Cooperating Libraries Automated Network, said in a recent letter to the ACLU that CLAN had acted quickly to fix the problems identified in its report: The "nudity" category—which had blocked access to a range of medical and other information—was dropped from the software's minimum setting, and adult patrons now receive a message instructing them to ask a librarian if they want a site unblocked.

"We are pleased that the state's public libraries have taken a positive step toward ensuring that library patrons have the freest possible access to the Internet," said Steven Brown, executive director of the Rhode Island ACLU. However, the ACLU also noted that the full extent of overblocking in the state remained unclear, since its most recent survey showed four libraries still block more than CLAN recommends, and eighteen libraries did not respond to the survey. Reported in: *American Libraries* online, October 14. ☐

more gay-themed books targeted

In the novel *The Gilda Stories*, Gilda is a lesbian vampire who travels through time to find herself and a community with which to connect. San Francisco author Jewelle Gomez said she didn't expect how controversial writing about a "complicated" lesbian character would be. Would-be censors have targeted her book and others that have gay or lesbian content.

Three of the top ten most challenged books in 2004 were disputed for homosexual themes, a higher percentage than in any other year in the last decade, said Beverly Becker of ALA's Office for Intellectual Freedom, which compiles the annual list.

The Arkansas group Parents Protecting the Minds of Children has a petition on its Web site that objects to librarians spending taxpayers' money on books that "promote" homosexuality or gay rights.

"There's a mistaken belief that if you control words you can control people's behavior. But you can't put a cap on something and expect it to disappear," said author Gomez. She said books with gay themes have become easy targets as America becomes more conservative. "Everyone's scared for their family values," she said.

One of the top ten books challenged for homosexual content is the young adult novel, *The Perks of Being a Wallflower*, by Stephen Chbosky. A main character in the book is a gay high school freshman. The other two books were *King & King*, by Linda de Haan and Stern Nijland, and *I Know Why the Caged Bird Sings*, by Maya Angelou. Reported in: *Bay Area Reporter*, November 3. □

California library compromises on filters

A months-long debate on whether to install blocking software on the public workstations of the Solano County Library ended November 8 when the board of supervisors voted 3–2 to equip every computer in the seven-branch system with filters. The board also instructed library officials to disable the software at the request of an adult with no questions asked. All patrons younger than eigtheen will be permitted only filtered searches unless their parent or guardian allows them unfettered access.

The decision came some seven months after a patron reported that her nine-year-old daughter had seen a sexually explicit image on a Vacaville branch computer being used by another visitor. Toni Horn's complaint triggered a series of meetings throughout the county in September, conducted in the style of a National Issues Forum program.

SCL Director Ann Cousineau said that the structured NIF communication style "allowed people that had widely diverse opinions on this to come together." She added that while "I don't know that anybody changed anyone else's mind," the dialogue "epitomized the democratic process and it really epitomized that role of the library as a commons, as a place to discuss the issues of the day."

Before the community discussions could take place, however, the same youngster saw another person viewing another explicit image online during a visit to SCL's Fairfield branch to claim an essay-contest prize the child had won. "Why promote storytime and lap sits and summer reading programs for kids when you can simply walk into the library and see pornography?" Horn said, adding that since the second incident "We have stopped going to the library." Reported in: *American Libraries* online, November 11. □

CPB ex-chair removed from board

Kenneth Y. Tomlinson, the former head of the Corporation for Public Broadcasting, was forced to step down as a member of its board November 3. The move came after the board began reviewing a confidential report by the inspector general of the corporation into accusations about Tomlinson's use of corporation money to promote more conservative programming. They included Tomlinson's decision to hire a researcher to monitor the political leanings of guests on the public policy program *Now with Bill Moyers;* his use of a White House official to set up an ombudsman's office to scrutinize programs for political balance; and secret payments approved by Tomlinson to two Republican lobbyists.

The move—and a statement by the corporation—strongly suggested that the inspector general discovered significant problems under Tomlinson, but officials at the corporation declined to discuss those findings. Board members who had copies of the report declined to discuss it, citing confidentiality agreements.

The statement said the board did not believe Tomlinson "acted maliciously or with any intent to harm CPB or public broadcasting." The statement also said Tomlinson "strongly disputes the findings" in the report.

"The board expresses its disappointment in the performance of former key staff whose responsibility it was to advise the board and its members," the board's statement said, without identifying the former officials. "Nonetheless, both the board and Mr. Tomlinson believe it is in the best interests of the Corporation for Public Broadcasting that he no longer remain on the board."

The corporation, a private nonprofit entity, provides almost $400 million in annual financing from Congress for public radio and television. Directors are picked by the president and confirmed by the Senate. Established by Congress in 1967, the corporation has a potential conflict in its mission that has in recent months roiled broadcasting executives and staff. It is supposed to insulate public broadcasting from politics, but it is also supposed to ensure "objectivity and balance" in programming, a mandate that was championed by Tomlinson and remains high on the agenda of Republicans who control the corporation's board.

Representatives David R. Obey of Wisconsin and John D. Dingell of Michigan, both Democrats, sought the review in response to an article last May in the *New York Times* that described Tomlinson's efforts. Obey said the resignation "should be used to bring people together, not divide them as he and the administration have done. Public Broadcasting is too important to be anybody's partisan or ideological plaything.

Appointed to the board initially by President Bill Clinton in 2000, Tomlinson has long been close with senior Republican officials, including Karl Rove, President Bush's senior adviser and the deputy chief of staff at the White House. The board elected Tomlinson chairman in September

2003; that term expired after two years. He is also chairman of the Broadcasting Board of Governors, which oversees most government broadcasting operations overseas.

Last June, sixteen Democratic senators called on President Bush to remove him because of their concerns that he was injecting partisan politics into public radio and television. In a speech before he quit as chairman, Tomlinson said he had no regrets over "aggressively" trying to balance what he called overly liberal programming.

"I am highly skeptical of so-called nonpartisanship in public broadcasting because that appears to mean the same old liberals making the same old decisions," he said.

In its statement, the board commended him "for his legitimate efforts to achieve balance and objectivity in public broadcasting." Reported in: *New York Times*, November 4. □

Bush administration involved in "covert propaganda"

The administration of President George W. Bush broke the law as it resorted to illegal "covert propaganda" in trying to sell its key education initiative to the public, U.S. congressional investigators have found. The finding, made public by the Government Accountability Office, added to a plethora of big and small ethics scandals besetting the administration and its top Republican allies and putting them on the defensive one year before congressional elections.

The investigation was ordered by Democratic Senators Edward Kennedy and Frank Lautenberg earlier this year, in the wake of reports the Education Department had paid newspaper columnist and television commentator Armstrong Williams thousands of dollars to help promote the No Child Left Behind Law. The 2002 bipartisan measure established new testing requirements for public schools designed to ensure that students achieve an acceptable level of proficiency in reading and mathematics. But the law came in for strong criticism from local officials and teachers' unions, who argued it did not provide sufficient funds to implement the reforms.

Under the deal, Williams produced a series of radio and television shows as well as wrote newspaper columns under his own name highlighting what he saw as the benefits of the law. But in doing so, he failed to disclose the government paid him for these activities $186,000 through Ketchum, Inc., a public relations firm, according to the GAO report.

"This qualifies as the production or distribution of covert propaganda," said the investigative arm of Congress. "In our view, the department violated the publicity or propaganda prohibition when it issued task orders . . . without requiring Ketchum to ensure that Mr. Williams disclosed to his audiences his relationship with the department."

Newspaper syndicate Tribune Media Services canceled Williams' column in January.

In addition, the department placed with the firm a total of twenty-one orders for producing unattributed videos showcasing the education initiative that were made to look like normal television reports and were slated for distribution to TV networks as bona fide news stories. There is no word if any of these clips actually made it to the air.

Congressional investigators pointed out that under U.S. law, "an agency must inform the viewing public that the government is the source of the information disseminated." The report also suggested the administration may have illegally shifted nearly $38,500 within its budget to pay for its propaganda campaign.

In statements that followed the GAO report, Senators Kennedy and Lautenberg demanded the misused money be returned to the government. "The taxpayer funded propaganda coming from the White House is another sign of the culture of corruption that pervades the White House and Republican leadership," argued Kennedy. Reported in: Agence France Presse, October 1. □

compromise on Internet control

Representatives from the United States and nations that had sought to break up some of its control over the Internet reached an accord on November 15 which leaves the supervision of domain names and other technical resources unchanged. They agreed instead to an evolutionary approach to Internet management. But the accord, a document of principles that delegates from more than one hundred countries worked out after more than two years of sometimes fiery argument, also established a new international forum intended to give governments a stronger voice in Internet policy issues, including the address system, a trade-off the Americans were willing to accept.

American delegates who had been working on the document celebrated the outcome. Only in September, the European Union had made a well-received proposal to put some of the American powers under a new agency. In the prelude to the talks that resumed in mid-November, increasing pressure had been brought on the Americans to share their authority.

David A. Gross, coordinator of international communications and information policy in the State Department, said: "I didn't think it was possible. We did not change anything about the role of the U.S. government. It's very significant."

The United States maintained that diluting the authority of the body that now manages the Internet address structure, the Internet Corporation for Assigned Names and Numbers, known as ICANN, could jeopardize the stability and security of the global network. ICANN is a California-based nonprofit group that is answerable to the Commerce Department.

The Internet, a largely decentralized way of linking many computer networks and retrieving data almost instantly, is dependent on a centralized master file that decodes its address scheme. That master file is under ICANN's jurisdiction.

Although many of the Internet's basic concepts and its infrastructure grew out of American government and academic research in the 1960s and '70s, most Internet users are now outside the United States. The computer network has grown into a critical international tool for communications and commerce.

That has led foreign governments to question why control over certain parts of the Internet plumbing still belong to the United States.

Masood Khan, the chairman of the working group and the Pakistani representative in Geneva, said the process of re-examining government involvement in the Internet would persuade ICANN officials to take the new forum seriously. The forum, he continued, is free to take up any Internet issue, whether cybercrime, spam, freedom of expression and multilingualism—even domain-name address questions.

"That has not been done before," Khan said. "The U.S. had maintained that it alone was qualified to handle such matters. Now, the U.S. has shown a willingness to engage in discussions on the subject."

Nations that argued most strongly against the American position, on the other hand, acknowledged in the end that ICANN had the technical experience needed to make the present system work, Khan said.

Under the agreement, the new group, the Internet Governance Forum, would begin operations in the first three months of 2006, convened by the United Nations secretary general, Kofi Annan. Greece offered to be the host of the meeting. The forum will have no power beyond the ability to bring together all the "stakeholders" in the Internet, from consumer groups to governments to private business.

The document states, among other things, "We recognize that the existing arrangements for Internet governance have worked effectively to make the Internet the highly robust, dynamic and geographically diverse medium that it is today, with the private sector taking the lead in day-to-day operations."

An American assistant secretary of commerce, Michael D. Gallagher, said "the leadership role of the private sector, where before it was informal and unofficial, is now clear."

The text also defined Internet governance as "more than Internet naming and addressing," including public policy issues like the security and safety of the Internet, as well as developmental issues, affordability, reliability and quality of service. But it also said that the forum would "have no oversight function and would not replace existing arrangements, mechanisms, institutions or organizations." Reported in: *New York Times*, November 16. □

(PATRIOT Act . . . from page 1)

The agreement would for the first time define a penalty for those who disclose that they have received National Security Letters: They could face criminal prosecution and a year in prison. In addition, reporters could be subpoenaed and forced to reveal their sources if they identified recipients of the Letters. The provision on the Letters, which the agreement would make permanent, would continue to permit FBI officials to issue the Letters without first seeking a judge's permission.

The agreement does not include a change to the library provision that the Senate had proposed. That proposal would have required the government to show that the individual whose records were being sought was connected to a terrorist suspect or terrorist activity. Also, the agreement calls for the library provision not to be reviewed again for seven years. The Senate had wanted it to be reviewed after four years.

But the compromise made some concessions to civil libertarians. It explicitly states that those who receive National Security Letters or orders for records under the library provision can consult with their lawyers, and it would require the Justice Department to reveal how many times it has issued National Security Letters. Also, the compromise would require annual audits by the Department of Justice's inspector general of the government's use of National Security Letters and orders under the library provision.

Critics called those changes only minor improvements. "This was their great opportunity to correct their past mistakes," said Emily Sheketoff, the executive director of the Washington office of the American Library Association, of Congress's review of the PATRIOT Act. "They did not."

The Campaign for Reader Privacy, a coalition of booksellers, librarians, writers, and publishers expressed disappointment over the failure of a House-Senate conference committee to include previously approved, critical protections for bookstore and library records in the final version of legislation. The Campaign urged senators and representatives to vote against the bill.

"From what we have seen, there is simply not enough in the final bill to restore some basic First Amendment and due-process protections that were unnecessarily abridged in the hastily passed USA PATRIOT Act," said Oren Teicher, chief operating officer of the American Booksellers Association, speaking on behalf of the Campaign. "It will still be possible for the FBI to trawl through the bookstore and library records of ordinary readers. So it is unclear to us what exactly has been gained in terms of meaningful new protections."

Some Democratic lawmakers also complained that the compromise was reached without their input. Under the compromise, fourteen out of sixteen provisions of the PATRIOT Act that are set to expire at the end of December would be made permanent.

"This is a blatant abuse of the democratic process and a blatant abuse of power," said Rep. Jerrold Nadler, a New York Democrat. "When we allow conference committees to rewrite bills behind closed doors, we ignore the will of the people, the will of their elected representatives, and the traditions of American governance." Reported in: *Chronicle of Higher Education* online, November 18. □

censorship dateline

libraries

Tucson, Arizona

Arizona's education chief wants schools to ban a book he has never read after receiving a complaint from an Apache Junction grandmother. *The Perks of Being a Wallflower* contains numerous sexual references, including a scene where a girl is forced to have oral sex with a boy during a party. That was the only page Superintendent of Public Instruction Tom Horne read after receiving the complaint.

"The page is not just oral sex. It's nonconsensual oral sex that's described in detail," he said. "There's nothing in *Catcher in the Rye* that's remotely comparable to this."

Horne sent a letter to charter schools and public school principals and district superintendents asking them to look at their school policies regarding library books. "I'm hoping that if they have this book on the shelves they make sure that this is no longer available to minors or any other students for that matter and they will check to see if there are any other books like that on their shelves," Horne said. "I wouldn't dream of trying to stop adults from reading it, but schools should not make this book available to students in their charge."

Horne says he is "against censorship," but some officials worry.

Tucson Unified School District (TUSD) "is not in the habit of censorship," said Harriet Scarborough, senior academic officer for curriculum instruction and professional learning. "Once we start taking books off the shelves, we might end up with no books at all."

The book was written by Stephen Chbosky and compared by critics to John Knowles' *A Separate Peace* and J. D. Salinger's *Catcher in the Rye*. It was found in the libraries of nine TUSD high schools and two middle schools, Scarborough said. Horne said it has been set at a fourth-grade reading level, but has not been found in any TUSD elementary schools.

"I haven't read the whole book, and I would hesitate to make a judgment based on that one page," Scarborough said. "Just taking a page out of context is not going to make your complaint very valid. TUSD leadership will have to do some research and discuss whether removing books like that is something that we want to start practicing."

Sunnyside Unified District officials did not find the book in their libraries, but said those who complain about questionable content in a book are asked to read the entire book before filling out a written complaint.

The decision should be left to the parents, said Melissa McCoy, mother of two boys at TUSD's Bonillas Elementary School. School libraries should stock books like this on their shelves, but let parents decide if their children should read it.

"A school library is the same as a public library," she said. "I think it's unfortunate that our librarians need to worry that a book will offend a parent or a group of parents. It's up to you to watch what your children are checking out and exposing themselves to. I do believe families should be given the choice without censorship. Censorship is not a learning tool; censorship is a limitation."

TUSD's Scarborough is also concerned about Horne's broader request for schools to check for other books that might be objectionable. "What is he going to do, check every book in the library and determine if a book has pages like those? We're going to be burning books again," she said. "We need to approach something like this with a focus and we need to have a system. We can't be reactionary." Reported in: *Tucson Citizen*, November 23.

Los Angeles, California

The Los Angeles County Board of Supervisors unanimously approved a motion October 11 to direct the county librarian to do whatever she can to block access to pornography on computers in the county's public libraries. The motion, originally submitted by Supervisor Michael D. Antonovich on September 20, was to order Librarian Margaret Donnellan Todd, in conjunction with county counsel, "to employ all measures necessary to block access to pornographic Web sites on computers in county public libraries."

Antonovich read the motion at the supervisors' weekly meeting, directing Todd to "adopt privacy technology as it

becomes available" and to "identify the funding requested to proceed."

The issue first arose when Canyon Country mother Lorie Holguin complained about her four-year-old daughter's inadvertent viewing of a computer screen with pornographic material in August at the Canyon Country Library. The computer was just ten feet or so from the children's section of the library. Holguin said in August she "noticed the man sitting next to us was viewing very graphic, harsh pornography."

The mother, who later wrote a letter about the issue to Santa Clarita Mayor Cameron Smyth, said she immediately approached library officials, who told her there were no restrictions on computer content.

Nancy Mahr, spokeswoman for the county public library system, said that to control the content would be censorship. "It is a First Amendment issue," Mahr said in August. "The Supreme Court ruled that they have the right to view what they want . . . so long as it is not illegal."

In August, the Board of Supervisors instructed Todd to write a report on the methods that would ensure that children and other patrons are protected from exposure to pornographic material on the Internet being viewed by people on computers. The report recommended the permanent attachment of privacy screens on computers with unfiltered access, the filtration of Web sites on all children's computers from objectionable sites, and the moving of adult computers away from the potential path of children.

Antonovich's communications deputy Tony Bell called that report "a solid first-step," and added that children should not view Internet porn "accidentally or otherwise."

"The taxpayers really ought not be charged with the responsibility to grant access to pornography at our libraries," Bell said. Reported in: *Santa Clarita Signal*, October 12.

Oak Lawn, Illinois

The Oak Lawn Village Board announced at an October 25 meeting that it was writing to city library trustees to request that they revisit their June 2004 decision to retain *Playboy* magazine over the objections of an area resident. "There is a difference between censorship and sponsorship," Oak Lawn Mayor and Board President David Heilmann remarked. "If someone wants the magazine, that's fine. They can buy it at a store."

The board voted unanimously to send the letter after hearing from Mark Decker, the Oak Lawn man who most recently appealed the board's June decision to keep *Playboy* in the library. "Pornography and children don't mix. This is not my opinion; it is fact," Decker said.

"In my thirty-two years, I've never seen a municipal body ask a library to remove a title," said Library Director James Casey. Decker met with law enforcement officers regarding the sale of pornographic magazines in convenience stores; the Oak Lawn police subsequently wrote store owners to caution them that they might be selling titles that violate local obscenity laws.

Throughout the controversy, the library has continued to make *Playboy* available by request only to patrons who are at least eighteen years old. Reported in: *American Libraries* online, October 28.

Granbury, Texas

A book in the Acton Middle School library has one Granbury grandmother seeing red. The book, *Detour for Emmy*, by Marilyn Reynolds, recounts the choices that the sexually active title character must make after an unprotected encounter with her boyfriend that leads to teen pregnancy.

Caroline Sanders' thirteen-year-old granddaughter brought the book home from the library. "I read a couple of pages, and it talks very vividly about the sexual encounters of a fifteen-year-old," she said. "Maybe I am living in the dark ages, but I don't think it is appropriate for a thirteen-year-old to read that."

Acton Middle School librarian Linda Goodgion spoke to the grandmother about the book, and says there's no way to censor what students check out. "I understand why she is upset, and I think she did an excellent job of filtering what her granddaughter is reading," she said. "I have to have faith in their (students) ability to choose what meets their family's standards. I can't go out there and say 'you can't take this book.'"

With such a diverse student body at the middle schools, from seventh-grade to freshmen, Goodgion has the job of selecting books for two very different groups. "I have a responsibility to select books for students that are older in age, interest and maturity," she said. "I also have books that have been and are best-sellers on the Christian booklists. I encourage my younger girls to read those.

"This particular book was an award winner, and it was purchased by all the standards that I know to use as a librarian. It was purchased with an older group in mind."

Sanders said the book does not belong in a middle school library. Period. "Even if my granddaughter were a freshman, I wouldn't even want her reading it," she said.

Detour for Emmy was cited as one of the American Library Association's Best Books for Young Adults in 1993. "It was written by a woman who works in an alternative school and the purpose is to try to dissuade youngsters from going that way (teen pregnancy)," Goodgion said.

But Sanders said she would not consider her granddaughter a young adult at age thirteen. "She is naïve and from the name of the book and the front of the book, she thought it would be a good book to read," Sanders said. "When we took it away from her, she thought she had done something wrong."

Sanders took the book to AMS principal Bobby Mabery, who is reviewing the book. Goodgion said the book will remain in the library until the matter is settled.

"We have a policy on challenged material. The person has to read the entire book and then quote what they believe is unacceptable," she said.

Sanders is ready to take action to get the book removed, but is concerned with what else might be in the library deemed inappropriate for young teenagers. "I don't know how much good it's going to do to remove that one book," she said. "Yeah, I don't think they should be reading it, but there is no telling how many more there are like it." Reported in: *Hood County News*, September 28.

Montgomery County, Texas

The normal quiet of Montgomery County's libraries was interrupted by the roar of an industrial mulcher October 13 as members of the American Veterans in Domestic Defense protested various books they found to be indecent, by shredding a book in effigy at each of the six county library locations.

Jim Cabaniss, the president of AVIDD, led a group that at times numbered up to fifteen, following a flatbed truck with a mulcher, starting at 9 A.M. at the library system's central branch in Conroe. They then went to the libraries in Montgomery, Willis, New Caney, Woodlands (South Branch), and Magnolia, holding a rally at each. The group met its strongest resistance in The Woodlands, where about forty-five people protested against the veterans' group.

Cabaniss spoke from the back of the flatbed truck about the "filth and smut that have polluted our libraries." He orchestrated the shredding of "symbolic" books—which he made clear were not those on the group's list, but books he owned privately—representing what he wanted to do to the more than seventy titles the group was against.

Jerilynn Williams, director of the Montgomery County Memorial Library System, said, "This is a group of people expressing their opinion . . . the group has a right to their opinion, as does any other."

Conroe police arrived just before the rally at the Conroe Library began, clarifying the limits of both parties' rights. Members of AVIDD said they were concerned about a possible counter protest from the gay and lesbian community. Williams asked the group to clean up any books shredded on library property.

About fifteen protesters and ten counter protesters arrived shortly after 9 A.M. at the main library, holding signs which read everything from "Liberal library lesbian agenda" and "Clean up my library," to those in the opposition holding posters which said "Ban censorship" and "AVIDD cannot tell me what to read."

Cabaniss said he was impressed with the number of people who showed up to the rally and was pleased to see that some opposition came out. He likes to see people exercising their constitutional rights, he said.

"The enemy is loud and boisterous, we tend to be more reserved," he said, which is why AVIDD decided to hold the rallies, aiming to catch the ear of more members of the community but especially the county commissioners. "I'd like for the county commissioners to bear down on the librarians to remove vulgar pornographic material and smut," said Cabaniss, "because I think there is a correlation between [that material] and pedophiles."

Cabaniss said that there are two works on the group's list that he is particularly familiar with. One, *Plastic Man*, by Art Speigelman and Chip Kidd, he carried with him as he walked through the group of people. The first sixty pages of *Plastic Man* reads like a proper comic book, he said, but the second half displays "pictures straight out of *Playboy* and a group of six or eight couples who are sitting around bored and decide to do wife swapping."

An abbreviated list of the alleged inappropriate books was distributed at all of the rallies, but only included twelve of the seventy titles.

"Where do you people come from with these ideas?" was Chris Gray's reaction when he and his friends were approached by Pete Goeddertz, a member of AVIDD. Gray, a children's librarian from the Harris County Library System, and Goeddertz, a Vietnam veteran from Magnolia, disagreed over whether or not homosexuality is a vice.

Gray argued that regardless of personal beliefs, it is a librarian's job to offer balanced information to the community so that reading decisions are the individual's prerogative. "None of it is pornographic, and most of the books are in the Young Adult, not the Children's section anyway," he said. "These books are on the shelves like the others, they are not being forced down children's throats . . . they are tools that should be used by the public," said Gray.

Goeddertz said that he is heavily guided by his religious convictions and that he would be just as adamant in trying to remove books that promote any vice. More importantly he said, "If the general consensus of the community is conservative, the library needs to reflect that." Simply removing the books in this case wouldn't be enough though he said, and he is calling for Jerilynn Williams' job.

"I think Jerilynn Williams should be fired," he said, "Her views do not reflect the values of the community."

The issue, he said, isn't over constitutional rights but that taxpayers foot the bill for the materials in the library and thus should be able to dictate what stays and what goes. "If Jerilyn Williams could have it her way, we'd have *Penthouse* and *Playboy* and other things like them."

With more than thirty years of experience and a master's degree in Library Science from the University of North Texas, in addition to having held several board positions on a variety of organizations, including the American Library Association, Williams said she believes that her performance and the efficiency she has helped to promote in her eight-year tenure in the job speak for themselves.

"I serve at the pleasure of the commissioners and they have the power to hire and fire, but every indication that I have received is that I am doing a good job," said Williams. "Even Mr. Cabaniss commented on our efficiency," she said.

The library system's standard protocol makes provisions for reviewing material if initiated by a form filled out by the public. "The library recognizes that some materials may be considered controversial or offensive to some patrons . . . " says the official policy, " . . . selection will not be inhibited by the possibility that controversial materials may come into the possession of children."

The policy which was challenged in a similar series of protests beginning in August of 2002, expanded the library's review board to include one citizen appointed by each commissioner.

If residents have qualms about a book, said Williams, they simply have to fill out a Request for Reconsideration of Materials Form, which are available from any of the libraries. The books then will go to the committee where they will be reviewed and decided upon. Negative reviews, she said, will not always result in taking the books off of the shelves, as there are more variables to be considered.

Jim Cabaniss said he has not filed any such forms with the library, but several of his supporters have, and have not seen results. He said that ideally the commissioners would respond to their protest and direct Williams to get rid of the books.

Ronald Brown, a seven-year Conroe resident and a veteran of World War II, held he was not against what the group was doing so much as how they were going about it. "It is not a library problem; it is a lack of morality in education." He said that despite AVIDD's veteran ties, the group does not entirely represent his views. The material AVIDD was protesting, he said, has been available as long as he can remember.

"When I was a kid there was smut out there but anyone with moral character wouldn't look at it," said Brown. "If they want to find it, (kids) will find it whether it's in the library or in a vault . . . we need to teach them morality ."

Emily Parham, a seventeen-year-old senior at The Woodlands High School, said that she has read several of the books on AVIDD's short list, including *The Perks of Being a Wall Flower*, by Stephan Chbosky. "I think the book was a great read; clearly the main character has some social issues, but it doesn't focus on homosexuality," said Parham.

"I don't think you can accurately represent a modern coming of age story without referencing the presence of things like that," she said. The responsibility of filtering out what is appropriate, said Parham, should invariably fall in the lap of the parents. Reported in: *Houston Community News*, October 13.

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 disagreed with Banks' 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.

Geography Club is one of ten nominees for the Evergreen Young Adult Book Award 2006. It's received favorable reviews and been placed on numerous adolescent reading lists. Although the novel has been challenged in other schools for its sexual content, Hartinger said this issue with his book was a first.

READ

BANNED

BOOKS

"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

Littleton, Colorado

Littleton English teachers vowed to seek reinstatement of a book by Nobel Prize winner Toni Morrison that the Board of Education banned in August. *The Bluest Eye* was barred from the curriculum and library shelves after complaints about its explicit sex, including the rape of an eleven-year-old girl by her father.

Heritage High School English teacher Amanda Hurley agreed the work is "painful, dif ficult to read." But, Hurley said, the book emphasizes such values as empathy . "We have to discuss it, we have to learn from it," she said.

The school board listened to proponents of Morrison' s book at a special meeting October 5. Earlier, students at Heritage and Arapahoe high schools held readings of the book in their school libraries.

Board President Mary McGlone said the panel does not intend to reconsider the August decision. But any member of the community can initiate the process of adding a book to the list of approved volumes, she said. That process could bring the issue back before the school board before the end of the school year.

Littleton High School English teacher Judy Vlasin said she would file an application on behalf of *The Bluest Eye* in coming weeks. She'll include material supporting the educational value of the book, she said.

"It's pretty shocking that any school board would ban a book by a Nobel Prize winner," said Vlasin, who has taught the book to junior and senior classes. "It's a huge step backward for the school district."

But Pam Cirbo, who has a child and foster child at Heritage High, said the descriptions in the book are too "horrific" for some high school students. "Do they need to know the explicit graphic-ness of a rape? I don' t think so," Cirbo said. She said the book is appropriate for college students. "Certainly it's not trash," she said.

Under a previous policy , the book was approved for students in tenth grade and up. Complaints came in March from the parents of a Heritage High ninth-grader who chose the Morrison book from a list of optional reading. A study group that included parents, teachers and administrators recommended restricting the book to juniors and seniors. The board rejected that recommendation at the August meeting on a 3–2 vote, opting instead to remove the book from reading lists.

Heritage High senior Camille Okoren, eighteen, said she worries the board will ban more books. "Once you ban one book, parents and teachers think it's OK to ban another book," Okoren said. "Everyone is offended by different things."

Okoren is reading *The Bluest Eye* on her own. She was among the students who took part in a public reading of the book at the school library. Okoren said students hear about rape and incest in the news media. It's better to learn about those subjects from a Nobel Prize winner with deep roots in the subculture she writes about and to discuss it with a teacher in class, she said.

Arapahoe High School English teacher Marlys Ferrill said she recommended the book to her own daughter when she was a junior at Arapahoe. "I thought it was a very powerful way for her to learn about the dif ferent issues people face in life," Ferrill said. Reported in: *Rocky Mountain News*, October 7.

Daytona Beach, Florida

After months of controversy , a Florida school board is considering whether Bapsi Sidhwa's novel, *Cracking India*, can safely be read by minors.

In September, Vikki Reed was infuriated that her daughter Rebekka, a junior at Deland High School, near Daytona Beach, had been assigned what Reed considers "pornographic material." Reed asked the Volusia County school board to halt instruction on the book.

Cracking India, published in 1990, describes the 1947 partitioning of India through the eyes of an observant small girl with polio. *The New Y ork Times* named it a notable book, as did the American Library Association. It's become a staple on college reading lists.

At Deland, the novel was taught as part of the school's International Baccalaureate Program, whose curriculum is college-level. In a letter sent home, parents were offered the option of having their children assigned an alternate book.

Reed particularly objected to a two-page scene in which the narrator brushes of f an older cousin' s attempt to trick her into performing oral sex.

Sidhwa said she was astounded to hear that the school board had considered banning the book. "I thought, this is the twenty-first century!" she wrote. "If anything, the humor in the scenes the mom mentions desensitizes rather than titillates."

Sidhwa says she'd never heard the novel described as pornographic before. "Not even in Pakistan, where a kiss is cut on TV, or India," she wrote. "This is the way of the culture in the U.S. these days—to focus on trumped-up issues of supposed morality and distract the population from discussion of large ideas and movements of history."

On November 4, an advisory committee to the school district ruled that the novel is suitable for high school

juniors and seniors. "I felt vindicated and grateful," says Sidhwa. "It restored my faith in American values that encourage openness and discussion." Reported in: *Houston Chronicle*, November 11.

Berkley, Michigan

A song about people picking cotton was pulled from a middle school concert in suburban Detroit after a black parent complained that it glorifies slavery. Superintendent Tresa Zumsteg decided November 14 to remove the song "Pick a Bale of Cotton" from the program, said Gwen Ahearn, spokeswoman for the Berkley School District.

Ahearn said that when the song was picked for the folk songs concert at Anderson Middle School, there was no intent to offend anyone. "As it became apparent that is the case, we pulled the song," she said. The school is predominantly white.

The song's lyrics include, "Jump down, turn around, pick a bale of cotton. Gotta jump down, turn around, Oh, Lordie, pick a bale a day."

Parent Greg Montgomery said he complained to school officials, and when he was dissatisfied with their response, decided to pull his eleven-year-old daughter, China, from singing. "It's mind-boggling that people don't understand sensitive issues," he told *The Detroit News*.

China said: "They were bringing back the memories of how African Americans picked cotton, and it wasn't a good memory. It was disrespectful to African Americans."

Ahearn said there's nothing derogatory in the song's lyrics, but the district did not want China to miss the concert. "For her family and the school district, the best thing was to pull the song," she said.

Earlier, Ahearn, while confirming that officials were considering pulling the song, had defended the choice. "We used to sing that song when I was in school during the '50s," she said. "It's like a Southern type of folk song. I remember it being perky. It was more of a song that people just sang for fun." Reported in: Associated Press, November 14.

Albuquerque, New Mexico

While the nation debates whether President Bush and his administration deliberately misled the nation into war in Iraq, local parents, Albuquerque Public Schools and its high school educators are facing off over the accuracy of a history textbook used in advanced placement (college preparatory) history classes. The debate, which finds itself before a district committee of parents and educators reviewing the complaints, raises serious questions about the purpose and aims of teaching history (national pride and civic duty are often cited) and whether Albuquerque and other Americans are being adequately equipped to engage in public policy debates that have historical roots—including a decision to wage war.

In one corner of the fight, illustrated by the jabs of parent Tony Watkins, critics contend a high school textbook used in AP classes is insensitive to minorities, yet portrays Europeans in "glowing terms." Another critic, Darva Chino, an Acoma-Navajo woman, school administrator and parent, said the book is a typical example of history textbooks that are not just "to people of color."

Watkins cited criticism of the *American Pageant* textbook by history professor James Loewen. Loewen's book, *Lies My Teacher Told Me: Everything Your American History Textbook Got Wrong*, challenges the high ground of teaching American history to the country's high school students.

Loewen discovered, during a survey of American history textbooks while at the Smithsonian Institution, thatAmerican high school textbooks were less focused on historical fact than they were on blind patriotism and optimism. He found them full of misinformation, inaccuracies and sins of omission. For example, if you are wondering why you may know so little about the Vietnam War, it might be because Loewen found that about nine out of tenAmerican high school history classes never even mention Vietnam, while those that do tend to provide a very limited and misleading story.

It should be noted that Loewen, in turn, has been criticized for presenting an "unabashed left-wing perspective," or what some might describe as a "politically correct" approach.

Some Albuquerque history teachers defend the use of *American Pageant* as comprehensive (1,044 pages), authored by Stanford and Harvard University professors, and recommended nationally for use in the rigorous advanced history classes. Reported in: *Albuquerque Tribune*, November 15.

Fargo, North Dakota

Pamela Sund Herschlip and Ruth Walsh don't consider themselves censors or book banners or any of the other names they've been called. They merely see themselves as two moms who care about their kids and the kids of others. The two women want the Fargo School District to eliminate John Grisham's best-selling novel *A Time to Kill* from an advanced placement English class at North High School.

Their request was denied at the building and district levels. On November 8, the two appeared before the School Board, which will make the final determination. Neither woman holds much hope the board will overturn previous decisions, but they refuse to drop the fight. For them, the novel and the district's support of it is a symptom of a society gone awry.

"We protect teachers, adults, lesson plans and books, but we're not doing anything to protect our children," said Walsh, whose daughter was assigned the novel last year.

At issue are a handful of scenes in the book. Grisham's novel, set in Mississippi, tells the story of a lawyer who

defends a black man after he shoots two white men who raped his young daughter. The novel describes the rape of the young girl in detail and includes descriptions of blood and brain matter after the father shoots the rapists.

Sund Herschlip gathered more than seventy-five signatures from people who support removing the book from the classroom and school libraries. She couldn't say whether all the signers had read the book in its entirety, but she offered to let them read the passages she considered offensive.

In March, Herschlip tried to read these passages during a School Board meeting where she asked the board to remove a different novel—*Mick Harte Was Here*, by Barbara Parks—from elementary school libraries. Herschlip's youngest daughter attends Centennial Elementary in south Fargo.

She was cut short by board President Jim Johnson, although it was unclear whether he interrupted her because *A Time to Kill* wasn't being reconsidered at that time or because board members found the passages offensive.

On October 12, Johnson sent Herschlip a memo saying her appeal of the Grisham novel would be placed on the board agenda. In the memo, he wrote: "I would ask that you refrain from reading actual passages from the book. As you may recall from your previous presentation to the Board, some of the members felt that oral reading of specific passages was inappropriate in an open public forum."

Sund Herschlip views the advice as a blatant contradiction. "If I can't read the passages in a public setting, why are we allowing our children to read them?" she asked.

The mothers' mission to remove the book from the classroom hasn't been without some rewards. After Walsh pointed out that her child needed parental permission to view an R-rated movie in class, Superintendent David Flowers said a parental sign-off on material like *A Time to Kill* "is not unreasonable." In addition, he recommended telling students and parents about any controversial subjects that might appear in assigned novels.

The advanced placement teacher sent students a description of all works they will read this year. The Grisham novel summary states a girl is "brutally raped, beaten, and left for dead." It also notes the book has been challenged, although it doesn't say why.

Challenges to two books in the past year also forced the district to re-examine its material selection and reconsideration policy. Administrators, educators and members of the PTA's citywide council will review the updated policy before it is presented to the School Board as early as December, Flowers said.

"I think it's appropriate we update it, given it's been on the books for quite a while," he said.

Sund Herschlip and Walsh said they have no issue with an adult choosing to write and read *A Time to Kill*, although both describe the novel as the antithesis of quality literature. They praise the book *To Kill a Mockingbird*," with which the Grisham novel is compared and contrasted during the class lesson. Reported in: in-forum news, November 7.

university

Flint, Michigan

The charcoal drawing called "Hermaphrodite," which hangs in the Lesbian, Gay, Bisexual, and Transgender Center at the University of Michigan at Flint, is accurately named. It portrays a naked female body, with wings, and also with a penis. The drawing has been on display for more than two years, but if you go to see it now, you'll find it covered with black paper and the word "censored" written over the paper.

University officials ordered the drawing removed, saying that it was creating a hostile work environment for an employee who complained about it. Students at Flint have thus far complied only by covering up the drawing, and many are furious at the university for seeking to have it removed.

"This art represents a person's identity, and the university is now trying to censor that identity," said Greg Storms, a senior at Flint who is a volunteer in the center with the drawing and president of the gay rights group on campus. He said that a transgendered artist gave the center the drawing a few years, after it was part of an art show organized on the Flint campus.

"This is just plain scary to us. It is saying on an institutional level that we are not accepted," Storms said.

While there are not complete images of the artwork online, *The Michigan Times*, the student newspaper at Flint, ran the image, with the penis blacked out.

Student groups have responded to the controversy by chalking various phrases on campus walkways. Phrases have included "A is for Art, B is for Body, and C is for Censorship" and "UM censored us."

Storms said it's not just a question of body parts, but of an idea being conveyed by the drawing. "To me, this represents the fluidity of gender to its fullest," he said. He scoffed at the idea that the drawing hurt any employees, and said he believed the complaint came not from a permanent worker in the office, but someone who had just needed to stop by one day. "This center serves transgendered students, so why should there be any surprise about transgender art?" he asked.

Julie Peterson, a spokeswoman for the University of Michigan, said the issue was more complicated than that. She said that when an employee complained, university lawyers reviewed the artwork and the situation, and determined that the drawing needed to be removed. Peterson said it wasn't clear whether covering up the drawing was sufficient. (Storms said the cover-up was done in a way that allows someone who wants to look at the drawing to pull up the paper and do so.)

"We have a long tradition at Michigan of freedom of expression, but there is a difference between what you might show in an exhibit and what might be in the workplace," she said. "As an employer, there are federal obligations to create a comfortable workplace." Reported in: insidehighered.com, October 21.

periodicals

Washington, D.C.

One might have thought the White House had enough on its plate in October, what with its search for a new Supreme Court nominee, the continuing war in Iraq and the CIA leak investigation. But it found time to add another item to its agenda—stopping *The Onion*, the satirical newspaper, from using the presidential seal.

The newspaper regularly produces a parody of President Bush's weekly radio address on its Web site (www.theonion.com), where it has a picture of President Bush and the official insignia.

"It has come to my attention that *The Onion* is using the presidential seal on its Web site," Grant M. Dixton, associate counsel to the president, wrote to *The Onion* on September 28. (At the time, Dixton's office was also helping Mr. Bush find a Supreme Court nominee; days later, his boss, Harriet E. Miers, was nominated.)

Citing the United States Code, Dixton wrote that the seal "is not to be used in connection with commercial ventures or products in any way that suggests presidential support or endorsement." Exceptions may be made, he noted, but *The Onion* had never applied for such an exception.

The Onion was amused. "I'm surprised the president deems it wise to spend taxpayer money for his lawyer to write letters to *The Onion*," Scott Dikkers, editor in chief, wrote to Dixton. He suggested the money be used instead for tax breaks for satirists.

More formally, *The Onion's* lawyers responded that the paper's readers—it prints about 500,000 copies weekly, and three million people read it online—are well aware that *The Onion* is a joke.

"It is inconceivable that anyone would think that, by using the seal, *The Onion* intends to 'convey sponsorship or approval' by the president," wrote Rochelle H. Klaskin, the paper's lawyer, who went on to note that a headline in the current issue made the point: "Bush to Appoint Someone to Be in Charge of Country."

Moreover, she wrote, *The Onion* and its Web site are free, so the seal is not being used for commercial purposes. That said, *The Onion* asked that its letter be considered a formal application to use the seal.

No answer yet. But Trent Duffy, a White House spokesman, said that "you can't pick and choose where you want to enforce the rules surrounding the use of of ficial government insignia, whether it's for humor or fraud." Reported in: *New York Times*, October 24.

Portland, Oregon

In October, the following items were readily available to any teenage girl who stepped into an Albertsons store: at least four brands of condoms; a recent *Men's Health* magazine article called, "Six Secret Ways to Turn Her On"; *Cosmopolitan*'s tips on how to make your own sex video. Unavailable in any of Albertsons' 2,500 locations was the October issue of *Seventeen* magazine.

The grocery chain pulled that issue from shelves. The reason? An article on women's anatomy.

The article, titled "Vagina 101," shows a drawing of a woman's genitalia with arrows pointing out the clitoris, the labia majora, the labia minora, the hymen and the anus. It provides a short description of each part of the anatomy, under the headline "Owner's Manual." On the second page, the author addresses what's normal and what's not.

The Idaho-based Albertsons' corporate of fice issued a statement saying it pulled the October issue after receiving complaints from customers who considered the article "inappropriate." The company has refused further comment.

Leafing through the article, Charlotte Ladd, sixteen, said she couldn't see what the big deal was. "It's ridiculous," she said. "If they have a problem with it, they can just skip over the article. But it's information that we need to know."

In the parking lot of a local Albertsons, customers differed widely on their reaction to the ban. Several mothers said the grocery chain did the right thing. "Once their innocence is gone, it's gone," said Debbie Cottingham, forty-two, toting groceries alongside her fourteen-year -old daughter. She said it's her job as a mother to teach her three daughters about their bodies.

Scott Spear, a University of Wisconsin professor of pediatrics who chairs Planned Parenthood's national medical committee, doesn't understand the fuss. "It's rather straightforward and certainly not titillating and certainly not inappropriate for the readership," he said. "A key issue for that age group is, 'Am I normal?' That's what the article talks about."

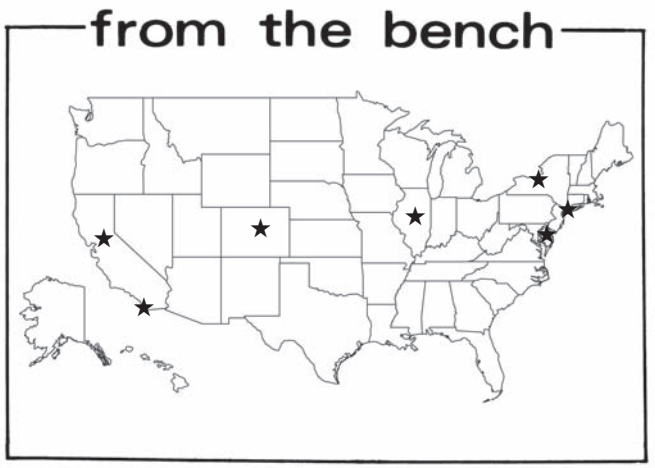
The story addresses such questions as how much pubic hair is healthy and whether girls should trim theirs. (On the latter, the article's answer is an emphatic "no"; it tells teens that the hair protects them from bacteria.)

Seventeen spokeswoman Elizabeth Dye defended the article, saying the magazine's readers perceive it as "a trusted friend." "So," Dye wrote in a prepared statement, "we talk about subjects that are important to them in an open and objective way."

Shaun Williams, seventeen, was vehement: The magazine's banishment makes no sense. "If you can buy condoms, why can't you have it out?" he asked. "They got to learn about their private parts."

One woman who has traveled the world interviewing more than two hundred girls and women about their vaginas said she wishes she were surprised. "Look, when I started, people told me to change the title. I mean, what was I going to call it? The Pocketbook Monologues?" said activist and playwright Eve Ensler, author of "The Vagina Monologues."

(continued on page 39)



U.S. Supreme Court

The anonymous plaintiff in a lawsuit challenging the federal government's right to search patrons' library records lost a skirmish October 7 when the U.S. Supreme Court denied an emergency appeal that would have allowed the plaintiff to identify itself publicly. The plaintiff was believed to be a library or library-related organization in Connecticut.

The lawsuit, filed in August and now before a federal appeals court, concerns a provision of the USA PATRIOT Act requiring libraries and Internet-service providers to share customer records with federal investigators. When such requests are made—using a tool known as a "National Security Letter"—the recipients are prohibited from disclosing the content of the request, or even the fact that they have received such a request.

Because of those secrecy rules, it is not known how frequently or broadly the federal government has used its four-year-old power to search library records. The plaintiff in the current case, which is represented by the American Civil Liberties Union, is among the first libraries to challenge the law. The ACLU had hoped that the gag order would be lifted in time for the plaintiff to describe its experiences in detail to members of Congress, who were in the final stages of reauthorizing the PATRIOT Act.

The action by the Supreme Court did not affect the central arguments of the lawsuit, which was heard by the U.S. Court of Appeals for the Second Circuit in November. It meant, however, that the briefs and motions associated with the case will continue to be filed under seal and will be made public only in highly-redacted forms.

In September, a U.S. District Court judge in Connecticut ruled that the plaintiff should be permitted to identify itself publicly. But her order never took effect, because she allowed the federal government to appeal immediately to the Second Circuit. The appeals court determined that the gag order should remaining effect while it considered the case.

The ACLU then filed an emergency application to the U.S. Supreme Court, asking that the gag be lifted. The American Library Association and three other organizations filed a brief in support of the ACLU's application. The brief argued, among other things, that the public cannot conduct an informed debate about the PATRIOT Act if it does not know how broadly or wisely the federal government has used its enforcement powers.

The brief also noted that the *New York Times* had reported in September that the plaintiff was probably Library Connection, Inc., a book-sharing consortium of twenty-six public and academic libraries based in Windsor, Connecticut. "The mere speculation about the recipient has forced Library Connection to risk violating the gag order," the brief argued.

Justice Ruth Bader Ginsburg made extensive comments when she announced that the plaintiff's emergency appeal had been denied. She reportedly said the ACLU had made strong arguments on its client's behalf, but that lifting the gag order was not a decision that should be made hastily. The question of lifting the gag now reverts to the Second Circuit.

In its initial complaint, filed in August, the ACLU argued that "in a library, the right to privacy is the right to open inquiry without having one's interest examined or scrutinized by others." The organization has argued that the library-records provision of the PATRIOT Act is especially troubling because it permits federal investigators to act with very little judicial oversight.

In testimony before the House Judiciary Committee in 2003, Viet D. Dinh, who was then an assistant U.S. attorney general and is now a law professor at Georgetown University, defended the PATRIOT Act's library-search provision. He noted that grand juries in criminal cases have sometimes subpoenaed library patrons' records, including in the investigations of the Unabomber and "Zodiac killer" cases. The new federal powers, he said, are no more threatening to civil liberties than grand juries' traditional subpoena powers. Reported in: *Chronicle of Higher Education* online, October 10.

The U.S. Supreme Court ruled October 31 that having pretrial access to a law library is not intrinsic to defendants' Sixth Amendment right to represent themselves. The decision reversed a ruling of the U.S. Court of Appeals for the Ninth Circuit that granted Joe Garcia Espitia a new trial on carjacking charges because he was repeatedly denied

pretrial prison library access despite repeated orders from the original trial judge. Ultimately, Espitia, who was incarcerated prior to the trial, was allowed to conduct only four hours of research in the prison collection just before closing arguments.

W. C. Melcher, Espitia's attorney, argued that his client "was deprived of any pretrial access to legal research materials and, accordingly, of any opportunity to make a meaningful defense." California Attorney General Bill Lockyer countered that the Supreme Court never established a defendant's right to library access in its 1975 decision that individuals may choose to act as their own counsel. The justices agreed with Lockyer, stating that *Faretta* v. *California* "says nothing about any specific legal aid that the state owes" people who represent themselves.

In the unsigned ruling, the High Court also noted that Espitia "had declined, as was his right, to be represented by a lawyer with unlimited access to legal materials."

Kane v. *Espitia* has been remanded to the Ninth Circuit Court for review.

Two days after the decision, Pennsylvania Attorney General Thomas W. Corbett, Jr., filed an appeal with the Supreme Court of a separate case regarding inmates' right to access prison libraries and receive periodicals other than religious and legal publications. Corbett is seeking to overturn a 2–1 ruling of the U.S. Court of Appeals for the Third Circuit, which stated that inmates in a Pittsburgh maximum-security prison should not be denied reading materials as a disciplinary tool.

Judges Julio M. Fuentes and Max Rosen wrote that "there was no valid, rational connection" between the denial of materials and the "stated rehabilitative purpose." The dissenting opinion, by Judge and Supreme Court nominee Samuel A. Alito, Jr., characterized the prison regulation as "a last resort" and prison library visits as impractical in maximum-security settings because inmates had to be "placed in hand and leg irons and . . . escorted by two officers" when they leave their cells. Reported in: *American Libraries* online, November 4.

The Supreme Court announced November 7 that it would decide the validity of the military commissions President Bush wants to use to bring detainees charged with terrorist offenses to trial.

The case, to be argued in March without the participation of Chief Justice John G. Roberts, Jr., places the court back at the center of the national debate over the limits of presidential authority in conducting the war on terror. Last year, the Supreme Court rejected the administration's position that the federal courts had no jurisdiction over those held as enemy combatants at the United States naval base at Guantánamo Bay, Cuba.

This time, once again, the justices acted over the vigorous opposition of the administration, which urged the court to stay its hand and defer any review until after a detainee had been tried by a military commission and convicted.

Lawyers representing Salim Ahmed Hamdan, the Yemeni who brought the challenge to the commissions, argued however that the issues of domestic and international law raised by the case were sufficiently important to be heard and resolved without further delay.

The military and civilian lawyers representing him are arguing that President Bush had neither statutory authorization nor inherent authority to establish military commissions. Further, they argue that the commissions, as defined by the military order the president issued on November 13, 2001, violate the Third Geneva Convention by withholding protections that defendants are guaranteed in courts-martial.

Hamdan, described by the government as Osama bin Laden's former bodyguard and driver, is charged with conspiracy, murder and terrorism. He was captured in Afghanistan in 2001 and since 2002 had been held at Guantánamo. He is now one of a dozen detainees, out of the more than 500 still held there, who have been designated by President Bush as eligible for trial before military commissions.

These would be the first trials by military commissions since the World War II era. Preliminary motions for the first trial, for an Australian detainee, David Hicks, were due to be heard at Guantánamo Bay in November. The Pentagon said it would proceed as planned, but Judge Colleen Kollar-Kotelly, a federal district judge with jurisdiction over another aspect of the Australian's case, ordered the parties to file briefs addressing whether the hearing should now be postponed.

Although the Hamdan case, *Hamdan* v. *Rumsfeld*, is likely to be the marquee case of the Supreme Court's term, it will be decided without Chief Justice Roberts. That is because he was a member of the three-judge panel of the federal appeals court that rejected Hamdan's challenge to the commissions, overturning a ruling issued by Judge James Robertson of Federal District Court in November 2004.

The appeals court issued its decision on July 15, four days before President Bush nominated Judge Roberts to the Supreme Court. When Hamdan's lawyers filed their Supreme Court appeal three weeks later, it was obvious that Judge Roberts, if confirmed to the Supreme Court, would be ineligible to participate.

The potential for a 4-to-4 tie may have been a reason for the apparent difficulty the other eight justices had in deciding whether to hear the case, an action that requires four votes. The case was listed for consideration at the justices' first closed-door conference of the new term, on September 26, and at every one of their subsequent weekly conferences, with no indication of the fate of the appeal until the court issued an order granting the case and noting that "the chief justice took no part in the consideration or decision of this petition."

A tie vote affirms the lower court's decision without setting a Supreme Court precedent. There are a number of interrelated issues in the case, and the court's roadmap through

them is not necessarily clear . At the threshold, Hamdan' s lawyers, Professor Neal K. Katyal of Georgetown University Law Center and Lt. Cmdr . Charles Swift, ar gue that the president's executive action establishing the military commissions was simply without authorization.

"The president's unilateral creation of commissions," they argue, "his single-handed definition of the of fenses and persons subject to their jurisdiction, and his promulgation of the rules of procedure combine to violate separation of powers." They add: "The Revolution was fought to ensure that no man, or branch of government, could be so powerful."

The Authorization for the Use of Military Force, which Congress passed in the immediate aftermath of the September 11 attacks, cannot plausibly be interpreted as the Court of Appeals did, to authorize military commissions, Hamdan's brief asserts. "While 'force' implies the power to detain those captured in battle, it does not imply a power to set up judicial tribunals far removed from zones of combat or military occupation," the brief said.

As to the actual operation of the commissions, Hamdan's lawyers described the rules of procedure as "starkly dif ferent than the fundamental protections mandated by Congress in the Uniform Code of Military Justice," which governs courts-martial. Their principal objection is to the rules' failure to give the defendant an absolute right to attend the trial, a right they describe as "universal" under civilian, military and international law. "Saddam Hussein and his henchmen" will be able to attend their trials under rules written by the Pentagon, they noted.

Finally, Hamdan's lawyers ar gued that he is protected under the Geneva Conventions despite the administration's view that the convention that deals with prisoners of war does not apply to the military conflict with Al Qaeda. This argument is supported by a brief filed by a group of retired generals and admirals.

Under Article 102 of that convention, a sentence imposed by a "detaining power," in this case the United States, can be valid only if it "has been pronounced by the same courts according to the same procedure" as members of the country's armed forces would enjoy. Under Article 5, any doubt about an individual' s eligibility for prisoner-of-war status must be resolved by a hearing before a "competent tribunal;" Hamdan, who denies being a member of Al Qaeda, has not received such a hearing.

The administration ar gued successfully in the appeals court that individuals cannot assert rights in court under the Geneva Conventions. Hamdan' s lawyers dispute this but argue that, even if it is correct, it is beside the point because he is entitled to pursue his case through the mechanism of a habeas corpus petition. Reported in: *New York Times*, November 8.

The free-speech rights of public employees proved a thorny and elusive subject for the Supreme Court in an argument October 12. The question was whether the Constitution protects government workers from retaliation for what they say on the job or in the course of their routine duties. A deputy district attorney in Los Angeles who claimed he had been demoted for challenging the legitimacy of a search warrant was found by a federal appeals court to be entitled to a trial on whether the demotion violated the First Amendment.

Appealing that decision, Cindy S. Lee, a lawyer for Los Angeles County, told the justices that "job-related speech should not be protected under the First Amendment." Lee said that under the analysis applied by the United States Court of Appeals for the Ninth Circuit in this case, public employees would receive constitutional protection for performing their duties "to the dissatisfaction of the employer."

The Los Angeles appeal has the support of the federal government. Dan Himmelfarb, an assistant solicitor general, shared the ar gument with Lee and told the justices the Constitution protects public employees only when they speak out on matters of public concern in the role of private citizens.

"A line must be drawn," Himmelfarb said, adding, "The alternative is to constitutionalize the law of public employment." Employees who are unfairly treated in the workplace, he said, should rely on the Civil Service laws that were created to protect them.

Bonnie I. Robin-Vergeer, representing the deputy district attorney, Richard Ceballos, ar gued that the rule the government lawyers were proposing would have the ef fect of chilling the speech of internal whistle-blowers. Robin-Vergeer asked the justices to imagine a FEMA employee who brought problems to the attention of the agency' s management and "gets fired because the supervisors don' t want to hear it." Protecting avenues of internal complaint is "critically important," she said.

Several justices were openly skeptical. "Y ou're saying that the First Amendment has a function within the government office," Justice Anthony M. Kennedy told Robin-Vergeer. That is a "curious calculus," he said, because "the First Amendment isn't about policing the workplace."

Justice Stephen G. Breyer said he thought the government's argument went too far but he found Robin-Vergeer's argument troublesome as well. "It' s hard," Justice Breyer told her. "The only choice you've given me is that every dispute goes right into constitutional litigation, and I don' t like that either." Is there not "some middle approach" for the court to take, he wondered.

Robin-Vergeer replied that "at a minimum," a government employee should be protected when the on-the-job speech consists of a report of government misconduct. "Whistle-blower-type speech is of paramount importance," she said, "because it goes to the very heart of government accountability."

That is not a satisfactory place to draw the line, Chief Justice John G. Roberts, Jr., said. He said he should be able to dismiss a law clerk who persisted in turning in memorandums declaring that "Justice So-and-so' s jurisprudence is wacky ."

The clerk might well think that nothing is "more important than how the court decides cases," he continued, but that would not mean that such "inappropriate" memorandums were entitled to First Amendment protection.

The case, *Garcetti* v. *Ceballos*, is the latest in a long line of Supreme Court cases addressing the rights of public employees. The general rule derived from these precedents is to protect employees who speak out on matters of public concern. But as the argument indicated, the rule can be unclear in application. Justice Antonin Scalia wondered aloud whether there was anything that occurred in a government office that was not to some degree a matter of public concern. Both government lawyers urged the court to shift its focus from the content of the employee's speech to the role in which the employee is speaking.

For example, addressing Lee, Los Angeles County's lawyer, Chief Justice Roberts asked whether a professor at a public university could be dismissed for the content of a lecture. The lecture would certainly have taken place in the context of the professor's employment, he continued, adding, "That's what he's paid to do." Would the professor's speech not be protected by the First Amendment nonetheless?

Such speech "should not be entitled presumptively to First Amendment protection," Lee replied.

"What does that mean?" Chief Justice Roberts asked. "That it might be?"

Lee explained that the legal burden in the case would be on the professor to contest the dismissal, rather than on the university to defend it. "I would have thought you might have argued that because the speech was paid for by the government, it was government speech and the First Amendment did not apply at all," Chief Justice Roberts said.

This was an argument from the solicitor general's brief, one with which Chief Justice Roberts, as a former deputy solicitor general, was familiar from cases he had handled himself.

While Lee readily endorsed the approach the chief justice had offered her, Justice Ruth Bader Ginsburg raised an objection to the precedent the lawyer cited, a 1991 decision holding that doctors in federally supported family planning clinics did not have the right to counsel patients on abortion, under the terms of government grants that did not permit such counseling.

Justice Ginsburg objected that in that case, *Rust* v. *Sullivan*, the government was paying for speech on one subject, family planning, but not on other subjects. "The government was buying a commodity," she said, while "here, a person is serving justice and truth." She added, "If that's part of his job responsibility, it's quite different from speech that the government wants spoken."

Lee replied that the deputy district attorney's job was to "assess the merits of a case." In this instance, Ceballos disputed the validity of an affidavit that had been used to obtain a search warrant, an affidavit that his supervisor deemed adequate. Ceballos testified for the defense at a court hearing that he believed the affidavit included false statements.

"Here we have a public employee challenging a decision made by a supervisor," Lee said. Reported in: *New York Times*, October 13.

When the Air Force came to Harvard Law School in October to recruit students for its Judge Advocate General's Corps, Adam R. Sorkin, a second-year student, signed up for an interview. Sorkin, who is gay, knew he would be turned down for the job under the military's "don't ask, don't tell" policy. But he went anyway, to argue for an end to the ban on homosexuals in the armed services.

"I shouldn't have to go back into the closet to serve my country," Sorkin said a week after the interview, at a protest rally on the law-school campus. He stood in the middle of a group of roughly a hundered students, some with duct tape plastered across their mouths and the words "Don't Ask, Don't Tell" scrawled on the tape in black ink. Others carried signs that read "Don't Ask, Don't Tell, Don't Recruit Here."

Sorkin said he was disappointed when the law school reluctantly agreed in September to lift its year-old restriction on military recruiting, after the Pentagon threatened to withhold $300-million in federal funds from the entire university. "Harvard should not send the message to the world that its principles can be bought," he said.

Some students, though, were pleased with the law school's reversal, saying the restrictions deprive students of the opportunity to learn about legal careers in the military, and suppress the free exchange of ideas that is at the heart of higher education. Recruiting bans, said Daniel J. Sullivan, a second-year law student who interned with the Navy JAG last summer, "send the message to students that considering the military is out of the mainstream. It makes them wary of showing interest."

Ultimately, the fate of military recruiters at Harvard and nationwide will be decided by the U.S. Supreme Court, which is considering the constitutionality of a decade-old law, known as the Solomon amendment, that allows the government to deny federal funds to colleges that bar or limit military recruiting.

If the court strikes down the law, and upholds an earlier ruling by the U.S. Court of Appeals for the Third Circuit, then Harvard could restore its restrictions on recruiting without risking federal funds; if it reverses the lower court's decision, the law will remain in place.

On its face, the case is a First Amendment fight over free speech and the power of the purse. In a larger sense, however, it is a battle over academic freedom, and the right of colleges to govern themselves as they see fit.

If the Defense Department prevails, critics of the Solomon amendment fear there will be nothing to stop the federal government from using its budget oversight to achieve all kinds of ideological ends. The government could withhold federal funds from universities that engage

in stem-cell research, for example, or that provide birth control to their students.

As Robert C. Post, a law professor at Yale University, puts it: "What's to prevent this new Congress from cutting off all funds if the biology department doesn't teach intelligent design? It could turn the whole country into Kansas."

As the Defense Department and Congress see it, the case is not about free speech, or even academic freedom, but about the authority of lawmakers to decide how taxpayers' money is spent. If the Solomon amendment were struck down, the government argues, it would deprive Congress of its ability to attach conditions to federal funds.

On the other side of the case is the Forum for Academic and Individual Rights, or FAIR, an association of thirty-eight law schools and law-school faculties. It argues that the Solomon amendment infringes upon law schools' freedom of association by forcing them to associate with the military, and by extension, its ban on gays and lesbians in the armed forces. The law schools also argue that the amendment requires them to "disseminate, carry and host" the military's message through their career-services offices and recruiting fairs.

But the military and its supporters say that the Solomon amendment does not compel anything, since institutions are free to ban military recruiters if they forfeit federal funds. The law schools are "arguing that the government is holding a gun to their heads when they give them $200-million in grants," says Shannen W. Coffin, who was a deputy assistant attorney general in the Justice Department when the case was filed.

The law schools also say that the amendment restricts free speech by forcing law schools to suspend their antidiscrimination policies for the sake of a single employer. But Solomon's supporters say law students are mature enough to distinguish between a law school's policy and that of an outside employer.

"Law-school students are not babies. They should be allowed to think as adults," says Gerald Walpin, a corporate litigator who wrote an amicus brief supporting the government for the Center for Individual Rights, a nonprofit group that brought the landmark affirmative-action lawsuits against the University of Michigan at Ann Arbor. "When universities stifle healthy discourse, we substitute academic censorship for academic freedom."

For such a controversial law, the Solomon amendment has surprisingly obscure origins. The bill's sponsor, Gerald B. H. Solomon, a Republican representative from New York, offered the amendment in 1994 to protest a court-ordered recruiting ban by the State University of New York.

Debate on the measure was brief, with only two members of Congress voicing concerns about academic freedom. One of them, Rep. Robert A. Underwood, a Democrat from Guam, noted that even the Defense Department had called the amendment "unnecessary and duplicative."

And while Solomon alluded to recruiting difficulties in his remarks during the debate, other supporters made clear that the amendment served symbolic purposes as well. Rep. Richard Pombo (R-CA), a cosponsor of the amendment, urged his colleagues to "send a message over the ivory tower of higher education" that colleges' and universities' "starry-eyed idealism comes with a price."

When the amendment passed, 271 to 126, that price was limited to funds from the Department of Defense. Since then, Congress has expanded the penalty to include money from the Departments of Labor, Health and Human Services, Transportation, and Homeland Security; the National Nuclear Security Administration; and the Central Intelligence Agency.

While many colleges have policies that bar discrimination on the basis of sexual orientation, law schools have been at the forefront of the fight against the Solomon amendment because they are more likely to extend their policies to outside employers.

To date, however, only three law schools have had their federal funds cut off: New York Law School, William Mitchell College of Law, and Vermont Law School. All three are free-standing law schools, and receive little or no federal dollars.

Until 2001, law schools were able to comply with the law by providing limited access to military recruiters. Harvard, for example, allowed the military to recruit at its veterans affairs' office, but did not volunteer its employees to arrange interviews.

After the terrorist attacks of September 11, 2001, however, the military did an about-face. In dozens of letters to law schools, the Defense Department charged that its recruiters had been "inappropriately limited in their ability to recruit" law students and ordered the colleges to provide the military with access "equal in quality and scope" to that given to other employers.

It was that demand for assistance that prompted FAIR to seek an injunction against the Solomon amendment in a U.S. district court in September 2003. The court denied the request, and FAIR appealed. The appeals court reversed the lower court's decision, ruling that the government had failed to show that its recruiting needs justified the infringement on law schools' First Amendment rights. In its ruling, the court cited a 2000 decision by the U.S. Supreme Court, *Boy Scouts of America* v. *Dale*, that allowed the Boy Scouts to exclude a gay assistant scoutmaster.

In its appeal to the Supreme Court, the Defense Department argues that its case is not like the Boy Scouts decision because recruiters are not members of law schools the way a troop leader is a member of the Boy Scouts, and because their presence on campus is "temporary and episodic," not permanent. It adds that while troop leaders speak on behalf of the Boy Scouts, military recruiters speak for the military, and not for the law schools.

FAIR counters that infringement is infringement, regardless of the duration and frequency. The only question, said David D. Cole, a professor of law at Georgetown

University, is whether the Supreme Court will grant law schools the same deference it gave the Boy Scouts.

"If the court is so willing to protect the right of the Boy Scouts to promote homophobia, shouldn't it also be willing to protect the rights of law schools to promote nondiscrimination?" he asked.

Ultimately, the Supreme Court's decision could hinge on two questions: whether the military can prove that it needs the Solomon amendment to recruit ef fectively, and whether the judges consider colleges' bans on military recruiting to be speech, or conduct.

So far, the military has done little to convince the court on the first ar gument. "The government has failed to proffer even a shred of evidence that the Solomon amendment materially enhances its stated goal," the appeals court wrote in its decision. In fact, declarations in the appeals-court case filed by members of each of the branches of the military show that the military has had a recent glut of candidates for its Judge Advocate General's Corps. The Navy receives 350 to 400 applications each year, and hires only 60 officers; the Marine Corps averages 200 applications per year and accepts forty officers.

Still, each of the representatives ar gues that denying the military equal access to law schools would hamper the military's ability to recruit the most qualified candidates, and place it at a significant competitive disadvantage with major law firms and corporate employers. To compete with these other employers, many of whom offer higher salaries, the military needs "a direct forum in which to communicate the many advantages of military service," says Navy Rear Adm. Jeffrey L. Fowler.

Other recruiting methods, such as direct mailings, television commercials, and radio advertisements, are "no substitute" for "a personal dialogue," he says.

But even the deputy under secretary of defense for military personnel policy admits that it is unclear whether overturning Solomon would really hurt the Judge Advocate General's Corps, given that only a handful of law schools have placed restrictions on recruiting so far.

There are some signs that the bans could become more widespread if the Supreme Court upholds the appeals court's decision. The Association of American Law Schools, which amended its bylaws in 1997 to allow its members to play host to the military without running afoul of its nondiscrimination policy, has already indicated that it hopes to eliminate the exemption for military recruiters if Solomon is struck down. If it does, the association's 166 members will again be bound by the bylaws to bar recruiters, including the military , that discriminate against gay students.

Equally critical to the outcome of the case is whether the Supreme Court considers law schools' bans to be speech or conduct. If the court views them as speech, then the Defense Department will have to prove that the law serves a compelling government interest and is as narrowly tailored as possible to achieve that interest. If, on the other hand, the court determines that the bans are "expressive conduct"—that is, conduct involving elements of speech—then the Pentagon must only prove that its recruiting aims would be achieved "less effectively" without the amendment.

FAIR, and the appeals court, said that the Solomon amendment is unconstitutional under either standard of review. They maintained that the military has provided no evidence that it needs the law, and argued that Congress exceeded its author - ity when it used the amendment to prohibit conduct outside the scope of the research programs being financed. Under the Solomon amendment, the government can withhold funds from the entire university , even though it is only the law school that is violating the amendment.

Congress is using its spending leverage "to coerce universities to abandon protected speech in areas wholly unrelated to its exercise of its spending power," says Kathleen M. Sullivan, a constitutional-law professor at Stanford Law School.

A third, but no less critical factor , will be who the Supreme Court pays greater deference to: academe or Congress. While the Supreme Court has traditionally granted greater First Amendment protections to colleges and universities than to the public at lar ge, it has also consistently yielded to Congress on decisions related to the military. In fact, the court has never declared a statute designed to support the military unconstitutional on First Amendment grounds, according to the government brief in the Solomon case.

"The court always defers to military needs over all other things," said Carter G. Phillips, a former assistant to the solicitor general who has ar gued forty-seven cases before the Supreme Court. "The court pays lip service to academic freedom, but often, it's not much more than that."

But FAIR says Congress should not get deference in the Solomon case because the law regulates the conduct of nonmilitary personnel in a nonmilitary setting, and because Congress has no unique expertise on legal recruiting.

Phillips, the former solicitor general, thinks the Supreme Court will be "frustrated" by the "overheated rhetoric" on both sides of the dispute and the lack of evidence on the government's side. He predicts that the judges will reverse the appeals court's decision, then send the case back to the lower court for further proceedings.

"People will get to shout on both sides that this is the end of the world either way ," said Phillips, "and then the court will issue a legal ruling that has meaning for thirty seconds." Reported in: *Chronicle of Higher Education* online, December 2.

libraries

New York, New York

A three-judge panel of the U.S. Court of Appeals for the Second Circuit in Manhattan heard ar guments November

2 in a case involving a Connecticut library and the USA PATRIOT Act. While the judges did not issue a ruling, they raised questions about the act's gag provision. "The troubling aspect from my standpoint is it's without limit," said Judge Richard J. Cardamone during the questioning. "There's no end to how long you have to keep this secret."

The American Civil Liberties Union filed the original suit, *Doe* v. *Gonzales*, in U.S. district Court in August to challenge Section 505 of the PATRIOT Act and obtain release from the gag provision so its unnamed client could identify itself as the recipient of a National Security Letter and participate in the debate over Congress's reauthorization of the legislation.

"I'm baffled why the argument is that they can't participate in the debate," said Douglas Letter, the lead attorney representing the government at the hearing. "The only thing they can't do is say that they were the recipient of a National Security Letter."

The ACLU argued that the secrecy provision violates the First Amendment. "This gag applies in every single case, whether the government can establish a need for it, and it's permanent," said ACLU attorney Jameel Jaffer.

U.S. District Court Judge Janet Hall removed the gag order related to the case September 9, but granted the Department of Justice time to appeal. On September 16, the appeals court granted a full stay of Hall's decision, prompting the ACLU to file an emergency appeal before the Supreme Court; Justice Ruth Bader Ginsburg denied that appeal.

The case was argued together with a case from New York. The New York plaintiff is a small Internet service provider whose name has been concealed in court filings to avoid running afoul of the PATRIOT Act. In September 2004, Judge Victor Marrero of United States District Court in Manhattan sided with the Internet service provider in finding that the expanded powers that the federal government received to issue National Security Letters, through the PATRIOT Act, violated the First and Fourth Amendments. His decision has been stayed pending the government's appeal.

Although the Connecticut plaintiff is also challenging the constitutionality of the National Security Letter it received, it has pressed for immediate relief to allow its officers and directors to testify in Washington on whether Congress should reauthorize the PATRIOT Act.

In urging the appeals panel to overturn the two lower court decisions, Letter said the New York judge "had it exactly backwards" and that the Connecticut judge had "turned herself into a national security expert."

Ann Beeson, one of the lawyers for the American Civil Liberties Union, which is representing both recipients of the National Security Letters, emphasized that her clients were not seeking to identify the targets of the National Security Letters and agreed that national security might warrant secrecy in some cases. But, she said, "there was no conceivable justification" for continuing the order of secrecy in the Connecticut case, citing reasons known to the court that she said she was unable to publicly state without violating the PATRIOT Act.

Representatives of the American Library Association, which submitted an *amicus curiae*, explained that Beeson was unable to argue aloud that the ban on disclosure was obsolete given that the plaintiff's identity had been made public by *The New York Times* in articles based on court records that directly and indirectly pointed to Library Connection, a consortium in Windsor, Connecticut, that serves as the back office for several libraries, as the plaintiff.

Both inside and outside of court, Beeson suggested it was unfair to perpetuate a situation in which Kevin J. O'Connor, the United States attorney for Connecticut, can speak out, as he does at one event after another in defense of the PATRIOT Act, when her Connecticut client cannot do so without fear of prosecution.

Letter, however, told the panel of judges that the civil liberties union was overstating the sweep of the ban and the risk of enforcement if one defied it. "I'm baffled why the argument is that they can't participate in the debate," he said. "The only thing they can't do is say that they were the recipient of a National Security Letter."

Beeson countered that "a sign advocating peace in the gulf on the lawn of a general" would have a far different impact from "the same sign in a ten-year-old child's bedroom." Reported in: *New York Times*, November 3.

church and state

San Diego, California

A Superior Court judge on October 7 declared unconstitutional a July ballot measure aimed at preventing the removal of a cross atop Mt. Soledad, the latest twist in a sixteen-year court battle.

Judge Patricia Y. Cowett invalidated the voter-approved measure that would have kept the forty-three-foot-tall cross in place by transferring the city-owned land to the federal government so the site can become a national monument. Cowett said the measure was unconstitutional because the cross, dedicated in 1954, is clearly a religious symbol and not, as its supporters claim, a monument to military veterans.

Transferring the land would be an unconstitutional preference for a specific religion, Cowett ruled. In a thirty-five-page decision, she said calling the cross a monument to veterans "at worst is but a sham." Supporters of the cross vowed to appeal, although it was unclear whether they will have legal standing to continue the case.

"This is an important fight," said attorney Charles LiMandri. "I want my kids to live in a community that has respect and reverence for veterans."

LiMandri said Cowett's ruling was faulty because she cites only cases involving sites where crosses are standing alone. Mt. Soledad's cross site has six walls with 1,600 plaques honoring veterans. The oldest plaques date from the mid-1990s.

LiMandri and other activists have said that removing the Mt. Soledad cross could spark other lawsuits aimed at taking down crosses from historic battlefields like Gettysburg.

James McElroy, attorney for Philip Paulson, a military veteran and atheist who sued to force the cross's removal, said he hoped Cowett's ruling would put an end to the court case.

Starting in 1991, federal courts have ruled that the cross violates the separation of church and state. But each ruling had been appealed. "I'm hopeful that our very ugly, very divisive, very expensive, very shameful episode of trying to buck the law and court decisions is now over," McElroy said.

McElroy said cross supporters probably will not be allowed to file an appeal because they were not part of the case. He sued the city clerk after the clerk approved putting the measure on the ballot.

LiMandri entered the case at the request of City Atty. Michael Aguirre, and it was unclear whether Aguirre will permit him to appeal on behalf of the city.

In a community with more active-duty military than any other in the country, political support for the cross is strong. The July measure was approved by 75 percent of voters. The San Diego City Council has twice tried to skirt the legal issue of separation of church and state by arranging for the land beneath the cross to be sold. But each time, the federal courts have ruled the sales were rigged in favor of groups that pledged to keep the cross atop Mt. Soledad, the highest peak in the city, which makes it one of the most visible sites in San Diego.

In December, President Bush approved a resolution by Reps. Duncan Hunter (R-El Cajon) and Randy "Duke" Cunningham (R-Rancho Santa Fe) authorizing the federal government to accept the property from the San Diego City Council. Rep. Cunningham has since resigned from the Congress after pleading guilty to numerous corruption charges.

But the council, weary of the long legal fight, voted five to three in March not to transfer the property. That led cross supporters to gather 89,000 signatures to put the measure on the July ballot. Reported in: *Los Angeles Times*, October 8.

Baldwinsville, New York

The decision of public school officials in Baldwinsville, near Syracuse, to obscure an image of Jesus before displaying a child's poster triggered a legal battle that landed in the U.S. Court of Appeals for the Second Circuit.

The dispute over displaying kindergartner Antonio Peck's poster was not an easy one to unravel for the circuit, as the case forced the court, in the words of Judge Guido Calabresi, to "cut a path through the thorniest of constitutional thickets—among the tangled vines of public school curricula and student freedom of expression."

While the court was able to produce one holding—"that a manifestly viewpoint discriminatory restriction on school-sponsored speech is, prima facie, unconstitutional, even if reasonably related to legitimate pedagogical interests," it still had to remand the case of *Peck* v. *Baldwinsville Central School District*, for further proceedings before Northern District of New York Judge Norman A. Mordue.

The conflict began when teacher Susan Weichert asked students to create a poster showing what they had learned about simple ways to save the environment. The posters were to be first presented to the class and explained by the students and then later displayed at an assembly to which parents were invited.

Antonio Peck produced, with the aid of his mother, a poster that showed Jesus kneeling and raising his hands to the sky, two children on a rock bearing the word "Savior" and the Ten Commandments, and several phrases, including "the only way to save our world" and "prayer changes things."

Weichert took the poster to school principal Robert Crème, who told the teacher that Antonio should be instructed to produce another poster. The boy's mother was later told by the teacher that his poster, in its original form, would not be shown at the school assembly.

The mother and son then sat down and made a second poster that once again showed Jesus, but this time kneeling next to a church with a cross. The phrases had been eliminated and, to the right of the church, there were pictures of people recycling trash, children holding hands encircling the globe and clouds, trees, a squirrel and grass.

Crème reviewed the second poster and instructed Weichert that the poster could be displayed at the assembly with the kneeling figure of Jesus folded under. But when it came time for the assembly, a parent volunteer made a mistake and obscured more of the poster than Weichert intended.

At depositions, Weichert and Crème offered several explanations for their actions. Crème said he rejected the first poster because it had no relevance to the assignment, he was certain the poster was not Antonio's work, and, because Antonio could not read, Weichert would have to read the poster for him.

He said he had similar concerns about the second poster.

Both Crème and Weichert were asked a series of hypothetical questions, including how they would react to a poster that showed topics not discussed in the environmental class,

(continued on page 41)

libraries

St. Petersburg, Florida

Activist and strip club owner Joe Redner sued Hillsborough County October 18, saying a June 15 vote by county commissioners to abstain from acknowledging, promoting or participating in gay pride events is unconstitutional. The suit also named six commissioners individually - Brian Blair, Ken Hagan, Jim Norman, Tom Scott, Mark Sharpe and Ronda Storms. Commissioner Kathy Castor, who voted against the measure and spoke out against it, was not named.

Redner argued that the policy violates his First Amendment right under the U.S. Constitution to receive information at local libraries. He said the commissioners "imposed a ban on one particular group but not on any other groups" and their actions constitute a "prior restraint on protected speech" that fails to "further a compelling government interest."

Redner's complaint also ar gued that the policy violated due process and equal protection provided by the Constitution by singling out a group. Commissioners "have not targeted other groups or topics featured in library displays," the suit said.

Redner asked the court to declare the policy unconstitutional, issue an injunction until a trial is scheduled and require the county to pay court costs. "They should have known they were violating the Constitution," he said. "My goal is to show them they are liable for doing that. . . . Someone has to call them on it."

County attorney Renee Lee said the county had not yet received notice of the lawsuit, filed hours earlier . "We're going to look at it," Lee said. "I will be really curious to see how the board's actions have impacted (Redner) more than any other member of the public, because I don' t think it does. I want to look at the pleadings and see how he alleged standing to bring" such a case.

The June vote came about a week after the *St. Petersburg Times* noted that a book display recognizing Gay and Lesbian Pride Month was taken down atWest Gate Regional Library after some patrons complained. The story mentioned a similar exhibit at John F. Germany Library in downtown Tampa.

Commissioner Storms quickly made good on a promise to seek a county policy banning public library displays that promote gay events. The board passed the measure after scant discussion that contrasted with impassioned pleas from gay rights advocates. The commission decided it can only repeal the policy on a 5–2 supermajority vote, following a public hearing. Castor voted against both measures, saying "I think it' s inappropriate for government to promote discrimination."

Later in June, a Tampa man filed a complaint with the city's Human Rights Board, saying the removal of a gay-themed book display from the John F . Germany Library—which is owned by the city but run by the county—violated the city's human rights ordinance. County library director Joe Stines ordered the removal after consulting with an assistant county attorney, a spokeswoman said.

Since the 1990s, the city has had a human rights ordinance prohibiting discrimination based on sexual orientation.

The commission's actions drew a scolding from Tampa Mayor Pam Iorio and inspired the city of KeyWest to invite gays and lesbians from the Hillsborough area to the island for a "Pride in Exile" festival in their honor . Reported in: *St. Petersburg Times*, October 19.

church and state

Pasadena, California

The Internal Revenue Service warned one of Southern California's largest and most liberal churches that it is at risk of losing its tax-exempt status because of an antiwar sermon two days before the 2004 presidential election. Rector J. Edwin Bacon of All Saints Episcopal Church in Pasadena told many congregants during morning services Sunday that a guest sermon by the church' s former rector, the Rev. George F. Regas, on October 31, 2004, had prompted a letter from the IRS.

In his sermon, Regas, who from the pulpit opposed both the Vietnam War and the 1991 Gulf War, imagined Jesus

participating in a political debate with then-candidates George W. Bush and John Kerry . Regas said that "good people of profound faith" could vote for either man, and did not tell parishioners whom to support. But he criticized the war in Iraq, saying that Jesus would have told Bush, "Mr . President, your doctrine of preemptive war is a failed doctrine. Forcibly changing the regime of an enemy that posed no imminent threat has led to disaster."

On June 9, the church received a letter from the IRS stating that "a reasonable belief exists that you may not be tax-exempt as a church . . ." The federal tax code prohibits tax-exempt organizations, including churches, from intervening in political campaigns and elections.

The letter went on to say that "our concerns are based on a November 1, 2004, newspaper article in the *Los Angeles Times* and a sermon presented at the All Saints Church discussed in the article."

The IRS cited the *Times* story's description of the sermon as a "searing indictment of the Bush administration's policies in Iraq" and noted that the sermon described "tax cuts as inimical to the values of Jesus."

"We are so careful at our church never to endorse a candidate," Rev. Bacon said. "One of the strongest sermons I've ever given was against President Clinton's fraying of the social safety net."

On a day when churches throughout California took stands on both sides of Proposition 73, which would have barred abortions for minors unless parents are notified, some at All Saints feared the politically active church had been singled out. "I think obviously we were a bit shocked and dismayed," said Bob Long, senior warden for the church's oversight board. "We felt somewhat targeted."

Bacon said the church had retained the services of a Washington law firm with expertise in tax-exempt organizations. And he told the congregation: "It's important for everyone to understand that the IRS concerns are not supported by the facts."

After the initial inquiry, the church provided the IRS with a copy of all literature given out before the election and copies of its policies, Bacon said. But the IRS informed the church that it was not satisfied by those materials, and would proceed with a formal examination. Soon after that, church officials decided to inform the congregation about the dispute.

In an October letter to the IRS, Marcus Owens, the church's tax attorney and a former head of the IRS tax-exempt section, said, "It seems ludicrous to suggest that a pastor cannot preach about the value of promoting peace simply because the nation happens to be at war during an election season." Owens said that an IRS audit team had recently offered the church a settlement during a face-to-face meeting.

"They said if there was a confession of wrongdoing, they would not proceed to the exam stage. They would be willing not to revoke tax-exempt status if the church admitted intervening in an election." The church declined the offer.

Long said Bacon "is fond of saying it's a sin not to vote, but has never told anyone how to vote. We don't do that. We preach to people how to vote their values, the biblical principles."

Regas, who was rector of All Saints from 1967 to 1995, said in an interview that he was surprised by the IRS action "and then I became suspicious, suspicious that they were going after a progressive church person." Regas helped the current church leadership collect information for the IRS on his sermon and the church's policies on involvement in political campaigns.

Some congregants were upset that a sermon citing Jesus Christ's championing of peace and the poor was the occasion for an IRS probe. "I'm appalled," said seventy-year-old Anne Thompson of Altadena, a professional singer who also makes vestments for the church. "In a government that leans so heavily on religious values, that they would pull a stunt like this, it makes me heartsick."

Joe Mirando, an engineer from Burbank, questioned whether the 3,500-member church would be under scrutiny if it were not known for its activism and its liberal stands on social issues. "The question is, is it politically motivated?" he said. "That's the underlying feeling of everyone here. I don't have enough information to make a decision, but there's a suspicion."

Bacon revealed the IRS investigation at both morning services. Until his announcement, the mood of the congregation had been solemn because the services remembered, by name, those associated with the church who had died since last All Saints Day.

Regas' 2004 sermon imagined how Jesus would admonish Bush and Kerry if he debated them. Regas never urged parishioners to vote for one candidate over the other, but he did say that he believes Jesus would oppose the war in Iraq, and that Jesus would be saddened by Bush's positions on the use and testing of nuclear weapons. In the sermon, Regas said, "President Bush has led us into war with Iraq as a response to terrorism. Yet I believe Jesus would say to Bush and Kerry: 'War is itself the most extreme form of terrorism. President Bush, you have not made dramatically clear what have been the human consequences of the war in Iraq.'"

Later, he had Jesus confront both Kerry and Bush: "I will tell you what I think of your war: The sin at the heart of this war against Iraq is your belief that an American life is of more value than an Iraqi life. That an American child is more precious than an Iraqi baby. God loathes war."

If Jesus debated Bush and Kerry, Regas said, he would say to them, "Why is so little mentioned about the poor?" In his own voice, Regas said: "The religious right has drowned out everyone else. Now the faith of Jesus has come to be known as pro-rich, pro-war and pro-American. . . . I'm not pro-abortion, but pro-choice. There is something vicious

and violent about coercing a woman to carry to term an unwanted child."

When you go into the voting booth, Regas told the congregation, "take with you all that you know about Jesus, the peacemaker. Take all that Jesus means to you. Then vote your deepest values."

Owens, the tax attorney, said he was surprised that the IRS is pursuing the case despite explicit statements by Regas that he was not trying to influence the congregation's vote. "I doubt it's politically motivated," Owens said. "I think it is more a case of senior management at IRS not paying attention to what the rules are."

According to Owens, six years ago the IRS used to send about 20 such letters to churches a year. That number has increased sharply because of the agency's recent delegation of audit authority to agents on the front lines, he said. He knew of two other churches, both critical of government policies, that had received similar letters, Owens said.

It's unclear how often the IRS raises questions about the tax-exempt status of churches. While such action is rare, the IRS has at least once revoked the charitable designation of a church. Shortly before the 1992 presidential election, a church in Binghamton, N.Y., ran advertisements against Bill Clinton's candidacy, and the tax agency ruled that the congregation could not retain its tax-exempt status because it had intervened in an election.

Bacon said he thought the IRS would eventually drop its case against All Saints. "It is a social action church, but not a politically partisan church," he said. Reported in: *Los Angeles Times*, November 7.

Washington, D.C.

The U.S. Department of Education has suspended grants of nearly half a million dollars to an evangelical college in Alaska in response to a lawsuit that said the federal support amounted to a government endorsement of religion. Alaska Christian College, an unaccredited, two-year institution that does not confer degrees, was to have received $435,000, thanks to earmarks that Rep. Don Young, an Alaska Republican, had inserted in spending bills for the Education Department. Such earmarks, often called pork, are grants awarded at the direction of Congress on a noncompetitive basis, and Alaska Christian has received more than $1 million in earmarks since 2003.

Last April, the Freedom From Religion Foundation, an advocacy group for atheist and agnostic causes, filed a federal lawsuit asserting that the earmarks violated the separation of church and state. The Education Department subsequently suspended grants to the college for the 2004 and 2005 fiscal years.

In a letter to the college, Sally L. Stroup, the assistant secretary for postsecondary education, said a department review of the college's activities had prompted the suspension. "We have concluded that the college has used federal funds for religious purposes," she wrote.

The Freedom From Religion Foundation hailed the action and agreed to settle its lawsuit. "We hope to send a message to Congress that religious pork does not pass muster," said Annie Laurie Gaylor, a co-president of the organization.

According to Stroup's letter, the suspension of federal grants will continue until the college presents a corrective plan that will "ensure that federal funds will not be used to support inherently religious activities."

The college intends to submit such a plan in the future, a spokesman said, but it disputes the assertions made in the letter. "The letter does not accurately describe court precedent," said Derek L. Gaubatz, a spokesman for Alaska Christian College. "The school has religion as part of its curriculum, but we're not seeking funding for its religious activities."

According to Stroup's letter, the college's curriculum is almost exclusively devoted to religious instruction. Alaska Christian offers courses such as "Survey of the Old Testament" and "Introduction to Mission and Evangelism," according to its catalog. It enrolls about thirty students, who can earn a certificate of biblical studies or a certificate of biblical and general studies. Reported in: *Chronicle of Higher Education* online, October 12.

evolution and "intelligent design"

Berkeley, California

Critics of evolution as an explanation for life's development sued University of California, Berkeley, and National Science Foundation officials in October, claiming public money is being used to endorse some religions—those which say the devout still can accept evolution—over others.

The federal lawsuit, filed October 15 in San Francisco by the Pacific Justice Institute and Quality Science Education for All, is about the university's "Understanding Evolution" Web site, which bills itself as "your one-stop source for information on evolution" and includes a section described as "the ultimate evolution resource for K–16 teachers."

One part of the site states "most religious groups have no conflict with the theory of evolution or other scientific findings. In fact, many religious people, including theologians, feel that a deeper understanding of nature actually enriches their faith. Moreover, in the scientific community, there are thousands of scientists who are devoutly religious and also accept evolution."

The site, created with about $523,000 in federal funding, directs users to statements by 17 denominations and groups that adhere to the idea that there isn't a conflict between their religious beliefs and evolution.

But the lawsuit notes many evolutionists' core claim is that life's origin wasn't planned or directed by any higher power, which contradicts the teachings of most major

religions. "While the government has a legitimate purpose in educating students about the science of evolution, it's outrageous that tax dollars would be spent to indoctrinate students into a particular religious view of evolution," plaintiff Jeanne Caldwell of Placer County said. "There are many different religious views about evolution. How dare the government tell students which religious view is correct! This is propaganda, not education."

But University of California counsel Christopher Patti said the complaint lacks merit. "What you have here is a Web site that is assisting teachers in the teaching of scientific concepts. It does not advocate any particular religious views but simply describes in a very straightforward way some of the issues that have arisen with the intersection of science and religion. There's nothing wrong with that," he said. Reported in: *Oakland Tribune*, October 16.

Ames, Iowa

With a magician's flourish, Thomas Ingebritsen pulled six mousetraps from a shopping bag and handed them out to students in his "God and Science" seminar. At his instruction, they removed one component—either the spring, hammer or holding bar—from each mousetrap. They then tested the traps, which all failed to snap. "Is the mousetrap irreducibly complex?" the Iowa State University molecular biologist asked the class.

"Yes, definitely," said Jason Mueller, a junior biochemistry major wearing a cross around his neck. That's the answer Ingebritsen was looking for. He was using the mousetrap to support the antievolution doctrine known as "intelligent design." Like a mousetrap, the associate professor suggested, living cells are "irreducibly complex"—they can't fulfill their functions without all of their parts. Hence, they could not have evolved bit by bit through natural selection but must have been devised by a creator.

"This is the closest to a science class on campus where anybody's going to talk about intelligent design," the fatherly looking associate professor told his class. "At least for now."

Overshadowed by attacks on evolution in high-school science curricula, intelligent design is gaining a precarious and hotly contested foothold in American higher education. Intelligent-design courses have cropped up at the state universities of Minnesota, Georgia and New Mexico, as well as Iowa State, and at private institutions such as Wake Forest and Carnegie Mellon. Most of the courses, like Ingebritsen's, are small seminars that don't count for science credit. Many colleges have also hosted lectures by advocates of the doctrine.

The spread of these courses reflects the growing influence of evangelical Christianity in academia, as in other aspects of American culture. Intelligent design does not demand a literal reading of the Bible. Unlike traditional creationists, most adherents agree with the prevailing scientific view that the earth is billions of years old. And they allow that the designer is not necessarily the Christian God.

Still, professors with evangelical beliefs, including some eminent scientists, have initiated most of the courses and lectures, often with start-up funding from the John Templeton Foundation. Established by stockpicker Sir John Templeton, the foundation promotes exploring the boundary of theology and science. It fostered the movement's growth with grants of $10,000 and up for guest speakers, library materials, research and conferences.

Intelligent design's beachhead on campus has provoked a backlash. Universities have discouraged teaching of intelligent design in science classes and canceled lectures on the topic. In October, University of Idaho President Tim White flatly declared that teaching of "views that differ from evolution" in science courses is "inappropriate." Citing what they describe as overwhelming evidence for evolution, mainstream scientists say no one has the right to teach wrong science, or religion in the guise of science.

"My interest is in making sure that intelligent design and creationism do not make the kind of inroads at the university level that they're making at the K–12 level," said Leslie McFadden, chair of earth and planetary sciences at the University of New Mexico, who led a successful fight there to reclassify a course on intelligent design from science to humanities. "You can't teach whatever you damn well please. If you're a geologist, and you decide that the earth's core is made of green cheese, you can't teach that."

At Iowa State, where Ingebritsen teaches, more than 120 faculty signed a petition condemning "all attempts to represent intelligent design as a scientific endeavor." In response, forty-seven Christian faculty and staff members, including Ingebritsen, signed a statement calling on the university to protect their freedom to discuss intelligent design.

At stake in this dispute are the minds of the next generation of scientists and science teachers. Some are arriving at college with conflicting accounts of mankind's origins at home, in church and at school. Many of Iowa State's 21,000-plus undergraduates come from fundamentalist backgrounds and belong to Christian student groups on campus.

According to an informal survey by James Colbert, an associate professor who teaches introductory biology at Iowa State, one-third of ISU freshmen planning to major in biology agree with the statement that "God created human beings pretty much in their present form at one time within the last 10,000 years." Although it's widely assumed that college-bound students learn about evolution in high school, Colbert said that isn't always the case.

"I've had frequent conversations with freshmen who told me that their high-school biology teachers skipped the evolution chapter," he said. "I would say that high-school teachers in many cases feel intimidated about teaching evolution. They're concerned they're going to be criticized by parents, students and school boards."

Warren Dolphin, who also teaches introductory biology at Iowa State, said he's begun describing evolution to his class as a hypothesis rather than as a fact to avoid confrontations with creationist students. "I don't want to get into a nonproductive debate," he says. "What I'm saying is so contrary to what they're hearing in their small town, their school, their church that I won't convert them in 40 lectures by a pointy-headed professor. The most I can do is get them to question their beliefs."

In a 1999 fund-raising proposal, the Discovery Institute—an intelligent design think tank in Seattle—outlined what it called a "wedge strategy" to replace the "stifling dominance of the materialist worldview" with "a science consonant with Christian and theistic conviction." Its five-year objectives included making intelligent design "an accepted alternative in the sciences" and the "dominant perspective" at two universities which weren't identified.

While these goals weren't met, some intelligent-design advocates associated with the Discovery Institute, found a receptive ear at the Pennsylvania-based Templeton Foundation. Between 1994 and 2002, the foundation funded nearly 800 courses, including several on intelligent design. It also has supported research by William Dembski, who headed an intelligent-design center at Baylor University, and Guillermo Gonzalez, co-author of a 2004 book, *The Privileged Planet*. The book claimed to discern a designer from the earth's position in the cosmos. Gonzalez, an assistant professor of astronomy at Iowa State, received $58,000 from the foundation over three years.

Foundation staff members now say that intelligent design hasn't yielded as much research as they'd hoped. Templeton, who chairs the foundation and turned 93 in November, believes "the creation-evolution ar gument is a waste of time," said Paul Wason, the foundation's director of science and religion programs. Wason added that Templeton is more interested in applying the scientific method to exploring spiritual questions such as the nature of forgiveness. Nevertheless, staff members remain reluctant to dismiss intelligent design entirely , in part because the doctrine's popularity could help achieve the foundation's goal of persuading evangelical Christians to pursue scientific careers. The foundation also complains that academia is too quick to censor the doctrine.

Templeton-funded proponents of intelligent design include Christopher Macosko, a professor of chemical engineering at University of Minnesota. Macosko, a member of the National Academy of Engineering, became a born-again Christian as an assistant professor after a falling-out with a business partner. For eight years, he's taught a freshman seminar: "Life: By Chance or By Design?" According to Macosko, "All the students who finish my course say, 'Gee, I didn't realize how shaky evolution is.'"

Another recipient of Templeton funding, Harold Delaney, a professor of psychology at the University of New Mexico, taught an honors seminar in 2003 and 2004 on "Origins: Science, Faith and Philosophy." Co-taught by Michael Kent, a scientist at Sandia National Laboratories, the course included readings on both sides as well as a guest lecture by David Keller, another intelligent-design advocate on the New Mexico faculty.

The university initially approved the course as qualifying students for science credit, as had been the custom with many interdisciplinary courses. Then the earth sciences chairman, McFadden, heard about the course. In an email to the chairman of biology, he described Delaney and Kent each as a "known creationist." The course, McFadden wrote, was "clearly 'designed' to show that 'intelligent design' is legitimate science.'" He added that he was "absolutely opposed" to classifying "Origins" as a science course. The biology chairman and other faculty members agreed, and Reed Dasenbrock, then dean of arts and sciences, re-categorized "Origins" as a humanities course.

Delaney complained in a letter to the director of the honors program that the reclassification was "a violation of my academic freedom." But Dasenbrock, now interim provost, said the principle of academic freedom was not at stake in the decision. "People didn't buy it as science," he said.

The controversy didn't end there. Once the course started, a retired neuroscientist, Gerald Weiss, sat in on several classes, passing out evolution literature and heckling the teachers. Intelligent design is "deception," Weiss said. "They had the students in the palm of their hands. I wasn't welcome at all, and I finally gave it up."

Henry F. Schaefer, director of the Center for Computational Quantum Chemistry at the University of Georgia, has written or co-authored 1,082 scientific papers and is one of the world's most widely cited chemists by other researchers. Schaefer teaches a freshman seminar at Georgia entitled: "Science and Christianity: Conflict or Coherence?" He has spoken on religion and science at many American universities, and gave the "John M. Templeton Lecture"—funded by the foundation—at Case Western Reserve in 1992, Montana State in 1999, and Princeton and Carnegie Mellon in 2004. "Those who favor the standard evolutionary model are in a state of panic," he says. "Intelligent design truly terrorizes them."

In April, the school of science at Duquesne University , a Catholic university in Pittsbur gh, abruptly canceled its sponsorship of a lecture by Schaefer in its distinguished scientist series. According to David Seybert, dean of the Bayer School of Natural and Environmental Sciences, Schaefer was invited at the suggestion of a faculty member belonging to a Christian fellowship group on campus. The invitation was withdrawn after several biology professors complained that Schaefer planned to speak in favor of intelligent design. The school wanted to avoid "legitimizing intelligent design from a scientific perspective," Seybert said. Faculty members also were concerned that top students might not apply to Duquesne if they thought it endorsed intelligent design. Schaefer gave his lecture—titled "The Big Bang, Stephen

Hawking, and God"—to a packed hall at Duquesne under the auspices of a Christian group instead.

Tensions are running high at Iowa State, with Ingebritsen playing a key role. Joining the Iowa State faculty in 1986, he specialized in studying how cells communicate, but ended his research about ten years ago and took up developing online biology courses. Shortly before that career change, he had converted from agnosticism to evangelical Christianity. As he explored whether—and how—modern science could be compatible with his religious beliefs, intelligent design intrigued him.

He taught "God and Science" for three years starting in 2000 without incident. But when he again proposed the seminar in 2003, members of the honors curriculum committee sought outside opinions from colleagues in biology and philosophy of science. They reported that the course relied on a textbook by a Christian publisher and slighted evolution. "I have serious worries about whether a course almost exclusively focused on the defense of Christian views is appropriate at a secular, state institution," wrote Michael Bishop, then philosophy chairman. The committee rejected the course by a 5–4 vote.

After protesting to a higher-level administrator to no avail, Ingebritsen revised the syllabus, added a mainstream textbook, and resumed teaching the course in 2004. Reported in: *Wall Street Journal*, November 14.

Lawrence, Kansas

A proposed University of Kansas course on the "mythology" of intelligent design was canceled December 1 by the professor who had planned to offer it because he felt the controversy surrounding the issue would make the course impossible to teach.

Paul Mirecki, chair of the religious-studies department at Kansas, had proposed the 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."

Around that time, Mirecki 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.

Not surprisingly, the leak sparked an even stronger response. The professor received 1,200 e-mail messages in one week, he said, although most of them have been positive. Many, however, were angry and even threatening. "I just thought that with all of the news that the learning environment was going to be ruined," Mirecki said.

The professor said he informed the university's provost of his decision to pull the course in a telephone conversation. "The administration has been very supportive, even though I've sort of knocked this hornet's nest down from the tree," he said.

Mirecki said he regretted the language he had used in the e-mail discussion group, but still believed the course was a good idea. "I've never had a problem like this on my hands," he said. "It had really turned personal, and I think that would have continued into the semester."

About twenty-five students had signed up for the course, Mirecki said, but because course registration for the spring semester is still going on, they should be able to replace it on their schedules. He said he did not know who the students were, or whether they supported or opposed intelligent design.

News of the course's cancellation pleased intelligent design proponents like John H. Calvert, a managing director of the Intelligent Design Network, a nonprofit group. "The function of that class was to convince people that intelligent design is religion, when it really isn't," Calvert said.

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 150 years ago, but must have been designed by some superior intelligence. Critics of intelligent design say it is little more than creationism, which considers God to have been the designer, and is in any event not a scientific theory. Reported in: *Chronicle of Higher Education* online, December 2.

Wichita, Kansas

The fiercely split Kansas Board of Education voted 6 to 4 November 8 to adopt new science standards that are the most far-reaching in the nation in challenging Darwin's theory of evolution in the classroom. The standards move beyond the broad mandate for critical analysis of evolution that four other states have established in recent years, by recommending that schools teach specific points that doubters of evolution use to undermine its primacy in science education.

Among the most controversial changes was a redefinition of science itself, so that it would not be explicitly limited to natural explanations.

The vote was a watershed victory for the emerging movement of "intelligent design," which posits that nature alone cannot explain life's complexity. John G. West of the Discovery Institute, a conservative research organization that promotes intelligent design, said Kansas now had "the best science standards in the nation."

A leading defender of evolution, Eugenie C. Scott of the National Center for Science Education, said she feared that the standards would become a "playbook for creationism."

The vote came six years after Kansas shocked the scientific and political world by stripping its curriculum standards of virtually any mention of evolution, a move reversed in 2001 after voters ousted several conservative members of the education board. A new conservative majority took hold in 2004 and promptly revived arguments over the teaching of evolution. The ugly and highly per-

sonal nature of the debate was on display at the meeting, where board members accused one other of dishonesty and disingenuousness.

"This is a sad day , not just for Kansas kids, but for Kansas," Janet Waugh of Kansas City, one of four dissenting board members, said before the vote. "We're becoming a laughingstock not only of the nation but of the world." Waugh and her allies contended that the board' s majority was improperly injecting religion into biology classrooms. But supporters of the new standards said they were simply trying to open the curriculum, and students' minds, to alternative viewpoints.

There is little debate among mainstream scientists over evolution's status as the bedrock of biology , but a small group of academics who support intelligent design have fervently pushed new critiques of Darwin's theory in recent years.

Kenneth Willard, a board member from Hutchinson, said, "I'm very pleased to be maybe on the front edge of trying to bring some intellectual honesty and integrity to the science classroom rather than asking students to check their questions at the door because it is a challenge to the sanctity of evolution."

Steve E. Abrams of Arkansas City, the board chair and chief sponsor of the new standards, said that requiring consideration of evolution's critics "absolutely teaches more about science."

The board approved the standards pending editing to comply with a demand from two national science groups that their copyrighted material be removed from the standards document because of its approach to evolution.

The National Academy of Sciences and the National Science Teachers Association said the much-disputed new standards "will put the students of Kansas at a competitive disadvantage as they take their place in the world."

"Kansas students will not be well-prepared for the rigors of higher education or the demands of an increasingly complex and technologically-driven world if their science education is based on these standards," Ralph J. Cicerone, president of the National Academy, and Michael J. Padilla, president of the teachers' group, said in a joint written statement released October 27. "Instead, they will put the students of Kansas at a competitive disadvantage as they take their place in the world."

In the statement, as well as in letters to the state board, the groups opposed the standards for singling out evolution as a controversial theory, and also for changing the definition of science itself so that it is not restricted to natural phenomena.

A third organization, the American Association for the Advancement of Science, echoed those concerns in a news release supporting the copyright denial, saying: "Students are ill-served by any ef fort in science classrooms to blur the distinction between science and other ways of knowing, including those concerned with the supernatural."

The chairman of the standards-writing committee, Steve Case, said copyrighted material appears on almost all of the document's 100 pages, and predicted it could take two to three months to revise them. "In some cases it' s just a phrase, but in some cases it' s extensive," said Dr. Case, an assistant research professor at the University of Kansas, who opposes the criticism of evolution that conservatives inserted into the standards. "Y ou try to keep the idea but change the wording around, the writing becomes horrifically bad."

The copyright skirmish is not a surprise: the two groups took a similar step in 1999, when the Kansas board stripped the standards of virtually any reference to evolution.

When Sue Gamble, a board member opposed to the standards, questioned the wisdom of voting on an unfinished document, calling it "a pig in a poke," Abrams dismissed the concern, saying, "It's immaterial because you're not going to vote for it anyway."

"Nothing is going to stop these six members from doing what they're going to do," Gamble said of the board' s conservative majority, four of whom are up for re-election in 2006. "It won' t make any difference, but I think it will make a difference next year in the election."

Indeed, when it was time to raise hands, the four self-described moderate board members cast nay ballots in unison. Their protest was echoed by Gov . Kathleen Sebelius, a Democrat, who called the vote "the latest in a series of troubling decisions" by the board. "If we're going to continue to bring high-tech jobs to Kansas and move our state forward," Sebelius said in a statement, "we need to strengthen science standards, not weaken them. Stronger public schools ought to be the mission of the Board of Education, and it's time they got down to the real business of strengthening Kansas schools."

Kansas's move came a week after the conclusion of a trial in which parents sued the school board in Dover , Pennsylvania, over the district' s inclusion of intelligent design in the ninth-grade biology curriculum (see page 3). The two debates have led a swell of evolution skirmishes in twenty states this year.

Local school districts in Kansas, as in most states, choose textbooks and set the curriculum, but the standards provide a blueprint by outlining what will be covered on state science tests, given every other year in grades 4, 7, and 10. The new standards emerged as part of a routine review and would take effect in 2007, presuming next year 's elections do not shift the balance on the board and result in another reversal.

Though the standards do not specifically require or prohibit discussion of intelligent design, they adopt much of the movement's language, mentioning gaps in the fossil record and a lack of evidence for the "primordial soup" as ideas that students should consider.

The other states that call for critical analysis of evolution—Minnesota, New Mexico, Ohio and Pennsylvania—

do so only in broad strokes, in some cases as part of a standard scientific process.

"They've given a green light to any creationist throughout the state to bring these issues into the classroom," said Jack Krebs, a Kansas science teacher and dissenting member of the standards-writing committee. "Science teachers are not prepared for that discussion and don't want it, because they've got plenty of science to teach."

John Calvert, a lawyer who runs the Intelligent Design Network, based in Kansas, praised the board as "taking a very courageous step" that would "make science education interesting to students rather than boring." Reported in: *New York Times*, October 27, November 9.

political expression

Denver, Colorado

The American Civil Liberties Union is taking up the case of two of the three people ejected from a presidential appearance in Denver over a bumper sticker and has named a federal bureaucrat in Denver as the mystery man who ousted them. The ACLU filed suit November 21 in federal court in Denver, alleging violation of the pair's civil rights.

The suit identifies the man who ejected them as Michael Casper, a building manager in the General Services Administration in Denver. Casper has worked as a volunteer at several White House events since 1996.

ACLU attorney Chris Hansen said the suit was filed because "the government should not be in the business of silencing Americans who are perceived to be critical of certain policy decisions."

President Bush came to Denver March 21 to speak about Social Security at the Wings Over the Rockies Air and Space Museum. Alex Young, 26, Leslie Weise, 39, and Karen Bauer, 38, said they were ejected from the event even though they had done nothing disruptive. Young and Weise are suing. All three had tickets to the public event, which was sponsored by the White House and paid for by taxpayers.

The man who forced them to leave was wearing a radio earpiece and a lapel pin that functioned as a security badge. The three say he was identified to them as working for the Secret Service. He was investigated for possible charges of impersonating a Secret Service agent, but the U.S. attorney in Denver declined to prosecute, saying the man never identified himself as a federal officer. His identity is known to the Secret Service and the White House, but both have repeatedly refused to reveal it.

The three said they were told by the Secret Service later that the man admitted ejecting them because they arrived in a car with a bumper sticker that read, "No more blood for oil." Casper denied that. He has been reported in the media as saying the three were asked to leave "because they were picked out by about fifty people inside the event as being troublemakers." He was quoted as saying he was told "they regularly come to events and disrupt them." He also said they had been heard talking about protesting as they stood in line. The three have denied saying anything of the kind.

Young and Weise are alleging violation of their First and Fourth Amendment rights, which guarantee free speech and protect against unreasonable search and seizure. The suit was filed not against the White House, which could claim governmental immunity, but against the individuals involved. They include Casper, Jay Bob Klinkerman—the head of the Colorado Federation of Young Republicans who has admitted to stopping Weise and Bauer at the gate—and five unknown persons involved in the decision to eject the trio. The ACLU hopes to identify them later.

"Casper had an earpiece," said Mark Silverstein, legal director of the Denver ACLU office. "It appeared that he let them in, and then he came back and said, 'You can't be here.' We're going to follow the earpiece," Silverstein said. The lawsuit will be used to discover who gave orders to Casper and "who set the policies, who directed that people who appear to have viewpoints in opposition to the president couldn't attend a publicly funded town hall meeting."

Weise and Young both said they were glad to have the national ACLU take their case, given its experience in civil rights lawsuits. Weise cited a similar case filed by the ACLU on behalf of Nicole and Jeffery Rank, who had tickets to a presidential speech in Charleston, West Virginia, on July 4, 2004, and were arrested after refusing to cover up or remove their T-shirts with anti-Bush slogans. The ACLU is suing the head of White House Advance, the head of the Secret Service and others directly involved in the ouster and arrest in that case.

"We're going to file a lawsuit to get the answers we deserve and make sure this doesn't happen to other people," Weise said.

At the height of the controversy last spring, White House spokesman Scott McClellan defended the actions of the man described as a "White House volunteer." "If we think people are coming to the event to disrupt it, obviously they're going to be asked to leave," McClellan said in a White House briefing.

The lawsuit says that at other presidential appearances around the country, people with views opposing the president's have been denied entry, ejected or arrested.

"This case isn't about just a couple of people here in Denver," Silverstein said. "It's really about a principle, about the rights and liberties of us all." Reported in: *Rocky Mountain News*, November 21.

Reno, Nevada

A woman was ordered off a Southwest Airlines flight in Reno for wearing a T-shirt with the pictures of President Bush and Vice President Dick Cheney and an obscene word. The woman, Lorrie Heasley of Woodland,

Washington, said she planned to file a civil rights complaint against the airline over the incident, which occurred October 4 at Reno-Tahoe International Airport.

Heasley said she wore the shirt as a joke and wanted her parents, who are Democrats, to see it when they picked her up at the airport in Portland, Oregon. Heasley, who sells lumber, argued that she had a right to wear it.

"I just thought it was hilarious," Heasley said. "I have cousins in Iraq and other relatives going to war . Here we are trying to free another country , and I have to get of f an airplane—over a T-shirt. That's not freedom."

Marilee McInnis, a spokeswoman for the airline, said the shirt became an issue after several passengers complained as they boarded during a scheduled stop in Reno. After several conversations with flight attendants, Heasley agreed to cover the word with a sweatshirt. When the sweatshirt slipped while she was trying to sleep, she was ordered to wear her T-shirt inside-out or leave. She and husband, Ron, chose to leave.

McInnis said Southwest rules allowed the airline to deny boarding to anyone whose clothing was "lewd, obscene or patently offensive."

Allen Lichtenstein, a lawyer for the American Civil Liberties Union in Las Vegas, said Heasley' s shirt was protected political speech under the Constitution. The real issue, Lichtenstein said, is that the airline allowed her to wear the shirt onboard and then objected only when passengers complained.

The flight originated in Los Angeles before making the stop in Reno. No one from Southwest complained about the shirt at Los Angeles International Airport, and neither the pilot nor crew members objected when she boarded the aircraft, Heasley said. Heasley said she had been in touch with ACLU lawyers in Seattle and wanted Southwest to reimburse her for the last leg of their trip. Reported in: *New York Times*, October 7.

government surveillance

Washington, D.C.

The Justice Department issued a broad defense November 29 of an investigative tool used by the FBI to compel businesses to turn over customer information without a court order or grand jury subpoena. Questions about the use of National Security Letters (NSLs) have become caught up in the debate over renewal of the anti-terror PATRIOT Act, which has been delayed by ideologically diverse lawmakers who want to ensure there are checks on investigative powers.

NSLs, which can be used in terrorism and espionage investigations, require telephone companies, Internet ser - vice providers, banks, credit bureaus and other businesses to produce highly personal records about their customers or subscribers. While most information about the Letters is classified, including the number of times they have been used, Assistant Attorney General William E. Moschella sent the chairmen of the House and Senate Judiciary Committees a ten-page letter rebutting criticisms aired in an article in the *Washington Post*.

The article, citing sources, said the FBI issues more than 30,000 NSLs a year , up from a few hundred prior to the September 11, 2001, attacks and, according to government sources, a hundredfold increase over historic norms. Moschella said the number was among several "erroneous claims" in the article, but he offered no alternative.

The Letters—one of which can be used to sweep up the records of many people—are extending the bureau' s reach as never before into the telephone calls, correspondence and financial lives of ordinary Americans, according to the *Post* article. Issued by FBI field supervisors, National Security Letters do not need the imprimatur of a prosecutor, grand jury or judge. They receive no review after the fact by the Justice Department or Congress. The executive branch maintains only statistics, which are incomplete and confined to classified reports. The Bush administration defeated legislation and a lawsuit to require a public accounting, and has offered no example in which the use of a National Security Letter helped disrupt a terrorist plot.

The burgeoning use of National Security Letters coincides with an unannounced decision to deposit all the information they yield into government data banks—and to share those private records widely, in the federal government and beyond. In late 2003, the Bush administration reversed a long-standing policy requiring agents to destroy their files on innocent American citizens, companies and residents when investigations closed.

In October, President Bush signed Executive Order 13388, expanding access to those files for "state, local and tribal" governments and for "appropriate private sector entities," which are not defined.

National security letters offer a case study of the impact of the P ATRIOT Act outside the spotlight of political debate. Drafted in haste after the September 1 1, 2001, attacks, the law's 132 pages wrought scores of changes in the landscape of intelligence and law enforcement. Many received far more attention than the amendments to a seemingly pedestrian power to review "transactional records." But few if any other provisions touch as many ordinary Americans without their knowledge.

Senior FBI officials acknowledged in interviews with the *Post* that the proliferation of National Security Letters results primarily from the bureau' s new authority to collect intimate facts about people who are not suspected of any wrongdoing. Criticized for failure to detect the September 11 plot, the bureau now casts a much wider net, using National Security Letters to generate leads as well as to pursue them. Casual or unwitting contact with a suspect—a single telephone call, for example—may

attract the attention of investigators and subject a person to scrutiny about which he never learns.

Justice Department officials previously gave lawmakers closed-door briefings on the Security Letters, where they shared the number.

Also false, according to Moschella, is the claim that the FBI uses NSLs to spy on law-abiding Americans. But he acknowledged that some people whose records are produced "may not be terrorists or spies or associated with terrorists or spies."

Leonard Downie, Jr., executive editor of the *Post*, said Moschella's letter "does not document any inaccuracies in our story on National Security Letters, which revealed the widespread use and limited oversight of this investigative tool. The letter relies on words like 'implies' and 'insinuates' to assert claims the story does not make. The story speaks for itself."

Lisa Graves, a lawyer for the American Civil Liberties Union, said that despite Moschella's admission, the government is allowed to retain that information. "I think the American people would prefer that there be some sort of connection and if not, then the records ought to be destroyed," Graves said.

The Bush administration contends that such consultation already is allowed, citing at least two court challenges to NSLs. However, in a letter obtained by the ACLU under the Freedom of Information Act and posted on its Web site, the FBI prohibits the recipient "from disclosing to any person that the FBI has sought or obtained access to information or records under these provisions."

The *Post* article prompted both Democratic and Republican members of Congress to voice concern. "We should not ever give up freedom on the basis of fear, and any freedom that we give up should be limited in time and limited in scope," Senator Tom Coburn, an Oklahoma Republican who is a member of the Judiciary Committee, said. Senator Joseph R. Biden, Jr., Democrat of Delaware, said that "based on the fact there's 30,000 of these Letters, which is a stunner to me, it appears to me that this is, if not abused, being close to abused."

Coburn and other Republicans said they wanted to explore the bureau's use of the Letters as part of a House-Senate conference working to make most parts of the PATRIOT Act permanent. Senator Chuck Hagel, Republican of Nebraska, said he was worried about "the overreach of the PATRIOT Act," adding, "I have always been concerned about centralization of power and eroding individual rights." Reported in: *Washington Post*, November 6; *Seattle Post-Intelligencer*, November 29; *New York Times*, November 7.

Washington, D.C.

The FBI has conducted clandestine surveillance on some U.S. residents for as long as eighteen months at a time without proper paperwork or oversight, according to previously classified documents released October 24. Records turned over as part of a Freedom of Information Act lawsuit also indicated that the FBI has investigated hundreds of potential violations related to its use of secret surveillance operations, which have been stepped up dramatically since the September 11, 2001, attacks but are largely hidden from public view.

In one case, FBI agents kept an unidentified target under surveillance for at least five years—including more than fifteen months without notifying Justice Department lawyers after the subject had moved from New York to Detroit. An FBI investigation concluded that the delay was a violation of Justice guidelines and prevented the department "from exercising its responsibility for oversight and approval of an ongoing foreign counterintelligence investigation of a U.S. person."

In other cases, agents obtained e-mails after a warrant expired, seized bank records without proper authority and conducted an improper "unconsented physical search," according to the documents.

Although heavily censored, the documents provided a rare glimpse into the world of domestic spying, which is governed by a secret court and overseen by a presidential board that does not publicize its deliberations. The records were provided to the Electronic Privacy Information Center, an advocacy group that sued the Justice Department for records relating to the PATRIOT Act.

David Sobel, EPIC's general counsel, said the new documents raised questions about the extent of possible misconduct in counterintelligence investigations and underscore the need for greater congressional oversight of clandestine surveillance within the United States. "We're seeing what might be the tip of the iceberg at the FBI and across the intelligence community," Sobel said. "It indicates that the existing mechanisms do not appear adequate to prevent abuses or to ensure the public that abuses that are identified are treated seriously and remedied."

FBI officials disagreed, saying that none of the cases have involved major violations and most amount to administrative errors. The officials also said that any information obtained from improper searches or eavesdropping is quarantined and eventually destroyed. "Every investigator wants to make sure that their investigation is handled appropriately, because they're not going to be allowed to keep information that they didn't have the proper authority to obtain," said one senior FBI official. "But that is a relatively uncommon occurrence. The vast majority of the potential [violations] reported have to do with administrative timelines and time frames for renewing orders."

The documents provided to EPIC focus on 13 cases from 2002 to 2004 that were referred to the Intelligence Oversight Board, an arm of the President's Foreign Intelligence Advisory Board that is charged with examining violations of the laws and directives governing clandestine

surveillance. Case numbers on the documents indicate that a minimum of 287 potential violations were identified by the FBI during those three years, but the actual number is certainly higher because the records are incomplete.

FBI officials declined to say how many alleged violations they have identified or how many were found to be serious enough to refer to the oversight board.

Catherine Lotrionte, the presidential board's counsel, said most of its work is classified and covered by executive privilege. The board's investigations range from "technical violations to more substantive violations of statutes or executive orders," Lotrionte said. Most such cases involve powers granted under the Foreign Intelligence Surveillance Act, which governs the use of secret warrants, wiretaps and other methods as part of investigations of agents of foreign powers or terrorist groups. The threshold for such surveillance is lower than for traditional criminal warrants. More than 1,700 new cases were opened by the court last year, according to an administration report to Congress.

In several of the cases outlined in the documents released to EPIC, FBI agents failed to file annual updates on ongoing surveillance, which are required by Justice Department guidelines and presidential directives, and which allow Justice lawyers to monitor the progress of a case. Others included a violation of bank privacy statutes and an improper physical search, though the details of the transgressions are edited out. At least two others involve e-mails that were improperly collected after the authority to do so had expired.

Some of the case details provide a rare peek into the world of FBI counterintelligence. In 2002, for example, the Pittsburgh field office opened a preliminary inquiry on a person to "determine his/her suitability as an asset for foreign counterintelligence matters"—in other words, to become an informant. The violation occurred when the agent failed to extend the inquiry while maintaining contact with the potential asset, the documents show.

The FBI general counsel's office oversees investigations of alleged misconduct in counterintelligence probes, deciding whether the violation is serious enough to be reported to the oversight board and to personnel departments within Justice and the FBI. The senior FBI official said those cases not referred to the oversight board generally involve missed deadlines of thirty days or fewer with no potential infringement of the civil rights of U.S. persons, who are defined as either citizens or legal U.S. resident aliens.

"The FBI and the people who work in the FBI are very cognizant of the fact that people are watching us to make sure we're doing the right thing," the senior FBI official said. "We also want to do the right thing. We have set up procedures to do the right thing."

But in a letter sent to the Senate Judiciary Committee, Sobel and other EPIC officials argued that the documents show how little Congress and the public know about the use of clandestine surveillance by the FBI and other agencies. The group advocates legislation requiring the attorney general to report violations to the Senate. The documents, EPIC wrote, "suggest that there may be at least thirteen instances of unlawful intelligence investigations that were never disclosed to Congress." Reported in: *Washington Post*, October 24.

Washington, D.C.

The Defense Department has expanded its programs aimed at gathering and analyzing intelligence within the United States, creating new agencies, adding personnel and seeking additional legal authority for domestic security activities in the post-9/11 world. The moves have taken place on several fronts. The White House is considering expanding the power of a little-known Pentagon agency called the Counterintelligence Field Activity, or CIFA, which was created three years ago. The proposal, made by a presidential commission, would transform CIFA from an office that coordinates Pentagon security efforts—including protecting military facilities from attack—to one that also has authority to investigate crimes within the United States such as treason, foreign or terrorist sabotage or even economic espionage.

The Pentagon has pushed legislation on Capitol Hill that would create an intelligence exception to the Privacy Act, allowing the FBI and others to share information gathered about U.S. citizens with the Pentagon, CIA and other intelligence agencies, as long as the data is deemed to be related to foreign intelligence. Backers say the measure is needed to strengthen investigations into terrorism or weapons of mass destruction.

The proposals, and other Pentagon steps aimed at improving its ability to analyze counterterrorism intelligence collected inside the United States, have drawn complaints from civil liberties advocates and a few members of Congress, who say the Defense Department's push into domestic collection is proceeding with little scrutiny by the Congress or the public.

"We are deputizing the military to spy on law-abiding Americans in America. This is a huge leap without even a [congressional] hearing," Sen. Ron Wyden (D-Ore.), a member of the Senate Select Committee on Intelligence, said. Wyden has since persuaded lawmakers to change the legislation, attached to the fiscal 2006 intelligence authorization bill, to address some of his concerns, but he still believes hearings should be held. Among the changes was the elimination of a provision to let Defense Intelligence Agency officers hide the fact that they work for the government when they approach people who are possible sources of intelligence in the United States.

Modifications also were made in the provision allowing the FBI to share information with the Pentagon and CIA, requiring the approval of the director of national intelligence, John D. Negroponte, for that to occur, and requiring

the Pentagon to make reports to Congress on the subject. Wyden said the legislation "now strikes a much fairer balance by protecting critical rights for our country's citizens and advancing intelligence operations to meet our security needs."

Kate Martin, director of the Center for National Security Studies, said the data-sharing amendment would still give the Pentagon much greater access to the FBI's massive collection of data, including information on citizens not connected to terrorism or espionage. The measure, she said, "removes one of the few existing privacy protections against the creation of secret dossiers on Americans by government intelligence agencies." She said the Pentagon's "intelligence agencies are quietly expanding their domestic presence without any public debate."

Lt. Col. Chris Conway, a spokesman for the Pentagon, said that the most senior Defense Department intelligence officials are aware of the sensitivities related to their expanded domestic activities. At the same time, he said, the Pentagon has to have the intelligence necessary to protect its facilities and personnel at home and abroad.

"In the age of terrorism," Conway said, "the U.S. military and its facilities are targets, and we have to be prepared within our authorities to defend them before something happens."

Among the steps already taken by the Pentagon that enhanced its domestic capabilities was the establishment after 9/11 of Northern Command, or Northcom, in Colorado Springs, to provide military forces to help in reacting to terrorist threats in the continental United States. Today, Northcom's intelligence centers in Colorado and Texas fuse reports from CIFA, the FBI and other U.S. agencies, and are staffed by 290 intelligence analysts. That is more than the roughly 200 analysts working for the State Department's Bureau of Intelligence and Research, and far more than those at the Department of Homeland Security.

In addition, each of the military services has begun its own post-9/11 collection of domestic intelligence, primarily aimed at gathering data on potential terrorist threats to bases and other military facilities at home and abroad. For example, Eagle Eyes is a program set up by the Air Force Office of Special Investigations, which "enlists the eyes and ears of Air Force members and citizens in the war on terror," according to the program's Web site.

The Marine Corps has expanded its domestic intelligence operations and developed internal policies in 2004 to govern oversight of the "collection, retention and dissemination of information concerning U.S. persons," according to a Marine Corps order approved on April 30, 2004. The order recognizes that in the post-9/11 era, the Marine Corps Intelligence Activity will be "increasingly required to perform domestic missions," and as a result, "there will be increased instances whereby Marine intelligence activities may come across information regarding U.S. persons." Among domestic targets listed are people in the United States who it "is reasonably believed threaten the physical security of Defense Department employees, installations, operations or official visitors."

Perhaps the prime illustration of the Pentagon's intelligence growth is CIFA, which remains one of its least publicized intelligence agencies. Neither the size of its staff, said to be more than 1,000, nor its budget is public, said Conway, the Pentagon spokesman. The CIFA brochure says the agency's mission is to "transform" the way counterintelligence is done "fully utilizing twenty-first century tools and resources."

One CIFA activity, threat assessments, involves using "leading edge information technologies and data harvesting," according to a February 2004 Pentagon budget document. This involves "exploiting commercial data" with the help of outside contractors including White Oak Technologies, Inc., of Silver Spring, and MZM, Inc., a Washington-based research organization, according to the Pentagon document.

For CIFA, counterintelligence involves not just collecting data but also "conducting activities to protect DoD and the nation against espionage, other intelligence activities, sabotage, assassinations, and terrorist activities," its brochure states.

CIFA's abilities would increase considerably under the proposal being reviewed by the White House, which was made by a presidential commission on intelligence chaired by retired appellate court judge Laurence H. Silberman and former senator Charles S. Robb (D-Va.). The commission urged that CIFA be given authority to carry out domestic criminal investigations and clandestine operations against potential threats inside the United States.

The Silberman-Robb panel found that because the separate military services concentrated on investigations within their areas, "no entity views non-service-specific and department-wide investigations as its primary responsibility." A 2003 Defense Department directive kept CIFA from engaging in law enforcement activities such as "the investigation, apprehension, or detention of individuals suspected or convicted of criminal offenses against the laws of the United States."

The commission's proposal would change that, giving CIFA "new counterespionage and law enforcement authorities," covering treason, espionage, foreign or terrorist sabotage, and even economic espionage. That step, the panel said, could be taken by presidential order and Pentagon directive without congressional approval.

White House spokeswoman Dana Perino said the CIFA expansion "is being studied at the DoD [Defense Department] level," adding that intelligence director Negroponte would have a say in the matter. A Pentagon spokesman said, "The [CIFA] matter is before the Hill committees."

Sen. John W. Warner (R-Va.), chair of the Senate Armed Services Committee, said in a recent interview that CIFA

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school

Austin, Texas

A private school in Texas returned a three million dollar donation rather than submit to the donor's request that a controversial book be removed from the school's reading list. A group of teen book authors was so impressed by the school's actions that they gave themselves a name, Authors Supporting Intellectual Freedom (or AS IF!), and are now all donating signed copies of their books, which the school will display in a planned "Freedom Library."

The school, St. Andrew's Episcopal School in Austin, had been promised the donation by the family of Cary McNair, who later objected to the presence of the Annie Proulx short story "Brokeback Mountain," on the school's list of optional reading for twelfth graders.

"St. Andrew's has a policy not to accept conditional gifts," school spokesman Bill Miller said. "When the McNair family looked at their gift in a conditional manner, then the school could not accept it."

According to AS IF! member Brent Hartinger, he and his author friends were overwhelmed by the depth of St. Andrew's conviction. "They gave up three million dollars rather than compromise the principles of academic independence and intellectual freedom," Hartinger says. "We authors wanted to show our thanks, so we formed our group, and are now all sending signed copies of our books."

So far, Hartinger said, over sixty books have been sent, including many by bestselling and award-winning authors. "I sent a signed first printing," says Newbery winner Cynthia Kadohata. "I saw a copy on E-bay go for eight hundred dollars. It's not $3 million, but it's a start."

The point of the book drive, said another AS IF! member, Lisa Yee, is to make a positive statement, not just add more acrimony to the ongoing debate over controversial books. "Rather than tear down those who make negative or uninformed judgments about literature," Yee says, "we want to support those who stand up for freedom of choice, and thank them for their efforts."

Other AS IF! members include Anjali Banerjee, Holly Black, Elise Broach, Cecil Castellucci, Dorian Cirrone, Sarah Darer Littman, Jeanne DuPrau, Dotti Enderle, Alex Flinn, Debra Garfinkle, Barb Huff, Tanya Lee Stone, R.L. LaFevers, David LaRochelle, E. Lockhart, Bennett Madison, Katie Maxwell, Dianne Ochiltree, Marlene Perez, Douglas Rees, Eileen Rosenbloom, Laura Ruby, Linda Joy Singleton, Arthur Slade, Laurie Stolarz, Chris Tebbetts, Anne Ursu, Jo Whittemore, Mark L. Williams, Maryrose Wood, Sara Zarr, and Lara M. Zeises.

"We're not going away," said AS IF! member Jordan Sonnenblick. "AS IF! definitely plans to continue doing whatever it can to support all those who fight efforts of censorship and intellectual suppression, especially of books for and about teenagers." Reported in: AS IF! Press Release, November 15.

publishing

Philadelphia, Pennsylvania

A disputed volume on homosexuality in the classical world will be published after all, Haworth Press announced October 11, and the controversial essay that almost sank the book also will be published, but in a different venue.

In September, the press announced the cancellation of *Same-Sex Desire and Love in Greco-Roman Antiquity and in the Classical Tradition of the West*, an edited volume that had been scheduled for publication in November. (It was to have been published simultaneously as a special issue of *The Journal of Homosexuality*, which also is published by Haworth.) The press scratched the book after conservative activists objected to one of its fifteen essays, which they saw as a defense of pederasty in present-day society.

On October 11, Haworth reversed course and announced that the book and journal would indeed be published—but without the controversial essay, which was written by Bruce L. Rind, an adjunct instructor in psychology at Temple University. Rind's essay will be published in a future "supplementary volume" of *The Journal of Homosexuality*, according to the press's announcement.

The book first came under fire when the conservative Web site WorldNetDaily sounded alarms about Rind's essay. The critics did not read the essay's full text, but had seen a four-paragraph abstract that had been posted on Haworth's Web site.

In his abstract, Rind noted that, in classical Greece, "pederasty was seen as the noblest of human relations, conducive to if not essential to nurturing the adolescent's successful intellectual and physical maturation." Then Rind appeared to offer the broader argument that sexual love between men and adolescent boys is a natural product of humanity's evolutionary development, and he criticized "the highly inadequate feminist and psychiatric models" of pederasty.

Haworth announced the book's cancellation two days after WorldNetDaily condemned it.

Bill Palmer, editor-in-chief of Haworth's book division, said that his colleagues and the editors of the journal "were able to come to an understanding . . . that the inclusion of the Rind material in this volume of historical scholarship was unnecessarily controversial in the current social and political climate." The future special issue of the journal, Palmer continued, would "be a much better venue for Dr. Rind's research (and that of some of his critics)."

In 1999, Rind came under fire for a review essay that he and two colleagues had written the previous year about the long-term effects of child sexual abuse. Critics said that the article soft-pedaled the effects of abuse. The controversy eventually reached such a pitch that both houses of the U.S. Congress formally denounced the article.

Rind noted that a committee of the American Academy for the Advancement of Science had expressed concern about the politicization of the debate over his 1998 paper. "We found it deeply disconcerting," the committee wrote, "that so many of the comments made by those in the political arena and in the media indicate a lack of understanding of the analysis presented by the authors or misrepresented the article's findings." In the same statement, however, the committee emphasized that it had not formally reviewed the methodology behind Rind's article and was neither criticizing nor endorsing it on the merits. Reported in: *Chronicle of Higher Education* online, October 12.

government

Washington, D.C.

The federal government has dropped a requirement that charities participating in its annual fund-raising campaign check to see if their employees' names are on government lists of terror suspects. Several well-known charities like Doctors Without Borders and Human Rights Watch dropped out of this year's drive, in which federal employees can contribute a part of their pay, rather than comply with the rule. And thirteen nonprofit organizations, led by the American Civil Liberties Union, sued the Office of Personnel Management, the central government personnel agency, to drop the requirement.

"The new rule is a change from where they were, and that's something we're pleased to see," said Gary Bass, executive director of OMB Watch, a government watchdog group that was a plaintiff in the lawsuit. Bass said his group relinquished less than $10,000 by dropping out of the charity drive, but several other organizations lost as much as $500,000 in revenue.

The ACLU, which endured internal turmoil after its executive director first agreed to the requirement and was then forced to backtrack by his board, said the lawsuit might be withdrawn.

"This is a major victory for nonprofit organizations that refused to be subjected to vague government requirements forcing us to become law enforcement officers for the federal government," Anthony D. Romero, the group's executive director, said. "We feel vindicated. List checking is not and has not been required by law."

Not everyone was fully satisfied. "The changes are marginally better but deliberately vague," said Kenneth Roth, executive director of Human Rights Watch, which returned the money it received from the 2004 Combined Federal Campaign, known as the CFC, after learning that it had inadvertently agreed to check its employees against terrorist lists. Human Rights Watch is not participating in the 2005 campaign but will apply for next year's.

In an interview last summer, Romero of the ACLU expressed reservations about the ambiguity of the measure then proposed by the Office of Personnel Management. The final rule differs slightly. Emily Whitfield, an ACLU spokeswoman, said that the Office of Personnel Management had now provided guidance that it would no longer require charities to check the lists.

"Charities, however, as a minimum, should follow the U.S. Department of Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities," the office wrote in the Federal Register. Those guidelines suggest that charities check the lists before distributing money to charities abroad.

Molly Millerwise, a spokeswoman for the Treasury Department, said that under various laws and statutes, it was illegal for anyone in this country to do business with anyone or any entity named on the list.

About 165 groups of about 1,700 that participated in the 2004 drive dropped off the list in 2005. Anthony De Cristofaro, executive director of the Combined Federal Campaign of the National Capital Area, the largest in the country, said that almost an equal number had been added and that the turnover was not unusual. Reported in: *New York Times*, November 10. □

(censorship dateline . . . from page 16)

The play, featuring monologues chosen from her interviews with real women, has played across the country, often drawing protest. "Why is it that the word 'vagina,' printed or visual, will shut down newspapers and magazines, but you can say nuclear war and Scud missile?"

Ensler said. "And you can put those on the front page of magazines and no one is horrified?" Reported in: *Seattle Times*, October 28.

broadcasting

Los Angeles, California

The two biggest hits on U.S. television, *CSI* and *Desperate Housewives,* joined two Fox network cartoons on the latest list of shows scorned by a conservative watchdog group as the worst for family audiences. Fox accounted for six of the ten shows the Parents Television Council named October 19 as the most offensive this season, with *The War at Home,* a new sitcom about a married couple raising three teenagers, topping the group's roster. Two returning animated shows, *Family Guy* and *American Dad,* were ranked in second and third place.

The group said it based its annual rankings according to the frequency of foul language, sexual content and violence contained in shows, as well as their story lines, time slots and target audiences. "We were alarmed to find that the three worst shows . . . are being marketed as family-friendly when in fact these shows are none other than wolves in sheep's clothing," Brent Bozell, head of the Virginia-based group, said in a statement.

A Fox spokesman said the network had "no comment regarding the PTC's opinions." Three other Fox shows named on the council's "worst" list were youth-oriented drama *The O.C.* at No. 4, period sitcom *That '70s Show* at No. 8 and the Emmy-winning comedy *Arrested Development,* a favorite of TV critics, at No. 9.

The two most watched shows in prime time, CBS crime drama *CSI: Crime Scene Investigation* and the darkly comic ABC soap *Desperate Housewives,* ranked in fifth and sixth place. Two other CBS shows, the raunchy sitcom *Two and a Half Men* and detective drama *Cold Case,* landed on the list at Nos. 7 and 10.

While Fox was the council's biggest target of criticism this year, the News Corp.-owned network also made the group's separate list of favorites with its mega-hit talent show *American Idol* and family sitcom *The Bernie Mac Show.* Two other uplifting reality shows topped the group's roster of "best" shows—ABC's *Extreme Makeover: Home Edition* and NBC's *Three Wishes*. Rounding out the list of PTC-endorsed shows were *Ghost Whisperer* on CBS, *Everybody Hates Chris* on UPN, *Reba* on the WB, *Dancing with the Stars* on ABC and the WB's *Seventh Heaven.* Reported in: Reuters, October 19.

art

Springville, Utah

A controversial sculpture, submitted to the Springville Museum of Art for inclusion in a religious art show, was rejected in October by museum officials who believed it desecrated the Bible and the Quran.

Adam Bradshaw, a graduate art student at Utah State University, created the sculpture, which features a Bible and Quran leaning against each other atop an oil drum. Both holy books have been hollowed out; inside the Bible is an ammo box overflowing with bullets, while the Quran contains a facsimile of a bomb.

Bradshaw said he intended the sculpture as a commentary on the religious tensions between Christians and Muslims in the wake of September 11, 2001, and the subsequent war in Iraq. But museum director Vern Swanson said the piece made him and members of the museum board uneasy.

"It wasn't the idea [behind the sculpture]. I love the topic. It was the actual putting of the bullets and the bomb inside the two holy scriptures," Swanson said. "We felt it was desecrating the Quran and the Holy Bible."

The twentieth annual exhibit, "Spiritual & Religious Art of Utah," opened October 30 at the museum in Springville. The show contained contemporary and traditional artworks, submitted by artists from throughout the state. A jury of art experts reviewed the 246 submissions and chose 162 to be displayed, Swanson said.

Bradshaw said his sculpture, titled "Improper Use May Result in Injury or Death," is a response to the war in Iraq and the notion that God is on one side or another. "I want people to realize. . .that people are using religion to justify killing others who don't agree with them," said Bradshaw, who added that he does not consider himself a member of any particular faith. He said he did not intend his sculpture to be blasphemous.

But museum officials saw the sculpture differently. Because potentially controversial artworks must be approved by the museum's board of trustees, Swanson and the two other jurors invited board members to view Bradshaw's piece in late October. Board members voted 7 to 3 to reject it, he said.

"It was offensive to some people," said board president David Cook. "If the artist's intent was to say that these are good books used improperly, we might have considered it. But we weren't sure what he was saying. It could be taken different ways. Part of our mission is to understand the values of our community and display art that reflects those

values," he added. "It's a religious show and we want it to be pro-religious instead of anti-religious."

When he did not hear whether his sculpture had been accepted into the show, Bradshaw drove to Springville October 29, where he found the piece in a museum cloakroom. A staffer told him that day that his artwork had been rejected, so Bradshaw drove the sculpture back to Logan. (A second sculpture by Bradshaw was accepted into the show and won a merit award.)

The young artist said he is bothered most by what he sees as the museum's censorship of his work. He still hopes that museum officials will reconsider. "I'd like to see the work back in the show," he said. "I'd like to be able to defend myself and my work. And I'd like to give the public the opportunity to tell me what they think." Reported in: *Salt Lake Tribune*, November 5.

foreign

Kabul, Afghanistan

For the first time since the fall of the Taliban's Islamic government four years ago, a journalist has been convicted by a Kabul court under the country's blasphemy laws. Ali Mohaqiq Nasab, the editor of a monthly magazine for women called *Women's Rights*, was sentenced October 22 to two years in prison by the primary court in Kabul. The sentence will automatically go to appeal.

The sentencing came after a strenuous battle between Kabul's conservative judges, led by members of the Supreme Court, and the liberal minister of information and culture, Sayed Makhdum Raheen, and revealed the strains between moderates and conservatives in the government of President Hamid Karzai.

The prosecutor called for the death penalty, accusing the editor of apostasy, the abandonment of the faith, so the sentence appeared to have been a compromise. But it was a reminder that Afghanistan is still ruled by the Islamic legal code, Shariah, and that on issues of religion, conservatives are determined to enforce it.

"He could not provide a defense against the prosecutor and was found guilty of disrespecting Islamic law and was convicted to two years' imprisonment," said Ansarullah Maulavizada, chief of the public security tribunal in charge of the case.

He contended that the magazine had run two articles in its latest issue about apostasy that violated the law by saying that while apostasy was taboo, it was not a crime under Islam. The authorities apparently ordered the issue removed from the newsstands.

Raheen, the information and culture minister, said, however, that the court had bypassed a commission that was supposed to make recommendations in cases involving the news media and that the commission had found no blasphemy after examining the articles.

Nasab, an Afghan who lived in Iran as a refugee, is an Islamic scholar and has degrees from more than one Islamic university there, Raheen said. He was arrested in early October and had won two postponements, one to find a lawyer and a second after he said he was ill.

Nasab was shown on the Afghan commercial television channel, Tolo TV, at the trial. "I do not accept the decision of the court," he said. He said he did not have a lawyer, although it was unclear whether he had chosen not to hire a lawyer or had not been able to find one.

Under a new law governing the news media, put into effect under Karzai, the Commission for Investigating Media-Related Offenses has been charged with reviewing cases and advising the court. The commission's recommendations are not binding.

"This procedure was not legal at all—to send someone to jail like that," Raheen said when Nasab was arrested. To emphasize that point, Raheen convened a meeting of the group. The commission interviewed Nasab and examined the two articles in question, one written by Nasab and one by an Iranian author.

"We found there was no blasphemy in the articles at all," Raheen said in an interview. "We believe it was a media mistake, that the way he has explained things creates misunderstanding, so we gave him advice to be more careful so as not to create misunderstanding."

He added that the court's anger had been directed against the article written by the Iranian, and that the commission had recommended the dismissal of Nasab as editor because his inexperience had led him to publish something that resulted in a misunderstanding.

The commission includes two religious scholars, one of them a former Supreme Court judge; a member of the Academy of Sciences; two independent professional journalists; the journalism dean of Kabul University; and a member of the human rights commission, Raheen said.

The case also has political overtones, since Nasab, a Shiite who had been an unsuccessful candidate in the parliamentary elections in September, had already come in conflict with senior, conservative Shiite clerics during the campaign, said Robert Kluyver, a representative of the Open Society Institute in Afghanistan.

The magazine "has been published for a number of years now, and although its articles are quite critical, they are well researched and not defamatory," Kluyver said in an e-mail message about the case. The religious issues addressed in the articles in question, and the scholarly way they were addressed, would be common in any other Islamic country, including Iran, he said.

This was not the first time that accusations of blasphemy have been raised against editors and writers under Karzai's government, but until now Raheen managed to discourage

convictions by the conservative judges and members of the Supreme Court.

"I don't want any kind of damage to the freedom of speech," he said. "I have been working very hard on this." He added, "There are always some fanatics behind these things, and they take sides very quickly." Reported in: *New York Times*, October 24.

Tokyo, Japan

The Japanese Supreme Court rejected an appeal December 1 by a professor at the University of the Ryukyus, in Okinawa, seeking damages against the government for censorship of a textbook he helped to write in 1993. Observers saw the ruling as upholding the education ministry's right to screen and alter textbooks.

The ministry's screening of textbooks aroused anti-Japanese rioting in China earlier this year after Japanese education officials released a list of approved textbooks that the Chinese viewed as whitewashing Japanese war crimes and injustices before and during World War II.

In this case, the professor, Nobuyoshi Takashima, contended that the education ministry had trampled on his freedom of speech in ordering changes to chapters in a high-school textbook on modern Japanese society in which he suggested that Japan should have paid more attention to the feelings of its Asian neighbors. A district court agreed in 1998 that some of the changes were illegal and awarded him a monetary settlement. The Tokyo High Court overturned that ruling on appeal. The Supreme Court upheld the Tokyo court's decision.

"I have fought thirteen years and the ruling is as unacceptable as it is superficial," Takashima said after hearing the verdict. He had asked the court for $10,000 for the mental anguish he suffered as a result of giving up his project to publish the original book.

Kazushige Yamashita, director of the division in charge of textbook screenings at the education ministry, said the ruling was reasonable because it confirmed the legitimacy and need for the screenings.

Takashima's case was the second prolonged case involving textbook issues to come before the Supreme Court. In 1965, Saburo Ienaga, a professor from the Tokyo University of Education, the predecessor of Tsukuba University, sued the government for censoring his textbook. That case did not reach the Supreme Court until 1997, when the court ruled against Ienaga's assertion that the ministry's vetting system violated the Constitution. However, the court did rule illegal the ministry's demand for Ienaga to delete a description of the biological experiments that the Japanese army conducted on Chinese people during World War II.

Japanese courts have found government-ordered changes unlawful several times, but they have never ruled that the system itself illegal. Reported in: *Chronicle of Higher Education* online, December 5. □

(from the bench . . . from page 24)

but were nonreligious, or a poster that was religious where the student would be able to explain its relevance to the environment.

Weichert responded that, even if Antonio explained the relevance of God or religion to the environmental theme, she still would not have accepted the first poster or displayed the obscured portion of the second poster because she never discussed religion with the students during the class.

Weichert also expressed concern that, if she allowed the poster to be shown at the assembly, parents might believe she was teaching religion.

The Pecks claimed the school had censored their son based on religious content, violating both the Establishment Clause and Antonio's right to free speech.

Mordue dismissed both claims, finding the censorship was viewpoint neutral, was justified by legitimate pedagogical concerns, and that the actions of school officials were not state-inhibition of religion.

The Seconnd Circuit agreed on the Establishment Clause claim. But on the First Amendment claim, Calabresi said the facts on the record brought Antonio's poster within the framework outlined by the U.S. Supreme Court in *Hazelwood School District* v. *Kulhmeier* (1984), where the Court said that "educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."

Calabresi said the circuit might have affirmed the district court if the only factual dispute raised by the Pecks concerned school officials' belief that Mrs. Peck and not Antonio was responsible for producing the poster. But Calabresi said there were other concerns, including that the lower court may have "overlooked evidence that, if construed in a light most favorable to the Pecks, suggested that Antonio's poster was censored not because it was unresponsive to the assignment, and not because Weichert and Crème believed that JoAnn Peck rather than Antonio was responsible for the poster's content, but because it offered a religious perspective on the topic of how to save the environment."

So there are "at least disputed factual questions, which may not be resolved on summary judgment," he said, on whether Weichert and Crème were particularly disposed to censor a poster with religious content and "would not necessarily have similarly censored secular images that were equally non-responsive."

"Were these facts ultimately proved, the District's actions might well amount to viewpoint discrimination," Calabresi said.

On remand for further proceedings on the motivation of school officials, he said, the circuit was not foreclosing the possibility that the record might show a state interest

"so overriding as to justify, under the First Amendment, the District's potentially viewpoint discriminatory censorship," such as the interest in avoiding the perception of religious endorsement.

"We think it prudent to leave it to the district court, in the first instance, to ascertain whether The District's actions were necessary to avoid an Establishment Clause violation, and if so, whether avoidance of that violation was a sufficiently compelling state interest as to justify viewpoint discrimination by The District," Calabresi said.

Judges Robert Katzmann and Barrington D. Parker joined in the opinion. Reported in: *New York Law Journal*, October 21.

colleges and universities

Denver, Colorado

The University of Colorado did not violate the First Amendment rights of a medical school professor by stripping his department chairmanship because he openly opposed a plan to move the school, a federal appeals court ruled November 1. Experts on higher education law said they believed the court's decision could narrow the academic freedom protections for public college employees—especially professors who also hold administrative jobs.

The decision by a three-judge panel of the U.S. Court of Appeals for the Tenth Circuit came in a case involving Robert W. Schrier, a professor of medicine at Colorado's Health Sciences Center and the longtime chairman of the department of medicine, the largest at the university's medical school.

In the mid-1990s, the university considered a plan to move the health sciences campus from its downtown Denver location to the site of a former Army medical center in Aurora, a Denver suburb. Schrier thought the move was unsound fiscally and administratively and, according to the court record, expressed his opposition to the idea vigorously and loudly.

In 2002, with the approval of the chancellor of the Health Sciences Center, the medical school's dean, Richard D. Krugman, removed Schrier from his chairmanship, though he retained his tenured professorship and full salary. Schrier sued, charging that the university had deprived him of his First Amendment rights and breached his employment contract by removing him in retaliation for publicly speaking out about the proposed move. He asked for a preliminary injunction that would restore him to the chairmanship.

A federal magistrate judge sided with the university, and Schrier appealed.

The case caught the attention of supporters of academic freedom—including the American Association of University Professors, which filed a friend of the court brief—because the lower court judge, in ruling against Schrier, rejected his argument that academic freedom is afforded "special constitutional significance" that give academic employees protections separate and apart from the standard ones available through the First Amendment.

In its ruling, the Tenth Circuit panel upheld the lower court judge's overall conclusion that the university did not violate Schrier's rights by stripping him of his chairmanship. While Schrier's comments dealt with a matter of legitimate public concern, the court ruled, and therefore warranted some First Amendment protection, the judges also found that his criticism "impaired harmony among co-workers, detrimentally impacted close working relationships within the School of Medicine, impaired his performance as department chair, and interfered with the university's ability to implement the move."

The "disruption" caused by Schrier's position, the Tenth Circuit ruled, outweighed his First Amendment rights, and justified Colorado's decision to remove him from his position.

The court did not stop there, though, to the dismay of advocates for academic freedom. Taking up the lower court's conclusion that academic freedom has no "special" First Amendment significance, the appeals panel's opinion includes language that asserts otherwise: "Courts have conspicuously recognized that academic freedom is a 'special concern' of the First Amendment," the Tenth Circuit judges wrote. "Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned."

But the court went on to say that it agreed with the magistrate judge that "an independent right to academic freedom does not arise under the First Amendment without reference to the attendant right of free expression. . . . Schrier's argument implies that professors possess a special constitutional right of academic freedom not enjoyed by other governmental employees. We decline to construe the First Amendment in a manner that would promote such inequality among similarly situated citizens."

What that language does, said Robert M. O'Neil, a professor of law at the University of Virginia, is to equate the academic freedom protections afforded to professors to the First Amendment protections given generally to public employees. That prospect troubles O'Neil, who said the standards used to assess whether the comments or actions of public employees are protected by the First Amendment—whether they disrupt the workplace, for instance, or undermine public confidence in the agency—could apply very differently within a college or university classroom than they do at a state motor vehicles bureau.

"On the facts of this case themselves, I cannot say that this is the wrong decision," said O'Neil, founding director of the Thomas Jefferson Center for the Protection of Free Expression. "But I would have been much more comfortable if the court had based its decision simply on the fact that

the university needs to be able to secure the cooperation of administrative employees in carrying out decisions that the Board of Regents has reached. Unfortunately, it backs into a doctrine that has very dangerous implications."

"I'm afraid this decision seems to be carrying over too much of the baggage of public employees' speech into the obviously very sensitive and different area of academic freedom," O'Neil said. "If this decision were to be read to say that academic freedom is qualified in circumstances where someone's comments may undermine the confidence of students, alumni, and the like, then we've got real trouble."

O'Neil said the decision could particularly spell trouble for department chairs and other scholars-turned-administrators who could be denied academic freedom protections because they make comments that create "conflict among faculty members," as Schrier 's actions were perceived as having done.

Thomas Rice, a Denver lawyer who ar gued the university's case before the Tenth Circuit, said the court' s findings were clearcut. "These guys have been trying from the beginning to try to carve out some special protection" for academic freedom," Rice said. "But the trial court agreed with us, and now the appeals court agreed with us: Every citizen has First Amendment rights, and there is no special or hybrid or augmented First Amendment freedom that somebody enjoys merely because their speech is of an academic nature.

He added: "In a First Amendment retaliation case, Dr. Schrier has no more protection than anybody else." Reported in: insidehighered.com, November 2.

Syracuse, New York

A New York judge has declined to second guess Le Moyne College's decision to overturn a student' s provisional admission to its graduate education program—a decision the student attributed to a controversial article he had written on the use of corporal punishment in the classroom.

Scott McConnell was provisionally admitted to the master's education program at Le Moyne, a Roman Catholic institution in Syracuse, N.Y., in the fall of 2004, but two days before the start of last spring's term, he received a letter saying the college had "grave concerns" that his "personal beliefs" would conflict with its philosophy. Although the letter didn't state it, McConnell was confident that the decision was related to a paper he had written for a course during the fall in which he expressed his support for cor - poral punishment in schools, as well as his skepticism of multicultural education.

McConnell sued the college in state court, ar guing that it had failed to follow its own rules and seeking his reinstatement to the graduate program. But in September , a judge in the state Supreme Court (which, despite its lofty name, is actually the lower trial court in New York State) ruled that New York law gives colleges and universities broad latitude to make internal decisions without review by the courts. "The academic and adminstrative decisions of educational institutions involve the exercise of subjective professional judgment," Justice Edward D. Carni wrote. "These institutions are peculiarly capable of making the decisions which are appropriate and necessary to their continued existence."

The decision at issue in this case, Carni wrote, is "an admissions determination uniquely within the professional judgment of those involved in the day-to-day implementation of the educational policies and academic oversight of this educational institution." McConnell, the judge said, has "provided the court with no legal authority that a college admissions decision may properly become the subject of judicial review under these circumstances."

Terence J. Pell, president of the Center for Individual Rights, the nonprofit law group that represents McConnell, said the student would appeal the decision in state court. "We think the judge is just plain mistaken," Pell said. "What judges have to defer to is the educational judgment of institutions, but the standard here is only that the school follow its own procedures. It is perfectly appropriate for a judge to assess whether the school followed its own procedures, and there is almost no ar gument in this case that the school ignored almost every aspect of its own procedures."

Le Moyne issued a statement saying its of ficials were pleased by the judge' s ruling. "As we have all along, we stand by our decision not to admit this individual as a fully matriculated student . . . We hope this decision will bring the matter to a close." Reported in: insidehighered.com, October 4.

Internet

Smyrna, Delaware

In the freewheeling, often obscene babble of Internet discourse, the insults flung by an anonymous poster to a Delaware Web log last year—comments that would eventually land at the center of a state court decision celebrated by First Amendment and Internet privacy advocates last week—were pretty tame.

"Cahill has devoted all of his energy to being a divisive impediment to any kind of cooperative movement," wrote someone using the nickname "Proud Citizen" on a blog dedicated to issues in the north-central towns of Smyrna and Clayton. Cahill is Patrick Cahill, a councilman in Smyrna.

"Anyone who has spent any amount of time with Cahill would be keenly aware of such character flaws," Proud Citizen continued, "not to mention an obvious mental deterioration." A day later, the anonymous antagonist took

the stinging tone even further, suggesting that Cahill "is as paranoid as everyone in the town thinks he is."

The chatter on the Smyrna/Clayton Web log suggested that the comments weren't the worst of what was said about Cahill—as well as his wife—and that the blog-sniping was actually spillover from a raging family feud between the Cahills and the kinfolk of Smyrna's mayor, Mark G. Schaffer. But to the rest of the world, the matter was a victory for free speech and, perhaps more fundamentally, that altered state of being that makes the Internet so powerful, so liberating and so dangerous: anonymity.

In a nutshell, Mr. and Mrs. Cahill, in mounting a defamation suit, managed to obtain the Internet protocol address for Proud Citizen, and sought to compel Comcast, the cable company that had provided the address, to unmask the opinionated poster behind it. Comcast notified its customer of the pending action, and Proud Citizen promptly filed a motion to block the outing.

A lower court sided with the Cahills, but on appeal, the Delaware Supreme Court sided with John Doe No. 1, aka Proud Citizen, stating that plaintiffs in such cases ought to face high hurdles before being granted the right to strip the anonymity from Internet posters—even cranky, insulting ones.

"We are concerned that setting the standard too low will chill potential posters from exercising their First Amendment right to speak anonymously," the court said. "The possibility of losing anonymity in a future lawsuit could intimidate anonymous posters into self-censoring their comments or simply not commenting at all."

The implication, of course, was that a rich and diverse commentary is fundamental to a healthy democracy, and courts have generally tended to recognize that the Internet, for all its rough edges, is arguably one of the best things to happen to democracy since the preamble itself.

"Despite the protection provided by the First Amendment, unconventional speakers are often limited in their ability" to reach the masses, wrote U.S. District Judge Lowell A. Reed, Jr., in 1999, in a case that struck down the Child Online Protection Act as being too restrictive of free speech. "In the medium of cyberspace, however, anyone can build a soap box out of Web pages and speak her mind in the virtual village green to an audience larger and more diverse than any the Framers could have imagined."

It's a fair assumption, of course, that fewer people would build digital soap boxes if they were forced to abandon "dogbyte12," "naturalman1975" and "NeuroticBlonde"—three handles grabbed at random from the political blogs DailyKos and FreeRepublic—and use their real names.

"There are some conversations that are undeniably improved when the rule going in is that you have to stand behind what you say and have to wear a name tag when you do it," said Jonathan Zittrain, who holds the chair in Internet governance and regulation at Oxford University and is a co-founder of the Berkman Center for Internet and Society at Harvard Law School. "But that's certainly not all conversations. People might be prepared to ethically stand behind what they say, but might be in a position that they can't afford to lose their house over it. Speech shouldn't just be for people with lawyers."

In other words, without robust protections for anonymity, which the Supreme Court called "a shield from the tyranny of the majority" in the 1995 case *McIntyre* v. *Ohio Elections Commission*, just the threat of lawsuits would have a chilling effect on free speech. It is worth noting, too, that the Delaware court reaffirmed the notion that however distasteful—even stupid—one might find the "speech" on Internet blogs and bulletin boards, at least some of it belongs to an "honorable tradition of advocacy and dissent."

The group Reporters Without Borders noted in its new "Handbook for Bloggers and Cyberdissidents" that there are plenty of places—Iran, China, Vietnam—where pseudonymous political bloggers are routinely tracked down and imprisoned. While there are numerous techniques, from anonymous proxies to encryption, that Internet users anywhere can use to cloak their IP addresses, and by extension their identities, few are foolproof.

This makes the decision of the Delaware court, and so many others like it, much more important. Such decisions recognize that the Internet's default shadow of anonymity can provide refuge for thieves and cons and pedophiles, that it elicits the worst of human impulses to impugn and gawk, to steal or spy or stalk. Yet. it is worth protecting.

"The right to remain anonymous may be abused when it shields fraudulent conduct," the Delaware court said, quoting the Supreme Court's decision in the McIntyre case. "But political speech by its nature will sometimes have unpalatable consequences, and, in general, our society accords greater weight to the value of free speech than to the dangers of its misuse." Reported in: *New York Times*, October 10.

video games

Springfield, Illinois

A federal judge ruled December 2 that Illinois' restrictions on the sale of violent and sexually explicit video games to minors are unconstitutional. He barred the state from enforcing the law. State officials "have come nowhere near" demonstrating that the law passes constitutional muster, said U.S. District Court Judge Matthew Kennelly.

Democratic Gov. Rod Blagojevich and other supporters of the measure argued that children were being harmed by exposure to games in which characters go on killing sprees or sexual escapades. Opponents declared the law a restriction on free speech and pointed out that similar laws had been struck down in other states.

"It's unfortunate that the state of Illinois spent taxpayer money defending this statute. This is precisely what we told them would happen," said David Vite, president of the Illinois Retail Merchants Association, one of the groups that sued over the law.

Blagojevich said he would appeal the ruling. "Parents should be able to expect their kids will not have access to excessively violent and sexually explicit video games without their permission," he said.

Other states this year approved similar legislation after hidden sex scenes were discovered in a popular game, "Grand Theft Auto: San Andreas." California's version, set to go into effect January 1, is among those being challenged in court (see page 55).

The Illinois law, which also was to go into effect January 1, would have barred stores from selling or renting extremely violent or sexual games to minors and allowed $1,000 fines for violators. The Illinois law's opponents said it would have a chilling effect, discouraging retailers and game makers from marketing mature games even to adults. They questioned why state officials were singling out video games when violent and sexual images appear elsewhere.

Kennelly agreed with both points. "If controlling access to allegedly 'dangerous' speech is important in promoting the positive psychological development of children, in our society that role is properly accorded to parents and families, not the state," he said.

The judge said the law would interfere with the First Amendment and that there wasn't a compelling enough reason, such as preventing imminent violence, to allow that. "In this country, the state lacks the authority to ban protected speech on the ground that it affects the listener's or observer's thoughts and attitudes," Kennelly wrote. Reported in: firstamendmentcenter.org, December 5.

protest

Sacramento, California

A federal judge on November 4 denied a request from a group of Mendocino women who wanted to protest topless on the grounds of the state Capitol. U.S. District Court Judge Garland Burrell said the group made no compelling argument that showing their breasts constitutes free speech.

"Being topless is not inherently expressive" speech, Burrell said. The group, Breasts Not Bombs, had scheduled a protest for noon November 7. The California Highway Patrol threatened to arrest anyone who went topless.

"All we really have is the power of ourselves," said Sherry Glaser, a leader of the group. "Our bodies bring attention."

Group members, whose protest on the west steps of the Capitol was intended to contrast the "indecent" initiatives backed by Gov. Arnold Schwarzenegger on the November ballot with their "natural and decent" breasts, sought a temporary restraining order prohibiting CHP officers from arresting women who protest topless.

The First Amendment protects their right to protest bare breasted, the group argued. "The very act is a dynamic and fully expressive statement worthy of constitutional protection," their brief asserted.

But Judge Burrell didn't buy that argument. "Do you think the founding fathers had this in mind when they drafted the First Amendment?" he asked Matthew Kumin, the lawyer representing Breasts Not Bombs.

Lawyers for the state said no previous group has been allowed to protest on Capitol grounds unclothed. Those protesters who have disrobed were ordered to put their clothes on or face arrest. "It has always been our policy that we do not allow nudity on the Capitol's grounds," said Tom Marshall, a CHP spokesman. Allowing public nudity on the Capitol grounds also would be disruptive and possibly dangerous, the state argued.

"The state Capitol is a destination for California residents and tourists from around the world. Hundreds of California schoolchildren visit on a daily basis. They often enjoy their lunch on the west steps of the Capitol," the lawyers for the attorney general's office wrote. "What visitors to the Capitol do not and cannot expect is to see topless adults and children engaged in public nudity under the guise of political protest." Reported in: *San Francisco Chronicle*, November 5. □

(is it legal? . . . from page 36)

has performed well in the past and today has no domestic intelligence collection activities. He was not aware of moves to enhance its authority. The Senate Select Committee on Intelligence has not had formal hearings on CIFA or other domestic intelligence programs, but its staff has been briefed on some of the steps the Pentagon has already taken. Reported in: *Washington Post*, November 29.

colleges and universities

Montgomery, Alabama

On October 31, the Foundation for Individual Rights in Education (FIRE) targeted the fifth university in its Speech Code Litigation project. Attorneys filed a federal lawsuit against Troy University in Alabama for violating the First Amendment by maintaining a restrictive speech code and censoring student artwork. FIRE's efforts to challenge

unconstitutional campus speech restrictions has already succeeded at Shippensburg University in Pennsylvania, Texas Tech University, the State University of New York at Brockport, and California's Citrus College.

FIRE filed the lawsuit on behalf of Blake Dews, a senior art major at Troy's main campus.

"The case against Troy University is yet another step in FIRE's effort to rid the nation of scandalous and unconstitutional speech codes on college campuses," noted FIRE President David French. "Speech codes like the one in effect at Troy University are incompatible with a free society."

Despite its obligation as a public university to uphold the First Amendment, and its explicit assurance to students that it will respect the rights of students to "[f]ree inquiry, expression, and assembly," Troy's speech code is extraordinarily overbroad and vague, the FIRE suit contends. Troy's handbook states, for instance, that a student can face punishment up to and including expulsion for "indecent . . . expression"; "[a]ny activity that creates a mentally abusive, oppressive, or harmful situation for another"; and for "[u]se of the mail, telephone, computer and electronic messages, or any other means of communication to insult . . . or demean another."

"If insulting or demeaning people is grounds for expulsion at Troy, I am surprised there are any students left on campus," remarked FIRE Director of Legal and Public Advocacy Greg Lukianoff. "Comedians, politicians, activists, or any others who dare to criticize apparently have no place there."

The school also has declared "jokes, or other verbal, graphic, or physical conduct relating to" characteristics including "age" and "religion" to be harassment, and also bans "derogatory or demeaning comments about gender, whether sexual or not," "gossip," or "suggestive" and "insulting" comments.

"No school that is bound by the First Amendment can ban categories as broad and amorphous as 'gossip' or 'suggestive comments,'" stated FIRE's Lukianoff. "Such absurdly unconstitutional policies not only harm debate and candor on campus, but also dangerously trivialize real harassment."

Beyond enacting unconstitutional policies, Troy also has engaged in unconstitutional art censorship, the suit alleged. In the fall semester of 2003, plaintiff Blake Dews, an art student, was assigned to create an original work of art on the theme of "birth." Dews created a photographic display on that theme, including several photos that featured nude models. Dews' artwork was not even close to the definition of obscenity under federal or state law, nor was it the only one that included nudity. A sign also was posted in the entrance of the exhibit advising patrons that the exhibit contained some nudity, so no visitors would be exposed unexpectedly to photographs they might find offensive.

Dews received an "A" and won an award for the artwork. Yet in early 2004, Dews was notified by his professor that three of the photos featuring nudity would have to be removed. Dews refused to remove the photos, and upon returning to the exhibit found that the three photos had been removed without his permission, although other exhibits with nudity remained untouched.

"What is particularly ironic here is that the Supreme Court has determined that if something has a redeeming artistic value, it is by definition not obscene," attorney Gabriel Sterling said. "The very fact that Blake received an 'A' and an award for his art should have made the university aware that the artwork was constitutionally protected expression."

"A true injustice was done this young man by having the artwork taken out after it was set up, after grades were given, and after the school knew what the situation was," attorney William Parkman concluded. "It turned out to be an unwarranted embarrassment, humiliating and shaming Blake's good name."

The lawsuit, filed October 31 in U.S. District Court for the Middle District of Alabama, also charged Troy with breach of contract, unlawful conditions placed on the receipt of state benefits, and denial of due process and of equal protection of the law. Reported in: FIRE Press Release, October 31.

Los Angeles, California

The college plans of six students at a Murietta, California, school have sparked a lawsuit that could have implications for academia nationwide. The lawsuit, filed in U.S. District Court in Los Angeles, contends that officials with the University of California system discriminated against students from Calvary Chapel Christian School in Murietta when they decided that some of the school's religious-viewpoint courses—such as "Christianity's Influence on American History"—do not meet the UC system's admissions standards.

The complaint, pushed by the Association of Christian Schools International, alleged the university's decision violates the First Amendment religious-practice rights of the students, including two who plan to attend UC San Diego.

The case is being closely tracked by free-speech advocates, public educators and Christian leaders who are concerned about the impact the case could have on state school admissions policies and the ability of some Christian schools to teach their core beliefs. The lawsuit "is one piece of the culture war that is ongoing in our country for a number of years," said Robert Tyler, who represents the students and heads the group Advocates for Faith and Freedom. "It's important for our clients to take a stand at this time to prevent the intolerance of the UC and to prevent them from attempting to secularize private Christian schools."

"This appears to be coming in as the first wave in an assault," said Barmak Nassirian, an official with the American Association of Collegiate Registrars and Admissions Officers, who sees the lawsuit as an effort by

a special-interest group to improperly shape admissions requirements.

UC lawyers say Calvary Chapel students are free to study as they choose, but they still must take courses approved by the university system—or alternately take an SAT subject test—to gain admission to one of the UC's ten campuses. University of California determinations of eligible courses also are applicable for admission to the twenty-three campuses of the California State University system.

Christopher Patti, a UC lawyer, said that in the past four years, thirty-two students from Calvary Chapel have applied for UC schools, and twenty-four were admitted. The lawsuit "has more to do with the university's ability to set admissions standards than it does with the plaintiffs' ability to teach what they want," Patti said. "We don't try to limit what they teach."

Lawyers for the plaintiffs contend this dispute came up two years ago when UC admissions officials began closely examining Calvary Chapel's courses and texts that emphasized Christianity. Among the rejected courses were biology classes with texts by A Beka Book and Bob Jones University Press, both conservative Christian publishers. Courses titled "Special Providence: American Government" and "Christianity and Morality in American Literature" also were rejected.

The lawsuit argues that it is unfair these courses were nixed while others titled "Western Civilization: The Jewish Experience" and "Intro to Buddhism" were approved.

Patti said of the roughly one thousand courses submitted for approval every year, 15 percent are rejected for reasons such as lacking proper content or being too narrowly focused.

It is the Calvary Chapel's biology courses that have sparked the most debate. Glenn Branch, deputy director of the National Center for Science Education, which fights attempts to teach intelligent design and creationism as science in public schools, called the biology texts used by the school "unabashedly creationist" books that explain evolution in a confusing manner. Creationism is the belief that God created the universe and all life.

Branch noted that the preface of the Bob Jones University's biology textbook states: "If conclusions contradict the word of God, the conclusions are wrong no matter how many scientific facts may appear to back them."

"I don't think the UC is insisting that incoming students accept evolution," Branch said. "They want them to have a good understanding of it. That's the purpose of education."

But plaintiff lawyer Wendell Bird, who argued before the U.S. Supreme Court in a 1987 Louisiana case dealing with creationist instruction in public schools, said it is wrong to interpret the suit solely as a fight over creationism. "This case would exist even if the science course had been accepted" by UC admissions officials, he said, noting other courses also were rejected. Reported in: *San Diego Union-Tribune*, November 27.

Washington, D.C.

A national coalition of student organizations, privacy advocates, and antiwar groups is urging the U.S. Department of Defense to stop collecting information about high-school and college students for a controversial military-recruiting database.

In a letter sent October 18 to Donald H. Rumsfeld, the secretary of defense, more than one hundred groups called for the immediate end of the database, which includes students' birth dates, Social Security numbers, ethnicities, grade-point averages, fields of study, e-mail addresses, and telephone numbers.

The Pentagon's Joint Advertising and Market Research Studies program, the letter said, "is in conflict with the Privacy Act, which was passed by Congress to reduce the government's collection of personal information on Americans." The Family Educational Rights and Privacy Act of 1974 prohibits colleges from releasing many kinds of information about students without their consent.

Signers of the letter, which also warned that the database had a potential for abuse, included the American Civil Liberties Union, Common Cause, the Republican Liberty Caucus, Rock the Vote, and Veterans for Common Sense.

Since news of the database first spread, in June, critics—including some higher-education associations—have worried that the program would allow the government to disclose students' personal information to other parties without their consent. Through a contract with the Defense Department, BeNow, Inc., a Massachusetts-based marketing firm, is compiling and maintaining the database, which contains the names of approximately 12 million students.

Military officials have described the database as a lawful means of improving their recruiting efforts. David S.C. Chu, deputy undersecretary of defense for personnel and readiness, said at a news conference in June: "If we don't want conscription, you have to give the Department of Defense, the military services, an avenue to contact young people to tell them what is being offered."

Opponents of the program hope to raise awareness of the issue among college students this fall. National student activist groups designated November 17 as a day of campus protest against the U.S. military's recruiting practices, including its use of the student database.

Angela Kelly, an official at Peace Action, a Maryland-based group that helped compose the coalition's letter to Rumsfeld, said opponents of the database include students on both sides of the political divide. "It's nothing but patriotic to ensure that our rights and our laws are being followed," Kelly said, "and that youth are not excluded from that."

The dispute over the database comes at a time when, thanks in part to the war in Iraq, the Pentagon is having increased difficulty finding qualified military recruits. The controversy also coincides with a legal case, which the U.S. Supreme Court will hear in December, over whether the

federal government can withhold funds from colleges that bar military recruiters from their campuses (see page 20). Some colleges have sought to ban such recruiting because they say the Pentagon's policy on gay men and lesbians in the military conflicts with the colleges' antidiscrimination policies.

A similar database, proposed last year to track the academic progress of all college students, drew sharp criticism from both Democrats and Republicans, and the education committee in the U.S. House of Representatives passed legislation in July that would kill the idea. Reported in: *Chronicle of Higher Education* online, October 19.

Indiana, Pennsylvania

Alan Temes believes that being a professor doesn't mean you give up your First Amendment rights—and that his beliefs cost him a chance at tenure. Temes, an assistant professor of health and physical education at Indiana University of Pennsylvania, had been receiving good reviews until last year, when some of his colleagues objected to notices he posted in the hallway of an academic building, among the various other notices that line such hallways. Temes posted—and regularly updated—the death counts of U.S. soldiers and Iraqi civilians killed since the United States invaded.

His department chair sent Temes an e-mail last April stating: "Hanging a body count is not an issue of freedom of speech, but one of using poor judgment and showing lack of sensitivity for students, faculty and staff in our office who have immediate family members who are themselves at risk of dying in Iraq every day." In the same e-mail—according to a lawsuit Temes has filed—the department chair, Elaine Blair, requested a meeting to talk about Temes' anti-war activities and his tenure bid. At that meeting, according to the suit, Temes was told that continued anti-war activity would hurt his tenure bid—and shortly after that he was rejected for tenure.

Normally, tenure lawsuits are very hard to win. But Samuel C. Cordes, a lawyer representing Temes, said that because of the collective bar gaining agreement in place at the university, tenure criteria are very specific and somewhat formulaic, so it will be easy to show that Temes met the criteria and was headed to tenure—at least until he exercised his freedom of expression.

The suit filed by Temes in federal district court charges that his First Amendment rights were violated and says that, as a result, he should be awarded tenure. "It's a First Amendment issue, and I think it's important for that reason," Cordes said. "Any public employee has a right to talk on matters of public interest. The Supreme Court has said that for more than twenty years, especially in the university setting, where there is supposed to be the free exchange of ideas."

Temes said he thought it was important, as a professor, to get students thinking about the war in Iraq. "The American media hasn't been covering the deaths," he said. It seemed perfectly appropriate to him to put up his notices in the hallway, since the same hallway includes notices that were patriotic or pro-war and a display of alumni and employee relatives who are serving in the military.

At the same time, Temes stressed that the activities for which he was criticized weren't in the classroom. He said he doesn't try to hide his liberal views, but the war is rarely relevant to his courses, so he doesn't bring it up. He did call off classes on the day the United States invaded Iraq, and participated in a teach-in instead, and he replaced regular classes with a discussion on 9/11. "I just thought we couldn't conduct business as usual" after learning of the attacks on the World Trade Center, he said. But Temes said those rare instances in which world events changed his classes weren't criticized—his body count and his other anti-war activities were.

He makes no apology for the body counts, and he thinks professors who were offended should respond with their own views, not criticize his. "I think it's important for professors to speak out about all social and political issues. There are lots of problems—national, global, that we could and should be addressing," he said. "The only time many of my colleagues are mobilized is on contract issues, pay and benefits. Sure I want to make a decent wage, but that's not high on my list." Reported in: insidehighered.com, December 2.

Pittsburgh, Pennsylvania

A Duquesne University sophomore said he will risk being expelled for expressing his view that homosexuality is "subhuman" rather than write a ten-page essay the university has called for. Ryan Miner of Hagerstown, Maryland, was sanctioned by the university for posting his view on an online forum not related to the university. He opposed an effort by other students to form a Gay-Straight Alliance group, an issue still being debated by the Catholic university.

"I believe as a student that my First Amendment rights in the Constitution were subverted and attacked," said Miner, who is Catholic.

After his comments appeared online, some students complained to the school. Following a hearing, the office of judicial affairs found Miner guilty of violating the University Code which prohibits harassment or discrimination based on, among other groups, sexual orientation. The paper was assigned as punishment, which Miner said he will appeal. Reported in: *Pittsburgh Post-Gazette*, October 27.

copyright

Washington, D.C.

The Association of American Publishers said October 18 that five of its members had filed a copyright-infringe-

ment lawsuit against Google because it is scanning books from top research libraries for the Google Library Project. The publishers' group is coordinating and paying for the lawsuit.

In their complaint, filed in the U.S. District Court for the Southern District of New York, the McGraw-Hill Companies, Pearson Education, the Penguin Group, Simon & Schuster, and John Wiley & Sons charged that Google is infringing copyright to "further its own commercial purposes." The publishers asked the court to forbid Google to reproduce their works and to require Google to delete or destroy records already scanned. The only remuneration the publishers seek is that Google pay their legal fees.

Another organization, the Authors Guild, and three writers filed a similar complaint in September.

Google's Library Project, announced in December 2004, involves Harvard and Stanford Universities, the University of Michigan at Ann Arbor, and the University of Oxford, in England, as well as the New York Public Library. Michigan has been most deeply involved with the project, giving Google permission to scan all the volumes in its library.

Google plans to allow users to see the full texts of books that are in the public domain, but only snippets of works that are still under copyright, which can go back as far as 1923.

David Drummond, Google's vice president for corporate development, released a statement denouncing the lawsuit as "shortsighted." He said it "works counter to the interests of not just the world's readers, but also the world's authors and publishers." He said that Google's project falls under copyright law's fair-use provision, that it would make books easier to find and buy, and that it would inevitably "increase the awareness and sales of books directly benefiting copyright holders."

Patricia S. Schroeder, president of the publishers' group, said publishers had been taken aback when Google announced its library-scanning project. She said the publishers held meetings with Google, in the spring and through the summer, repeatedly asking the company not to scan books under copyright. For a while this summer, Google stopped scanning copyrighted books while the negotiations were going on. But then Google announced that it would resume scanning books under copyright.

"We don't seem to be able to get their attention," Schroeder said. "Instead, we get, 'This is for the global good,' and, 'This will be good for you, but you just don't get it.' We seemed to be talking past each other. The real fear is that if Google can do this, anyone can do this. The precedent is just terrifying." Asked why the publishers did not also sue any of the universities involved, many of which are discussed in the complaint, Schroeder said: "Google is clearly the instigator. They are the driving force behind this."

James L. Hilton, interim university librarian and associate provost for academic-, information-, and instructional-technology affairs at the University of Michigan, said he was disappointed by the lawsuit. "We believe that this project has enormous benefit for humanity" in allowing people to search entire texts of obscure and long-out-of-print works through a computer, he said. "If you can't find it online, it won't be read." Reported in: *Chronicle of Higher Education* online, October 20.

broadcasting

Washington, D.C.

Viacom, Inc., has asked a federal court to overturn new rules requiring more educational TV programs for children and setting tighter limits on kids' exposure to advertising in the age of digital television. The suit came a week after a group of entertainment companies, including the Walt Disney Co. and General Electric, Co.'s, NBC Universal, Inc., asked the Federal Communications Commission to postpone the rules, which were approved last year and were set to go into effect in January.

The government had long set guidelines for broadcasters to set aside a certain amount of educational programming for children—currently, three hours per week—with commercials limited to 12 minutes per hour of kids' programming on weekdays and 10.5 minutes on weekends. But the FCC has formulated new rules to take into account the nation's move toward digital transmission of TV signals and the phaseout of analog broadcasting. Moving to digital transmission will allow stations to broadcast several channels where they could only show one before.

The new FCC rules would extend the children's programming requirements to those new channels, something the major entertainment companies are resisting. They argue that the new channels could be useful for formats that are not conducive to kids' shows, such as weather or news channels. The rules also would limit the amount of time broadcasters can put commercial Web addresses on the screen, which the companies think would be a handicap in a digital world where people can hop from a TV show to a Web site with a single click. In addition, the rules would limit broadcasters' ability to preempt educational programming for things such as sporting events.

Viacom escalated the industry's complaints October 3 by asking the U.S. Court of Appeals for the D.C. Circuit to review the new rules.

Advocates say the rules are needed to ensure that children get some television with educational value and to protect them from commercial pitches on the Internet. "My fear is that this will end up in court and everything gets thrown out," said Gloria Tristani, managing director of the Office of Communication of the United Church of Christ, Inc., a member of the Children's Media Policy Coalition that supports the rules. "What they ultimately appear to be battling for, in the age of the transition to digital television

and interactivity, is . . . to have a free hand on how they advertise . . . to children."

Viacom said it was only asking the court to challenge the new rules and had no plan to file suit against the old ones, which stem from the 1990 Children's Television Act. "Viacom does not intend to challenge the entirety of the Children's Television Act. Our filing is simply seeking a review of the most recent children's television rules that the FCC adopted last year. We still hope that the FCC will reconsider these rules," Viacom spokesman Carl D. Folta said.

In a petition asking the FCC to delay the new rules for ninety days, Viacom, Disney and NBC Universal made a host of arguments, including that the rules may be unconstitutional on First Amendment grounds. "They have laid the groundwork for a very broad challenge," said Geor getown University Law Center professor Angela Campbell, who is representing the Children's Media Policy Coalition on the issue. "I think that if the commission doesn' t change it . . . they would mount an all-out attack."

In a sign that it may be bracing for a court battle, Disney has hired Seth P. Waxman, a top Supreme Court lawyer, to advise it on the new FCC rules.Asked if Disney was preparing to sue the government over the rules, Preston Padden, Disney's executive vice president for government relations, said: "I cannot comment on prospective litigation."

"The Disney company has an undisputed record of providing wholesome, family-friendly kids programming on television and on its Web sites. We don't think these rules are about quality programming for kids—we're doing that, we do more of it than anybody in the world," Padden said.

The original rules have never been challenged in court, experts said, a sign that they were basically acceptable to the broadcast industry and to children' s media advocates. "If it is actually litigated, I think that would be suggestive that this formerly held truce that existed . . . no longer is acceptable," said University of California at Los Angeles law professor Jerry Kang, speaking before Viacom filed its suit. "It could open up an interesting Pandora' s box." Reported in: *Washington Post*, October 6.

Washington, D.C.

For every hour of *Desperate Housewives* the nation' s 3,000 public-access television channels present dozens of hours of local school board meetings, Little League games and religious services. Not to mention programs like *The Great Grown-Up Spelling Bee,* a spelling bee for adults that raises money for the Kalamazoo, Michigan, public library , and *Fruta Extrena,* a bilingual gay talk show in New York City. Now, though, the future of the channels deemed "electronic soapboxes" in 1972 by the Federal Communications Commission is uncertain, as proposed legislation about how the telecommunications industry is regulated winds its way through Congress.

The main concern for public-access advocates is that the law preserve the ability of municipalities to negotiate franchise agreements for cable television. Those agreements pay for the public-access programs and allow municipalities to determine how many channels they want and allow public access programmers to train nonprofit groups to produce their own shows. The proposed legislation varies in its specifics, but several bills aim to allow more video-services competition—easing the way for telephone companies to compete for the franchises—and minimize regulations for franchises. Advocates of the legislation say that the fears of the demise of public access are exaggerated and that some local control of franchises is written into the bills.

Currently, most cable franchise agreements include a franchise fee paid by cable providers for using city property, putting millions of dollars in city coffers, some of which can be used for public-access channels. Some agreements also provide explicit financing and support for the community' s use of the cable system. Public, educational and government—or "PEG"—access channels tend to be uneven in their quality and production values. But, say advocates, these shows are not meant to sell products or just entertain, but to mirror community interests and needs.

"There has to be some portion of the system open to public use, which has public revenue supporting it," Anthony T. Riddle, executive director of the Washington-based Alliance for Community Media, said of his advocacy of public access. The group represents one thousand media centers nationwide.

On November 7, election eve, thousands of public-access channels nationwide scheduled one minute of video snow simultaneously to protest the legislative proposals. The alliance is joined by the National League of Cities and the United States Conference of Mayors in opposing any bill that would strip local control of cable franchises. Public-access advocates are appealing to politicians and to the public to hear their case.

The cable business has $60 billion in revenue annually, and last year cable operators paid $2.4 billion in franchise fees, according to the National Cable and Telecommunications Association, the cable industry's principal trade association. Under federal law, cities can collect a franchise fee that is up to 5 percent of the gross revenue generated from the delivery of cable services.

With 33,000 local cable franchises across the country, telephone companies are now pressuring the federal government for speedier access to franchises and fewer restrictions. In Texas, SBC and Verizon got that state to set up a uniform clearing-house approach, meaning that these companies can apply to the state for franchises and do not have to negotiate agreements with each municipality separately.

"One of the big questions is, Is there a place for public interest in our media policy , or is it one size fits all?" said Rick Junger, the director of community media at Manhattan Neighborhood Network.

The National Cable and Telecommunications Association has not weighed in on any specifics of the proposed laws because it is too early, said a spokesman for the association, Rob Stoddard. The organization's concern, he said, is that any new rules on franchises apply to all video providers, whether they are traditional cable providers or telephone companies.

What advocates hope is not lost in all the fights over politics and technology is their idea of public access as a First Amendment right, especially for people and towns under-represented on television. The local franchise agreements, they said, have provided a tried and true mechanism to handle customer complaints, determine local programming needs and deliver the money to produce those programs.

"It's where we turn for a sense of self," Laurie Cirivello, executive director of the Community Media Center of Santa Rosa, said of the four access channels in her Northern California community of 150,000. The channels feature locally produced shows like *Mrs. Twizzleton's Magic Garden,* a children's program with a local psychologist as host, and a number of Spanish-language shows. Cirivello noted that Santa Rosa, near San Francisco, has no local television stations.

Legislators say their bills are needed because the current telecommunication laws did not foresee the Internet explosion, or new video technology like telephone service over the Internet, and interactive television.

The Video Choice Act, introduced in the House by Marsha Blackburn, Republican of Tennessee, has been referred to the House Energy and Commerce Committee. The Senate version, introduced by Gordon Smith, Republican of Oregon, and Jay Rockefeller, Democrat of West Virginia, has been referred to the Senate Commerce, Science and Transportation Committee. In the Senate, a bill introduced by John Ensign, Republican of Nevada, which covers a broader range of telecommunications issues, is known as the Broadband Investment and Consumer Choice Act.

"This legislation allows consumers—not government bureaucrats—to choose the best services at the best prices," Senator Ensign said in an e-mail message. The Ensign bill, now also in the Senate Commerce, Science and Transportation Committee, has drawn the most fire from opponents, who say the House and Senate versions of the Video Choice Act are more flexible in their language.

"It is just flat wrong to say we eliminate public, educational and government channels," Senator Ensign said. "Our bill specifically requires video providers to carry up to four PEG channels." He said his bill did not eliminate the 5 percent franchise fee. It extends it, he said, to new video providers and also has an entire section protecting the ability of state and local governments to manage their rights of way.

Representative Blackburn said that her bill was intended to create more affordable video options and more diversity in programming. "My bill seeks to keep limitations and regulations to a minimum in order to encourage an active, growing marketplace rather than the atrophied one we have right now," she said.

But public-access advocates argue that these are empty words and that questions remain, including those concerning how franchise fees are defined and who oversees the collection of right-of-way revenue. Senator Ensign's aides acknowledged that the definition of "revenue" for franchise fees was still debatable. Whether revenue from purchases on a home shopping channel should be included, as they currently are, is one question that has to be answered, an aide to Senator Ensign said. The Ensign bill also caps the number of access channels at four in each municipality, although some big cities already have more. New York City, for example, has nine PEG channels. Reported in: *New York Times*, November 8.

Internet

Washington, D.C.

A number of education, privacy, and technology groups have filed appeals with the U.S. Court of Appeals in Washington, D.C., challenging a new Federal Communications Commission rule that would make it easier for government agencies to monitor e-mail and other online communications. Finalized October 13, the FCC ruling orders distributors of broadband services—including libraries and universities—to comply with the Communications Assistance for Law Enforcement Act (CALEA) of 1994, which requires telephone companies to assist police in executing court-authorized electronic surveillance. In March 2004, the Department of Justice, the FBI, and the U.S. Drug Enforcement Agency petitioned the FCC to bring all broadband access within CALEA's scope.

An October 24 challenge by the American Council on Education focused on the expenses of implementing the new rule. In a separate appeal October 25, the American Library Association, the Association of Research Libraries, the Center for Democracy and Technology, and five other groups argued that the ruling "extends the wiretapping rules to technologies it was never intended to cover, imposes a burdensome government mandate on innovators, and threatens the privacy rights of individuals who use the Internet and other new communications technologies," according to a CDT press release.

"We're deeply concerned that extending a law written specifically for the public telephone network to these emerging technologies will stifle the sort of innovation that has been the hallmark of the Internet revolution," said John Morris, staff counsel for CDT.

Carrie Lowe, Internet policy specialist for ALA's Office for Information Technology Policy, said the new rule "will

impact both academic and public libraries," although many of the details about costs and how systems would be reengineered, for example, remain unclear. She said another FCC ruling with more details is expected in the next few weeks.

The order, issued by the Federal Communications Commission in August and first published in the *Federal Register* in October, extends the provisions of a 1994 wiretap law not only to universities, but also to libraries, airports providing wireless service and commercial Internet access providers. It also applies to municipalities that provide Internet access to residents, be they rural towns or cities like Philadelphia and San Francisco, which have plans to build their own Net access networks.

The 1994 law, the Communications Assistance for Law Enforcement Act, requires telephone carriers to engineer their switching systems at their own cost so that federal agents can obtain easy surveillance access. Recognizing the growth of Internet-based telephone and other communications, the order requires that organizations like universities providing Internet access also comply with the law by spring 2007.

The Justice Department requested the order last year, saying that new technologies like telephone service over the Internet were endangering law enforcement's ability to conduct wiretaps "in their fight against criminals, terrorists and spies."

Justice Department officials said in their written comments filed with the Federal Communications Commission that the new requirements were necessary to keep the 1994 law "viable in the face of the monumental shift of the telecommunications industry" and to enable law enforcement to "accomplish its mission in the face of rapidly advancing technology." The FCC said it is considering whether to exempt educational institutions from some of the law's provisions, but it has not granted an extension for compliance.

The universities do not question the government's right to use wiretaps to monitor terrorism or criminal suspects on college campuses, but contest the order's rapid timetable for compliance and extraordinary cost. Technology experts retained by the schools estimated that it could cost universities at least $7 billion just to buy the Internet switches and routers necessary for compliance. That figure does not include installation or the costs of hiring and training staff to oversee the sophisticated circuitry around the clock, as the law requires, the experts said.

"This is the mother of all unfunded mandates," said Terry W. Hartle of the American Council on Education. Even the lowest estimates of compliance costs would, on average, increase annual tuition at most American universities by some $450, at a time when rising education costs are already a sore point with parents and members of Congress, Hartle added.

At New York University, for instance, the order would require the installation of thousands of new devices in more than one hundred buildings around Manhattan, be they small switches in a wiring closet or large aggregation routers that pull data together from many sites and send it over the Internet, said Doug Carlson, the university's executive director of communications and computing services. "Back of the envelope, this would cost us many millions of dollars," Carlson said.

FCC officials declined to comment publicly, citing their continuing review of possible exemptions to the order. Some government officials said they did not view compliance as overly costly for colleges because the order did not require surveillance of networks that permit students and faculty to communicate only among themselves, like intranet services. They also said the schools would be required to make their networks accessible to law enforcement only at the point where those networks connect to the outside world.

Educause, a nonprofit association of universities and other groups that has hired lawyers to prepare its own legal challenge, informed its members of the order in a September 29 letter signed by Mark A. Luker, an Educause vice president. Luker advised universities to begin planning how to comply with the order, which university officials described as an extraordinary technological challenge.

Unlike telephone service, which sends a steady electronic voice stream over a wire, the transmission of e-mail and other information on the Internet sends out data packets that are disassembled on one end of a conversation and reassembled on the other. Universities provide hundreds of potential Internet access sites, including lounges and other areas that offer wireless service and Internet jacks in libraries, dorms, classrooms and laboratories, often dispersed through scores of buildings.

If law enforcement officials obtain a court order to monitor the Internet communications of someone at a university, the current approach is to work quietly with campus officials to single out specific sites and install the equipment needed to carry out the surveillance. This low-tech approach has worked well in the past, officials at several campuses said. But the federal law would apply a high-tech approach, enabling law enforcement to monitor communications at campuses from remote locations at the turn of a switch. It would require universities to re-engineer their networks so that every Net access point would send all communications not directly onto the Internet, but first to a network operations center where the data packets could be stitched together into a single package for delivery to law enforcement, university officials said.

Albert Gidari, Jr., a Seattle lawyer at the firm Perkins Coie who is representing Educause, said he and other representatives of universities had been negotiating with lawyers and technology officials from the Federal Bureau of Investigation, the Department of Homeland Security and other agencies since the spring about issues including what technical requirements universities would need to meet to comply with the law.

"This is a fight over whether a Buick is good enough, or do you need a Lexus?" Gidari said. "The FBI is the lead agency, and they are insisting on the Lexus."

Law enforcement has only infrequently requested to monitor Internet communications anywhere, much less on university campuses or libraries, according to the Center for Democracy and Technology. In 2003, only 12 of the 1,442 state and federal wiretap orders were issued for computer communications, and the FBI never ar gued that it had difficulty executing any of those twelve wiretaps, the center said.

"We keep asking the FBI, What is the problem you're trying to solve?" CDT' s Dempsey said. "And they have never shown any problem with any university or any for - profit Internet access provider. The FBI must demonstrate precisely why it wants to impose such an enormously disruptive and expensive burden."

Larry D. Conrad, the chief information of ficer at Florida State University, where more than 140 buildings are equipped for Internet access, said there were easy ways to set up Internet wiretaps. "But the wild-eyed fear I have," Conrad said, "is that the government will rule that this all has to be automatic, anytime, which would mean I'd have to re-architect our entire campus network. It seems like overkill to make all these institutions spend this huge amount of money for a just-in-case kind of scenario."

The University of Illinois said it is worried about the order because it is in the second year of a $20 million upgrade of its campus network. Peter Siegel, the university's chief information of ficer, estimated that the new rules would require the university to buy 2,100 new devices, at a cost of an additional $13 million, to replace equipment that is brand new. Reported in: *American Libraries* online, October 28; *New York Times*, October 23.

Lakeland, Florida

Polk County of ficials arrested a Lakeland man on obscenity charges October 7 after investigating his graphic Web site, which has gained international attention for allowing U.S. soldiers to post pictures of war dead on the Internet. The charges against Christopher Michael Wilson, a former police officer, are likely to reignite the debate about obscene material in the Internet age. It also raises questions about whether the federal government played a part in motivating the prosecution.

Polk County Sherif f Grady Judd said that the 300 obscenity-related charges against Wilson all involve sexual content on his Web site—and not graphic war-scene images posted by soldiers. "It is the most horrific, vile, perverted sexual conduct," Judd said. "It is as vile, as perverted, as non-normal sexual conduct, which rises to the level of obscenity, as we've ever investigated."

U.S. Army officials said they could not confirm whether photographs on Wilson's Web site, presumably showing Iraqi and Afghan war dead, were actually posted by U.S. soldiers. An Islamic civil-rights group was disappointed that the Army did not pursue criminal charges. Ibrahim Hooper, a Council on American-Islamic Relations spokesman, said: "For this to be treated in a manner that suggests the Army does not take this seriously is only going to further harm our nation's image and interests around the world, particularly in the Muslim world."

Wilson was letting soldiers access normally paid por - tions of his site in exchange for graphic war -scene shots or proof that they were fighting in the Middle East. Judd said none of the twenty films and eighty photos that brought about the charges involved pictures of war dead. But Judd confirmed that his detectives did speak with of ficials with the U.S. Army Criminal Investigation Division before arresting Wilson.

Wilson's Web site and his deal with soldiers have been the subject of many recent news articles. Judd said his obscenity charges have nothing to do with the Army's interest in the case, and he maintained that he was not pressured to investigate Wilson. "We unilaterally initiated the investigation without any support, help or encouragement from the federal government," Judd said.

But Wilson's Central Florida lawyer , Larry Walters, questioned the motivations behind the prosecution, noting that there may be hundreds of thousands of Web sites with explicit material. "Why are they getting into this battle now, and why Chris Wilson?" Walters asked. "It' s the military that potentially stands to have the greatest gripe."

Walters argued that local community standards, the guiding principle behind implementation of obscenity laws, cannot be applied to the Web, a global venue. "Any obscenity charge against any Web-site content or Internet content is unconstitutional," said Walters, who specializes in First Amendment law. "There is no commonality based on just geography anymore. It's not the 1800s anymore, not here. But I don't know about Polk County."

He said part of Walters' mission "is telling the truth about the war going on in Iraq."

Before Wilson's arrest, Polk County Judge Angela Cowden found probable cause that the images and tapes were obscene, Judd said. The obscenity statute is one of the few in which a judge must make such a determination before an arrest is made. Investigators also obtained a search warrant and removed computers from Wilson's home. They will be looking for customer lists and other documents to assist the investigation. Information that Army investigators might need in their search will be made available, Judd said.

"It's never our intent to put somebody out of business," Judd said. "All we ask is that they obey the laws of Florida. We've been investigating vice and pornography long enough to know pretty much what crosses the line. This didn't just cross the line. This left the line many miles behind." Reported in: *Orlando Sentinel*, October 8.

Annapolis, Maryland

The publisher of a financial newsletter told Maryland's second highest court November 2 that he should not be forced to disclose his subscriber list and other information sought by an Arizona company seeking those it says made defamatory online comments. The publisher, Timothy M. Mulligan, told the judges "almost everything we publish could potentially be subpoenaed," putting him in the position of constantly appearing for depositions if his request to quash a subpoena by the Arizona drug company, Matrixx Initiatives, is denied.

The judges, however, appeared to side with Matrixx, repeatedly asking why Mulligan should not appear for the deposition and invoke his right not to reveal his subscribers and sources under Maryland's so-called "Shield Law," which protects the rights of the press.

"My sense is it didn't go well," Mulligan said after the hearing. "It's not clear yet, but it will probably be in litigation for years because I have no intention of giving up my sources or subscribers."

After the hearing, Matrixx attorney David Tobin said "no one has the right to make defamatory comments. That is not protected speech."

Internet postings have become the subject of a number of court battles, especially in cases where they have affected the stock prices of companies. Free speech advocates also have become involved and the issue has even entered the Maryland political arena. Joseph F. Steffen, Jr., a former aide to Republican Gov. Robert L. Ehrlich, Jr., resigned last winter after it was revealed that he had posted rumors about Baltimore Mayor Martin O'Malley's personal life on Internet chat sites. O'Malley is seeking the Democratic nomination for governor and would face Ehrlich in the general election if he wins.

Tobin told the court it was unclear whether Mulligan could invoke the shield law. "That's the white elephant in the room," the Matrixx attorney told the judges.

In response to the first subpoena by Matrixx, Mulligan two years ago turned over nearly four hundred pages of documents, which he said was mainly source material for his report. He has refused to comply with a second subpoena seeking, among other things, his subscriber list and any contacts with an anonymous poster to Internet messages boards known as "TheTruthseeker."

However, Montgomery County Circuit Judge Eric M. Johnson denied Mulligan's request to quash the second subpoena and Mulligan appealed to the Court of Special Appeals.

Matrixx claims the postings are part of a scheme to drive down the company's stock, benefiting traders who sell short, or borrow shares and repay them at a later time, hopefully when the price has dropped.

The company filed a defamation lawsuit in Arizona in 2002, naming two dozen John and Jane Does as defendants. Matrixx also has been battling lawsuits claiming its Zicam Cold Remedy nasal gel causes permanent loss of smell and taste.

Mulligan has said he doesn't know the anonymous posters and doesn't think he should answer further questions. He is fighting the subpoena with the help of the American Civil Liberties Union, the Electronic Privacy Information Center, Public Citizen and other advocacy groups. Reported in: Associated Press, November 2.

recordings

Los Angeles, California

In separate legal actions November 21, the Electronic Frontier Foundation, an influential digital rights advocacy group in California, and the Texas attorney general filed lawsuits against the music publisher Sony BMG, contending that the company violated consumers' rights and traded in malicious software. The lawsuits were the latest in a series of blows to the company after technology bloggers disclosed that in its efforts to curb music piracy, Sony BMG had embedded millions of its music CD's with software designed to take aggressive steps to limit copying, but which also exposed users' computers to potential security risks.

The copy-protection software, called XCP, was bought by Sony BMG from a British company, First 4 Internet, and was installed on fifty-two recordings, totaling nearly five million discs, according to the music publisher, jointly owned by Sony and Bertelsmann. In response to the concerns, the company posted a public apology on its Web site, began recalling the affected CD's from retail and warehouse shelves, and offered restriction-free versions of the CD's—as well as MP3 files—to consumers in exchange for purchased CD's carrying the XCP software.

Daniel M. Mandil, general counsel with Sony BMG, said the company was "very keen to open up a dialogue with the Texas attorney general's office." Thomas Hesse, Sony BMG's president for global digital business, added that "as a company, we are deeply committed to fixing this problem, and we are doing everything we can to get this right."

Cory Shields, a Sony BMG spokesman, also said that in mounting the recall and exchange program, the company had already responded substantially to concerns raised by the Electronic Frontier Foundation.

The class-action suit filed by the foundation in State Superior Court in Los Angeles County, however, took aim at a much broader range of Sony BMG titles than those identified in the recall—including 20 million CD's that used copy-protection software from another company, SunnComm International of Phoenix. Sony BMG contends the SunnComm software has been installed on only 12 mil-

lion CD's. In a letter to the foundation the company stated that while it would be "reviewing its use of copy protection on all of its compact discs," it did not believe that the SunnComm discs needed to be removed from the market.

Cindy Cohn, the legal director for the foundation, however, said that both the First 4 Internet and SunnComm copy-protection systems, at the very least, violated consumers' rights by failing to disclose properly what sort of software would be installed when they listened to the CD' s on their computers, and what exactly that software would do.

Users do have to accept "license agreements" that appear on their computer screens before playing CD's protected by the First 4 Internet and SunnComm software, but the foundation called the terms of those agreements "outrageous" and "anti-consumer."

Only consumers playing the discs on Windows-based PC's are known to be af fected by the copy-protection programs. Studies have shown that about 36 percent of CD buyers listen to the discs on a computer.

At least six other class actions have been filed against the company.

Meanwhile, the Texas suit against Sony BMG, which refers only to the copy-protection software developed by First 4 Internet, seeks $100,000 per violation of the state's Consumer Protection Against Computer Spyware Act, which was passed by the Texas Legislature last spring and went into ef fect September 1. It is the first such state action against Sony BMG.

"What's wrong about all this is that in an ef fort to protect against illegal copying, it was Sony BMG that engaged in illegal conduct," said the Texas attorney general, Reported in: *New York Times*, November 22.

video games

Sacramento, California

Two industry trade groups sued the state of California October 18 after the state passed a law barring the sale of violent video games to minors.

California Gov. Arnold Schwarzenegger, the former screen "Terminator" who is himself portrayed in several video games based on his Hollywood roles, vowed to fight the suit, which was filed in federal court in San Jose. After Schwarzenegger vetoed similar bills last year , opponents said he was influenced by his movie persona and his lucrative connections to the bodybuilding industry.

"I will do everything in my power to preserve this new law and I ur ge the attorney general to mount a vigorous defense of California's ability to prevent the sale of these games to children," Schwarzenegger said. "California's new law will ensure parental involvement in determining which video games are appropriate for their children. I believe strongly that we must give parents the tools to help them protect their children."

"I'm a big believer in video games," the governor said. "I think they are terrific—a lot of them are manufactured in California, and we think they are doing a great job. We just want to make sure they don't get in the wrong hands so that someone the age of ten aren' t playing those things because it does have an impact on children."

The trade group Entertainment Software Association announced its intentions to fight in court immediately after Schwarzenegger signed the ban October 8. The Video Software Dealers Association joined in the suit. "It is not up to any industry or the government to set standards for what kids can see or do; that is the role of parents," Douglas Lowenstein, the group's president said. "Everyone involved with this misguided law has known from the start that it is an unconstitutional infringement on the First Amendment freedoms of those who create and sell video games."

Federal courts have ruled against violent video game legislation in Washington state, the city of Indianapolis and St. Louis County in Missouri, saying the moves violated constitutional free speech guarantees.

The California ban came in the wake of lively debate after game publisher Take-Two Interactive Software, Inc., pulled its best-selling game Grand Theft Auto: San Andreas from retailers this summer because of hidden sex scenes.

AB1179, introduced by Assemblyman Leland Yee, D-San Francisco, bans the sale or rental of especially violent video games to children under 18 years old unless there is parental approval. It was scheduled to take ef fect January 1. Ultraviolent is defined in the law as a game that depicts serious injury to human beings in a manner that is especially heinous, atrocious or cruel. The video games most often show violence in the first-person, meaning the person playing the game is committing the action.

"Unlike movies, where you passively watch violence, in a video game you are the active participant and making decisions on who to stab, maim, burn or kill," said Yee, who is also a child psychologist. "As a result, these games serve as learning tools that have a dramatic impact on our children."

The law will assess a fine on retailers who violate the act by selling a marked game to a minor in an amount up to $1,000 for each violation. It will be up to the manufacturer and distributor of the games to make sure that they are designated for adult sale only. Stores would not be fined if the manufacturer failed to properly label the game. There is no state enforcement of the law. Any suspected violation may be reported to a city or county attorney or district attorney by an adult acting on behalf of a minor who is allowed to buy or rent a violent game. The local officials can then prosecute the violation. Reported in: Reuters, October 18; *San Francisco Chronicle*, October 8. □

intellectual freedom bibliography

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