newsletter on intellectual freedom

IFC ALA

Editor: Judith F. Krug, Director
Office for Intellectual Freedom, American Library Association
Associate Editor: Henry F. Reichman, California State University, Hayward

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# congress debates PATRIOT Act renewal

In a closed-door meeting May 26, the Senate Intelligence Committee failed to agree on a proposal that would renew the USA PATRIOT Act and expand the FBI's powers to obtain records in terror investigations. A bill proposed by committee Chair Pat Roberts (R-KS) would permit the FBI to subpoena records without a judge's approval. Committee members refused to discuss details of the two-and-a-half-hour session, although officials voiced confidence that the senators would eventually reach an agreement.

Senate Republican leaders and the Bush administration argue that the legislation would give the FBI essential tools to fight terrorism, while civil liberties advocates and some Democrats maintain it would open the door to fishing expeditions.

Although House and Senate Judiciary Committees have held hearings on the PATRIOT Act provisions set to expire at the end of the year—including Section 215, which eases restrictions on searches of library and bookstore records—the Senate Intelligence Committee is the first to consider formal legislation to renew the measures.

The American Civil Liberties Union decried the secretive meeting. "These are proposals that demand a full, vigorous, and public debate and vote, not secret meetings," said Lisa Graves, ACLU Senior Counsel for Legislative Strategy. "If adopted, these broad new powers would sidestep time-honored checks and balances. Lawmakers should reject this reckless disregard for the Fourth Amendment."

Just a few weeks earlier, critics and supporters of the sweeping antiterrorism law had reduced their differences to only a handful of substantive issues, and the two sides were talking openly about finding room for compromise in renewing the law. But the new proposal in the Senate Intelligence Committee—backed by the Bush administration—sent the two sides scurrying back to their war camps.

The central question is no longer whether the government's antiterrorism powers should be scaled back in the face of criticism from civil rights advocates, but whether

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

# in this issue



## targets of the censor

**books**



**periodicals**






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## ALA receives major grant to support intellectual freedom

The American Library Association (ALA) has received a grant of $380,000 from The Ford Foundation. This funding will be used over a two-year period to support three major ALA initiatives that will support intellectual freedom and advocacy efforts.

"This generous grant from the Ford Foundation comes at an important time for libraries and the ALA," said ALA President Carol Brey-Casiano. "We are delighted to have the Foundation's support to pursue these timely projects concerning privacy rights, intellectual freedom and library advocacy."

The grant will support two research studies that will be administered through ALA's Washington Office that will gauge the frequency with which federal law enforcement have contacted libraries since the passage of the USA PATRIOT Act, and the types of contacts being made. The results of this initiative will be compiled in a research report and will prove useful to policymakers, academics, journalists, and legislators who wish to understand the impact of the PATRIOT Act on libraries.

The second initiative encompasses "Lawyers for Libraries" and "Law for Librarians." Lawyers for Libraries is a project to create a cadre of attorneys across the country committed to the defense of intellectual freedom in libraries. The goal of Law for Librarians is to provide librarians and trustees with legal fundamentals of the First Amendment, which gives users the right to read freely in libraries, and to create a means of enabling librarians to effectively partner with their legal representatives to defend against censorship. The ALA Office for Intellectual Freedom will administer this initiative.

The grant also will assist the ALA Public Information Office with the development of mini-Advocacy Institutes that will build on the Advocacy Institute held at the ALA Midwinter Meeting in January 2005. These smaller versions of the Institute will be developed for implementation at the grassroots level, and will be conducted in collaboration with ALA state and regional chapters. ☐

## ALA opposes bill to mandate school library purchases

The following is a statement from American Library Association (ALA) President Carol Brey-Casiano released on May 18:

"The American Library Association is deeply concerned about H.R. 2295, which would deprive schools of much-needed funding unless the community adopts a federally mandated review panel to judge books purchased for classrooms and school libraries.

"According to the bill's sponsor, Rep. Walter Jones (R-NC), the legislation is designed to restrict children's access to information by establishing review boards that would recommend for or against the acquisition of particular books and materials based on the panel's view of 'appropriateness.' This effort to limit access violates ALA's long-held principles of intellectual freedom and parental involvement by denying every parent the ability to choose what materials are appropriate for their children according to their own family's values. Instead, it empowers a small review board to decide for all families in a community what materials will be available.

"This legislation is also unnecessary. Communities already elect parent and community representatives to local school boards, and these boards empower parents by providing ample opportunities to participate in their children's education. This legislation is a solution in search of a problem. There is no need for federal interference in a local community's decisions about its education needs." ☐

## survey finds gap between press and public

A survey released May 16 reveals a wide gap on many media issues between a group of journalists and the general public. In one finding, 43% of the public says the press has too much freedom, while only 3% of journalists agree. And in a major poll conducted by the University of Connecticut Department of Public Policy, just 14% of the public could name "freedom of the press" as a guarantee in the First Amendment to the U.S. Constitution.

Six in ten among the public believe the media show bias in reporting the news, and 22% say the government should be allowed to censor the press. More than 7 in 10 journalists believe the media does a good or excellent job on accuracy—but only 4 in 10 among the public feel that way. A solid 53% of the public thinks stories with unnamed sources should not be published at all.

In the widest gap of all, 8 in 10 journalists said they read blogs, while less than 1 in 10 of others do so. Still, a majority of the news pros do not believe bloggers deserve to be called journalists.

Asked who they voted for in the past election, the journalists reported picking Kerry over Bush by 68% to 25%. In this sample of 300 journalists, from both newspapers and TV, Democrats outnumbered Republicans by 3 to 1—but about half claim to be Independent. As in previous polls, a majority (53%) called their political orientation "moderate," versus 28% liberal and 10% conservative.

Earlier this year, a survey from the same department gained wide attention after it showed that American high schoolers had a rather flimsy grasp of the First Amendment to the U.S. Constitution. Half of the young people said they thought newspapers should not be able to publish stories without government approval. Stories about that survey appeared in hundreds of newspapers and it was even mentioned on the March 13 episode of the ABC drama *Boston Legal*.

The new poll was carried out in March and April. For the public opinion part, 1,000 adults were interviewed. However, the journalist part of this new poll, as with so many previous ones, seems to weigh its sample much too heavily toward managers, and so may not represent a true cross-section in the profession.

Of 300 surveyed—with 120 from TV and 180 from newspapers of different sizes—a lopsided 43% of them were news directors or editors, 4% TV producers, 5% news analysts and columnists, and just 47% reporters. One in three have spent 25 or more years in the field. They were overwhelmingly white (83%), largely male (70%), and relatively well-paid (with a significant number making more than $100,000). Another gap in this sample was that roughly 90% of the journalists had a college degree, versus only 23% of the general public.

Ken Dautrich, chair of the Department of Public Policy, said one of the most surprising findings was that a majority of the public (59%) joined the journalists in supporting their right to keep sources confidential even when tested by the courts—odd, in light of fact that a majority of the public says stories with unnamed sources shouldn't be published in the first place. In a related area, 55% of non-journalists support the current effort to enact a federal shield law, as did 87% of news people.

But that doesn't mean most readers like stories based on unnamed sources. The survey showed that 74% of journalists and 89% of non-journalists said one should question the accuracy of news stories that rely on anonymous sources.

Newspaper relevance in the average American's news diet appears to have slipped, with 61% of non-journalists using television as their main new source, and only 20% citing newspapers.

Blogs showed their growing influence among those polled, as 83% of journalists reported the use of blogs, with four out of 10 saying they use them at least once a week. Among those who use them, 55% said they do so to support their news-gathering work. And even though 85% believe bloggers should enjoy First Amendment protections, 75% say bloggers are not real journalists because they don't adhere to "commonly held ethical standards." Reported in: *Editor and Publisher*, May 15. □

## FTRF announces election results

In May, the Freedom to Read Foundation (FTRF) announced the winners of its 2005 Board of Trustees election. Six trustees were elected to two-year terms in the April election: John W. Berry, Therese Bigelow, Jonathan Bloom, Anne Heanue, James G. Neal, and Judith Platt. Of these trustees, Berry, Bloom, and Heanue were re-elected; Bigelow and Neal are newly elected; and Platt previously served as a trustee.

These trustees will join Francis J. Buckley, Jr. (Arlington, Virginia), Chris Finan (New York), Joel Hirschhorn (Coral Gables, Florida), Deborah Jacobs (Seattle), and Candace Morgan (Portland, Oregon) on the board. Biographical information on the winners follows:

John W. Berry (River Forest, Illinois), the current president of the Freedom to Read Foundation, serves as the executive director of Network of Illinois Learning Resources in Community College (NILRC), one of the oldest community college learning resources cooperatives in the nation. He is a past-president of the American Library Association (ALA).

Therese Bigelow (Kansas City, Missouri) is deputy director of branch services at the Kansas City Public Library. She currently serves as chair of the Metropolitan Libraries Committee of the Public Library Association and is a past ALA councilor.

Jonathan Bloom (New York) specializes in media and First Amendment, intellectual property, and art law with Weil, Gotshal & Manges. As counsel to the Freedom to Read Committee of the Association of American Publishers, he has authored several briefs in First Amendment cases that the Freedom to Read Foundation also has joined.

Anne Heanue (Alexandria, Virginia) is a former lobbyist for the ALAs Washington Office. Since retiring from ALA, she has served on the ALA Committee on Legislation's Task Force on Privacy.

James G. Neal (New York) is the vice rresident for information services and university librarian at Columbia University. He has served on the board of the Association of Research Libraries and the executive board of ALA.

Judith Platt (Washington, D.C.) is director, Freedom to Read & communications and public affairs, at the Association of American Publishers (AAP). As such, she is responsible for articulating AAP's position on important free speech issues as laid down in the Freedom to Read Statement over fifty years ago.

The Freedom to Read Foundation was founded in 1969 to promote and defend the right of individuals to freely express ideas and to access information in libraries and elsewhere. FTRF fulfills its mission through the disburse-

ment of grants to individuals and groups, primarily for the purpose of aiding them in litigation, and through direct participation in litigation dealing with freedom of speech and of the press. □

## the limits of academic freedom

David A. Sandoval was sitting in his office at Colorado State University at Pueblo and speaking to a local reporter on the telephone. The reporter had called to get the Chicano-studies professor's opinion on Ward Churchill, the University of Colorado at Boulder professor who had recently tripped the switch of national outrage by calling the victims of the World Trade Center bombings "little Eichmanns."

Sandoval offered the standard-issue rhetoric of academic freedom: Churchill's words were hurtful and terrible, yes, but it was nonetheless "appropriate for him to raise the issues" as a university professor. However, with the reporter's next question, the conversation dropped abruptly from the rhetorical sphere.

Can you think of any circumstances, the reporter asked, where a professor's speech would constitute a firing offense?

"Yeah," said Sandoval, "I would pull professor Dan Forsyth from the classroom in a second."

With that, another investigation of a professor was set into motion, one that would follow a pattern that is becoming typical. In the shadow of the Ward Churchill controversy, a flurry of verdicts have been handed down from ad hoc investigative committees—some of them the result of proceedings lasting years; some spurred by complaints made against professors in recent months; all of them vying for the same awkward balance between defending academic freedom and demonstrating public accountability.

In some precincts of the debate over academic freedom, commentators say these investigations are just a natural outgrowth of scholarly debate—an honest effort to get to the bottom of things. Others contend these are not really investigations, but inquisitions.

It just so happened that, shortly before the phone rang with the reporter's call, a student had come to Sandoval's office to discuss a class she had attended the day before—taught by Forsyth, an anthropology professor at Pueblo. The student, a Chicana freshman named Victoria Watson, had brought with her a written complaint that described the last few minutes of the class, when she said Forsyth ranted about "lazy, bitter Mexicans." Watson then wrote that, when she moved to exit the classroom before the end of her professor's tirade, Forsyth yelled "screw you." After answering the reporter's questions, Sandoval promptly handed the phone to Watson, who was nearby.

The story that ran on the front of the Metro section in the next day's *Pueblo Chieftain*, dated March 5, was not about Ward Churchill after all. It was about Dan Forsyth.

According to Forsyth's lawyer, Robert J. Corry, Jr., the speech that inspired Watson's complaint was an announcement of an upcoming campus appearance by U.S. Rep. Thomas G. Tancredo—a Colorado Republican known for his outspoken views on illegal immigrants. Corry says that Forsyth was merely espousing a conservative take on immigration policy, and not making any categorical statements about Mexicans.

By mid-March, the university had begun an independent investigation into Forsyth's speech, and by month's end, the ad hoc investigative team had reached its verdict. The administration cleared Forsyth of the gravest charge against him—racism—but reprimanded him for a variety of ancillary offenses: using his classes as a bully pulpit, using profanity, and being too "animated" in his classroom demeanor. So the committee's action neutralized any threat to Forsyth's tenure and academic freedom while publicly disapproving of his behavior.

In early February, an ad-hoc committee at the University of Nevada at Las Vegas released the results of its investigation into the speech of a professor, Hans-Herman Hoppe, who said in a lecture that homosexuals tend to spend money because they do not feel they have to save for the future expense of raising a family. The word from the committee? A nondisciplinary "letter of instruction" advising Hoppe that his comments had created "a hostile learning environment because they were not qualified as opinions, theories without experimental/statistical support, topics open to debate, or otherwise limited." Later that month, however, Carol C. Harter, the university president, stood up for Hoppe's freedom "to teach theories and to espouse opinions that are out of the mainstream" and reversed the committee's ruling.

At Columbia University, a committee convened to investigate complaints that professors in the university's Middle Eastern studies department had intimidated pro-Israel, Jewish students found that there was no evidence of anti-Semitism in the classroom. The committee did, however, say one professor had "exceeded the commonly accepted bounds" of classroom behavior when he harshly criticized a student for defending Israel's treatment of Palestinians.

Lastly, at the University of Colorado at Boulder, the firestorm over Churchill's remarks prompted the university to conduct a review of his scholarship—resulting in a report that defended his First Amendment rights while unearthing a slew of new research misconduct allegations, which will be investigated further.

According to Robert M. O'Neil, founding director of the Thomas Jefferson Center for the Protection of Free Expression and a professor at the University of Virginia School of Law, these investigations are often healthy exercises in institutional self-examination. "I believe that is, after all, what we do as scholars," he says. "When a controversial premise is advanced, we investigate."

In the midst of these investigations, says O'Neil, an account of events that exonerates the professor and calms

public outrage often comes to light. "If a student ever accused me of, let's say, being insensitive or disparaging a particular religious faith in my class or outside," he says, "I would want an investigation. I wouldn't want that allegation festering."

O'Neil added that conducting an independent investigation is often the best way for a university to ward off the encroachments of upset legislatures, trustees, and alumni. "I think I'd rather have the locus of concern within the academic community," he says. "A credible internal inquiry, in my view, is the best possible antidote to outside pre-emption."

But for David French, the president of the Foundation for Individual Rights in Education, a Philadelphia-based watchdog group, the mere threat of an investigation into offensive but constitutionally protected speech is an affront to academic freedom.

"An investigation itself can have a chilling effect, even if it comes out the right way," he says. "If the language on its face is constitutionally protected, then there's really nothing to investigate. Nobody wants to be investigated," he continued. "If you're as flamboyant or as bold in the expression of your opinions as Churchill or Hoppe or maybe Forsyth, that's a deterrent to saying controversial things."

However, French says he does see an important distinction between the Columbia case and the others. At Columbia, he says, there were credible complaints that a professor had quashed disagreement in the classroom. "There you had allegations that professors had deprived students of academic freedom," he says. For that reason, he thinks the Columbia investigation was merited. "You can't look at a classroom as your personal fiefdom," he says.

For the most part, French is dead set against investigating diatribes, rants, or tirades, unless they cross the bounds of ethical or professional behavior. "No student has a right to have a professor that won't offend them," he says. "They have a right to a professor who will grade them fairly. They have a right to a professor who will protect their academic freedom."

Forsyth's lawyer says that the Colorado State professor will probably tone down his rhetoric in the future—a prognosis that the lawyer considers disheartening. "One man's tirade is another man's passionate teaching," he said. "If you're a professor, you should err on the side of passionate teaching."

As far as Sandoval is concerned, however, it was the university that erred—on the side of weakness—by not taking the investigation of Forsyth nearly far enough. Sandoval says that he will be satisfied with nothing less than Forsyth's termination.

Sandoval and Forsyth, it turns out, have a history. The two men joined the social sciences faculty within a couple of years of each other in the early 1980s. By 1984, their previously friendly relationship had taken an acrimonious turn. "I haven't had a kind word with him since," Sandoval said.

Sandoval has appealed the university's ruling on Forsyth to the university's board of governors. If he has anything to say about it, the investigations will continue. "Round one has been fought," he said, "and that's it—just the first round of a twelve-round heavyweight bout." Reported in: *Chronicle of Higher Education* online, April 15. □

## Muzzle awards spotlight school censorship

Censorship incidents in public schools in 2004 occupied a prominent place among this year's Jefferson Muzzles—a "dubious distinction" bestowed by the Thomas Jefferson Center for the Protection of Free Expression upon individuals or groups who thwarted freedom of expression in the past year.

The Charlottesville, Virginia-based anti-censorship group announces its awards each year to celebrate the April 13 birthday of President Thomas Jefferson. Those who earned 2005 Muzzles included:

- The Federal Communications Commission for its crackdown on "indecent" broadcasts and heavier fines since the infamous Janet Jackson Super Bowl performance.
- The Democratic and Republican national parties for remaining silent when the free-assembly rights of protesters were squelched outside the party conventions in Boston and New York.
- The U.S. Marshals Service for confiscating an audio recording of U.S. Supreme Court Justice Antonin Scalia's speech at a high school in Hattiesburg, Mississippi.
- The Virginia House of Delegates for passing bills related to mandatory filters on computers in public libraries and the wearing of sagging jeans by teens. One measure would have criminalized the wearing of such clothing.
- Georgia State Rep. Ben Bridges for proposing a bill to restrict teaching about evolution in public school science classes. The bill provided that teachers could only teach "scientific fact," not theories, although evolution and gravity are both theories.

Five of the fifteen Muzzles went to secondary school officials for censoring student expression:

- Berkmar High School Principal Kendall Johnson in Georgia for censoring a school newspaper article about the new gay-and-lesbian student club on campus.
- The administration at the High School of Legal Studies in Brooklyn, N.Y., for denying the valedictorian her diploma because they disagreed with her graduation speech, including her complaint about overcrowded classrooms and a lack of textbooks.
- Administrators at Russell High School in Kentucky for prohibiting a student from wearing a prom dress styled

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## broadcasters pitch self-policing

As the movement in Washington to crack down on indecency on TV and radio grows, industry executives said they are working diligently to handle the issue in-house by policing their own airwaves. "We are saying to the government, 'Let us have a crack at this and see if we can self-regulate,'" LIN Television Chairman Gary Chapman said April 18 during a National Association of Broadcasters convention panel in Las Vegas. "We'd rather be self-regulated than government regulated," he said.

A number of broadcasters have settled their indecency complaints at the FCC with monetary fines and promises of indecency intolerance.

Chapman serves on a task force of industry executives organized last year after the NAB's summit on responsible programming to try to confront the heat from the Hill on content. The group will present its report and recommendations this summer. Areas of focus include better audience communication on safeguards like the V-Chip and ratings system. Radio and TV stations will also share their "best practices" for training staff and trying to prevent FCC violations.

"What we aren't focusing on yet is inappropriate and indecent content is still protected content," said Hearst-Argyle Television CEO David Barrett. "We have to be very careful not to let our government start making content decisions."

Chapman and Susquehanna Media Co's David Kennedy outlined the task force's objectives in front of a packed house of local radio and TV industry executives. Kennedy said he didn't think the efforts would head off government action, but that at least it shows, "We are trying to marshal our forces and demonstrate to the Hill and constituencies that we can self-regulate and we do take this seriously."

One bit of self-regulation broadcasters are not sanguine on is a family viewing hour. There has been talk of reviving the so-called family hour (8–9), but executives familiar with the plan said it is unlikely that NAB will recommend that stations institute a prime time family viewing period, though it is something that new FCC Chair Kevin Martin has suggested broadcasters institute voluntarily.

Fox Networks Group CEO Tony Vinciquerra is heading up the task force's V-Chip efforts. Somewhat ironically, Fox was identified in a Parent's Television Council Study as the network with the least V-chip-friendly ratings, though Fox challenged that. Vinciquerra is no fan of PTC.

Fox and its affiliates are being fined more than $1 million for the risque reality show *Married by America*. Vinciquerra made no excuses for the show, saying, "It was not our finest moment of television and it was a mistake." But, he said, the network did not get a single complaint from viewers.

All 180 complaints were lodged by the Parents Television Council, which Vinciquerra says operates a "sweat shop" in Virginia where staffers monitor TV shows and say, "Oh, that is risque."

As to whether indecency standards should be extended to cable, the executives were cautious but not dismissive of the idea. "The majority of Americans don't make a distinction between over-the-air broadcast and cable," Chapman said. "*The Sopranos* can be one click away from a broadcast station."

But, he said, "except for pay cable, there isn't much on cable that is in violation of FCC standards [the pay content crackdown is targeted primarily at basic], most that are risque run after 10 P.M.," said Vinciquerra, whose company owns cable networks including FX. And after 10 P.M., even broadcasters could theoretically put on just as risque fare as anything currently on cable and not run afoul of existing FCC rules.

Emmis Communications CEO Jeff Smulyan dialed down the cable versus broadcast rivalry. "I worry about any additional infringements on the First Amendment," he said. For its part, Emmis paid $300,000 last August to settle its outstanding indecency complaints and fines and pledged a "zero tolerance" policy on indecency. Reported in: *Broadcasting and Cable*, April 19. ☐

## French court rules for Yahoo!

A Paris appeals court on April 6 upheld a decision that absolved Yahoo!, Inc., of any legal responsibility for auctions of Nazi paraphernalia formerly held through its Web site. The attorney for Yahoo!, Olivier Metzner, said the decision made clear that the company and its former chief executive, Tim Koogle, were not responsible for the Nazi collectibles sold.

In 2003, a Paris court ruled that Yahoo! and Koogle never sought to "justify war crimes and crimes against humanity"—the accusation leveled by human rights activists, including Holocaust survivors and their families.

The case was initiated in 2000, when France's Union of Jewish Students and the International Anti-Racism and Anti-Semitism League sued Yahoo! for allowing Nazi collectibles, including flags emblazoned with swastikas, to be sold on its auction pages.

The case led to a landmark ruling in France, with a court ordering Yahoo! to block Internet surfers in France from auctions selling Nazi memorabilia. French law bars the display or sale of racist material.

Yahoo! eventually banned Nazi material as it began charging users to make auction listings, saying it did not want to profit from such material. Reported in: Associated Press, April 6. ☐

## Larry Miller wins FLA IF Award

The executive board of the Florida Library Association announced April 11 that Larry Miller had won the 2005 FLA Intellectual Freedom Award "in recognition of his

tireless efforts to preserve free access to information and ideas for library users and to protect patron confidentiality in Florida and across the nation."

Miller was honored for his work on privacy and access issues at the national level through service on the Association of College and Research Libraries' Intellectual Freedom Committee as a member and as chair and his work on the executive board of the Florida Library Association. ☐

## Cohen named to FTRF Roll of Honor

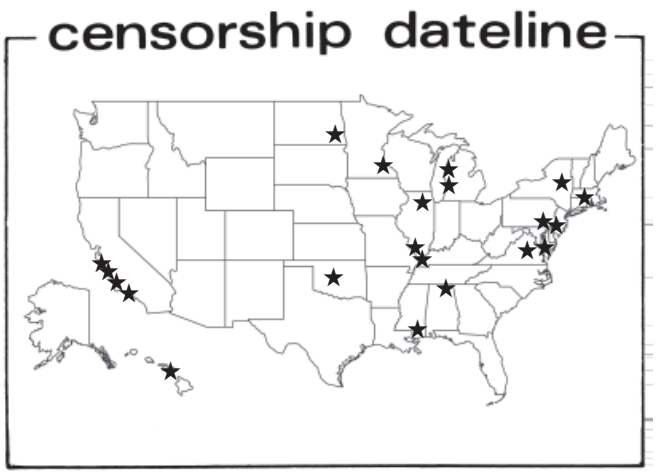
David Cohen, director of Friends of the Queens College Library and professor emeritus at Queens College, is the recipient of the 2005 Freedom to Read Foundation Roll of Honor Award.

Cohen's library career has spanned eight decades. His many contributions to the library community include serving as co-founder and coordinator of ALA's Ethnic Materials Information Exchange Task Force of the Social Responsibilities Round Table, the precursor to the Ethnic and Multicultural Information Exchange Round Table (EMIERT); trustee of the LeRoy C. Merritt Humanitarian Fund; co-founder of the Long Island Coalition Against Censorship; and charter member of the Freedom to Read Foundation.

In 1986, he was awarded the SIRS Intellectual Freedom Award by the New York Library Association. In 1999, EMIERT created the David Cohen Multicultural Award, which "encourages and recognizes articles of significant new research and publication that increase understanding and promote multiculturalism in libraries in North America." In 2004, the ALA Council saluted Cohen with a proclamation for his lifetime achievement in multiculturalism and intellectual freedom in celebration of his ninety-fifth birthday.

"We are thrilled to present David with this year's Roll of Honor Award," said FTRF Executive Director Judith Krug. "David has been a beacon in New York and nationally for generations of librarians and free speech advocates. He has been a stalwart supporter and member of the Freedom to Read Foundation from day one. His work on multicultural issues in librarianship is legendary, and he understands the importance of ensuring the availability of the full spectrum of ideas and information to the whole of society. As a writer, speaker, teacher, and librarian, he has proven himself a treasure."

The Freedom to Read Foundation Roll of Honor was established in 1987 to recognize and honor those individuals who have contributed substantially to FTRF through adherence to its principles and/or substantial monetary support. FTRF was founded in 1969 to promote and defend the right of individuals to freely express ideas and to access information in libraries and elsewhere. FTRF fulfills its mission through the disbursement of grants to individuals and groups, primarily for the purpose of aiding them in litigation, and through direct participation in litigation dealing with freedom of speech and of the press. ☐




## libraries

**Decatur, Alabama**

Heidi vigorously scrubs her brown arms with a bristle brush at the kitchen sink. She just finished a therapy session. Heidi pretended to be her stepfather, a man who calls her racist names like "stupid black bitch" because she is biracial. The therapist watches Heidi scrub and knows Heidi wants to wash herself until she is white so her stepfather will love her.

Heidi's therapy session, in Chris Crutcher's book *Whale Talk*, led the Limestone County Board of Education on March 7 to ban the book from its school libraries. Board members John Wayne King and Charles Shoulders and board President Roger Whitt voted in favor of keeping the book on the shelves while board members Earl Glaze, James Shannon, Bryant Moss and Darin Russell garnered a majority vote to ban *Whale Talk*.

"I think it is obscene that your school board does not trust you enough to know you can read harsh stories, told in their native tongue, and make decisions for yourself what you think of the issues or the language," Crutcher wrote in an online letter to Limestone students.

Ardmore High School parent Christi Brooks filed the complaint about *Whale Talk* in November 2004 because of offensive language. She wrote that she objected to the language, and more offensive racial statements and profanity. Although the book "is talking about teamwork and dealing with racism," Brooks wrote, students using the material "would be more likely to use the words every day."

Ardmore senior Sheila Foster, 18, who is a school library aide, said reading a book with profanity does not make her want to curse. "I was brought up that I wouldn't get away with saying things like that," she said. "Kids can probably hear worse language riding on the school bus. Some books have pretty good points. You just have to get past the language."

"I know the board members need to protect themselves because people file lawsuits for anything these days," she said. "But to me, it definitely would be hard to say, 'Don't let every person read this book.' Everyone is different."

A review committee of parents and staff recommended the board keep *Whale Talk*, which was in the high school libraries, saying it provides a realistic view of life, including the "consequences of prejudice, outspoken and malicious people." The committee said the book also highlights the importance of forgiveness over revenge, and the message of the book is more important than the language it contains.

Superintendent Barry Carroll agreed, but the board voted 4–3 to ban it.

"I think we have to make sure books are age-appropriate," Carroll said. "I think most high school students are mature enough to handle books like *Whale Talk*."

Board member James Shannon, who voted to ban it, said it did not matter that the parent who complained about *Whale Talk* is his niece. He said the book's content, not her opinion, swayed him. "If kids shouldn't be saying it in the halls, they shouldn't be reading it in our schools," Shannon said. "Why shouldn't I vote on that?"

At a subsequent board meeting in early May, Limestone County's school librarians challenged the board to defend its decision. The librarians, represented by Creekside Librarian Janet Saczawa called on each board member to read *Whale Talk* from cover to cover.

"It is obvious to many of us that some of the board members have not read the book in its entirety," Saczawa said. "In doing so, you have violated your own board policy, which states that you will read the material being challenged in its entirety, not just Xeroxed copies of the offending passages."

"As in all of his novels, Crutcher, a family therapist who has first-hand experience with teens in these situations, portrays his subject in real and unflinching terms," Saczawa said. "In a time when some students feel compelled to resort to violence in response to racists and bullies, I feel that learning how to deal with these problems without resorting to violence is much more important than shielding them from a few words they've already heard."

"*Whale Talk* is a disturbing book," Saczawa said. "What is even more disturbing is that it is based on actual cases that Mr. Crutcher has encountered in his practice. Some of

our students face similar situations every day. You do these students a disservice if you remove this book and others like it from our schools, thereby telling them that you are offended by their stories, their situations, their pain, and ultimately, by them."

Board members did not immediately respond to Saczawa's plea that they each read the book, consider its message and reconsider the ban.

The author responded, however, by donating five copies of *Whale Talk* to the Athens-Limestone Public Library. Crutcher said he would give the same number to the library nearest any other school that bans any of his books.

"I'm not being nasty about it at all," Crutcher said. "I don't take it personally, but I believe in intellectual freedom, and that's the best way I can think of to say it." Crutcher explained in his online letter to Limestone students that he once was a therapist for a girl like Heidi and that for children like her to survive, their peers must accept them.

"I write the stories I write to bring things like this to your attention," Crutcher wrote. He added, "acceptance will come from understanding."

Crutcher also wrote an online letter to Limestone citizens and the school board: "The kids you turn your backs on when you take away their stories are the ones who lose, as well as you as a community of adults who may appear to fear their truths. Remember, if you take *Whale Talk* out, you can take any book out."

*Whale Talk* isn't the first book Limestone has banned. In 1998, the board voted against former Superintendent Les Bivens and a review committee's recommendation to keep Judy Blume's *Blubber* in libraries. The board voted 4–3 to ban her book because it contained the words "damn" and "bitch."

Parents, teachers, and students objected. After an election that unseated three of the four members who opposed the book, the board voted in 1999 to return it to school libraries. In 2000, J. D. Salinger's *The Catcher in the Rye* came under scrutiny for objectionable language, but survived. Reported in: *Decatur Daily News*, April 17; *Athens News-Courier*, May 3.

**New Orleans, Louisiana**

Books "containing the theme of homosexuality" and other "age-inappropriate" topics should not be on public library shelves accessible to children, a St. Tammany Parish lawmaker said May 19. Rep. A.G. Crowe, R-Slidell, filed House Concurrent Resolution 119, which called on all public libraries to remove such material from the children's book sections and confine it "exclusively for adult access and distribution."

The resolution said "materials concerning human sexuality and those of an arguably prurient nature should not be readily available to children, nor should the distribution of such materials be supported by public funds."

The resolution did not have the force of law but, if passed, would have expressed the wishes of the legislature. The measure was assigned to the House Committee on Municipal, Parochial and Cultural Affairs, but no date for a hearing had been set.

Crowe filed the measure as a resolution because the deadline to file bills to become laws had passed. He said he might follow up with a bill next year requiring libraries to separate such reading material.

Crowe said he filed the resolution after being contacted by a constituent, Dan Danese of Slidell, who said his four-year-old daughter had picked out the book *King and King* from the children's section of the St. Tammany Parish Library on Roberts Boulevard. The book deals with a queen mother who tries to introduce her son to potential princesses, but the prince instead prefers one of the women's brothers. "The last page of the book clearly shows men kissing and clearly promotes the homosexual lifestyle," Crowe said. He said the book is labeled as appropriate for children six and older.

"I'd prefer to get them out of the library," Crowe said. "Somebody (in St. Tammany Parish) should be held accountable for allowing this to get into the hands of our children.

"I am not espousing censorship," Crowe said. "There should be a way these types of books should be kept away from children and keep children from picking out these types of books."

But others said it is clearly a matter of free speech.

"This was entirely inappropriate to make this into a political issue," said Joe Cook, executive director of the Louisiana chapter of the American Civil Liberties Union. "It, unfortunately, feeds into a mind-set of a certain segment of society that wants to demonize people who are gay, and that is not in keeping with the spirit of the Constitution and the Bill of Rights. It's an example of intolerance. Unfortunately, we have politicians who want to exploit the intolerance and use it to their political advantage."

Danese said his daughter picked out the book on a trip to the library. He said his wife started reading the book to their daughter, but when she "got to the first indication of what the book was about," she stopped reading it and scanned the rest of it. "This is not a child's subject matter," Danese said. "I would like to see this (kind of book) only on request." He said it should at least be segregated from the children's section.

Danese said he had not contacted library officials about the book, pending the outcome of Crowe's resolution. "I'm deciding to skip the whole useless step," Danese said, saying that library systems in other parts of the country have defended the book's content as a freedom of speech issue. "I want to see if they will cooperate with the people's will," Danese said.

Donald Westmoreland, assistant director of St. Tammany Parish Library, said the library system has a process by

which patrons may challenge any books they deem inappropriate by filling out a form at the checkout counter. Each challenge is addressed by a committee of staff members, he said. "That's the proper venue for changing policy," Westmoreland said. "Not the state legislature."

He said it's "unrealistic" to expect staff members to police every page or every paragraph of the system's roughly 500,000 holdings.

However, the library honors requests from parents who want to restrict their children's access to any materials they deem inappropriate, because what is objectionable varies from family to family, Westmoreland said. Reported in: *New Orleans Times-Picayune*, May 20.

**Guilderland, New York**

With summer reading season approaching, an elected town library official wants parents to know that what goes on beneath the sheets could be between the covers of their teens' books. Library trustee John Daly wants to slap an orange sticker on books in the "young adult" section that contain graphic sexual descriptions.

While it would not ban books or prevent kids from checking them out, the "PG rec"—for parental guidance recommended—sticker would alert parents a book contains racy content. State and national library officials say the proposed amendment to the materials selection and collection development policy might be the first of its kind.

It's not sexual content that Daly says he objects to. It just should not be in a collection geared to young teens, he says. And if it is there, "We have an obligation to put parents on notice," said the retired state Budget Division employee who was elected to the eleven-member board as a write-in candidate in 2002 and then won a five-year term in 2003.

Young adult books are a popular publishing industry genre aimed at twelve-to-sixteen-year-olds and sometimes depict teen experiences with sex, drugs, and violence. The descriptions can be detailed and, Daly says, provide what amounts to instructions for things like oral sex.

Library officials fear the dangerous precedent that any remotely offensive material could end up being labeled, raising concerns about such coming-of-age classics as *The Catcher in the Rye* and *A Tree Grows in Brooklyn*. The plan's critics argue it will deter people from reading books they might enjoy or learn from. It also raises sticky ethical issues about whether libraries should make value judgments about the material they offer.

"If you start labeling books for one type of content, there are lots of other things that people can find objectionable in books: racism, anti-Semitism, violence," said Barbara Nichols Randall, the library's director for four years. "If this is something that the community members thought was a problem, I would be getting daily complaints, or at least weekly complaints."

Randall said she hasn't heard any complaints from parents about the content of their children's books. And it isn't the library's place to be assigning books labels other than those that help patrons find them, she said. "The policies we currently have in place, I support," Randall said. "If there was a change, I would have a problem. As a professional, I would have a problem. There is a code of ethics. It is a code those of us who are serious about our profession follow as best that we can."

The four-member policies and procedures committee decided unanimously not to recommend Daly's amendment, said committee Chair Ellen Sanchez Doolin. Board President Robert Ganz, who is not on that committee, expressed similar reservations about the change.

Daly still intends to present his proposal to the entire board. E-mails have circulated among town residents seeking public opposition to the proposal.

The change could create a logistical headache—forcing library staff to actually read every page of every book that enters the young adult collection, rather than relying on the professional book reviews, Sanchez Doolin said. Also, judging what is graphic is subjective, she said: "My definition . . . and your definition may be somewhat different."

Daly's proposal defines what books would get the sticker: any that contain "descriptions of sexual intercourse, oral sex, transgender masturbation, or other physical contact with genitalia, e.g. sodomy." In proposing the amendment, Daly provided excerpts from two of the eight young adult books he read after reading a *New York Times* article in February about how the genre has become increasingly racy and targeted at older teens and people in their early twenties. One of the excerpts is from *Forever*, by well-known author Judy Blume.

Leith Mead, a Guilderland mother of two girls, ages ten and thirteen, said she would much rather the library offer a class for parents on the different series and titles in the young adult collection than start tagging books. "The responsibility should be on the parents," said Mead, adding that she was concerned about the precedent of labeling books. "Where do you go from there?"

But Kevin Brogan, who has an eleven-year-old daughter, supports any tool that will help him monitor what his daughter is exposed to. "I would assume that what they have is appropriate for children," Brogan said. "If they want to put a sticker on it, great."

"Each library should make its own decision about what it will and will not provide to its patrons, but I think that censorship in any form is a terrible step," said Michael Borges, executive director of the New York Library Association, an advocacy group. Borges was elected to the Guilderland Board of Trustees last month, but he will not take office until July.

"We discourage the use of any labels that are prejudicial," said Beverly Becker, associate director of the American Library Association's Office for Intellectual

Freedom. "Anytime you make a label, it presupposes people to a quick judgment on it. They make you think you know something about the book before you give it an opportunity."

"It's going to be a close vote," Daly said. "Some (board members) are reluctant to rock the boat. This is a very gentle rocking. We're not talking about banning a book. We're not talking about censorship or redacting any material. I welcome community awareness of this issue and participation," he added. "Let them let us know what they think." Reported in: *Albany Times-Union*, June 2.

**Oklahoma City, Oklahoma**

The Oklahoma House of Representatives voted overwhelmingly May 9 to urge library officials to restrict children's access to books with homosexual themes. House Resolution 1039, by state Rep. Sally Kern, R-Oklahoma City, does not have the force of law but calls on Oklahoma libraries to "confine homosexually themed books and other age-inappropriate material to areas exclusively for adult access and distribution." It passed, 81–3.

Kern said she wanted to make public libraries aware of the "values that our state upholds" and make sure books are on the shelves "where they appropriately need to be."

"There are a lot of books that children shouldn't be reading," Kern said. "This isn't censorship, because I'm not asking that they be thrown away, be burned. I'm asking that they just be put in with adult collections and then if a parent wants their child to see a book like that they can check it out," she said.

Three Democratic representatives—Opio Toure of Oklahoma City, Darrell Gilbert of Tulsa, and Glen Bud Smithson of Sallisaw—voted against the resolution. "It's all about censorship and trying to control what decisions people have the right to make on their own," Gilbert said. "It's up to the parents to make that decision, not the state to do that."

Smithson said libraries in his district aren't big enough to have separate adult and children's sections. "We have very good library boards and I just kind of hate to take that power away from our local libraries to choose the books that they display. They really don't have room or the money to separate them," he said. Smithson continued, "I don't really see that hiding a child from all the evils in the world is protecting a child from all evils in the world. At some point in their lives, they do have to start learning about a few of these things."

House members passed the resolution after an Oklahoma County couple living in Kern's district were surprised to learn that a book checked out by their child was about homosexual marriage.

Kern said HR 1039 will be distributed to the American Library Association, the Oklahoma Library Association, Oklahoma City Mayor Mick Cornett, the Oklahoma City Council and the Metropolitan Library Commission. The resolution noted that the development of children "requires certain guidance and protection by adults to ensure that their maturation is timely and results in a greater degree of personal responsibility and respect for their role in society."

It also states that a child's development "should be at the discretion of a child's parents free from interference from the distribution of inappropriate publicly cataloged materials" and that public libraries should not expose children to material "that may be deemed harmful and inappropriate."

Gilbert said this resolution was "run on the House floor for political fodder. Where's the stopping point on this?" he asked. "If this is a book that you want to have in, quote, an adult-only access part of the library—which there aren't any such things—you're going to have to take every anatomy book and put it in there, too, because it has nude bodies in it, pictures of body parts. Where does it stop?"

As of mid-May, Oklahoma's major libraries had not moved a single book from a children's section despite the resolution. "It's trying to limit the right of what people can read," said Linda Saferite, chief executive officer of the Tulsa City-County Library system. "Serving an entire community is a balancing act."

Although the Tulsa library did not move any books out of the children's section, employees started moving gay-themed and other books into a new parenting unit in the children's section. Besides the gay-themed books, books in the special section will deal with other issues, including the death of family members and bullying.

"A library just reflects what is happening in society," she said. About eighty people attended a May 5 hearing on the proposal in Oklahoma City during a meeting of the Metropolitan Library System's Public Services Committee. The committee took no action in the shelving policy. Executive Director Donna Morris said all ten copies of the gay-themed book *King & King* had been checked out since the controversy started.

Wayne Hanway, executive director of the Southeastern Public Library System based in McAlester, said he hadn't received any complaints about books in his fifteen branches. "We're down here and other people are up in Oklahoma City," he said. "Sometimes it filters down to us, other times it doesn't."

Because the resolution isn't law, state funding for individual libraries will not be affected, said Bill Young, spokesman for the state Libraries Department. "These decisions are up to the local library board," he said.

In ten years at the Ardmore Public Library, Director Daniel Gibbs said no one had ever filled out a protest form about a book there. Gibbs said he thinks there are "very few, if any," gay-themed books in the children's section, but there are some in the young adult area. The contents of most public libraries are determined by the needs of their communities, Gibbs said.

"It's a matter of reflecting the values of the community that you're a part of," he said. "Obviously what we have in our library is more conservative than what they might have in some other community."

Wilita Larrison, director of the Public Library of Enid and Garfield County, said she didn't think any children's books at her library fall into that category. "We try to select things that are appropriate for our service area," she said. "We don't have any demand" for gay-themed books.

Some Oklahoma House members threatened to kill new funding for the Department of Libraries unless libraries across the state remove homosexual-themed books from children's shelves. "If the libraries do not comply with what the Legislature feels is the prevailing community standard of our towns and cities and entire state, then yes, there is a possibility that they will not receive extra funding," said Rep. Kern.

Kern is vice chair of the subcommittee handling the Department of Libraries appropriation. The subcommittee chair, Rep. Tad Jones, R-Claremore, said while no decision had been made on the library appropriation, linking it to the shelving issue "is something we will definitely be considering."

The Department of Libraries received almost $1.6 million in state funds this year. It has requested an additional $841,000 for next year.

Linking compliance to the library appropriation puts teeth in the resolution, said Lynn McIntosh, president of the Oklahoma Library Association, an organization of librarians that supports local decision-making for libraries. "Should we let the Legislature control what's in libraries all across the state? Libraries are a reflection of their communities, and communities vary greatly," McIntosh said.

Kern said community standards are state standards. "My guess is that 88 percent of Oklahomans and 80 percent or more of the people in Oklahoma County support limiting access to children of homosexual-themed books," Kern said.

Donna Morris, executive director of the Metropolitan Library System, said many small libraries across the state depend on state funding to buy new books. "If money was withheld from small libraries that don't even have the book, that would seem strange," Morris said.

Kern said that is not her intent, and her committee will be searching for a way around that. "We're looking at doing something where those that are not cooperating will not receive additional money. We're not going to do anything to hurt those libraries that are complying," she said.

The Senate appropriations subcommittee handling the library budget request is making no demands in exchange for funding, said Sen. Johnnie Crutchfield, the chair. "I don't like attaching policy to appropriations," Crutchfield, D-Ardmore, said. "I don't think that's part of the appropriations process. That's what we have substantive bills for." Reported in: *Daily Oklahoman*, May 10, 13.

**Providence, Rhode Island**

Rhode Island public libraries are inconsistent in how they comply with the Children's Internet Protection Act and, in some cases, discourage access to constitutionally protected material, the state's American Civil Liberties Union affiliate revealed in a report released April 19.

In "Reader's Block: Internet Censorship in Rhode Island Public Libraries," Amy Myrick, state ACLU program and development coordinator, describes "a mixed, but surprisingly troubling, picture" of the use of internet filters in public libraries. Among the findings: some libraries block material beyond the minimum needed for CIPA compliance; the statewide consortium Cooperating Libraries Automated Network has given libraries confusing information about the law and the filtering technology installed; and some libraries haven't adequately made patrons aware of their legal right to access wrongly blocked information.

Myrick described one incident at the Providence Public Library when a librarian refused to remove a filter to allow her to look at sites about nudism. "She insinuated that I was looking at porn," Myrick said. "I felt judged." Providence Public Library Director Dale Thompson acknowledged that she wasn't sure how her library was enforcing CIPA and said she planned to discuss the issue at a staff meeting.

The report's recommendations include using minimum-compliance filter settings, actively informing patrons of their options for filter-free computer use, and providing appropriate staff training.

Congress passed CIPA in 2001, requiring libraries that receive federal funds to install software that would block access to objectionable Web pages. Immediate legal challenges stalled the law's adoption. A federal court in Philadelphia ruled that the requirement violated the First Amendment by prohibiting adults from seeing material that is legal for adults to view.

The Supreme Court reversed that decision on a 6–3 vote. The law contains a provision that allows adults to ask that the blocking software be turned off "for bona fide research or other lawful purposes." The majority wrote that this clause allowed the law to pass constitutional muster.

In July 2004, libraries nationwide began using the blocking software. Most of Rhode Island's forty-eight public library systems share the Cooperating Libraries Automated Network (CLAN) system. The CLAN libraries agreed to use one blocking filter supplied by a company called Websense.

The Websense software allows libraries to choose three blocking settings: one that complies with the CIPA by blocking access to sites that show or graphically describe sex; another setting that blocks displays not only overt sex but all erotica; and a setting that blocks all images of nude or seminude people.

Myrick found that Rhode Island libraries have not been consistent in their settings: while nudism was banned in Providence, she could read about it online in East Providence. She also found that libraries have no standard

for notifying adults of their right to turn off the blocking software. North Scituate's library posts a sign saying: "If you are at least seventeen years old and would like a site unblocked, just ask." In Coventry, patrons are told "If you are unable to access a Web site, please see a librarian." Some libraries, such as Providence's, do not notify patrons of their right to remove the block. Reported in: *American Libraries* Online, April 22; *Providence Journal*, April 20.

## schools

**Sonoma, California**

To Sonoma Valley High School (SVHS) English teacher Daniel Alderson, the ominous state assessment survey he and other teachers received in their boxes May 6 was a step away from book burning. But even as SVHS students protested, other educators fretted, and Alderson vowed to read *Fahrenheit 451* every day under the flagpole, district officials said they were jumping the gun—that the survey, required under recent federal sanctions, is only meant to gather information not to dictate it.

The issue was aired at the Sonoma Valley Unified School District board meeting, when district staff presented new information on the district's program improvement label—including the survey. A tool of the federal No Child Left Behind Act, program improvement applies sanctions that drain federal aid from districts that fail the federal government's assessment. Those sanctions now require a district-wide self-assessment that includes a teacher survey, called the academic program survey. The assessment will be used to help create a district action plan to increase student proficiency in math and English.

The survey asks teachers to rate their programs on the level and extent of standards incorporated into their curriculum. When Alderson read the survey, he became wary of the implications in its language.

English classes already observe standards-aligned curricula, but at this point, teachers have some control over what literary works they assign. Alderson believes the district's new mandated direction could spell the end of literature-based English classes for the high school—and the beginning of a state-dictated curriculum in which books like *Of Mice and Men* and *Great Expectations* are replaced with a scripted textbook where even daily lessons are assigned from on high.

"We'll be taking literature out of the hands of students," he said. "I see this as a pivotal moment—that's why I'm engaged in nonviolent protest," he said.

Jay Rowley, director of curriculum, held that "nothing could be further from the truth." He said staff is reading far too much into the survey. "People don't need to start packing up and getting rid of books," he said. "The whole notion is to identify where we have gaps and what we can do about it." That might mean adding more standards-based intervention for certain groups of kids—not dumping *Catcher in the Rye* into the waste bin.

Superintendent Kim Jamieson said he doesn't see a risk of "losing literature-based English classes." He emphasized that the final action plan the district chisels out will be a collaborative effort—where teachers and parents are involved in the process and actually sit on the decision-making committee.

Alderson said he doesn't trust that process. "It's a lie—every time we've trusted the process, teachers have wound up on the short end," he said.

Valley of the Moon Teachers Association President Melanie Blake believes a major issue at this point is the "lack of communication with teachers . . . And the survey, in absence of any conversation, had some disturbing objectives." Blake hoped that the specific intervention needs of a few students wouldn't overshadow the overall quality of education for everyone—and that the district wouldn't resort to using a "sledgehammer to swat a fly."

In the meantime, Alderson has resolved to standing under the flagpole every morning to read passages from *Fahrenheit 451*. His AP English class joined him in the protest. They vowed to begin holding weekly "read-ins" on Wednesdays from 5 to 7 P.M. in front of the Sonoma Plaza. Literary works will be read aloud. Reported in: *Sonoma Index-Tribune*, May 10.

**Wailuku, Hawaii**

Officials from a Maui high school restricted the showing of a video about discrimination against homosexuals after some parents objected. King Kekaulike High School officials had planned to play the fifty-minute video, "It's Elementary: Talking about Gay Issues," to ninth-, tenth-, and eleventh-grade students during their advisory classes where pupils receive counseling. Kenneth Nomura, the area school superintendent, said after he met with Principal Susan Scofield and some teachers, they decided to allow only students with parental permission to view the video.

The decision came after about thirty parents watched the video at the school library and raised objections. Students were given a slip and asked to check whether or not they wanted to see the video and to have their parents sign the permission slip granting them access to view it.

Nomura said the decision was based on school board policy that calls for schools to present various viewpoints on controversial issues.

Ron Akre, a grandparent of a student, said the majority of people attending the viewing were against showing the video because it portrayed Christians as being the "bad guys." "Those that were Christians were offended," Akre said.

He said the video wasn't well-researched and gave some false statistics about the percentage of gay people committing suicide.

"I don't think it should be shown, period," he said. "They're promoting their gay agenda." Akre said he felt there must be a better video for viewing, including one that showed people who are happy with their decision to step away from a gay lifestyle.

Not all parents agreed with the school officials' decision, however. Connie McAboy said the video was intended to help solve problems of harassment and physical abuse of homosexual students on campus. McAboy, whose seventeen-year-old son Tony is gay, said she felt parents' criticism of the video was placing the wrong emphasis on the issue.

"They're turning it into something different," she said. "The issue to me is there's a problem at the school, and they were trying some way to address it."

Tony McAboy said the harassment problem is so bad that he has decided to get a GED rather than attend his senior year at the school in Pukalani. And he said that one gay friend who was beaten has transferred out of King Kekaulike.

Still, parent Benjamin Massenburg questioned whether playing the video would accomplish the desired effect. "I'm concerned something like this would be more polarizing," he said. Massenburg said he felt the school should explore discrimination and harassment of various groups and not just one group. "If there's an issue of disrespect on campus, I think it needs to be treated in a broader perspective," he said.

Troy Hashimoto, the state school board student member and a senior at King Kekaulike, said he favored the initial plan to show the video and allow students whose parents objected to it to attend a study hall class. "It's a big hassle now that we have to go through this paperwork," Hashimoto said. He said that while he understands the decision to restrict the viewing, he hopes it does not require the school to show points of view that advocate intolerance. He said he doesn't think that there is a huge problem regarding intolerance of homosexuality at his school. "In any school, there are a few people not really tolerant of people," he said. "The bottom line of the school is we try to look at diversity, understanding others and tolerating others . . . that's what the teachers want to see."

But Tony McAboy said teenage boys and girls have thrown rocks at him and other gay students at the school and not enough has been done to stop the atmosphere of harassment. "The teachers look the other way. It's frustrating, extremely frustrating," he said. Reported in: *Honolulu Star-Bulletin*, May 24.

**Boston, Massachusetts**

A Saugus man livid about an AIDS booklet his daughter brought home from school wants the state to establish one standard textbook for health education. A Lexington father, upset about a different book that exposed his kindergartner to gay parents, believes that schools should notify parents before discussing same-sex marriage and other adult themes in class.

Boston-area school officials said that the fathers' demands highlight the need for parental input on controversial subjects and show the fine line teachers walk as they try to educate children and avoid stepping too far into parents' domain.

Paul Stamatopoulos, a thirty-nine-year-old professional driver from Saugus, and his wife met with Superintendent Keith Manville to discuss the AIDS booklet and ask him to remove it from the school. His seven-year-old daughter had received the booklet three months before, but the father, dissatisfied by the school district's response, took his complaints to a television station.

Manville said he would bring up the issue at the school committee's next meeting. He said some of the booklet's language was "kind of strong" for second-graders, but the father's arguments underscore the sensitive nature of teaching young students facts about life.

''We feel and obviously the school committee feels there is a responsibility to educate kids about this," Manville said. "The problem is that you have people on one end of the spectrum who say, 'Oh, thank God, you're doing this' . . . then you have people on the other end of the spectrum who say, 'You can't do this.'"

Stamatopoulos was disturbed by the content in "AIDS EducaTion Series," a student booklet about a boy who contracts HIV from a blood transfusion. A fact sheet about AIDS in the back says HIV is spread by the exchange of infected body fluids like semen and vaginal secretions. His daughter was upset because the book said the boy was going to die and was saddened by an illustration of a crying baby receiving a transfusion.

''I think at this age, the only thing [schools] should be saying is: 'Don't touch blood. You see a needle, don't touch it. Call for help,'" he said. Parents should handle discussions about the sexual transmission of AIDS, he said.

''If my daughter had come to me with that question, I would have talked to her," said Stamatopoulos. "She never did. She plays with dolls. Do they have any innocence anymore? Is it all gone?"

Mary Kelly, a Milton School Committee member who has three school-age children, said she would want to be notified about discussions on sensitive topics, such as same-sex marriage. "Quite honestly, I think parents should be advocates for whatever they believe their children should be taught or not be taught," she said. "I think school systems only get better when parents get very involved."

The conundrum, she acknowledged, is when and how a district should notify parents. "It shouldn't be so cumbersome that it takes a whole other administrator to deal with it," she said.

Saugus did let parents know about the AIDS booklet, school officials said. In January, the principal of Douglas G. Waybright School sent parents a letter telling them that the

series would be taught to pupils in the first through fifth grades and that parents could review the booklet in the office.

But Stamatopoulos said the letter did not give enough details. "It doesn't say anything that they're going to be talking about the vagina," he said. "Maybe shame on me for not looking at the materials. . . . The letter is rated G, and the book is rated X."

The booklet was part of an overall program about AIDS education that sold nationwide in the late 1980s and 1990s and was well received, said Barbara Wetzel, marketing director for Marco Products, Inc., the Pennsylvania company that published the booklet.

The company stopped selling the program in 2000, saying it no longer fit their marketing needs and needed to be revised. That anyone should find it controversial is surprising, Wetzel said. "We didn't get any complaints that I know of about the program."

David Parker, the Lexington father who was arrested April 27 while protesting the book his child received, contended that the school never gave proper warning about the contents of a book bag promoting diversity. The book bag included a copy of *Who's in a Family*?, which shows same-sex partners raising children.

After seeing the book, Parker and school officials had several months of discussions. He was arrested when he refused to leave the school, saying he was protesting because school officials rejected his request to notify him about discussions on adult topics in his child's kindergarten classroom. Reported in: *Boston Globe*, May 4.

**Traverse City, Michigan**

Tom Czarny hates having to take an Xacto knife to his students' textbooks, and he'd like to see it change. Czarny teaches advanced placement biology at Traverse City Central High School. Page 994 of the class textbook includes a brief passage about abortion, which he dutifully cuts out before students get the books.

It's a decision Czarny inherited and one Traverse City Area Public Schools officials said is influenced by state law that prohibits the teaching of abortion "as a method of reproductive health."

"It's just an unhappy reality," Czarny said. "I don't like anything involving censorship. It's counterproductive and counter-intuitive to the goal of education."

TCAPS Superintendent James Pavelka said he was unaware the district was removing anything from textbooks until a local newspaper inquired about the practice. But Sue Wilson, a TCAPS school nurse who chairs the district's sex education advisory board, said the district's administration sought a legal opinion in the 1980s and decided to remove any textbook references to abortion in the context of reproductive health.

Assistant Superintendent Jayne Mohr said since the state law is subject to some interpretation, TCAPS chose to err on the side of caution. Wilson said the advisory board since asked administrators several times to revisit the decision to censor. The advisory panel includes parents, educators and health professions, and reviews sex education curriculum materials.

TCAPS offers AP biology classes, which lets students earn college credit, at Central and West high schools. Wilson said this year West AP biology students could receive books with the abortion references intact if they purchased the book and had permission from their parents. She said the advisory board approved that change, which she called a successful "pilot" that will likely include Central's class next year.

Czarny said that's a more palatable option, and he'd like to see the district reconsider whether deleting the passages is necessary.

The sections cut out are part of a chapter on animal reproduction and are surrounded by discussion of other contraceptive methods.

Czarny said the topic of abortion "almost never comes up" because of the course's pace and breadth of subjects. His students can purchase their textbook, which he called the best available, at the end of the year to take with them to college since it's used by many universities. He said he saves the portions cut from the pages to give back to students if they buy the book.

Czarny said updated editions of the same book have been used with portions cut out since the early 1990s, before he started teaching the class. Reported in: *Traverse City Record-Eagle*, March 24.

**Winona, Minnesota**

The off-Broadway hit *The Vagina Monologues* has gotten two high school students into trouble. The students were admonished for wearing buttons inspired by the show that say "I (heart) My Vagina." The American Civil Liberties Union of Minnesota has offered to help students fight any consequences from their actions.

The trouble started in March after student Carrie Rethlefsen saw Eve Ensler's play about female sexuality and sexual violence against women. Rethlefsen and fellow student Emily Nixon soon began wearing the buttons.

"We can't really find out what is inappropriate about it," Rethlefsen, 18, said. "I don't think banning things like that is appropriate."

As a show of support, more than 100 students ordered T-shirts bearing "I (heart) My Vagina" for girls and "I Support Your Vagina" for boys.

Principal Nancy Wondrasch said some in school find the buttons offensive. "We support free speech," she said. "But when it does infringe on other people's rights and our school policies, then we need to take a look at that." Reported in: Associated Press, April 22.

**Fargo, North Dakota**

The parent of a Fargo North High student asked that a John Grisham bestseller no longer be assigned reading for an advanced English class. Ruth Walsh said *A Time to Kill* is inappropriate for high school students because of graphic rape and murder scenes. She wants the book removed from the classroom and school libraries.

"Just because something is printed doesn't mean it needs to be passed as literature," she said. "I just about threw up (while reading it)."

Grisham's first novel tells the story of a small-town Mississippi lawyer who defends a black man after he shoots two white men who raped his young daughter. The book opens with the details of a ten-year-old black girl being bound and violently raped. The novel also includes vivid descriptions of blood and brain matter in a stairwell after the girl's father shoots the rapists with an M-16 rifle. The novel was made into a 1996 movie by the same name.

"They (my children) couldn't go to an R-rated movie without my permission, why can they read this book?" Walsh asked.

Walsh's daughter was assigned the novel last fall in her accelerated sophomore English class. Teacher Deborah Meyers asked students to compare the contemporary work to Harper Lee's *To Kill a Mockingbird*, said Andy Dahlen, North's principal. Both novels explore racial tensions within the context of a court trial. Dahlen said students were warned about the content in Grisham's novel and given the opportunity to select a different assignment.

When Walsh expressed concerns about the Grisham novel, Meyers suggested Walsh's daughter read *Fahrenheit 451*, Walsh said. But the sophomore still had to answer questions about *A Time to Kill* on the class final last semester, Walsh said.

"These books aren't written for kids, they're written for adults," Walsh said. "When you're forced to read it for class, it's a whole different matter."

Grisham's novel was the second book to be challenged by parents in the Fargo School District this school year. Last fall, two parents asked educators to remove the short novel *Mick Harte Was Here* from elementary school libraries. After the parents appealed the novel at the district level, the book was retained. Reported in: *Fargo Forum*, April 19.

**Muhlenberg, Pennsylvania**

In April, at an otherwise mundane meeting of the Muhlenberg school board, Brittany Hunsicker, a sixteen-year-old student at the local high school, stood up and addressed the assembled board members. "How would you like if your son and daughter had to read this?" Hunsicker asked. Then she began to recite from *The Buffalo Tree*, a novel set in a juvenile detention center and narrated by a tough, twelve-year-old boy incarcerated there. What she read was a scene set in a communal shower, where another adolescent boy is sexually aroused.

"I am in the eleventh grade," Hunsicker said. "I had to read this junk."

Less than an hour later, by a unanimous vote of the board (two of its nine members were absent), *The Buffalo Tree* was banned, officially excised from the Muhlenberg High School curriculum. By 8:30 the next morning, all classroom copies of the book had been collected and stored in a vault in the principal's office. Thus began a still unresolved battle over the fate of this young adult novel by Adam Rapp that was published eight years ago by HarperCollins and has been on the eleventh-grade reading list at Muhlenberg High since 2000.

Pitting teachers, students, and others who say the context of the novel's language makes it appropriate for the classroom against those parents and board members who say context be damned, it is a dispute illustrative of the so-called culture war, which, in spite of its national implications, is fought in almost exclusively local skirmishes.

"We're absolutely middle-American," said Joseph Yarworth, the schools' superintendent for the last nine years. "And we're having an argument over our values."

Muhlenberg is a township of modest homes and 10,000 people or so, a bedroom community for the city of Reading, in the southeastern corner of the state. It is conservative politically and almost entirely white, and there are a growing number of evangelical Christians. Hunsicker had just returned from a two-week church mission in Honduras when, encouraged by her mother, she made her public complaint.

But the town is not militantly right wing. It is significant that even the more vociferous opponents of the book did not insist it come off the school library shelves (though thieves apparently took care of that). In fact, on April 14, as soon as Dr. Yarworth discovered that an overzealous underling had copies of the novel stored in the school vault, he ordered them returned to storage in classrooms so it could still be read by students who sought it out.

"I wanted us to comply with the narrowest possible interpretation of the board's decision," Dr. Yarworth said.

What followed was a period of unusual activism. Students circulated petitions. Teachers prepared defenses of the book, and their local union prepared a defense of the teacher who had assigned it. Letters on both sides appeared in the local newspaper, which published a number of articles about the dispute. In May, a column appeared headlined "The Upside of Censorship," by a regular columnist, John D. Forester, Jr., who wrote that after reading only "passages" of *The Buffalo Tree*, "I am actually applauding the efforts of parents to have books banished in their school libraries and classrooms." A few days later, an editorial took the opposing view.

On May 4, the school board met for the first time since banning *The Buffalo Tree* and about two hundred people

attended, ten times the usual number, Dr. Yarworth said. The president, Mark Nelson, apologized for his vote to ban the book, not because he approved of it in the curriculum—he admitted later he had not read it—but because he felt the decision had been hasty and in violation of the board's policy for book challenges, which says a challenge should first be heard by a committee of teachers and administrators before the issue goes before the board.

Another member, Otto Voit, who had read the novel, responded that the board, as the ultimate authority, was within its rights in removing the book from the curriculum.

Over the next two hours, some of the rhetoric on both sides became inflated. Some declared that dirty words are dirty words, and that with novels like *The Buffalo Tree* being taught, it's no wonder American society is going down the tubes. Others, not allowing for the genuine discomfort that some readers of *The Buffalo Tree* feel, invoked the specter of Nazi book-burning.

Several students spoke with more reasonable passion about the value of the novel, and one high school senior, Mary Isamoyer, offered to replace the missing library copies of *The Buffalo Tree* with her own. "Do not insult our intelligence by keeping this book from us," she said.

Tammy Hahn, a mother of four and perhaps the most outspoken of the book's opponents, responded that the students' view was irrelevant. She was not about to let her daughter take part in a classroom discussion about erections, she said, adding that it amounted to harassment to subject a girl to the smirks and innuendoes of male classmates who would have no sympathy for her discomfort.

"This is not about a child's opinion," she said of the students' defense of the book. "This is about parents."

Afterward, Joan Kochinsky, a board member who had not been at the previous meeting, moved that the ban be rescinded. But wary of making another decision in haste, the board postponed the vote for a week.

On May 11, it met for another tense, well-attended session that lasted until nearly midnight. This time there was much discussion about the particulars of Hunsicker's unhappiness with the book. School policy allows for alternate reading assignments when a student or a parent objects to a book on religious or moral grounds, but Hunsicker never did that; her mother, Tammy, said she would have made those specific objections if she had known it was necessary. Hunsicker had simply asked for something else to read because she didn't like *The Buffalo Tree*, and her teacher, Luana Goldstan, refused.

"No one is more critical of literature than English teachers," Stacia Richmond, a colleague of Goldstan's, told the board. "Do you really think we as educators choose literature in terms of its titillation? Do you not realize we are battling the same immorality you are?"

Dr. Yarworth then suggested that confusion could be avoided if a more explicit policy for book challenges were given to parents, including a synopsis of all books on the required reading lists. If that were done, he asked, would the board consider rescinding the ban on *The Buffalo Tree*?

An informal poll was taken, and by a five-to-three vote the board indicated it was ready to reverse itself. It was unclear how many members had finished *The Buffalo Tree*; at least two had, at least three had not. But the lengthy debate seemed to prepare them to change their minds.

After the meeting, however, Hahn said she felt her arguments had been given short shrift, and she met privately with Nelson, the board president, to push the idea of a rating system for schoolbooks, similar to what the Motion Picture Association of America does for films. And on May 18, the board rejected the English department's new policy for book challenges and asked that Hahn's requests be accommodated: that reading lists made available to parents include a ratings system, plot summaries of all assigned books, and the identification of any potentially objectionable content.

Teachers adamantly opposed these strictures, Michael Anthony, chairman of the English department, said, adding that they would undoubtedly result in more frequent challenges. Dr. Yarworth, who is trying to broker a compromise between the board and faculty, said he had already heard a few grumbles about *Of Mice and Men* and *Catcher in the Rye*.

In any case, Anthony said, "*The Buffalo Tree* isn't coming back anytime soon." Reported in: *New York Times*, June 2.

## student press

**Collinsville, Illinois**

School officials distributed copies of the April issue of the Collinsville High School *Kahoki* on May 20, weeks after the student newspaper's distribution was held up by the principal, who had concerns the content would be "disruptive."

Principal Daryl Floit delayed the release of the *Kahoki* until the last day of school because its March issue contained a top ten list by editor Sarah Lawrence criticizing the school's guidance and math departments. The April issue contains two pages of letters to the editor that agree and disagree with Lawrence's stance, she said.

After the release of the March issue, Floit required the students to submit the pages to him before they went to press, Lawrence said. Lawrence and other *Kahoki* staffers protested the delay at a May 2 school board meeting, but the decision stood. The next day, the students began assembling an independent publication, *The Tunnel*, which was distributed May 11. The paper, which contains another commentary by Lawrence and the letters to the editors that are at the heart of the controversy, was subtitled: What Floit Won't Let You Read.

"We decided that we wanted these articles to run, we wanted them to run in a timely manner and we wanted them to run when they could have influence still," Lawrence said. "Because if you give them to [students] on the last day of school, they're going to shove them in their backpacks, take them home and nothing's ever going to be read . . . and our writing will have no impact."

The delay of the school-sponsored student newspaper was the first confrontation between the newspaper and the administration since Lawrence joined the paper four years ago, she said.

Next year's editors said they are unsure if the paper will be able to continue in its current form as a journalism class. Adviser Dawn Lewis submitted her resignation on May 4, although she will remain at the school as an English teacher.

"I think the paper will have less meaning because I know the new sponsor is going to be hesitant to print anything that might be considered controversial," said incoming co-editor Kurt Simpson. Reported in: Student Press Law Center, May 19.

## colleges and universities

**Monterey, California**

The Republican Party of Monterey County is fuming over a scheduled lecture by a Colorado professor who compared the victims of the September 11, 2001, attacks to Nazi war criminals. Ward Churchill was the keynote speaker during CSU-Monterey Bay's Semana de la Raza (Week of the Race) that began May 2 and was intended to highlight Chicano culture and multiculturalism.

The University of Colorado ethnic studies professor gained national notoriety in February for an essay in which he said the attacks on the World Trade Center and the Pentagon were payback for an unlawful American foreign policy that resulted in killing countless innocent people around the world.

Paul Bruno, co-chairman of the Monterey County Republican Party, said Churchill is nothing more than a hate-monger. "He is trampling on the graves of people of who died that day," Bruno said. "A friend of my family's lost his sister in the World Trade Center. I couldn't look him in the face if I didn't take a stand."

CSUMB student Vito Triglia said that if Bruno was so concerned about the sanctity of human life, he should protest the Bush administration's foreign policy, which he says is responsible for the deaths of innocent Iraqis. Triglia heads the Events Workgroup, charged with scheduling lectures and musical concerts on campus. The Events Workgroup and MEChA sponsored the Churchill event. Bruno said Triglia was doing what Churchill does, "equating the actions of our government with terrorists."

CSUMB's interest in bringing Churchill to campus predates the uproar over his comments, Triglia said. "Some people only know about him (Churchill) because a couple of right-wing crackpots are trying to discredit him," Triglia said. "His books are assigned reading in several classes."

Bruno said he hoped others would join him in exercising their First Amendment rights by protesting the lecture. "CSUMB is a fine institution, worthy of our community support," Bruno said, "but these students are tarnishing its reputation."

Triglia said Churchill reflects CSUMB's mission, to not just experience the world, but change it. Reported in: *Monterey Herald*, April 28.

**Carbondale, Illinois**

Jonathan Bean is a popular professor at Southern Illinois University at Carbondale—even though his libertarian politics don't always coincide with his students' views. A historian, he was just named Teacher of the Year in the College of Liberal Arts.

In April, however, he found himself under attack in his department—with many of his history colleagues questioning his judgment for distributing an optional handout about the "Zebra Killings," a series of murders of white people in San Francisco in the 1970s. His dean also told his teaching assistants that they didn't need to finish up the semester working with him, and she called off discussion sections of his course for a week so TA's would not have to work while considering their options.

Students and professors at the university are trading harsh accusations about insensitivity and censorship, talking about possible lawsuits, and assessing the damage. Shirley Clay Scott, dean of the College of Liberal Arts, sent a memo to faculty members warning that they could "easily self-destruct if we do not exercise restraint and reason."

Support for Bean appears strong on the campus, at least outside of his department and his dean's office, and several national groups that defend professors who get in trouble for their views have offered to help him. Bean, who calls the incident one of "handout hysteria," said that he hoped life could get back to normal. "I want this resolved in a civil manner," he said.

The controversy involves readings in Bean's survey course on twentieth century American history. In teaching about race relations in the '60s and '70s, he assigns readings by and about such notables as the Rev. Martin Luther King, Jr., and Malcolm X. But he also gave students some "optional readings," too. And Bean is enough of a realist to know that most students don't read optional handouts (at least not until they become Topic A on campus).

One of those readings was called "Remembering the Zebra Killings," and it was largely a review of a book published about a series of murders of white people by

black militants in the early 1970s. The article describes how gruesome the killings were and suggests that they are little known today because of public discomfort in discussing black violence against white people. The article was a condensed version of the original, which appeared on *FrontPage Magazine*, published online by David Horowitz's Center for the Study of Popular Culture. The online version of the article contains a link to the European American Issues Forum, a group that has been criticized by many as being racist and anti-Semitic (articles on its home page talk of "Jewish influence" and bias against white people) and that has pledged to oppose parole for those involved in the Zebra Killings.

Critics of Bean have focused on the link. In a letter to *The Daily Egyptian*, the student newspaper at the university, six history faculty members expressed "disgust" with the distribution of the article, which they said was "distorted and inaccurate," and combines "falsehood and innuendo." They also said the article was downloaded from a site with "links to racially charged and anti-Semitic Web sites." They said further that Bean abridged the article in a way that "disguised its full context," although the handout clearly indicated that FrontPage was the source.

Bean said, on the advice of his wife, he decided to "push for harmony." So although he didn't think there was anything wrong with students reading the article, he withdrew his recommendation that they read it and apologized to his history colleagues for any concerns he had raised—as soon as he heard of complaints from his colleagues, and before the letter was published.

But things escalated. Scott, the dean, told Bean's teaching assistants they didn't need to finish up the course, Bean said. He said this amounted to his being convicted of doing something inappropriate without due process. He also noted the concerns about the link from the article were from the online version—when he'd distributed a print version that couldn't link anywhere.

Dean Scott did not directly respond to charges that she had interfered with Bean's rights. The student paper quoted her as telling Bean that he did not understand "the parameters of discussion." In her memo to professors, Dean Scott said: "I do not consider it my responsibility to conduct surveillance of faculty actions that are beyond the scope of the college mission—and I will not do that."

*The Daily Egyptian* came out strongly behind Bean. An editorial said: "Professors must be free to choose controversial material if doing so will further intellectual inquiry. The manner in which the material is presented, the discussion it generates and the conclusions drawn from it—in other words, the intellectual context—must provide the standards by which such material is judged." The editorial said that another professor at the university reconsidered distributing material because he feared a backlash against it.

The student journalists also criticized the idea that students can't judge ideas for themselves. "Another troubling aspect is the insistence by some that the students who were presented with the article were not yet capable of critical thinking and were therefore susceptible to corruption," the editorial said. "This paternalistic attitude flies in the face of all freedom. It is not the university's mission to shield soft young minds from offensive ideas, and the ability to think critically cannot be developed when people are denied the opportunity to think in the first place."

Bean said he was gratified by the student support. But he said he remained amazed that his faculty colleagues had turned against him and his dean had punished him—for an article that was never even required and that he withdrew as even an optional assignment.

"It was a handout," he said. "This is a 100-level course so we're trying different things to get students interested in events they've never heard of." He said his study of history has always left him amazed at events of cruelty in American history and when he teaches about the lynching of black people, he doesn't hide the extent of the terror and horror. "I don't whitewash history," he said.

"The chilling thing here is that people are saying what is allowed and what is not allowed." Reported in: insidehighered.com, April 29.

**Holland, Michigan**

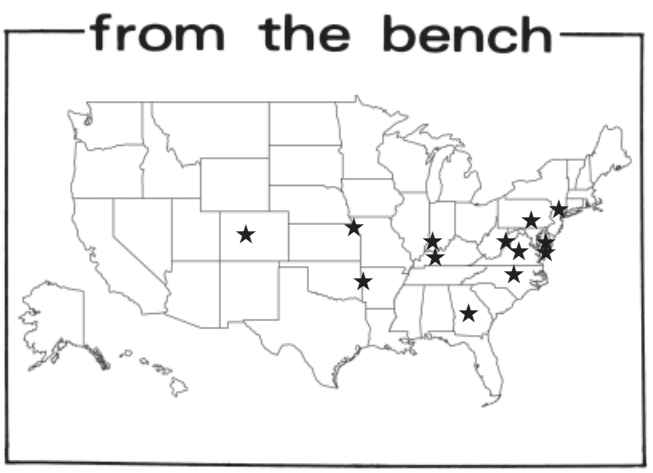
Hundreds of students and faculty members at Hope College held meetings and rallies in April over the resignation of a popular religion professor who had criticized many Christian leaders.

Miguel De La Torre is leaving Hope, a Michigan college where he has taught since 1999, to take a job at the Iliff School of Theology, in Denver. In addition to teaching and publishing while at Hope, he also has been a prolific writer in local newspapers, offering his views on any number of religion-related topics, and frequently taking issue with the Christian right.

De La Torre said that he quit—giving up tenure he won a few months earlier—because of a letter from Hope's president, James E. Bultman, criticizing his writings and suggesting that they were making it difficult for the college to raise money. While De La Torre did not release the letter, he confirmed reports that it said his writings had "irreparably damaged the reputation of Hope in our community" and "when people are displeased with what we do, their only recourse is to exercise their options with regard to enrollment and gifting."

Hope is affiliated with the Reformed Church in America. The letter particularly took issue with columns De La Torre wrote in *The Holland Sentinel* mocking some Christian leaders. One of the columns that angered the president was a piece mocking evangelicals who criticized the role of SpongeBob SquarePants in a video encouraging tolerance toward gay people.

*(continued on page 188)*




## U.S. Supreme Court

The Supreme Court ruled unanimously May 31 that a new federal law requiring prison officials to meet inmates' religious needs is a permissible accommodation of religion that does not violate the separation of church and state. The court rejected arguments by Ohio officials that the law, the Religious Land Use and Institutionalized Persons Act, violated the Constitution by elevating religion above all other reasons a prisoner might seek special privileges.

The state had said that by requiring prison officials to cater to the demands of adherents of Satanist or white-supremacist religions, the law would result in attracting new followers to these sects, to the detriment of prison security. The five Ohio inmates who brought the case belong to non-mainstream religions, including one, Asatru, that preaches that the white race needs to use violence and terrorism to prevail over the "mud races."

In her opinion for the court, Justice Ruth Bader Ginsburg said the state's fears were unfounded. The Congressional sponsors "were mindful of the urgency of discipline, order, safety, and security in penal institutions," she said, and "we do not read" the law to "elevate accommodation of religious observances over an institution's need to maintain order and safety."

Justice Ginsburg said that under Ohio's constitutional argument, which the federal appeals court in Cincinnati accepted last year in invalidating the statute, "all manner of religious accommodations would fall." She noted that many accommodations have been widely accepted: Ohio itself provides prison chaplains for "traditionally recognized" religions, and Congress has authorized military personnel to wear yarmulkes and other religious apparel while in uniform despite a Supreme Court ruling that such an accommodation was not constitutionally required.

The Supreme Court has had a sometimes troubled history of defining where the two religion clauses of the First Amendment overlap: the Free Exercise Clause, which protects religious practice from government interference, and the Establishment Clause, which in Justice Ginsburg's words "commands a separation of church and state."

From the tone of this latest decision, *Cutter* v. *Wilkinson*, it appeared that the court was seeking to defuse the tension inherent in the two clauses. "Our decisions recognize that there is room for play in the joints between the clauses, some space for legislative action neither compelled by the Free Exercise Clause nor prohibited by the Establishment Clause," Justice Ginsburg said.

The ruling marked the latest chapter in a fifteen-year dialogue among the court, Congress and the states over the degree to which the government may take religious interests into account in law or official policy. The statute in question, passed in 2000, is a direct outgrowth of that dialogue, which began with a 1990 Supreme Court case from Oregon, *Employment Division* v. *Smith*.

The court ruled in that case about American Indians' religious use of an illegal substance, peyote, that the government's refusal to grant religion-based exemptions to the general application of its laws did not violate the Free Exercise Clause. Congress reacted swiftly and, by large margins in both houses, passed the Religious Freedom Restoration Act, which required the government to accommodate religious practices unless it had a "compelling" reason not to do so.

In 1997, the Supreme Court, taking the Religious Freedom Restoration Act to be an assault on its institutional prerogatives, declared it unconstitutional on the ground that Congress lacked authority, at least in the circumstances of that case, to define the meaning of a constitutional provision and to impose that meaning on the states. The full impact of that decision, *City of Boerne* v. *Flores*, continues to play out across the court's federalism docket.

The law's supporters regrouped and arrived at a different approach. The Religious Land Use and Institutionalized Persons Act addressed only two types of government action: zoning and the rights of inmates of prisons, government-run mental hospitals and other public institutions. Unlike the original statute, Congress passed the new law under its power to control spending and to attach strings to the receipt of federal funds; any state or local government that accepted federal dollars for land development or prisons had to agree to apply the "compelling interest" standard for any policy that interfered with religious practice.

Whether this was an appropriate use of the Congressional spending power remains unresolved. Neither the lower

court nor Justice Ginsburg addressed that question, but Justice Clarence Thomas, in a concurring opinion, suggested that a state that accepted the federal money might have waived its objection. "The states' voluntary acceptance of Congress' condition undercuts Ohio's argument that Congress is encroaching on its turf," he said.

It remains open to Ohio to return to the lower courts and argue that the law violates either Congress's spending authority or its power to regulate interstate commerce. The section of the law dealing with land use was not before the Supreme Court in this case. Cases challenging that section, which usually arise when a church seeks an exception from zoning laws, are making their way through the lower courts.

The case the court decided began before passage of the new law. The Ohio inmates complained that officials were withholding religious publications and items, denying them access to religious services, and generally discriminating against them as compared with prisoners who belonged to mainstream religions. When the new law took effect, the inmates, represented by a clinical legal program at the Ohio State University Moritz College of Law, invoked it in amended complaints. Ohio argued that the law was unconstitutional, and the federal government intervened to defend it. The case never went to trial. The federal district court refused to dismiss the lawsuit, but the United States Court of Appeals for the Sixth Circuit held that the law violated the Establishment Clause "by giving greater protection to religious rights than to other constitutionally protected rights."

In her opinion, Justice Ginsburg emphasized that the court was only evaluating the law "on its face." Particular arguments, including the state's assertion that the law would foment gang activity, are to be evaluated as cases arise, she said. She added: "It bears repetition, however, that prison security is a compelling state interest, and that deference is due to institutional officials' expertise in this area."

For purposes of this preliminary ruling, she said, the law "fits within the corridor between the Religion Clauses: on its face, the act qualifies as a permissible legislative accommodation of religion that is not barred by the Establishment Clause." Reported in: *New York Times*, June 1.

On May 23, the Supreme Court upheld by a 6–3 vote the government's power to assess a fee on producers of agricultural products to pay for advertising and promotion of the products, even when some assessed producers disagree with the message. The Court ruled that the so-called "beef checkoff" program is a form of "government speech," and that it cannot be challenged as compelled private speech:

"Citizens may challenge compelled support of private speech, but have no First Amendment right not to fund government speech. And that is no less true when the funding is achieved through targeted assessments devoted exclusively to the program to which the assessed citizens object. The First Amendment does not confer a right to pay one's taxes into the general fund, because the injury of compelled funding (as opposed to the injury of compelled speech) does not stem from the Government's mode of accounting," the Court stated.

"But our references to "traditional political controls," do not signify that the First Amendment duplicates the Appropriations Clause, U. S. Const., Art. I, §9, cl. 7, or that every instance of government speech must be funded by a line item in an appropriations bill. Here, the beef advertisements are subject to political safeguards more than adequate to set them apart from private messages. The program is authorized and the basic message prescribed by federal statute, and specific requirements for the promotions' content are imposed by federal regulations promulgated after notice and comment. The Secretary of Agriculture, a politically accountable official, oversees the program, appoints and dismisses the key personnel, and retains absolute veto power over the advertisements' content, right down to the wording. And Congress, of course, retains oversight authority, not to mention the ability to reform the program at any time. No more is required." Reported in: www.supremecourtus.gov, May 23.

The Supreme Court agreed May 2 to consider a case involving national defense, concepts of patriotism and free speech and, not incidentally, billions of dollars in federal money. The justices announced that they would review a lower-court ruling, in favor of 25 law schools, that universities may bar military recruiters from their campuses without risking the loss of federal aid. Arguments will be heard in the justices' next term, which begins in October.

At issue is a ruling by the United States Court of Appeals for the Third Circuit, in Philadelphia, which held in a 2-to-1 decision last November 29 that educational institutions have a First Amendment right to bar military recruiters to protest a Defense Department policy that discriminates against gay people by barring them from serving openly in the armed forces.

The controversy began in 1995, when Congress passed what became known as the Solomon Amendment to a military appropriations bill. Named for its sponsor, Representative Gerald B.H. Solomon, an upstate New York Republican, the measure barred disbursement of money from the Departments of Defense, Transportation, Health and Human Services and Education, as well as some other agencies, to any college or university that blocked campus recruiting by the military.

As Solomon put it at the time: "Tell recipients of federal money at colleges and universities that if you do not like the armed forces, if you do not like its policies, that is fine, that is your First Amendment right. But do not expect federal dollars to support your interference with our military recruiters."

The amendment's co-sponsor, Representative Richard Pombo, Republican of California, said the measure would "send a message over the wall of the ivory tower of higher education." The message, he said, is that "starry-eyed idealism comes with a price."

Virtually every accredited law school bars discrimination on the basis of sexual orientation, putting their universities in an awkward position with respect to the military. Some law schools barred military recruiters from their campuses, while others arranged visits under conditions that set the military people apart from other recruiters.

As amended and interpreted over the years, the law is supposed to prohibit federal aid to all parts of a university if any of its units, like a law school, makes military recruiting even a little more difficult. Since the attacks of September 11, 2001, the Defense Department has been enforcing the measure more strictly, putting more pressure on the schools.

Writing for the Third Circuit last November, Judge Thomas L. Ambro said the schools were entitled not to associate with groups whose policies they oppose, and that the presence of military recruiters forced the universities to convey a message with which they disagreed—a form of compelled speech prohibited by the First Amendment.

Judge Walter K. Stapleton joined Judge Ambro's decision. But the dissenter, Judge Ruggero J. Aldisert, said the decision was misguided, particularly in wartime, and that the law school plaintiffs were wrong to look at the issue as simply "an academic exercise" or "a moot court topic."

"No court heretofore has ever declared unconstitutional on First Amendment grounds any Congressional statute specifically designed to support the military," Judge Aldisert said.

The case is *Rumsfeld* v. *Forum for Academic and Institutional Rights*. The Bush administration has argued that the Solomon Amendment is constitutional, since the schools are free to protest military policies if they are also willing to forgo federal money. Solomon, a former marine, served twenty years in Congress before retiring in 1998. He was famous for his tough talk in support of conservative causes, once inviting Representative Patrick Kennedy of Rhode Island to "step outside" to settle a dispute over a proposed ban on assault weapons. He died in 2001 at 71. Pombo, the co-sponsor of the amendment, is still in Congress. Reported in: *New York Times*, May 2.

The Supreme Court in recent years has drawn constitutional rules for the use of newly popular law enforcement techniques. The police need a warrant before aiming a heat-detecting device at a private home in an effort to find out whether marijuana is growing inside under high-intensity lights. The police do not need a warrant before permitting a trained dog to sniff a car, or a piece of luggage at an airport, in order to detect drugs.

Those precedents converged in a case from Texas that posed this question: Can the police bring a trained dog to stand outside a private home and sniff for drugs? The lower courts have disagreed, and the Supreme Court decided April 4 to let the confusion linger. The justices did not take the case.

The court offered no explanation for declining to hear an appeal from a Houston man, David G. Smith, whose supply of methamphetamine in his garage was detected by a trained dog. After the dog was walked up Smith's driveway and signaled the presence of drugs behind the lower corner of the garage door, the Harris County Sheriff's Department obtained a search warrant and found the drugs and other criminal evidence. A state appeals court rejected Smith's appeal, upholding his conviction and his sentence to 37 years in prison.

The Texas Court of Appeals issued its ruling in February 2004. That was nearly a year before the Supreme Court, in a ruling in January, upheld the use of a trained dog to sniff a car that had been stopped for a non-drug-related traffic violation. But the Texas court did cite a 1983 Supreme Court decision, the first to address the use of drug-detecting dogs, that upheld the sniffing of luggage at an airport.

The constitutional question in all such cases is whether the canine sniff is, under the circumstances, a search within the meaning of the Fourth Amendment; if so, it requires probable cause or a warrant. The court has never categorically held that a sniff is not a search, and although the justices made no law, the case itself offered a window into the growing use of trained dogs and some of the legal issues the practice raises.

In its 1983 airport decision, *United States* v. *Place*, the court suggested that the sniff was not a search in that setting because it "discloses only the presence or absence of narcotics" without requiring that the suitcase be opened. In *Illinois* v. *Caballes*, the court said that a dog's sniff of an automobile that had been lawfully stopped for speeding did not "implicate legitimate privacy interests."

In the appeal, the court turned down *Smith* v. *Texas*, Smith argued that the most important precedent for understanding his case was one that did not involve dogs at all, but rather a thermal imaging device that the police use to detect distinctive patterns of heat produced by the indoor cultivation of marijuana. In a 2001 decision, *Kyllo* v. *United States*, the court held that the use of this device, when trained on a private home, was a search that required a warrant. In his majority opinion, Justice Antonin Scalia said that the heat patterns could also reveal other kinds of personal behavior behind a home's walls. Justice Scalia noted that the home was what the framers of the Fourth Amendment had in mind when they barred "unreasonable searches."

In the appeal, Smith's lawyers told the court: "No distinction exists between a thermal-imaging device and drug-sniffing dog in that they are both sense-enhancing and permit information regarding the interior of a home be gathered which could not otherwise be obtained without physical intrusion into a constitutionally protected area."

In urging the justices to reject the appeal, the Harris County district attorney, Charles A. Rosenthal, Jr., argued that the thermal imaging case was off the point. "The use of a drug detection dog does not constitute the use of any technology, let alone advanced technology," he said.

The district attorney's brief cited a variety of lower-court precedents that had upheld canine sniffs as not amounting to searches: in the common corridor of a hotel, outside an Amtrak sleeper compartment, outside an apartment door, at the exterior of a home. These activities were found not to "implicate Fourth Amendment concerns," he said, because "society clearly is not willing to recognize as reasonable or legitimate an expectation of privacy in the possession of narcotics."

One decision from the federal appeals court in New York that reached the opposite conclusion in 1985 should be ignored as a precedent, he said, because that decision "is twenty years old, yet it stands alone" and has not been adopted by other courts. Reported in: *New York Times*, April 5.

Two reporters facing up to eighteen months in jail for refusing to testify about their sources gained some unlikely allies May 27. The attorneys general of thirty-four states and the District of Columbia filed a brief in the United States Supreme Court supporting the reporters, Judith Miller of *The New York Times* and Matthew Cooper of *Time* magazine. The brief urged the court to hear the reporters' case and argued that the absence of federal protection for journalists and their sources undermines the laws of the forty-nine states that do offer protection.

State court judges considering subpoenas for reporters' sources usually balance two competing interests, the importance of the information and the damage that disclosure may do to the flow of information to the public. The brief took no position on whether Patrick J. Fitzgerald, the federal special prosecutor pursuing the two reporters' testimony, would win or lose under such a standard. But it said the Supreme Court should take the case to establish similar federal protection.

Such protection would close a gap, the brief argued. At present, reporters receive widely varying protection depending on whether their testimony about a given interview is sought in state or federal court. As a consequence, the brief said, reporters and sources cannot make agreements in the confidence that state laws will protect them.

"In the absence of some kind of federal privilege, our laws could become meaningless," Attorney General W.A. Drew Edmondson, an Oklahoma Democrat and the lead lawyer for the group, said in an interview.

Attorney General Mark Shurtleff, a Utah Republican, said he hoped the brief would cause the Supreme Court to consider the case. "In something like this," he said, "a majority of A.G.'s asking the Supreme Court to look at this can have an impact."

The case against the reporters arose from the publication of the identity of an undercover CIA operative, Valerie Plame, by the syndicated columnist Robert Novak, who said he had been told it by "two senior administration officials." It can be a crime for government officials to disclose such information. Though many aspects of the case have been kept secret, Fitzgerald appears to assert that Cooper, who wrote about Plame after the Novak column, and Miller, who never wrote on the subject, may have information that may point to criminal conduct by a government official. Novak's role in Fitzgerald's investigation remains a mystery.

In February, the federal appeals court in Washington upheld a trial judge's decision holding the two reporters in contempt and ordering them jailed, but the appeals court panel split three ways on the question of whether federal law recognizes a reporter's privilege. A 1972 decision of the Supreme Court, *Branzburg* v. *Hayes*, held that the First Amendment does not supply such protection.

But a rule of evidence adopted by Congress in 1975 authorizes federal courts to recognize new privileges in light of "reason and experience." In the brief filed in May, the state attorneys general argued that the breadth and consistency of state protections, many of them relatively recent, satisfies that requirement.

The Supreme Court may decide whether to hear the case before it takes its summer recess. Should it do so, it would probably hear arguments in its next term, which begins in October.

Shurtleff, Utah's attorney general, said the public benefits from the legal protections states give journalists. "If you don't have protection, there is going to be a chilling effect and people don't talk," he said. "If people don't talk, the public won't hear important stories."

Attorney General Greg Abbott, a Texas Republican, said in a statement, "A free and open democracy requires a free and open press." Those are arguments and sentiments one is used to hearing from journalists and their lawyers, said Floyd Abrams, who represents Miller. They have more force, he said, coming from law enforcement officials.

"These are the people who are losing evidence because of shield laws," he said. "Yet they still come in and say, in effect, that we can live with that."

Theodore J. Boutrous, Jr., who represents Cooper, said the prosecutors' brief may strike a chord with the Supreme Court, which has been concerned with the relationship between the federal government and the states. "The lack of a privilege could undermine, and defeat from a federalism perspective, what the states are trying to protect," he said.

Edmondson, Oklahoma's attorney general, suggested that he may be prepared to continue to support the reporters on the merits of the case if the Supreme Court agrees to hear it. "As I have followed the case in the press," he said, "it may be very difficult for the government to prove the information it seeks is relevant or significant or that it cannot be obtained elsewhere."

Edmondson, who has been a prosecutor for twenty years, said he has never felt it necessary to subpoena a reporter for information about a source. "There have been times when I have been very curious and would like to know," he said, "but that's insufficient." Reported in: *New York Times*, May 27.

U.S. Supreme Court Justice Anthony M. Kennedy on April 15 denied a Florida broadcaster's emergency request to stop enforcement of two trial court orders that it said prevented publication of grand jury testimony by an accused killer. First Coast News had argued that the orders last summer from Florida Seventh Judicial Circuit Judge Robert Mathis, who is now retired, operated as an unconstitutional prior restraint against the press because they threatened criminal prosecution for future disclosure of the transcript of Justin M. Barber's grand jury testimony, which First Coast had obtained from the prosecutor's office.

But Kennedy—while acknowledging that "informal procedures undertaken by officials and designed to chill expression can constitute a prior restraint"—said any threat implied in Mathis' first order was "much diminished," noting that Mathis is no longer in office and that the state's attorney had suggested that further publication by the broadcast outlet would not be prosecuted.

"We consider it a victory even though the stay was denied," First Coast attorney George Gabel of Holland & Knight in Jacksonville, said. "Justice Kennedy made it clear that the only reason for the denial was the fact that during briefing the Attorney General's office represented that the State has no current plans to enforce the order of the now-retired judge prohibiting publication of the material at issue."

Kennedy's six-page opinion essentially means First Coast News—a Gannett duopoly of an ABC and NBC affiliate—is free to re-publish the grand jury transcript. Barber, who allegedly killed his wife, is scheduled to go to trial in June.

"With this ruling the station can now air the material, and we have a U.S. Supreme Court opinion of lasting value on the prior restraint issue," said Gabel, adding he was "pleased" that Kennedy chose to explain in writing his reasons for denying First Coast's request. Gabel said First Coast would not seek review of the case by the entire Supreme Court.

Mathis had ordered First Coast on July 30 not to re-publish information contained in the transcript, portions of which the station had already broadcast. After First Coast challenged the order as an unconstitutional prior restraint, the judge issued a second order purporting to clarify the first one. The second order stated that releasing the transcript violated a Florida law that generally prohibits disclosing grand jury testimony, and threatened First Coast with criminal sanctions if it re-published the information. Mathis also called for Gov. Jeb Bush to investigate the release of the document by the State's Attorney's office, although no such investigation was ever done.

In March, after six months of inaction, Florida's Fifth District Court of Appeal refused without comment to review First Coast's challenge to Mathis's orders. State rules of appellate procedure prevented the Florida Supreme Court from considering the appeals court's denial, prompting First Coast to seek relief from Kennedy, who serves as circuit justice for the geographic area that includes Florida. A coalition of media groups, including The Reporters Committee for Freedom of the Press, filed a friend-of-the-court brief supporting the request.

Kennedy could have granted the request only if the issue was so substantial that four Supreme Court justices likely would agree to take the case. "I think Justice Kennedy's reasons for denying this order are all practical ones and are all tied to the unusual facts of this case," said attorney Nathan Siegel of Levine Sullivan Koch & Schulz, who wrote the friend-of-the-court brief. "The opinion suggests no diminution at all in the First Amendment's protection against prior restraints. To the contrary, it's a rather First Amendment-friendly opinion that includes some nice language about how restraints can result from informal court orders and actions as well as formal injunctions."

Siegel said Kennedy's marks the latest in a line of single-justice opinions involving applications for stays of prior restraints dating back to the 1970s, adding to a "fairly significant body of law" in this area. The issuance of written opinions on stay applications—which are often denied without explanation—in such cases indicates the justices "view prior restraint as the kind of issue that . . . merits very quick action and some explanation for it," he said. Reported in: Reporters Committee for Freedom of the Press, April 18.

## libraries

**Cedarville, Arkansas**

A federal judge has ordered the Cedarville school district to return J.K. Rowling's Harry Potter books to the open shelves of its libraries. In a decision announced April 22, U.S. District Court Judge Jimmy L. Hendren said the books must be displayed "where they can be accessed without any restrictions other than those administrative restrictions that apply to all works of fiction in the libraries of the district."

A student and her parents sued the Cedarville school board last year after it removed the books in response to a complaint that the books show "that there are 'good witches' and 'good magic'" and that they teach "parents/teachers/rules are stupid and something to be ignored." A dozen national groups and author Judy Blume filed a friend of the court brief supporting Dakota Counts and her parents, Billy Ray and Mary. "It is the bravery of people like the Counts that protects free speech in this country," said Chris Finan, the president of the American Booksellers Foundation for Free Expression (ABFFE), one of the sponsors of the friend of the court brief.

Judge Hendren said there was no evidence to support the school board's claim that the books were encouraging

disobedience and threatening the orderly operation of the schools. He concluded that the majority of the board members voted to "restrict access to the books because of their shared belief that the books promote a particular religion." This violated the First Amendment rights of the students. "Regardless of the personal distaste with which these individuals regard 'witchcraft,' it is not properly within their power and authority as members of defendant's school board to prevent the students at Cedarville from reading about it," Hendren said.

This was the first legal challenge to a restriction on the use of Harry Potter books in a public school. For the last four years, the Potter books have been the most frequently challenged books in the country, according to the American Library Association.

In addition to ABFFE and Judy Blume, the amicus brief was signed by the Freedom to Read Foundation, Americans United for Separation of Church and State, the Association of American Publishers, the Association of Booksellers for Children, the Center for First Amendment Rights, the Children's Book Council, Feminists for Free Expression, the National Coalition Against Censorship, Peacefire, PEN American Center, People for the American Way Foundation, the Student Press Law Center, and Washington Area Lawyers for the Arts. Reported in: FEN Newswire, April 23.

**Washington, D.C.**

The U.S. Circuit Court of Appeals for the District of Columbia issued a decisive 3–0 opinion May 6 in favor of libraries and consumers when it ruled that the FCC overstepped its jurisdiction by mandating a "broadcast flag" copy protection in new technologies. The decision is being hailed as a significant step towards restoring the rights of consumers to make lawful copies of digital content. "This is a big victory for consumers and libraries," said Emily Sheketoff, executive director of the American Library Association (ALA) Washington Office, representing the petitioners in the case.

"The broadcast flag seriously undermined the rights allowed nonprofit educational institutions under the TEACH Act to distribute digital content over the Internet for distance learning purposes. It even imposed restrictions on how consumers are able to use digital content in their own homes. We are happy the court has restored the rights of libraries and consumers by ruling that the FCC does not have the right to mandate technological copy protections," Sheketoff added.

The FCC order required that all digital electronic devices, such as television sets and personal computers, include code that accompanies digital television (DTV) signals to prevent redistribution of the digital content over the Internet. The petitioners in the case believed that the FCC ruling constituted another step toward giving content providers too much control over what users can do with digital content. The broadcast flag prevented the use of an entire category of works-high definition television programs-from being used in distance education.

The petitioners in the case were the American Library Association, Association of Research Libraries, American Association of Law Libraries, Medical Library Association, Special Libraries Association, Public Knowledge, Consumer Federation of America, Consumers Union and Electronic Frontier Foundation. Reported in: ALA Washington Office Newsline, May 6.

## schools

**New York, New York**

New York City has agreed that First Amendment activities including leafletting, petition-gathering, picketing, and holding press conferences can occur on public sidewalks in front of schools, a civil rights lawyer said March 29. The agreement between the city and lawyers for the New York Civil Liberties Union was approved March 16 by a federal judge who was scheduled to preside at a trial over a 2003 lawsuit brought by a youth advocacy organization, the Ya-Ya Network, said Christopher Dunn, the NYCLU's associate legal director.

The lawsuit was brought after students working with the group alleged they were threatened with arrest outside schools for handing out literature telling other students about their rights to keep personal information from military recruiters. The NYCLU said it was "essential" for such student activities to be allowed to occur outside schools.

"Because so many important controversies involve our schools, it is essential that students, parents, teachers and advocates be able to protest or engage in other First Amendment activity in front of schools," Dunn said. "This settlement assures that they now can do so without fear of arrest."

The executive director of Ya-Ya Network, Amy Wagner, said it was important to have access to students outside schools. "As the public controversy over military recruiting in schools intensifies, it is particularly important that students have access to facts which are not included in the recruiters' sales pitch," she said.

City lawyer Dara Weiss noted that the settlement allows for people to participate in "legitimate expressive activities near school grounds provided that they are not engaging in any unlawful activity." Reported in: Associated Press, March 29.

**Putnam County, West Virginia**

A federal judge has ruled a high school dress code that banned items bearing the "Rebel flag" is overly broad and

violates students' rights to free speech. But U.S. District Court Judge John T. Copenhaver, Jr., warned students if they use the Confederate battle flag as a symbol to violate the rights of others, "the very ban struck down today might be entirely appropriate."

Copenhaver's ruling came in a lawsuit filed by Hurricane High School senior Franklin Bragg, who was ordered to serve two in-house detentions last November for wearing the T-shirt with the flag's image. The lawsuit was filed by the American Civil Liberties Union of West Virginia after attempts to resolve the issue with school officials failed.

Some view the flag as a symbol of hate and racism. Others see it as honoring Southern history. Bragg said he wore the T-shirt to show his Southern heritage.

Bragg sued Principal Joyce Swanson and the Putnam County Board of Education, arguing he had worn similar T-shirts and a Confederate flag belt buckle before Swanson became principal last fall. Bragg also argued other clothing with political and advertising slogans was permitted.

Swanson modified the 1,000-student school's dress code to prohibit clothing that featured "profanity, vulgarity, sexual innuendo, and racist language and/or symbols or graphics . . . This includes items displaying the Rebel flag, which has been used as a symbol of racism at high schools in Putnam County."

Putnam County, which is between Huntington and Charleston, is 98 percent white, according to the 2000 census. About 0.6 percent of the county's 51,589 residents are black.

In his ruling, issued May 31, Copenhaver wrote that courts have moved to ban such images in schools where racial tensions exist. Testimony at a hearing last month did not show such a climate existed at the Putnam County school. "To suggest a ban is warranted simply because some associate it with racism proves too much for First Amendment purposes," Copenhaver wrote.

The dress code is unconstitutional because it issues an outright ban on "items" displaying the flag, he wrote. Although the policy may have been written with the best intentions, "the offending portion unjustifiably silenced a significant amount of permissible speech in contravention of the First Amendment," he wrote. Reported in: Kentucky.com, June 2.

## colleges and universities

**Louisville, Kentucky**

A Kentucky newspaper is not entitled to the names of individual donors to a university foundation because they are categorically private and exempt from open records law disclosure requirements, a state appellate court ruled, partially reversing a lower court decision. The ruling was the latest judicial decision surrounding a four-year-old dispute.

Judge Julia Tackett, writing for a unanimous three-judge panel of the Kentucky Court of Appeals, agreed with the foundation that "whether a donor has specifically requested anonymity" has no bearing on the weight of the donor's privacy versus the public's interest in the donors' names. In balancing the donors' privacy concerns against the public's interest, Tackett conceded a "theoretical connection . . . between the identity of the donors and the way the University eventually expends money raised." But the court cited other Kentucky open records cases in which requested information "would reveal little or nothing about the operations of the public agency and much about the private individuals."

The court's ruling came four years after Keith Runyon, opinion editor of the *Louisville Courier-Journal*, requested the names of all University of Louisville Foundation donors. Initially, the foundation argued that as a non-profit corporation, its records were not subject to Kentucky open records law, an argument dismissed by the state Court of Appeals in November 2003.

Once the foundation was deemed a government entity whose records were subject to the open records law, the question became whether the privacy exemption protected the donors' names. In September 2003, Jefferson County Circuit Judge Stephen K. Mershon ruled that privacy concerns only protected a donor's name from release when confidentiality was specifically requested at the moment of the gift. Both parties in that case, the *Courier-Journa*l and the University of Louisville Foundation, were dissatisfied with the degree of ordered disclosure and permitted exemption, respectively, and they both appealed.

The records battle has been litigated piecemeal over many years because Mershon has ruled on the case's various issues in separate opinions. In November, for example, Mershon resolved the donor-name-privacy issue with respect to corporate donors in much the same way his September 2003 decision—now reversed by Tackett's May 20 ruling—treated private individual donors' names. Reported in: Reporters Committee on Freedom of the Press, May 24.

**Chapel Hill and Raleigh, North Carolina**

Two college students in North Carolina and their universities scored a legal victory against the recording industry in April when a federal judge quashed subpoenas that would have required the institutions to reveal the students' identities. The Recording Industry Association of America had requested the subpoenas as a likely precursor to filing lawsuits accusing the students of swapping music online in violation of copyright law.

About two years ago, the industry group sought to learn the name of a student at the University of North Carolina at

Chapel Hill whose online name was hulk. The group also sought the identity of a North Carolina State University student whose online name was CadillacMan@Blubster.com. The students said the subpoenas were invalid because they did not conform to the provision of the Digital Millennium Copyright Act that authorizes such subpoenas and because they were unconstitutional. The subpoenas are controversial because a court clerk, instead of a judge, issues them. The process is faster but, its critics say, puts a powerful judicial function in the hands of a low-level official.

Judge Russell A. Eliason, of the U.S. District Court in Greensboro, agreed with the students that the subpoenas violated the digital copyright act. The judge issued his decision on April 14 but did not make it public until a week later.

The judge's rationale, in large part, mirrored a December 2003 ruling by the U.S. Court of Appeals for the District of Columbia Circuit. That court said the expedited subpoenas that the recording industry group had been using to learn the identities of suspected music pirates were invalid when the copyrighted material had been stored on computers beyond the Internet-service provider's reach. Although in that case Verizon Communications, Inc., had challenged the subpoenas, the court ruling also applied to colleges when acting as Internet-service providers.

The appeals court said the subpoenas could be issued only to service providers that stored copyrighted material on their servers, not to providers, like Verizon, that were merely conduits of information sent by others. The subpoenas issued to Chapel Hill and North Carolina State were the same type of documents that the appeals court had ruled were illegal. The universities' networks were used to transmit songs traded by students, but not to store the music.

The universities initially appeared willing to comply with the subpoenas, but they questioned the documents' validity after the federal appeals court ruled. Eventually they filed their own separate motions to quash the subpoenas. The district court consolidated the two cases.

The federal government intervened in the litigation on behalf of the recording industry because it sought to support the digital copyright law.

Judge Eliason said he was not persuaded by the recording industry group's argument that Congress—in drafting the digital copyright act—meant to allow the expedited subpoenas to also apply to Internet-service providers that are only thruways for peer-to-peer file sharing. To allow such subpoenas to be served, the judge stated, "would amount to a rewriting" of the digital copyright law. "There are simply too many dangling threads in this cloth for a court to tailor it into a garment fit for the use" that the recording industry group proposed, the judge added.

Judge Eliason also endorsed a separate argument by the North Carolina State student that the subpoena sent to her institution was invalid because it was issued by a court that does not have jurisdiction over the university.

The American Civil Liberties Union, which represents the Chapel Hill student, hailed Judge Eliason's ruling. "Hopefully, the recording industry will not use these special subpoenas any longer," said Aden J. Fine, a lawyer at the group's New York City office.

Jenni Engebretsen, a spokeswoman for the Recording Industry Association of America, said the group was considering whether to appeal Judge Eliason's order. Since the appeals-court decision, she added, the industry group has not been using the expedited subpoenas, but instead has been filing lawsuits against unidentified John and Jane Does, accusing them of violating copyright law by swapping music online. Reported in: *Chronicle of Higher Education* online, April 22.

## church and state

**Chesterfield County, Virginia**

The U.S. Court of Appeals for the Fourth Circuit has ruled a Virginia county can refuse to let a witch give the invocation at its meetings by limiting the privilege to clergy representing Judeo-Christian monotheism. Lawyers for Wiccan practitioner Cynthia Simpson planned to file a motion this week asking the full court, based in Richmond, to review the three-judge panel's decision.

While the U.S. Supreme Court has limited government entanglement with religion in the past, the Fourth Circuit's decision relies heavily on a case in which the high court carved out separate and broader boundaries and guidelines for prayer at legislative gatherings. In that 1983 case, *Marsh* v. *Chambers*, the court ruled there was no violation of the establishment clause when the Nebraska legislature used a Presbyterian minister over a number of years to lead its invocations.

The court said in *Marsh* that as long as the selection of a particular minister did not stem "from any impermissible motive," it was constitutional. The *Marsh* opinion also strongly emphasized the long history of prayer in both Congress and the Supreme Court itself.

The Fourth Circuit ruled Chesterfield County's Board of Supervisors did not show impermissible motive in refusing to permit a pantheistic invocation by a Wiccan because its list of clergy who registered to conduct invocations covers a wide spectrum of Judeo-Christian denominations.

"The Judeo-Christian tradition is, after all, not a single faith but an umbrella covering many faiths," Judge J. Harvie Wilkinson, III, wrote in the opinion.

Simpson is a leader in the spiritual group Reclaiming Tradition of Wicca and a member of another known as the Broom Riders Association. Her lawyers argued the Fourth Circuit wrongfully discriminates among religions. "A very basic point is that governments cannot make distinctions among their citizens on the basis of religion," says Rebecca Glenberg of the American Civil Liberties Union of Virginia, who argued on behalf of Simpson.

A law professor who has been involved in establishment clause litigation said the full Fourth Circuit was not likely to change the ruling. If it does, Douglas Laycock said, the Supreme Court probably would not take up a case with questions about limiting legislative prayer to Judeo-Christian faiths.

"The court has only so many chips to spend on this issue," said Laycock, a professor at the University of Texas School of Law, who believes there should be greater separation of church and state. "They haven't touched legislative prayer since the *Marsh* case more than twenty years ago. And it would be immensely unpopular in many parts of the country to let a Wiccan give a prayer. The courts aren't supposed to follow election returns, though they sometimes seem to do so, and they're even getting death threats now."

The Fourth Circuit opinion carefully builds on precedent that indicates a preference for more mainstream religions. Legislative invocations "constitute 'a tolerable acknowledgment of beliefs widely held among the people of this country,' being as we are 'a religious people whose institutions presuppose a supreme being,'" Wilkinson wrote, quoting the *Marsh* opinion, which itself was in part quoting the 1952 case *Zorach* v. *Clauson*.

After Simpson complained about not being permitted to conduct an invocation, the board of supervisors added rabbis and a Muslim imam to its list of clergy, said Ayesha Khan, legal director for the Washington, D.C.-based Americans United for Separation of Church and State, who also argued the case for Simpson. That "tokenism" wasn't enough, she said.

"The *Marsh* case said that if the prayer giver was selected with impermissible motive, then it would be improper," she said. "If the board of supervisors didn't mean to discriminate, then I don't know what they did mean. The Fourth Circuit gave short shrift to that point."

Simpson had told the board she would drop her complaint if the legislative body discontinued invocations. Reported in: *ABA Journal eReport*, April 29.

## political speech

**Boulder, Colorado**

A man who disrupted a 2002 political rally is asking the Colorado Supreme Court to toss out his conviction, saying he fears the precedent set by his case could lead authorities to arrest people for simply expressing their opinions. Matthew Dempsey, twenty-six, who worked for Republican Sen. Wayne Allard's re-election campaign, was with a group of volunteer protesters using a bullhorn to heckle Democratic Senate candidate Tom Strickland. Prosecutors said the protesters were pushing people aside and drowning out speakers' comments by shouting into the bullhorn.

Dempsey was convicted of disrupting a lawful assembly and obstructing a peace officer. His attorney said it is the first time the state's high court has been asked to determine how those laws can be applied in a free-speech case.

Prosecutors said the laws were applied appropriately, and if the conviction is overturned, people would be granted immunity for conduct that violates the rights of others.

Dempsey said he was approached by police officers almost immediately when his group began its protest, and that the bullhorn was used only a few seconds. A police officer took Dempsey aside and asked for identification, saying he planned to issue a summons for disorderly conduct. Dempsey refused to provide identification, and when he reached into his pocket for a cell phone to call his lawyer, officers grabbed his arms and handcuffed him after a brief struggle.

A Boulder County judge ordered Dempsey to pay a $300 fine and $159 in court costs. Dempsey appealed after a district court judge upheld his convictions. "It's really these people that are college students, young people, or people that come in every day to campaign headquarters to put stamps on letters those people are all going to be more worried about getting involved at this point," Dempsey said in an interview. "This happened on the Pearl Street Mall in Boulder, the capital of protests in Colorado, an open forum, probably the best place traditionally for free speech in the state."

Dempsey's attorney, his brother Bradford Dempsey, said the trial judge failed to ask for evidence that the rally was actually disrupted and for legal justification of the prosecutor's argument that Dempsey did not have the right to refuse to show his ID. Without that evidence, the two laws Dempsey was convicted of breaking could be used to punish constitutionally protected but unpopular speech, Bradford Dempsey said in written arguments.

"Government officials have no legitimate interest in serving as ideological gatekeepers, selectively blocking access to a public forum based on the speaker's intended message," the attorney wrote. "Instead of silencing the Allard supporters and arresting their leader, police officers had a constitutional obligation to vigorously protect the right of Dempsey and the Allard group to express their views, even if such views were unpopular."

Bradford Dempsey argued that nobody who participated in the rally complained about the protest, and said his brother was not required to cooperate with police officers' demands because he was not under arrest.

Boulder Deputy District Attorney Adrian Van Nice said Dempsey was essentially under arrest when officers told him he was being detained so they could issue a summons. Jurors were told they could convict him only if they determined he created a significant disturbance, she said.

"There is no evidence that the officers chose to act due to the content of Mr. Dempsey's speech. All three officers addressed themselves to the conduct they observed, rather than the message that was being conveyed," she wrote. Reported in: news4colorado.com, May 2.

## freedom of information

**Washington, D.C.**

Records fulfilling Freedom of Information Act requests were fully provided 92 percent of the time in 2004, according to a Government Accountability Office report released in early May. But that number does not distinguish between requests by individuals for their own personal information, which is almost always released, and requests for information about government operations and activities or for government collected data, requests far less likely to be fully answered. Because types of requests are not distinguished in the report, the figure is misleading as to how successful the act is in ensuring open government.

Linda Koontz, GAO's director of information management issues, said that the "devil may be in the details" in assessing the report. Although the report concludes that the FOI Act "continues to be a valuable tool for citizens to obtain information about the operation and decisions of the federal government," Koontz acknowledged that Congress' requirements for the annual reports do not distinguish between categories of requests.

That would require a change in the requirements of the FOI Act or in the Department of Justice's instructions to agencies on filing annual reports, Koontz said. The FOI Act requires federal agencies to send their annual reports to the Department of Justice which forwards them to Congress.

GAO based its analysis entirely on the annual reports to Congress from 25 agencies. It noted a 71 percent increase in numbers of requests received from 2002 to 2004, and a 14 percent increase in the backlog of requests from 2002 to 2004.

Four agencies account for 91 percent of all FOI Act requests made to the federal government, according to the report. Those include the Veterans Administration, which considers patient requests to be FOI requests and accounts for 46 per cent of the requests reported. The Social Security Administration, which includes citizen requests for their own or relatives' entitlement information, accounts for 36 percent of the requests reported.

The Department of Health and Human Services, which includes in its count requests for Medicare and Medicaid information, accounts for 6 percent. The Department of Homeland Security, which processes requests for alien files, accounts for 4 percent. Their attorneys must request files from the department's U.S. Citizen and Immigration Services through FOI procedures because they have no right to discovery of information in deportation proceedings.

The remaining 9 percent of requests studied came from the other 21 agencies whose reports were analyzed. GAO notes that the numbers of fully granted requests vary widely among agencies, with the Department of State, the Central Intelligence Agency and the National Science Foundation fully releasing requested records in fewer than 20 percent of the requests they process. (GAO notes that in rounding the percentages, the total exceeds 100 percent).

GAO said Department of Justice guidance suggests to agencies that it is "good policy" to treat all first-party requests as both Privacy Act and FOI Act requests whether or not the requester cites either or both laws. Considering both acts would ensure that requesters seeking information about themselves have the fullest possible response to their inquiries, the Justice Department said. Reported in: Reporters Commitee on Freedom of the Press, May 17.

**Dover, Delaware**

The U.S. Constitution bars Delaware—where most large American corporations are legally incorporated—from discriminating against noncitizen records requesters in administering the state freedom of information law, a federal court in Wilmington ruled in May. The citizenship precondition of Delaware's records law violates the constitutional clause that entitles citizens of each state to "privileges and immunities" in other states, U.S. District Court Judge Joseph J. Farnan, Jr., ruled in siding with a New York records requester who sued for access.

The ruling leaves a few states—Arkansas, Georgia, Pennsylvania, Tennessee and Virginia—that only allow their own citizens to use the state open records law.

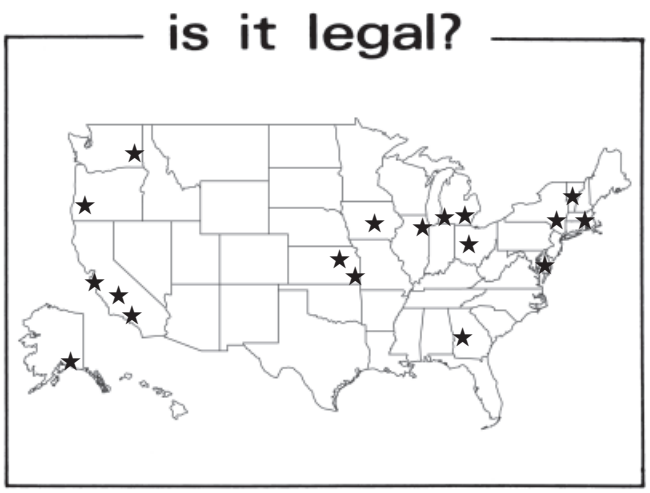
Matthew Lee, a New York-based advocate for fair banking practices who follows Delaware banking regulations for the *Inner City Press*, a newspaper he founded, has used the state records law to obtain information concerning predatory lending. In January 2003, Lee was told not to expect requested documents pertaining to actions taken by Delaware Attorney General M. Jane Brady against a corporation for predatory lending because he was not a Delaware citizen. Another request Lee made later in 2003 yielded similar response.

Lee sued, arguing that the citizenship precondition of the Delaware freedom of information law violates the Privileges and Immunities Clause of the U.S. Constitution, which the U.S. Supreme Court has said seeks to unite the citizens of the states as one people.

The Delaware Freedom of Information Act discriminates against Lee for being a noncitizen and therefore compromises "interstate harmony," Farnan ruled Lee "cannot practice his common calling as a journalist and consumer activist on the same terms and conditions as journalists and consumer advocates who are citizens of the State of Delaware," Farnan wrote.

The negative impact of the law's Delaware-only limitation becomes clearer, Farnan wrote, when considering that "as the corporate home for thousands of corporations in the United States, Delaware's regulations have nation-wide political and economic impact."

*(continued on page 195)*




## libraries

**San Diego, California**

Publishers are objecting to an electronic reserve system at the University of California in which libraries scan portions of books and journals and make them available free online to students. In recent months, lawyers for the Association of American Publishers have sent letters to the university that object to the use of electronic reserves on the San Diego campus. The publishers say that the use of electronic reserves is too extensive, violating the "fair use" doctrine of copyright law and depriving them of sales.

University officials counter that the electronic reserves at San Diego are well within the bounds of fair use. They worry that the letters portend a lawsuit. "They clearly had a lawsuit in mind when they started contacting our office," said Mary MacDonald, a lawyer for the university system. "Their position was that the 'evidence' showed that we weren't following fair-use guidelines, that this was a national issue, and that the set of facts gave them a good platform from which to take legal action."

MacDonald said she sent a "comprehensive response" to the association in February, laying out how the university's electronic reserves respected fair use. She said she had not heard from the publishers since then.

Allan R. Adler, vice president for legal and governmental affairs at the publishing group, said the university's responses "haven't been very satisfactory. We are continuing to look at the issue and to contemplate what additional steps we need to take," he said. He would not say what those steps might be.

Electronic reserves have become a popular method for distributing reserve reading at college libraries around the country. While students once had to turn up at the library to take supplemental readings from a shelf, colleges and universities can now post such articles and other materials online, where students can get access to them from, say, a dormitory room.

At the University of California and at other institutions, electronic-reserve materials are generally protected by passwords, so that only students can see them. Offering limited amounts of supplementary materials for educational purposes, without having to pay royalties, is allowed under fair-use doctrine. But how much access libraries can provide is not always clear under the law.

Adler contends that professors and libraries are offering too much. "We are finding," he said, "that far from being supplementary reading or additional reading supplied by the teacher, in many classes now it is becoming the required reading and the only reading." He said that electronic reserves have become more like "course packs," collections of required reading materials that, in earlier days, were photocopied from books and journals.

For the publishers, there is a great distinction between materials that constitute "reserves" and those that compose a "course pack." In the 1990s, publishers won a series of lawsuits against commercial companies, such as Kinkos, that were copying and selling materials for course packs. Courts determined that the publishers, as the copyright holders, should be paid for the materials.

Adler said he objects even to the notion of electronic reserves. This is not like the old days, he said, when one copy of a reading was at the library, and students had to hike there to read it. "We are talking about putting materials in digital form onto a library server, and then allowing students to have access to it as they choose, including in many instances the ability to download and print copies," he said. "That's not the same thing as traditional reserves."

MacDonald, the University of California lawyer, said that the reserve system had not affected publishers' profits. She said the publishers first contacted the library at San Diego in 2003 with a list of about 140 courses, the names of the professors teaching the courses, and the number of pages available on reserve for each course. MacDonald and other system representatives met with the publishers' group last November, and then conducted an investigation of electronic reserves at San Diego. She insisted that the practice conforms with the principles of fair use.

"I don't think it would do anything for their cause to sue us, and I don't think they would win," she said. "If they were to sue us, they could well be making a very big public-relations mistake because our faculty are world-renowned, and we are the very people who provide their publishers with things to publish. There is a growing discontent

among UC faculty about prices the publishers are charging, and faculty are starting to look at other avenues for publication of their work."

Jonathan Franklin, associate law librarian at the University of Washington and a fair-use scholar, said that because the doctrine had not been well defined, some institutions have let fear of litigation determine how, or whether, they set up electronic reserves. "It's very vague as to what people can do, and institutions are so risk-averse that they license things they wouldn't normally have to license," he said. Still, he said, a legal battle might help clarify matters. "I would look forward to a resolution that was public," he said, "and that set out guidelines and standards under which universities could successfully offer electronic course reserves." Reported in: *Chronicle of Higher Education* online, April 7.

**Washington, D.C.**

Republican Congressman Walter Jones of North Carolina has introduced a bill that would withhold federal education funds from states that don't require schools to establish parental advisory committees to review materials before they are purchased by school libraries. Jones said the purpose of the legislation—dubbed the Parental Empowerment Act of 2005 (H.R. 2295)—is "to empower parents at a local level and shine a light on controversial books before they are purchased."

This is not Jones' first such effort. He has repeatedly introduced a bill that would remove the restrictions that bar clergy from endorsing candidates from the pulpit. He also led efforts to rename french fries "freedom fries" after the French government opposed the U.S.-led invasion of Iraq.

Jones said he became interested in the book issue after parents in Wilmington, N.C., complained that their child's school library carried the book *King and King*, a fairy tale in which two princes get married.

Beverley Becker, associate director of the Office for Intellectual Freedom at the American Library Association, said the ALA opposes Jones' bill because it is intended to prevent schools from buying books on controversial topics. School libraries already have material selection policies that are approved by school boards, Becker said. She added that all libraries have policies and procedures to respond to parental concerns, which require that a formal complaint be filed.

"Libraries are local and have local policies designed by local people," Becker said. "The federal government should not be telling local institutions how to run their libraries." Becker said that this year's upswing in gay-related book complaints is a response to the prominence of the same-sex marriage issue.

In the Wilmington case, the school system resolved the issue over *King and King* by putting the book in a special section for adults only. New Hanover County School Board member Janice Cavenaugh said that although the school was able to deal with the issue, "the inclusion of parents in the process of selecting books would be beneficial in that it would prevent surprises at a later date."

"This legislation would be laughable if it weren't real," said Christopher Barron, the political director for the national gay rights group Log Cabin Republicans. "Obviously we support age appropriate materials but for Congressman Jones to grandstand like this is antithetical to Republican values. We are supposed to be the party . . . that believes in returning control and power to states and localities, and it is clear that Congressman Jones doesn't care about that."

Barron said the Log Cabin Republicans intend to watch this legislation, but it is not clear to him the legislation will advance. "Jones' record so far has been a lot of talk and little action," Barron said.

Proposals intended to limit access to books with homosexual content are also being proposed at the state level. In Alabama, Rep. Gerald Allen (R-Tuscaloosa) proposed a bill that identified homosexuality as a crime and would have made it a Class A misdemeanor for public schools or libraries to use public funds to purchase materials that address homosexuality without condemning it. The bill died in committee (see page 185).

The Oklahoma House passed a non-binding resolution introduced by Rep. Sally Kern (R-Oklahoma City) that stated public funds should not be used to make materials about human sexuality available to children (see page 156). The resolution, which passed 81–3, said passage of the Oklahoma marriage amendment rendered "materials promoting homosexual marriage inconsistent with current law." It also stated that "a survey showed that 88 percent of Oklahomans favored restricting the availability of homosexually-themed books and over 50 percent of those favor withholding funds from libraries that fail to do so."

In Louisiana, Rep. A. G. Crowe, (R-Slidell) introduced a non-binding resolution with wording similar to the measure passed in Oklahoma. Crowe, who was one of the authors of Alabama's constitutional amendment banning same-sex marriage, said that in response to feedback that the bill seems extreme and anti-gay, he is revising his bill, and taking out the mention of homosexuality as one of the themes inappropriate for children. Reported in: *Washington Blade*, May 27.

**Naperville, Illinois**

Before long, patrons wanting to use Naperville Public Library System computers without a hassle will have to prove their identity with a fingerprint. The three-library system signed a $40,646 contract in May with a local company, U.S. Biometrics Corp., to install fingerprint scanners on 130 computers with Internet access or a time limit on usage. The decision, according to the American Library Association, makes Naperville only the second library system in the country to install fingerprint scanners.

Library officials say the added security is necessary to ensure people who are using the computers are who they

say they are. Officials promised to protect the confidentiality of the fingerprint records.

But with Congress contemplating an expansion of the USA PATRIOT Act, which gives federal authorities access to confidential library records, and cameras watching the streets some Chicagoans drive or the sidewalks they stroll, privacy advocates are concerned about yet another erosion of personal liberty.

"We take people's fingerprints because we think they might be guilty of something, not because they want to use the library," said Ed Yohnka, spokesman for the American Civil Liberties Union of Illinois. Yohnka said Naperville may mean well, but that does not mean the technology won't be used for something else at a later date. "You're creating just another database of information about people," Yohnka said. "I'm sure they started out with the best of intentions of not sharing this information, but the reality is sometimes intentions go awry."

Currently patrons use their library cards and personal identification numbers to access the computers. That will change once the scanners are installed. The glass-topped, silver metal boxes about the size of a package of Tic-Tacs read the print on a patron's index finger and use an algorithm to convert at least fifteen specific points into a unique numeric sequence. Once a patron's fingerprint has been recorded, accessing a computer will require only the touch of a finger.

Library Deputy Director Mark West said the system will be implemented over the summer beginning with a public education campaign in June. West said he was confident the public will embrace the technology once it learns its limitations. The stored numeric data cannot be used to reconstruct a fingerprint, West said, nor can it be cross-referenced with other fingerprint databases such as those kept by the FBI or the Illinois State Police.

"Right now we give you a library card with a bar code attached to it. This is just a bar code, but it's built in," West said.

Last May, when Naperville police demanded the account information of a man who had fondled himself in front of teenagers while viewing pornography in the computer lab at Nichols Library, the library refused to release the information without a subpoena, citing the Illinois Library Records Confidentiality Act. During the investigation of the incident, library officials discovered that many patrons logged onto library computers using library cards and passwords of friends or relatives. That realization, coupled with a new library policy that allows parents to install automatic Internet filters on their children's accounts, prompted the search for better computer security, West said.

West said he had to be convinced that the technology would protect patron privacy before he would recommend it to the Library Board. "Confidentiality and privacy [are] my middle name," West said. West said the library is requiring a fingerprint to set up computer access, although patrons who object could ask a staff member to log them on to a computer. "I'm sure we won't turn anybody away who refuses to use the technology, but in all honesty, it will be more cumbersome," West said.

Only one other system uses fingerprint-scanning technology: the Buffalo-Erie County Library System, a collection of fifty-two public libraries that serves 400,000 people in upstate New York. Ann Kling, support services manager, said the library launched a fingerprint recognition program at the main library in downtown Buffalo in 2001. The library offers fingerprint scans as an optional replacement for library cards. The system is limited to the library in downtown Buffalo and consequently only 1,787 patrons use it, Kling said.

Because the use of the technology is so limited, American Library Association officials said the organization has not taken an official stand on it. Deborah Caldwell-Stone, deputy director of the ALA's Office for Intellectual Freedom, acknowledged that requiring a fingerprint scan might dissuade some people from using library computers.

"There are going to be folks who come from different political situations, folks who come out of Central Europe who have had a history of living under authoritative regimes who may not be comfortable with this," Caldwell-Stone said. But she said libraries already collect all kinds of personal information from patrons and at some point must be trusted to protect it. Reported in: *Chicago Tribune*, May 20.

**Boston, Massachusetts**

Public libraries in Massachusetts would be required to equip at least one Internet-wired computer with technology that blocks material that is "harmful to minors" under legislation proposed by a state lawmaker. State Rep. Charles A. Murphy, D-Burlington, said his bill would ensure that parents who bring their children to the library can be assured their child won't have access to pornography if they use a computer with a content filter.

"The focus is more on the parents. It's giving the parents a choice to put their kids on that particular computer," Murphy said. "I understand it's not a perfect solution."

His bill would require libraries with more than one computer to install the filtering technology on one of the machines. For those libraries with ten or more computers, at least thirty percent of the computers must have the filters on them. It also requires libraries to "prominently" label computers which have the filters so that adults are aware. Librarians in Massachusetts and across the U.S. have been adamantly opposed to any attempt to mandate content-blocking technology on public access computers, saying those decisions should be left to the boards of trustees which run the libraries.

In 2001, Congress passed and President Bush signed the Children's Internet Protection Act (CIPA), which requires public libraries with more than one computer to install devices that can block "inappropriate material" on the Web. Those libraries which do not use the filtering technology are not eligible for the "E-Rate" program, which provides discounts to schools and libraries for affordable access to telecommunications and Internet services. Schools and libraries which didn't use the filters also lose access to federal technology grants.

Libraries wishing to remain eligible for the federal benefits had to install the technology by July 1, 2004.

The American Library Association objected, insisting that libraries are intended to provide "intellectual enlightenment" and not take part in censorship. The ALA said the responsibility of monitoring what children view on the Internet is the parents. "One of the primary concerns about filters is that they don't work 100 percent of the time," said Beverly Becker, associate director of the ALA's Office for Intellectual Freedom. "There is information restricted which should be available, and there is information that gets through that may be objectionable."

Some of the cheaper filters available may block a Web site if it contains words like "enlargement" or if it referred to "Vice President Dick Cheney," the ALA has argued. Becker said Murphy's bill "is certainly preferable" to the CIPA because it would give parents a choice, but it still does not provide the funding for libraries to purchase the technology, which can be costly.

Pat McLeod, director of the Milne Public Library in Williamstown, said her library trustees voted not to install the filters, and forego some $80,000 in federal funding. "I don't have the money to buy the filtering software. If my community came to me and said, 'Listen, we've got a severe problem, we want you to get the filter,' I think we'd give it a hard look," McLeod said. "But no one has ever said, 'Why don't we filter the machines.'"

McLeod said the library has had problems with library users logging onto pornography sites, but those are dealt with on an individual basis.

The Williamstown library belongs to a cooperative of some 163 public libraries in Massachusetts known as the Central/Western Massachusetts Automated Resource Sharing system. The libraries share access to databases and catalogs to save money, making them less reliant on federal grants, McLeod said.

Librarians also object to the fact that state and local governments haven't clearly defined what matter is considered objectionable. Murphy's bill says material is "harmful to minors" if it "describes or represents nudity, sexual conduct or sexual excitement, so as to appeal predominantly to the prurient interest of minors," or if it is "patently contrary to prevailing standards of adults in the county where the offense was committed as to suitable material for such minors." A third definition describes it as "lacking serious literary, artistic, political, or scientific value for minors." Reported in: *North Adams Transcript*, May 26.

## schools

**Topeka, Kansaas**

The American Association for the Advancement of Science declined an invitation from the Kansas Board of Education to appear at a May hearing on teaching evolution in public schools after concluding that the event was likely to sow confusion rather than understanding among the public.

In a letter to George Griffith, science consultant to the Kansas State Department of Education, association CEO Alan I. Leshner sided with the leaders of the Kansas science community who have described the hearings as an effort by faith-based proponents of "intelligent design" theory to attack and undermine science.

"After much consideration," Leshner wrote, "AAAS respectfully declines to participate in this hearing out of concern that rather than contribute to science education, it will most likely serve to confuse the public about the nature of the scientific enterprise."

AAAS is the world's largest general science organization and the publisher of the journal *Science*; Leshner also serves as the journal's executive publisher.

Leaders of the Kansas science community have called for a boycott of the hearing, and thus far, representatives of state and national science groups have refused to testify. Most mainstream religions and religious leaders agree with the mainstream of science that evolution is a fact, backed by extensive evidence. Leshner, in his letter, emphasized that science is not inherently opposed to religion. "Facts and faith both have the power to improve people's lives, and they can and do co-exist," Leshner wrote. "But they should not be pitted against one another in science classrooms."

Kansas has been a focal point of efforts to restrict the teaching of evolution in public schools. Proponents of intelligent design theory hold that the physical universe is so elaborate and complicated that its creation required a sophisticated architect, and they are working to impose that theory in science classrooms.

Critics, including virtually all of the science community, say that the theory lacks any basis in hard evidence and, therefore, is a matter of faith. Evidence and proven facts are central to the scientific method, they say, and for that reason, faith has no place in a science classroom.

Last June, the Board of Education established the Kansas Science Curriculum Writing Committee with a membership including scientists and educators to revise science education standards. The committee earlier this year approved proposed standards that include the teaching of evolution but make no provision for intelligent design.

In January, conservatives won control of the Board of Education, and they have been backing a minority group within the Curriculum Writing Committee that is seen as sympathetic to the intelligent design movement. Though the minority group's report and recommendations have been rejected in a scientific peer-review process, critics say, the Board of Education is continuing to back the group.

The conservative-dominated board in April called for six days of hearings, from May 5–7 and from May 12–14. The committee's minority bloc presented a list of twenty-three anti-evolution witnesses for the hearing, including a handful of scientists closely associated with the intelligent design movement.

The format and agenda of the hearing before the board's education subcommittee "suggests that the theory of evolution may be debated," wrote Leshner. "It implies that scientific conclusions are based on expert opinion rather than on data." But, he added: "The concept of evolution is well-supported by extensive evidence and accepted by virtually every scientist. Moreover, we see no purpose in debating interpretations of Genesis and 'intelligent design' which are a matter of faith, not facts."

A group called Kansas Citizens for Science has called for the boycott, objecting to a "rigged hearing" in which anti-evolution Board of Education members "will appear to sit in judgment and find science lacking." Reported in: AAAS Press Release, May 6.

**Webb City, Missouri and Dublin, Ohio**

The American Civil Liberties Union took on schools in two different states April 6 for violating the First Amendment rights of students who wish to wear t-shirts expressing their support for gay rights issues. In Missouri, the ACLU filed a lawsuit in federal court against a high school that twice punished a student for wearing t-shirts expressing her support for gay rights. LaStaysha Myers, a heterosexual 15-year-old student at Webb City High School in Missouri, was twice sent home from school last November for wearing homemade t-shirts; first, one bearing several handwritten slogans such as "I support the gay rights!" and "Who are we to judge?" and the next day one that bore a rainbow and the Webster's dictionary definition of "gay": "M[e]rry, happy."

In Ohio, the ACLU sent a letter to school officials demanding that they stop censoring a group of students who want to wear t-shirts supporting marriage for same-sex couples. Two weeks before, a student at Dublin Jerome High School was told to take off a t-shirt that read "I support gay marriage" after administrators claimed that a student had been offended by it. The next day, about twenty students protested the action by coming to school in similar t-shirts. They were required to change their t-shirts, turn them inside-out, or go home. In both schools, administrators routinely allowed students to wear shirts expressing other messages, including endorsements of the Bush and Kerry presidential campaigns, students' views on abortion, and religious messages.

"Our principal says that the shirts are disruptive, but the truth is that the only thing that's been disruptive has been the way the school has reacted to them," said sixteen-year-old Zach Hust, one of the Ohio students who was told to change shirts. "I haven't heard anyone complain about our support for gay people and their right to marry, but everyone's upset and angry that our school is trampling all over our First Amendment rights."

"Because the Supreme Court has held that students have a First Amendment right to free speech at school unless that speech disrupts the educational process, many administrators try to justify illegal censorship by claiming a student's speech is disruptive, without any evidence or proof that it really is," said Jeff Gamso, legal director at the ACLU of Ohio. "But for the censorship to be legal, the speech itself must be genuinely disruptive—it can't just be censored because someone finds it offensive or it generates discussion or the administration is worried that it might cause controversy."

"Schools that prevent students from expressing their opinions on gay rights or any other issue are not only failing their duties to teach students how to be good citizens—they're also violating the United States Constitution," said Dick Kurtenbach, Executive Director of the ACLU of Kansas and Western Missouri who represents Myers. "With those who are supposed to be teaching our young people acting this way, it's no wonder so many students don't understand or value their First Amendment rights." Reported in: ACLU Press Release, April 6.

**Spokane, Washington**

A high school sophomore was suspended and his teacher disciplined after the student created a Web site that bypassed the Spokane Public Schools Internet content filter. The Lewis and Clark High School student's site, called Bad Dog, was shut down.

Conrad Sykes, sixteen, said he created the Web site because the school district's content filter hampered student research. With Bad Dog, students could access research sites, but also visit adult sites or others the district deems inappropriate. Sykes was suspended for two days in February for violating school computer use policies.

"The Bad Dog project was one of the greatest learning experiences of my Internet life, and I had a lot of fun doing it, too," Sykes wrote in an Internet diary called a blog. "Overall, I can't complain about how things turned out."

The site was so successful that many Spokane Public School students—and people from as far away as Alabama and Pennsylvania—used it thousands of times between December 14 and February 22. The site's success prompted computer teacher Wes Marburger to ask Sykes to make a

presentation to other classes on the number of visitors to his Web site.

The teacher was given a written reprimand and removed from teaching computer classes. The state Office of Professional Practices is now investigating and could potentially take away Marburger's teaching certificate. District investigators wrote that Marburger knew the Bad Dog site could bypass the district's content program—called Bess—yet allowed Sykes to explain it to two classes.

"You stated your reasoning was that Bess blocked some appropriate sites and that the assignment was to help students learn how to look at Internet site statistics," Staci Vesneske, executive director of human resources wrote in a March 17 letter to Marburger. "Your conduct allowed Spokane Public School student to bypass the district's filtering system over 3,000 times, potentially exposing them to inappropriate content and putting their safety at risk." Reported in: Associated Press, April 4.

## colleges and universities

**Soldotna, Alaska**

A group representing atheists and agnostics has filed a lawsuit against the U.S. Department of Education over federal funds that were earmarked for Alaska Christian College. The Freedom From Religion Foundation said the Congressionally directed, noncompetitive grants violate the constitutional separation of church and state. The college, which is unaccredited and does not offer degrees, is affiliated with the Evangelical Covenant Church of Alaska.

"This is tantamount to religious pork," Annie Laurie Gaylor, co-president of the Wisconsin-based foundation, said April 27. "It's the kind of thing you would expect in a theocracy."

Since 2003, Alaska Christian College, a five-year-old institution with thirty-seven students, has received more than one million dollars in federal earmarks. That includes $835,000 in Education Department money for student scholarships, student recruitment, and faculty salaries, and $350,000 from the Substance Abuse and Mental Health Services Administration for a residential substance-abuse program for teenagers.

Alaska's three members of Congress—Sens. Ted Stevens and Lisa Murkowski and Rep. Don Young, all Republicans—were responsible for the earmarks.

The lawsuit, filed in the U.S. District Court in Madison, Wisconsin, seeks to block disbursement of the most recent of the grants—$435,000 inserted in this year's budget for the Fund for the Improvement of Postsecondary Education, or FIPSE. The Education Department has canceled its annual grant competition for FIPSE because Congress devoted the bulk of the program's $163.6-million budget to pork-barrel projects.

Alaska Christian College's president, Keith Hamilton, said the college had been rigorously evaluated before receiving the earmarks. He said the college helps Alaska Native students make the transition from village life to larger educational institutions, such as Kenai Peninsula College and the University of Alaska's campuses at Anchorage and at Fairbanks.

"We're an educational bridge," said Hamilton, noting that the college also offers mentors, tutoring, and career-assessment services. "We help them get on their feet to go to the four-years."

Students receive a "certificate of biblical studies" upon completion of their first year, while second-year students who take mathematics, science, and English courses at Kenai Peninsula College get a "certificate of biblical and general studies." The college is seeking accreditation from the Association for Biblical Higher Education.

But Gaylor said that Bible study does little to prepare students for the rigors of higher education. She said the college's main mission is to proselytize. "This is tinged with colonial imperialism," Gaylor said. "It's 'convert the natives, and send them on their way.'" Reported in: *Chronicle of Higher Education* online, April 28.

**Berkeley, California**

If the computer age is continually testing how well institutions protect personal information, the nation's colleges and universities may be earning a failing grade. In March, administrators at the University of California, Berkeley, acknowledged that a computer laptop containing the names and Social Security numbers of nearly 100,000 people—mostly graduate school applicants and alumni, including the Associate Editor of this *Newsletter*—had been stolen. Just three days earlier, Northwestern University reported that hackers who broke into computers at its Kellogg School of Management may have had access to information on more than 21,000 students, faculty and alumni. And one week before that, officials at California State University, Chico, announced a breach that may have exposed personal information on 59,000 current, former and prospective students.

There is no evidence that any of the compromised information has been used to commit fraud. But at a time of rising concerns over breaches at commercial data warehouses like ChoicePoint and LexisNexis, these incidents seem to highlight the particular vulnerabilities of modern universities, which are heavily networked, widely accessible and brimming with sensitive data on millions of people.

Data collected by the Office of Privacy Protection in California, for example, showed that universities and colleges accounted for about 28 percent of all security breaches in that state since 2003—more than any other group, including financial institutions.

"Universities are built on the free flow of information and ideas," said Stanton S. Gatewood, the chief information security officer at the University of Georgia, which is still investigating a hacking incident there last year that may have exposed records on some 20,000 people. "They were never meant to be closed, controlled entities. They need that exchange and flow of information, so they built their networks that way."

In many cases, Gatewood said, that free flow has translated into a highly decentralized system that has traditionally granted each division within a university a fair amount of autonomy to set up, alter and otherwise maintain its own fleet of networked computers. Various servers that handle mail, Web traffic and classroom activities—"they're all out in the colleges within the university system," Gatewood explained, "and they don't necessarily report to the central I.T. infrastructure."

Throw in aging equipment, an entrenched sense that information should be as free-flowing as possible, and a long-standing reliance on Social Security numbers as the primary means of identifying and tracking transient populations, and the heightened vulnerabilities of universities become apparent. "We sometimes battle networks and mainframes in place since the 1960's," said Gatewood, "and mind-sets in place even longer."

For years, the Social Security number served as the default identifier for students, faculty and staff at nearly every university and college. It was printed on identification cards, posted on bulletin boards along with grades, and used to link bits of information—spread across dozens of networked databases—on each individual.

A handful of states—Wisconsin, California, Arizona, New York, and West Virginia—now ban or limit the use of Social Security numbers in this way, according to a compilation of state and federal laws by the privacy advocate Robert Ellis Smith. Many universities have already abandoned or are in the process of moving away from using Social Security numbers as the primary means of identifying students.

But a 2002 survey by the American Association of Collegiate Registrars and Admissions Officers indicated that at least half were still using it as the primary identifier for students in their databases. And because the number has been used to link so many records across so many different databases in so many different departments for so long, abandoning it quickly is nearly impossible.

"It's complicated," said Virginia Rezmierski, the assistant to the vice provost for information technology at the Ford School of Public Policy at the University of Michigan. "We started a long time ago, and gave the university seven years to complete the process." The University of Michigan essentially completed a migration to randomly generated identifier numbers in 2003. But Professor Rezmierski pointed out that myriad entities both inside and outside the university still use Social Security numbers, forcing universities to continue to handle them. For instance, she said, most of the national testing agencies still use Social Security numbers to identify the scores of incoming students.

Another problem, according to Jonathan Bingham, president of Intrusic, a company that develops tools designed to uncover security breaches, is that universities have tended to put too much emphasis on preventing attacks from worms and viruses and too little on capturing troublemakers who quietly stroll through their databases.

The leaking of names and Social Security numbers from all these universities was not the result of noisy, destructive attacks, Bingham pointed out. "These are all problems that have nothing to do with that," he said. Rather, "someone's been able to get into the network who doesn't want to be detected."

Of course, not all universities are equally vulnerable, and some are more adept at protecting their data. "Many of the better universities have better security in place than some corporations," said Eugene H. Spafford, the executive director of the Center for Education and Research in Information Assurance and Security at Purdue University. And because federal laws governing the handling of student data—specifically, the Family Educational Rights and Privacy Act of 1974—have been in place for longer than many other privacy statutes, Spafford said, data security "has been a concern at universities for some time."

Yet it appears that, on the whole, schools remain comparatively low-hanging fruit for hackers and thieves. "I think it has shaken people up," said Professor Rezmierski of the University of Michigan, who is conducting a study of computer-based incidents at colleges and universities across the country. "Often it takes these kinds of incidents to get people to pay attention." Reported in: *New York Times*, April 4.

**Fresno, California**

There will be no police surveillance on California State University, Fresno's campus unless it's required by law, and approved by administrators, said university President John Welty, answering student complaints that undercover officers attended one of their lectures. Welty's memo, sent to David Moll, director of university public safety, and to David Huerta, campus police chief, was issued May 2 but announced to the public on May 16.

"Police should not conduct surveillance activities" at California State University, Fresno, without permission, and outside law enforcement should notify campus officials "immediately" if there is a need to come on campus, according to the memo. Welty also told student groups that "university police will not conduct illegal surveillance," and that if university officers plan to attend an event, they will notify the organizers in advance.

Welty's announcement came after students protested the presence of undercover officers at a November lecture on

campus by animal rights advocate Gary Yourofsky. Campus Peace, the group organizing the lecture, and the American Civil Liberties Union of Northern California had objected to the officers' unannounced presence.

The students said they commended the president's stance, and said it was an important first step to guaranteeing free speech on campus. Reported in: *Fresno Bee*, May 17.

**Washington, D.C.**

A growing number of organizations concerned about privacy rights are fighting a Department of Education plan that would require colleges and universities to place personal information on individual students into a national database maintained by the government. The plan would radically change current practice by requiring schools to provide personal information on all students, not just those receiving federal aid. Submissions would include every student's name and Social Security number, along with sex; date of birth; home address; race; ethnicity; names of every college course begun and completed; attendance records; and financial aid information.

Such detailed information is now provided only for students receiving federal aid, giving the department only a partial picture of higher education nationwide. The new approach, department officials say, would not only complete the picture but also help track students who take uncommon paths toward a degree.

"Forty percent of students now enroll in more than one institution at some point during their progress to a degree," said Grover Whitehurst, director of the department's Institute of Education Sciences, which devised the plan. "The only way to accurately account for students who stop out, drop out, graduate at a later date or transfer out is with a system that tracks individual students across and within post-secondary institutions."

It is not clear whether the proposal has enough momentum—or even a sponsor—to be added to the higher education appropriations bill by the Senate. The House version did not include the plan, and Representative John A. Boehner of Ohio, chair of the House Education and Workforce Committee, has spoken against it. Concerned that the plan could emerge through the Senate, opponents are trying to kill it before it gains any traction.

"Our belief is that the department, itself, is both unconstitutional and a relic of the last century that should not exist, let alone create new databases," said Michael Ostrolenk, education policy director for two conservative groups, EdWatch and Eagle Forum. "I don't trust the government with databases with private information on citizens."

Jim Dempsey, executive director of the Center for Democracy and Technology, said: "Once a database is created for one purpose, regardless how genuine or legitimate it is, it's very, very hard to prevent it from being used for law enforcement or intelligence purposes. If the FBI comes calling, it almost doesn't matter what the privacy policy is. They'll get the information they want."

Indeed, the feasibility report permits the attorney general and the Department of Justice to gain access to the database "in order to fight terrorism." Backers of the proposal, while acknowledging the privacy concerns, say that the benefits of having more information about students outweigh the risks, especially for lawmakers who oversee federal aid programs. Reported in: *New York Times*, May 27.

**Washington, D.C.**

Scientists from academe and industry are protesting a Bush-administration proposal to further restrict foreign researchers' access to sensitive research equipment, saying the plan could cost colleges millions of dollars and discourage foreign students and scholars from coming to American universities. The proposal, which is under consideration by the Commerce Department, would clarify that colleges are in fact required to obtain licenses for foreigners who work with equipment that is subject to export controls even if the underlying research is exempt from licensing.

To date, most universities have assumed that such equipment is exempt if the research itself will be published and shared broadly among scientists. University leaders say such a requirement would compel them to obtain licenses for work with even the most mundane laboratory equipment, such as fermenters. At a hearing held at the National Academy of Sciences May 6, they told Commerce Department officials that the changes would disrupt research programs and overwhelm lab supervisors.

"The mantra will be, 'when in doubt, get a license,'" said C.D. Mote, Jr., president of the University of Maryland at College Park. Administrators there estimate that it would cost them $1.5 million to comply with the regulation because they would have to determine whether each piece of equipment was subject to licensing and whether individual researchers could use it.

The Commerce Department says the changes are necessary to ensure that spies and terrorists do not obtain access to equipment that could have military applications.

Last year the department reviewed 995 applications for "deemed export" licenses, more than half of which were for Chinese nationals. It granted 85 percent of those, determined that 14 percent did not require licenses, and rejected 1 percent. Still, some academics say that the government has gone overboard, imposing so many licensing and clearance requirements that it is becoming difficult for universities to attract foreign students and scholars. The number of foreign students on American campuses declined last year by 2.4 percent—the first drop in foreign enrollments since the 1971–72 academic year.

"The issue here is death by a thousand cuts," said Eric L. Hirschhorn of the Industry Coalition on Technology

Transfer, noting that some foreign researchers must already undergo extensive background checks before obtaining a visa.

Peter Lichtenbaum, assistant secretary of commerce for export administration, said the department would "not shy away from doing the right thing because of impacts in other areas. We're not going to say because visa policy is too restrictive, we're going to have a lenient deemed-export policy," he said. Reported in: *Chronicle of Higher Education* online, May 9.

**Chicago, Illinois**

DePaul University administrators have suspended Professor Thomas Klocek without a hearing after he engaged in an out-of-class argument with pro-Palestinian students at a student activities fair. When the students complained to administrators, Klocek was denied the rights that DePaul guarantees to professors accused of wrongdoing and immediately suspended. Statements from DePaul administrators indicated that Klocek was disciplined because of his harsh criticism of the students' viewpoint, despite DePaul's stated commitments to free speech and academic freedom.

"DePaul has unquestionably violated Professor Klocek's due process rights, and the university did so because his statements were allegedly offensive," commented David French, president of the Foundation for Individual Rights in Education (FIRE), which wrote to DePaul on Klocek's behalf.

The incident in question occurred on September 15, 2004, when Professor Klocek engaged in conversation with students representing Students for Justice in Palestine (SJP) and United Muslims Moving Ahead (UMMA). According to the *DePaulia* student newspaper and other sources, during the debate, Klocek cited a *Chicago Sun-Times* article that quoted the general manager of the Al-Arabiya television network as saying, "It is a certain fact that not all Muslims are terrorists, but it is equally certain, and exceptionally painful, that almost all terrorists are Muslims." A heated but strictly verbal argument ensued during which Klocek argued that a Christian viewpoint, in addition to Muslim or Jewish ones, should be considered in discussing Israel and Palestine. According to Klocek, SJP and UMMA students (several of whom had gathered around Professor Klocek) made their own controversial statements comparing Israeli Jews to Nazis. The argument concluded when Klocek walked away from the SJP and UMMA tables and thumbed his chin at the students in what he believed to be an Italian hand gesture meaning "I'm outta here."

The offended students complained to DePaul administrators, who moved quickly to punish Professor Klocek for his part in the argument. Klocek reported that on September 24, 2004, Dean of the School of New Learning Susanne Dumbleton informed him that the university had received letters of complaint from SJP and UMMA students and had met with the students and their faculty advisors the previous evening. Dumbleton immediately suspended Klocek with pay and ordered him to stay off campus. Klocek was never given a copy of the complaint letters, nor was he given a hearing or any other chance to face his accusers before his suspension.

In an October 8 letter to the *DePaulia* about the university's actions, Dumbleton explained, "The students' perspective was dishonored and their freedom demeaned. Individuals were deeply insulted*. Our college acted immediately by removing the instructor from the classroom."

Dumbleton also made several other comments indicating that DePaul was primarily concerned with the content of Klocek's remarks. On November 10, Klocek finally received a letter confirming his punishment and stating that he would be able to teach only one class the following semester, and that the class would be subject to observation.

Klocek's suspension violated DePaul's own policies guaranteeing academic freedom as well as its contractual promises of basic due process. Klocek was suspended without a hearing, which DePaul policies say can only be done in an "emergency." Though DePaul now claims that the argument created the "emergency" conditions necessary for an immediate suspension, the university waited a full nine days before acting against Klocek.

"If DePaul professors aren't worried about this situation, they should be," remarked Greg Lukianoff, FIRE's director of legal and public advocacy. "Due process is most important in cases like Klocek's in which facts need to be sorted through and in which punishment can be severe and career-ending. By refusing Professor Klocek a hearing at such a crucial juncture, DePaul threw its stated commitments to basic procedural rights out the window and missed an opportunity to discover what actually took place."

On March 24, 2005, FIRE wrote DePaul's president, Rev. Dennis H. Holtschneider, on Professor Klocek's behalf. FIRE asked the university to honor its own commitments and reminded DePaul that "[i]f every person had the power to punish those who expressed ideas they found offensive, we would all soon be reduced to silence." President Holtschneider responded, saying this was not a matter of academic freedom and that "the university acted to address threatening and unprofessional behavior." He also noted that Klocek had refused to pursue the university's grievance process. This response contradicts Dean Dumbleton's original justification for the school's punishment. Furthermore, the grievance process available to Professor Klocek does not have the authority to restore his position.

FIRE's French remarked, "While DePaul may now argue that the issue is one of professionalism, its public statements at the time of Klocek's punishment make it clear that Klocek's real crime was offending students during an out-of-class discussion of a controversial and emotional

topic. Academic freedom cannot survive when professors who engage in debate on controversial topics are subject to administrative punishment without even the most cursory due process." Reported in: FIRE Press Release, May 18.

**Grinnell, Iowa**

Grinnell College, a respected liberal arts college in rural Iowa, might not seem a prime target for a terrorist attack. But a Grinnell student is in jail—facing felony charges of threatening a terrorist act of violence at the college. Those who know him say that the student isn't a terrorist or even someone capable of a violent act. Experts on higher education liability say that's beside the point. These days, a student who posts a violent comment in a chat room needs to assume that the comment will make its way to the police, and that the student could end up behind bars.

Paul Wainright, the student at Grinnell, apparently posted the message on Plans, an online discussion area frequented by students at the college. Prior to spring break, some students on the site were complaining about recent drug arrests on the campus. A message attributed to Wainwright urged students as follows (punctuation and capitalization per the posting):

"Please come back to school armed with whatever lethal weapon you have access too. If we can't depend upon the administration to protect the bubble we were promised and that they are selling us for 34,000 goddamn dollars a year, then we will have to take matters in our own hands. That means violence and bloodshed. That means warfare. That means KILL THE MOTHERFUCKING POLICE THAT YOU SEE ON CAMPUS AND KILL THE MOTHERFUCKING NARCS WHO ARE GETTING YOUR FRIENDS ARRESTED. RUBY RIDGE MOTHER FUCKERS. LET THE STREETS RUN RED."

Jody Matherly, chief of police for the town of Grinnell, Iowa, said that his department received several complaints from people about a "threatening communication" in which others were urged to join the author in acts of violence against the college and police officers. An investigation led to Wainright, who was on spring break at his home in Wisconsin, and was arrested there.

The charge Wainright faces carries a possible sentence of five years in prison.

Matherly said that he had advised the college to heighten security on the campus. Mickey Munley, vice president for communications at Grinnell, emphasized that the site where the posting was made "is not a site that the college owns or operates or manages," but he said that the posting "came to the attention of the college, and the police took the investigation from there." He stressed that police officials made the judgment on what to do. "Hindsight is always 20/20," he said, but even if some think that there was no real threat at Grinnell, people who have not acted on clues abut possible violence have been "a contributing factor to a lot of tragic circumstances in our country in the last few years, very horrific and sad situations."

One Grinnell student, who said that he knows Wainright but doesn't consider himself a close friend, said that in online discussions, some students said they were upset by Wainright's posting, but many others "knew it was in jest" and are now more angry about his arrest. "It would be hard to know from the outside looking in at the site what you are seeing, and I assume the person who flagged this was an administrator," said the student.

Another Grinnell student sent an e-mail message saying: "The post looks very bad when read out of context, but it was all written with tongue firmly—very firmly—in cheek, and no one who knew him at all well doubted that it was a joke. Unfortunately, someone with no sense of proportion or context (probably an administrator, although no one has claimed responsibility for the atrocity) contacted the police about it, and Paul was arrested. Apparently at no point during the process did anyone step back and consider, for instance, whether a student at left-liberal Grinnell would ever refer to 'Ruby Ridge' any way but ironically. From many Grinnell students' perspectives, the matter is not about our physical security, but about the threat posed to our civil liberties by overzealous and unreflective administrators and police."

Chief Matherly, however, said it would be irresponsible for authorities to dismiss any violent statement as campus hijinks. "Any threat of terrorism is a serious threat of terrorism," he said. "There are no pranks. There are no jokes. It's one thing to stand out in a field when no one is around and talk about things, but once you put it into an arena when people fear for their lives and safety, that's different."

While some students are criticizing the college and the police for acting, a post on Plans (that could not be independently verified) from Wainright's mother was understanding. "Of course we who know and love Paul, know that what was posted was said tongue-in-cheek with no malicious intent," she wrote. "Unfortunately, in the current climate such sleep-deprived rants will be taken seriously by some. It is totally appropriate for authorities to check it out. As a parent, I would want to be assured that this was being looked into. If I were an administrator, I may be terrified that someone might actually carry out any violence toward me."

Sheldon E. Steinbach, general counsel and vice president of the American Council on Education, said "Grinnell had no choice but to act" upon reading the post. "Once a post is out there in such a visible way, it requires the college to act. In another day, someone would have called the kid, and the kid would have said, 'I wrote that when I was drunk,' and it would never have gone this far," Steinbach said. "But college students need to remember that after 9/11, they just need to exercise better judgment."

*(continued on page 198)*


## libraries

**Montgomery, Alabama**

A bill in the Alabama Legislature that would criminalize the purchase by public and school librarians of materials relating to homosexuality died in the waning days of the legislative session. The bill was sponsored by Representative Gerald Allen of Cottondale.

According to the *Tuscaloosa News*, "Allen's bill was graveyard material from the get-go. Though its audacity grabbed headlines, it was obvious that it had no chance whatsoever of passing in even a legislature as conservative and often reactionary (see: quick passage of Allen's other bill to mandate marriage in Alabama to be between a man a woman) as Alabama's. House and Senate leaders hemmed and hawed (if not actually running and hiding) when asked about Allen's censorship bill, and in the end, all the measure did was prompt another onslaught of ridicule across the country." Reported in: *Tuscaloosa News*, May 6.

**Johnson County, Kansas**

Facing intense public criticism, members of the Johnson County Library Board voted May 18 to reinstate national guidelines of intellectual freedom that guide how library materials are selected. One month earlier, the board voted 4–3 to remove from its collections development policy the American Library Association's Library Bill of Rights and other guiding principles that shape its collection. Some saw it as housekeeping to make the library's policies consistent; others saw it as a smokescreen to hide an agenda by the far right to censor library materials.

The vote generated dozens of letters, e-mails, and phone calls from residents, the majority of whom criticized the board for taking a step backward. Some threatened to withhold contributions to the library until the vote was changed, while others said the library's national reputation was at stake. The library board responded to the criticism and voted 4–2 to rescind the April 20 vote.

Two new library board members—Pamela Crandall and Charley Vogt—joined Ken Davis and Terry Goodman to rescind the vote. Board members Michael Krolski and Jenifer Lathrum voted to support the position previously taken by the board. James Berger had to leave the meeting early but said in a memo that he would have voted with Krolski and Lathrum.

A vote later to return the ALA guidelines to the library's collections policy was approved 5–1. By that time, Krolski said strong support from library staff convinced him to reinstate the policy. "If they want it, they can have it," he said.

Lathrum said her vote against the Library Bill of Rights was fueled by her belief that young children should not have easy access to objectionable material that she said is allowed under the guidelines. She said it was easier for a child to get titles like *Blood Simple* and *Dawn of the Dead* from the Gardner library than it is to get the same titles from a movie rental store in her community.

"I don't want to ban and burn any books," she said. "But just because every other library in the nation supports this (the ALA guidelines), should we? Maybe we should be the first in the nation to stand against the ALA."

Vogt argued the library is not a "safe haven for children" but a gateway to knowledge, good and bad. "The library staff is not baby sitters," he said. Reported in: *Kansas City Star*, May 19.

**Shelbyville, Kentucky**

On May 17, Shelbyville School Board members upheld a decision by East Middle School's appeal committee, and supported by Superintendent Elaine Farris, to keep a challenged book in the school's library.

After their daughter brought home *Alice on the Outside* last March, parents Joe and Candy Riley challenged the book, believing it to be inappropriate for middle school children. They maintained the book contained graphic sexual language and promoted promiscuity without teaching children about the possible dangers of having sex. The appeal committee decided to keep the book in the school, but require a signed parental consent form for it to be checked out.

The Rileys appealed the decision first to the superintendent, who upheld the committee's decision, and then to board of education members. East Middle Principal Patty Meyer told the board that the book is linked to Health Education curriculum directed at adolescence, puberty and reproduction for grades 6–8. Meyer said committee members read the book, discussed it and concluded it was suitable for the educational level of students at East Middle.

"At the most basic level, *Alice on the Outside* seeks to address very natural questions which some students are unwilling or unable to ask out loud," Meyer said. "It is not assigned reading but is an educationally suitable book for our school library."

But Joe Riley told board members he was appalled and upset by the notion that the book is being used as an educational tool available in the school. "I would not feel comfortable discussing the content [of this book] with a child of any age," he said. He told board members he has shown the book to several other parents, and all agreed the book should not be available in the schools. He also said he had concerns that students who checked out the book would pass it around among students whose parents had not given their children consent to read it.

An emotional Candy Riley burst into tears as she tried to address board members. "I'm sorry, but this book infuriates me" she said. "There's a difference between teaching the reproductive system and just being perverted."

Board members first considered the legality of removing the book before voting unanimously to uphold the decision to allow it to remain in the school. "I don't want to set a precedence [of] banning books, and I'm afraid that's where we're headed," board member Eddie Mathis said. Mathis compared the situation to the Bible, which, he said, some people might find offensive. "Would I want my daughter to read this—no. But I don't think that's my decision," Mathis said.

Board member Allen Phillips said this was the first time in his seventeen-year career on the board that a book has been challenged. He said that he thinks the school's appeal committee made provisions to let parents make the decision. Reported in: *Shelbyville Sentinel-News*, May 18.

## schools

**Marietta, Georgia**

Workers in Cobb County have begun removing controversial evolution disclaimer stickers from science textbooks to comply with a judge's order. By the end of the day May 23, several thousand stickers, which said evolution was a theory and not a fact, had been scraped off. The school district had put 34,452 stickers on textbooks across the county.

The evolution disclaimer read: "This textbook contains material on evolution. Evolution is a theory, not a fact, regarding the origin of living things. This material should be approached with an open mind, studied carefully, and critically considered."

Six parents sued to remove the stickers saying the disclaimers violated the principle of the separation of church and state. A federal judge in January agreed and ordered the stickers removed. An appeal by the school system, north of Atlanta, is pending.

"It's a sad day in Cobb County," said Larry Taylor, a parent who favors including alternatives to evolution in science classes. "I hate to see the stickers go. I thought they were a fair compromise."

But Jeffrey Selman, who was the lead parent of the group who sued to remove the stickers, said he was glad they were being removed. "I'm optimistic, but it ain't over till it's over," Selman said. Reported in: Associated Press, May 24.

**Benton Harbor, Michigan**

If he were still alive, Richard Berry, the man who penned the lyrics for the iconic fraternity-rock anthem "Louie Louie," might be shaking his head in disbelief. Berry wrote the song as a simple sea shanty about a sailor trying to get back to his lady love. But a middle school marching band in Benton Harbor was almost banned from playing "Louie Louie" at a festival because of what the school's superintendent called "sexually explicit lyrics."

Benton Harbor Supt. Paula Dawning reversed her decision May 5 after parents at McCord Middle School came out in support of the song. "The school district operates in collaboration with the parents and based on them granting permission and the multiple versions of the song, the students will march in the parade and play 'Louie Louie,'" Dawning wrote in a statement.

It wasn't the first time parents and teachers questioned the song's seaworthiness as family fare. The long-simmering pop-culture controversy dates back to 1963, when the most famous version of "Louie Louie" was recorded by The Kingsmen. The band's slurred, barely intelligible take on the song fueled rampant speculation that the lyrics were obscene, prompting a two-year FBI investigation that ended when the feds concluded they were unable to interpret any of the wording. Since then, "Louie Louie" has become one of the most recorded and requested rock songs of all time.

Dawning expressed concern that the allegedly racy content of The Kingsmen's hit made it an inappropriate choice for the band to play at the Blossomtime Festival, even though the marching band was not going to sing it. But band members and parents of McCord students complained to the Board of Education that it was too late to learn another song in time for the festival. In addition, many parents said they doubted the students even know the words

to "Louie Louie," which as published include not a single sexual reference. Reported in: *Chicago Sun-Times*, May 6.

**Rochester, Michigan**

First Amendment activist and bookseller Cammie Mannino, owner of Halfway Down the Stairs Children's Bookshop in downtown Rochester, Michigan, was instrumental in securing the re-election of two incumbent school board candidates. The contentious campaign, which pitted the two incumbents against two newcomers supported by a newly formed conservative political action committee (PAC), ended May 3 with a record turnout and two-to-one victories over both PAC candidates.

Mannino, who has long opposed efforts to ban books and stifle free expression, participated in a diverse network of "open-minded people," who united around the freedom to read. The campaign, which Mannino called the most divisive she had ever witnessed in the "conservative community" of Rochester, brought out, "some of the worst behaviors by the opposition, including the distribution of anonymous campaign literature filled with innuendo and half-truths, increased personal attacks, and a very polarized constituency."

"We tried to run a very positive campaign, and I'm very proud of the job we did," Mannino said. "We talked about our candidates and their qualifications. The PAC made books the major issue first, and that kind of backfired. Many people of varied political and religious groups don't like other people telling them what to read." Eventually the group "dropped the book issue—it wasn't working for them," she said.

Although Mannino always opposes any forms of censorship or book banning, she said that efforts to "tighten up" the procedures by which books are selected for use in the schools have been acceptable to most. "Some of the ideas resulting from the PAC's activity were good ones—such as including more parents on the [book] challenge committees and having parents sign off on the reading lists at the beginning of the year. But I object to the negative, destructive approach. I was even a target of one board member," said Mannino.

"The controversy over certain books has led to some wonderful outcomes—one school board meeting had 150 people attending, including senior citizens and high school kids. Kids made impassioned statements about their right to read. It was a great night for books—a real celebration of reading."

The campaign took its toll on Mannino and others. Attending meetings, developing extensive e-mail trees or "fan-outs" to spread information around quickly, and encouraging people to write letters to the editor of local newspapers are time-consuming and exhausting. "This is the hardest thing I've ever done besides opening a bookstore," Mannino said." Reported in: *Bookselling This Week*, May 18.

## foreign

**London, England**

Britain's largest faculty union voted overwhelmingly May 26 to overturn a controversial boycott of two Israeli universities. In a decision that provoked international condemnation, the governing council of the Association of University Teachers had voted at its annual meeting in April to sever ties with the University of Haifa and Bar-Ilan University. At the time, some two hundred council members approved motions that accused those institutions of undermining Palestinian rights and curtailing academic freedom.

Almost immediately, critics of the boycott began organizing to overturn it. At a special session of the governing council, convened in reaction to the boycott, some 250 delegates voted by a show of hands to do just that.

"Boycotting universities and their faculty is anathema to academic freedom," the American Federation of Teachers said. It called on its British counterpart, which represents 50,000 higher-education professionals, to reverse its action, saying that "boycotts of this nature, especially at this sensitive time, are counterproductive to the peace process."

Universities UK, the lobbying group for British institutions, said the boycott decision was "inimical to academic freedom, which includes the right of academics to collaborate with other academics."

The British faculty association did not issue guidelines on how to observe the boycott, which called for its members to "refrain from participation in any form of academic and cultural cooperation, collaboration, or joint projects" with the two Israeli institutions. Faculty members at the Israeli universities would have been excluded from international conferences and academic exchanges unless they publicly distanced themselves from Israeli policies toward Palestinians.

Opponents of the boycott deemed especially offensive the notion that individual professors would be subjected to an ideological or political litmus test before being allowed to participate in scholarly exchanges. Many academics cited that as a central reason for their opposition.

Supporters of the boycott vowed to press on with their efforts. "So we've lost a battle, but not the campaign," said Hilary Rose, one of the boycott organizers and an emerita professor of social policy at the University of Bradford, in England. "This is a big setback, but the campaign will continue."

Sari Nusseibeh, the Palestinian president of Israel's leading Arab institution, Al-Quds University, in Jerusalem,

also joined the opposition to the boycott. In a statement signed with Menachem Magidor, president of the Hebrew University of Jerusalem, Nusseibeh said it was only "through cooperation based on mutual respect, rather than through boycotts or discrimination, that our common goals can be achieved."

"Bridging political gulfs—rather than widening them further—between nations and individuals thus becomes an educational duty as well as a functional necessity, requiring exchange and dialogue rather than confrontation and antagonism," Nusseibeh said.

Nusseibeh's opposition to the boycott was, in turn, condemned by many Palestinians, including the Palestinian Union of University Teachers and Employees, which accused him of taking a stand against the boycott as a way of trying to normalize relations with the Israeli government of Ariel Sharon.

Jon Pike, a senior lecturer in philosophy at Britain's Open University and a co-founder of the antiboycott campaign, said that although the boycott had been intended as a show of solidarity with Palestinians, it would have hurt them, too. "Israeli and Palestinian academics and students are existing in very difficult conditions," he said. "Palestinians especially are working in very difficult situations, and we want to give them support. This doesn't do that. It's negative attention that has diverted attention from doing practical work, both as a trade union and as individual academics."

After the boycott was overturned, Aaron Ben Ze'ev, president of the University of Haifa, said he was pleased but not surprised. "We have done a lot of work in persuading people and in presenting our case, by revealing the false accusations against our university," he said. Haifa had warned the British faculty association that it was considering libel proceedings for what Ben Ze'ev called the "slander and defamation against our university."

Despite the boycott reversal, Ben Ze'ev said he was disappointed that he had not yet received any apologies from representatives of the faculty association. "We are the most pluralistic university in Israel," he said. "We also want to continue and strengthen our connection with Palestinians and Arab states."

He noted that his institution, where twenty percent of the students are Palestinian, had just elected an Arab as dean of research. Rather than undermining Palestinian rights, he said, his institution had done much to foster good relations with Palestinians. Beyond its ramifications for his own university, Ben Ze'ev said, the boycott also raised wider issues. "I don't see this as an isolated or accidental incident," he said. "I see it as a part of a larger-scale campaign against the State of Israel and its academic institutions."

He said he was concerned that other organizations might try similar tactics. "The University of Haifa intends to lead the struggle in Israel against this sort of immoral phenomenon," he said. Reported in: *Chronicle of Higher Education* online, May 27.

**Cape Town, South Africa**

The South African Film and Publication Board overturned on appeal a ruling that *GQ*, *FHM*, and *Cosmopolitan* magazines be sold only to people over the age of eighteen. Robyn Fudge, of Fish Hoek, Cape Town, had taken the magazines to the board because she believed their contents were not suitable for children, and that they could influence their attitudes, particularly in the way they portrayed women. Fudge said the magazines were pornographic and objectified women, and should be classified as adult material.

On February 23, the Film and Publication Board's classification committee ruled that the magazines were not pornographic but that they should be sheathed in plastic and marked for sale to people over age 18. The magazines appealed the ruling, and the board's review board ruled April 19 that the magazines could be sold to readers of any age. However, *GQ* and *FHM* were ordered to wrap their issues in plastic.

*FHM* Publishing Director Louis Eksteen was jubilant about the ruling. "We feel that the initial decision by the classification committee was incorrect and that we have been vindicated by winning this major appeal," he said. Eksteen said he was pleased that the review board had agreed that *FHM* was a magazine for all ages.

"This favorable decision by the board simply means that the status quo continues for *FHM*. We are going to continue distributing the magazine in plastic wrappers, like we have done since October 2000, to prevent in-store reading."

Vanessa Raphaely, of *Cosmopolitan* magazine, said there was reason why the magazine should be wrapped in plastic. "It is great that we live in a country that protects freedom of expression," she said. Raphaely said that for the past twenty-one years, *Cosmopolitan* had been viewed as reflecting the life of young people and creating a medium that was educational, informative, and entertaining. "Writing about sex is part of what we do. It is not pornographic, nor harmful. We deliver good advice," she said. Reported in: *Cape Town Mercury*, April 20. □

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*(censorship dateline. . . from page 164)*

In a column called "When the Bible Is Used for Hate," De La Torre wrote: "I always knew there was something fishy about a sponge who openly held hands with a pink starfish. God only knows what illicit acts are taking place at SpongeBob's neighborhood, appropriately named Bikini BOTTOM. Thanks to the vigilant eyes of James Dobson, who credits himself for bringing about the president's re-election, we can now shield our children from SpongeBob the sex fiend."

In the less satiric portion of the column, De La Torre asked, "Does not Christ call us to love our (white, black,

Latino/a, Native American, and, yes, gay) neighbor as ourselves?"

De La Torre said that he knew he had no future at Hope after he was passed over for a merit raise this year, despite earning tenure, having books accepted for publication, and winning strong teaching reviews. "It was inappropriate for the president to connect my writing to his needs with the donor base," De La Torre said. "It was clear I would never get another raise or become a full professor so I looked for another job."

While De La Torre does not share the views of many religious leaders, he stressed that he is a "man of faith" who has devoted his career to religion. He is an ordained Southern Baptist minister and considers himself a liberation theologian. He recently finished three books that will be published in the next two years: *Re-Imagining Christian Sexuality*, *Liberating Jonah: Toward a Christian Ethics of Reconciliation*, and *Rethinking Latino/a Religion and Ethnicity*.

De La Torre said he wanted to "go quietly" but when students got hold of the president's letter and started distributing it, protests began.

Hope officials declined to comment on the specifics of the debate, but the college released a statement noting the "concern expressed within the Hope College community" about De La Torre's departure. "The college has accepted his resignation with regret knowing that he has a passionate voice for the marginalized in our society and a message that is a good one for all of us to hear."

President Bultman appeared before packed meetings of students and faculty members to discuss the controversy. The meetings were closed to the press, but those who attended said Bultman wouldn't talk about the letter he sent De La Torre, but that he did say tuition would have to go up substantially if donors stopped making gifts to the college. Reported in: insidehighered.com, April 28.

**Manassas, Virginia**

When Chester E. Finn, Jr., was asked to give a talk at George Mason University two years ago, he had an unusual condition: He didn't want Gerald W. Bracey, who taught part time at the university, in the audience.

Finn, president of the Thomas B. Fordham Foundation, is an outspoken defender of many Republican ideas about education reform. Bracey, author of numerous books and articles, is an outspoken critic of many of the policies Finn defends.

The university went along with Finn's request, and asked Bracey to stay away from the lecture. This two-year-old dispute surfaced in April on the Web site of *The Washington Post*, where columnist Jay Matthews wrote about it—and about how the university has decided not to renew Bracey's contract.

In a memo sent by Bracey to the university, he charged that he was being squelched for criticizing the university's handling of the Finn lecture. The university denies any relationship between the Finn incident and Bracey's contract, but acknowledges that he was asked to stay away from the talk.

According to Bracey's memo, Jeffrey Gorrell, the dean of the education school, took him to lunch after Finn had agreed to appear on campus, and told him about Finn's condition and asked him to abide by it. Bracey wrote that he believed the university should have responded to Finn with the expletives Vice President Cheney used last year on the Senate floor. But Bracey said he did not feel it was appropriate as a part-time professor to "deprive" the rest of the faculty from hearing Finn.

What Bracey did do (after considering, and rejecting, the idea of going in disguise) was send his faculty colleagues a list of questions they might ask Finn—which Bracey says the dean criticized him for distributing.

The dean told Bracey this spring that budget priorities meant his contract would not be renewed. Bracey pointed out in his memo that during his time at George Mason, his courses have been popular and he's managed a research output that would put many full-time professors to shame. In three years at the university, he has published six books, written seventeen scholarly articles, and delivered forty-five speeches in twenty-three states.

"When I think about the record of speaking and publishing and honors received during the past three years, I cannot help but feel that this cancellation [of the teaching contract] goes back to l'affaire Finn," he wrote.

Dan Walsch, a spokesman for George Mason, said that the decision not to renew Bracey's contract was part of the routine, annual evaluations of all part-timers. He said it had nothing to do with Finn.

In an e-mail message, Finn said: "I'm a pretty thick skinned guy and can tolerate almost anyone but there are four or five people in the field of education for whom I have utter contempt and will, therefore, not do ANYTHING with: not debate, not appear together on radio or TV shows, and when possible not be in the same room. A VERY short list but life is too short to subject oneself to dreadful folks. I didn't ask to speak at George Mason. They invited me. I said OK. Then I learned that one of the few people on my short list was on their faculty. So I said to the dean, 'if he's going to be present I'd rather not come.' That's the whole story from my end. Someone from GMU later assured me that Bracey wouldn't be there."

Asked whether it was appropriate for George Mason to abide by that request, as it did, Walsch said, "it was a judgment call." Reported in: insidehighered.com, April 28.

## publishing

**Cupertino, California**

In an apparent fit of corporate pique, Apple Computers pulled dozens of books by John Wiley & Sons, Inc., from the shelves of its 103 stores, the publisher said. Apple was

unhappy with an upcoming book on its chief executive and co-founder, Steve Jobs. The move heightened Apple's reputation as Silicon Valley's most thin-skinned company. In recent months, it has drawn criticism for suing three Web site operators to learn the source of leaks about new products.

The latest flap began when Apple tried to block publication of *iCon Steve Jobs: The Greatest Second Act in the History of Business*, said Wiley spokeswoman Susan Spilka. After Hoboken, N.J.-based Wiley refused to stop the book, Apple pulled all Wiley titles, including *Macs for Dummies*.

"We don't think it's in the best interest of their retail store customers or in keeping with the nature of our long-standing partnership," Spilka said. "We hope that they reevaluate."

A representative of the Cupertino-based Apple declined to comment on the company's actions.

Jeffrey S. Young, who wrote the book with William L. Simon, can't figure out what made Apple executives so mad. He said the book was about how Jobs returned to Apple after being ousted and returned the company to glory, rewriting the rules for the music industry in the process. It deals with the CEO's family and his bout with pancreatic cancer, but "It's not a Kitty Kelley tell-all book."

IDC analyst Roger Kay said Apple's move could backfire and boost book sales. But it doesn't surprise him. "'My way or the highway,' is the cliche that fits the way Apple deals with the entire [business] ecosystem," he said.

Kay knows something about that. He mildly criticized Apple last year for not having an entry-level Mac. Although the company already had such a model in the works, Apple executives chewed him out and complained to his boss. Reported in: *Los Angeles Times*, April 27.

## broadcasting

**Washington, D.C.**

The Corporation for Public Broadcasting (CPB) is considering "a study on whether National Public Radio's Middle East coverage was more favorable to Arabs than to Israelis"—further evidence that the agency intends to police public media for content it deems too "liberal."

The *New York Times* reported that two of the CPB board members had expressed concern over the alleged bias of the public radio network's reporting. Gay Hart Gaines, formerly a Republican fundraiser, "talked about the need to change programming in light of a conversation she had with a taxi driver about his listening habits." Her colleague on the CPB board, Cheryl Halpern, reportedly raised complaints about NPR's reporting. Halpern is "a former chairwoman of the Republican Jewish Coalition and leading party fund-raiser whose family has business interests in Israel."

While NPR's Mideast coverage has frequently been criticized by pro-Israel partisans, research and analysis by others has found a strong and consistent slant on NPR toward an Israeli perspective on the conflict. One study found that during a six-month period, NPR's main news shows reported 81 percent of Israeli deaths in the conflict and only 34 percent of Palestinian deaths. Tellingly, when Israeli minors were killed, NPR reported on their deaths 89 percent of the time, while mentioning only 20 percent of the Palestinians youths killed.

The *Times* also reported that CPB chair Kenneth Tomlinson had contacted conservative media analyst Robert Lichter of the Center for Media & Public Affairs (CMPA) about the possibility of conducting research for the agency. Lichter is no stranger to battles over public broadcasting's so-called "liberal bias." In 1992, as congressional debate over PBS's funding was heating up, the Center released a study alleging rampant left-wing bias on PBS. But the methodology was dubious, at best: The CMPA studied only documentaries that aired on PBS, neglecting popular conservative programs like William F. Buckley's *Firing Line* and Morton Kondracke's *American Interests* show.

The CMPA study broke down the documentaries into over 35,000 segments—yet only "studied" 614 of those segments that had a clear "thematic message." And the findings that CMPA presented were hardly evidence of liberal bias. The Center's report explained one form of bias: "Racial discrimination was described as a condition of American society fifty times without a single dissenting opinion." Another example counted as a "liberal" viewpoint by CMPA was a Catholic priest's opposition to in vitro fertilization. The report argued that PBS has a pacifistic bent, even though 1,309 military personnel appeared as sources during the period studied.

The news of a possible investigation into NPR's Mideast slant came on the heels of a similar report about CPB's plans to monitor PBS programming for liberal bias. Under Tomlinson's direction, the CPB has successfully lobbied to add conservative programming to PBS's public affairs lineup, apparently in an attempt to "balance" the program *Now*, which until recently was hosted by Bill Moyers. One new show that Tomlinson pushed for is the *Journal Editorial Report*, a program that is virtually 100 percent conservative opinion. Reported in: fair.org, May 17.

**Los Angeles, California**

In the latest twist in the broadening battle over decency standards, the glam-metal band Mötley Crüe filed suit against NBC May 24. The suit states that the network violated the group's free-speech rights and weakened its sales by banning it after Vince Neil, the lead singer, used an expletive on the air in a December 31 appearance on *The Tonight Show*.

The lawsuit, filed in a federal court in Los Angeles, accuses the network of censoring the band to mollify a Federal Communications Commission that has been

increasingly quick to levy steep fines for broadcasting indecent material on television and radio. The lawsuit says the network, which banned the group after Neil inserted an expletive into his New Year's greeting to Mötley Crüe's drummer, Tommy Lee, added insult to injury by promoting a summer reality series featuring Lee.

The band, known for 1980's hits like "Shout at the Devil" and "Girls, Girls, Girls," is requesting a ruling that NBC's ban is unconstitutional, a court order forcing the network to lift it, and unspecified financial damages tied to the band's reduced media exposure.

"We meant no harm, but it feels that we're being singled out unfairly," said Nikki Sixx, the band's bassist. "This is a discrimination issue, pure and simple. All we've ever asked is to be treated like everybody else, which is why we're taking this action."

In a statement, NBC said: "To ensure compliance with its broadcast standards, NBC has the right to decide not to invite back guests who violate those standards and use an expletive during a live entertainment program. The lawsuit Mötley Crüe has filed against us is meritless."

The band's case appears somewhat quixotic, given that federal courts have afforded wide discretion to broadcasters to choose their own content. But it does illustrate the uneasiness of the relations between entertainers and the media companies that provide a platform for their fame in the cautious climate that has surrounded programmers since CBS's Super Bowl fiasco last year, when Janet Jackson's right breast was exposed during a half-time performance in front of tens of millions of viewers.

Last year, the FCC proposed fines of nearly $8 million against broadcasters, primarily for risqué material, and executives have spoken openly of practicing self-censorship to avoid the agency's crosshairs. Whether performers can take legal action to influence programming is in serious doubt, however. Charles Tobin, a Washington lawyer who specializes in First Amendment law and has represented CNN and Fox, said: "The government has no right to censor people on the content of their speech. But time and again the Supreme Court has upheld the rights of broadcasters, newspapers and the other media to decide who it wants to give priority to. That includes the right to ban anyone they want to."

"I think it's a publicity stunt," Tobin said of the Mötley Crüe suit. "It can't get NBC's help to boost its album through the airwaves. So it's going to try and do it by dragging NBC into court."

But the band's lawyer, Skip Miller, argued that there are lower-court opinions supporting the notion that a private entity, like a television network, acting under government pressure, can be liable for damages for violating free-speech rights. Miller added that NBC's action unfairly singled out Mötley Crüe because NBC had not announced similar bans on other performers who have uttered profanities on its airwaves, including the singer Bono of U2, or the singer John Mayer.

"Once you're on, and then you get banned," Miller said, "the question is why? Is it because NBC decided to throw Mötley Crüe under the train? If it's because of kowtowing to the FCC and governmental pressure," he continued, "yes, I do think that can be a First Amendment violation."

In the lawsuit, the band said Neil was not aware that his statement was being broadcast. But in any event, the band said, the live broadcast took place during late-night hours when federal prohibitions on indecent material have not traditionally been applied. Reported in: *New York Times*, May 25.

## Internet

**Washington, D.C.**

A large portion of a major Department of Defense web site was taken offline overnight after unclassified documents on the site became the subject of news stories and public controversy. The Defense Technical Information Center (DTIC) Joint Electronic Library, including hundreds or thousands of doctrinal and other publications, was replaced by a single page that read "File Not Found."

One of those publications was a draft titled "Joint Doctrine for Detainee Operations" (JP 3-63) that was circulated by Human Rights Watch and others and was widely and critically reported in the press. Another was a draft "Doctrine for Joint Nuclear Operations" (JP 3-12), that was spotlighted and analyzed by Jeffrey Lewis of ArmsControlWonk.com.

In response, the Defense Department removed those draft documents, but also many hundreds of others. A selection of DoD Joint Publications and other doctrinal documents previously available through DTIC remains available on the FAS Web site. Reported in: *Secrecy News*, April 8.

## art

**Chicago, Illinois**

The Secret Service sent agents to investigate a college art gallery exhibit of mock postage stamps, one depicting President Bush with a gun pointed at his head. The exhibit, called "Axis of Evil: The Secret History of Sin," opened in April at Columbia College in Chicago. It featured stamps designed by 47 artists addressing issues such as the Roman Catholic sex abuse scandal, racism and the war in Iraq. None of the artists is tied to the college.

Secret Service spokesman Tom Mazur would not say whether the inquiry had been completed or whom the Secret Service had interviewed, but he said no artwork had been confiscated. The investigation began after authorities received a call from a Chicago resident.

"We need to ensure, as best we can, that this is nothing more than artwork with a political statement," Mazur said.

Two federal agents arrived at the exhibit's opening night, took photos of some of the works, and asked for the artists' contact information, said CarolAnn Brown, the gallery's director. Brown said the agents were most interested in Chicago artist Al Brandtner's work titled "Patriot Act," which depicted a sheet of mock 37-cent red, white and blue stamps showing a revolver pointed at Bush's head.

The exhibit's curator, Michael Hernandez de Luna, said the inquiry "frightens" him.

"It starts questioning all rights, not only my rights or the artists' rights in this room, but questioning the rights of any artist who creates—any writer, any visual artist, any performance artist. It seems like we're being watched," he said.

Last spring, Secret Service agents in Washington state questioned a high school student about anti-war drawings he did for an art class, one of which depicted Bush's head on a stick. Reported in: Earthlink News, April 12.

## billboard

**New York, New York**

Clear Channel, the radio station giant that also runs a billboard operation, Clear Channel Outdoor, rejected an attack on Wal-Mart that a labor union had planned for a billboard on Staten Island. The union, Local 342 of the United Food and Commercial Workers, does not like Wal-Mart's plans for an outlet on the island. It hoped to channel its displeasure clearly with a billboard message that showed a fire-breathing Godzilla by the Verrazano-Narrows Bridge. The accompanying text said, "The Wal-Monster will destroy Staten Island businesses and devastate our quality of life."

No way, Clear Channel Outdoor said. Those images are too violent and the words too inflammatory for post-9/11 New York. Local 342 said that even when it offered to soften the language, Clear Channel said no.

Not surprisingly, the union sees censorship at work. "There is a freedom-of-speech issue," said Michael Mareno, Local 342's secretary-treasurer. "We just wanted to get our message out. Clear Channel didn't give us that opportunity."

Clear Channel is not the only billboard operator to decide that certain messages on matters of public policy are unsuitable for tender New York sensibilities. When a group called Project USA put up anti-immigration billboards along the Brooklyn-Queens Expressway, local politicians screamed. The billboards, owned by Infinity Outdoor Signage, came down. There was nothing threatening about the messages. They merely questioned the wisdom of mass immigration. But that is not a terribly popular notion in New York.

A similar fate befell billboards that a Nigerian-born Christian minister posted on Staten Island, quoting a passage from Leviticus that calls homosexuality an "abomination." No call to harm homosexuals was made, just the biblical citation. All the same, important politicians objected. While no cause and effect was ever proved, the billboard company, P.N.E. Media, developed a serious case of cold feet. The minister filed lawsuits, but they went nowhere.

A public service advertisement promoting a free health information line for gay men and lesbians was removed from bus shelters in the Bronx after a reference to gay sex drew complaints. An antiwar message that included a red, white and blue bomb was not allowed on a Times Square billboard around the time of the 2004 Republican National Convention.

The city's buildings department can say where a billboard may go and how large it may be. But it assigns responsibility for advertising content to companies like Clear Channel. The city's Transportation Department takes the same position with bus shelters, operated by a subsidiary of Viacom Outdoor, Inc.

Donna Lieberman, executive director of the New York Civil Liberties Union, said that, from parks to bus shelters, "what we think of as public space is increasingly privatized." As a result, she said, "the lines get blurred" when it comes to First Amendment rights.

For Mareno of Local 342, the question is whether an executive "in charge of these billboards can make a decision as to what is good for the public and what is not." It seems, he said, that "it comes down to one person deciding what the public hears." Reported in: *New York Times*, April 22.

## foreign

**Gaborone, Botswana**

Botswana deported an outspoken political-science professor on May 31 after a landmark trial in which he was found to be a threat to national security for writing an academic paper that criticized the president of the southern African country. Shortly before the professor, Kenneth Good, was to present the paper, in March, he was ordered to leave the country within forty-eight hours. Good, an Australian native who had taught at the University of Botswana for fifteen years, won the first round of the ensuing legal battle when a judge granted him permission to remain in Botswana until the end of his trial.

However, when Good arrived in court May 31 to hear the ruling by a panel of three judges, police officers took him into custody. "They kept him hidden from us," said Carlos Falbany, a lawyer in the firm that represented Good. After Good's lawyers insisted on the right to see their client before he was deported, Botswana's attorney general, Ian Kirby, granted them five minutes.

Good told his lawyers that he wished to appeal the court's decision. However, even if Good wins the appeal, the professor may be denied re-entry into Botswana.

Once the judgment was delivered, the professor was hustled off to the airport and within hours was placed on a flight to Australia, connecting via South Africa. "This is very unfortunate because I did not anticipate this kind of judgment," Good said before being led away from the court. "I still believe I did nothing wrong, and I did not deserve this."

His lawyers also said the ruling came as a surprise. Good was allowed to take only a few personal possessions with him, they said. Good's teenage daughter had lived with him in Botswana. It could not be immediately determined what arrangements were being made for her.

Back in March, Good presented his paper—which was written with Ian Taylor, of the School of International Relations at the University of St. Andrews, in Scotland—to a large audience at the University of Botswana. It argued that Botswana's president, Festus Mogae, has shortchanged the electorate by planning to step down before his term ends and hand-picking his successor.

Botswana, a relatively wealthy, stable country with nearly forty years of multiparty democracy behind it, is often held up as a model for failing African states. Observers considered Good's trial to be a test of academic freedom in Botswana. Reported in: *Chronicle of Higher Education* online, June 1.

**Amman, Jordan**

Jordanian authorities reportedly confiscated copies of the controversial bestseller, *The Da Vinci Code*, by Dan Brown, for slandering Christianity. Amman's daily *al-Ghad* said copies of the book were seized from a publishing house in the Jordanian capital and its owner, Ahmed Abou Tawk, was summoned for interrogation.

The paper quoted the president of the state's Publication Department, Ahmed Kodat, as saying other titles were confiscated in addition to *The Da Vinci Code* for undermining religions. "This book is largely harmful for Christianity and was banned from many countries, including Lebanon," Kodat said, noting Christian clerics in Jordan demanded the ban. Jordan, a mainly Muslim country, has a Christian minority. Reported in: United Press International, May 10.

**Warsaw, Poland**

On May 16, Grzegorz Prujszyk, a student contributor to the Indymedia Poland Web site, was arrested and mistreated by police after filming an anti-war demonstration in Warsaw. Police arrested Prujszyk as the rally was beginning to break up. He was wearing an orange waistcoat with the word "Press" marked on it. Police grabbed him first among a group taking part in the march. He was then forced to lie on the floor of the van taking him to the police station with an officer kneeling on his back.

At the station, officers viewed Prujszyk's videotape and held him in custody for thirty-nin hours. He remains under police surveillance and must report to police once a week. He has been accused of assaulting a police officer, a charge that carries a ten-year jail sentence.

Police accused Prujszyk of assaulting a police officer. Eyewitnesses at the scene, however, particularly other journalists, said he took no part in jostling with the security forces. He categorically denied any involvement.

The police accusations are based on the evidence of an officer whom Prujszyk says he does not know. One officer reportedly told him while in custody that security forces had been planning to arrest him for some time. No detailed charges have yet been produced.

There have been very few anti-war demonstrations in Poland since the government decided to support the United States-led coalition in March 2003. Fewer than 5,000 people took part in the biggest march in 2004. Several pacifist activists have, however, been arrested in Poland since the start of the conflict for "demonstrating illegally".

Indymedia is a network of Web sites on which Internet users post messages freely. Prujszyk spends most of his spare time reporting without pay for Indymedia Poland and is a member of its editorial team. Reported in: IFEX, May 19.

**Latakia, Syria**

About forty students at Tishreen University, in Syria, have been arrested and tortured, the Damascus-based Human Rights Association in Syria has announced. As is typical in Syria, the government made no statement about the arrests, and Syrian officials refused to comment. It is not known precisely how many students were arrested, when most of them were arrested, or what they are accused of.

Six of the students have been released, however, making it possible for the Human Rights Association to piece together part of their story. Anwar al Bunni, a lawyer and spokesman for the association who has spoken to the families of several of the students, said the arrested students were Islamists who had become friends while studying medicine and engineering at the university, which is located in the northern seaport of Latakia and was formerly known as the University of Latakia.

The students had been tortured "very harshly" while in custody, al Bunni said, and they were too broken and frightened to speak to lawyers on their own. According to al Bunni, the government believes the arrested students are affiliated with an Islamist movement that it identified as "Sunaa al Hayat," which means "Makers of Life" in Arabic. The name comes from the title of a conservative Egyptian sheikh's popular TV talk show.

Al Bunni said that it was not yet clear whether the students had chosen the name themselves, or whether the name had been selected by the government in order to create an excuse for the arrests.

Although the majority of Syria's people consider themselves conservative Muslims, Syria's Baathist government

is secular, and has long seen Islamist movements as a threat to its rule. Syria's emergency laws, adopted some forty years ago as a national security measure, forbid the formation of any group without explicit government approval. Thus, merely forming an illegal student group, let alone an Islamist one, is grounds for arrest in Syria.

But al Bunni said that it had not yet been established that the students belonged to any such group. "They're Islamists, yes, but they're not members of any organization," he said. "Three or four of them went to fight the [American] occupation in Iraq, but they felt disappointed with it and came home soon. They're just young men, a group of friends, peaceful people who happen to have Islamist opinions."

Muhammed Habash, a member of Syria's parliament and the director of the moderate Islamic Studies Center in Damascus, said that more than thirty students were still being held, and that it was not known whether they would be tried. He has called for the students' release.

"We have very little information about these students, but this incident comes at a very bad time for Syria," Habash said. "Syria is under so much external pressure. This is a time to be talking about democracy and development. This is not a time to be locking people up for their beliefs." Reported in: *Chronicle of Higher Education* online, May 9.

**Istanbul, Turkey**

An academic conference on the 1915 killing of 1.5 million Armenians by Ottoman Turkish forces was canceled May 24, a day before it was scheduled to take place at Istanbul's Bogaziçi University. The conference, "Ottoman Armenians During the Decline of the Empire: Issues of Scientific Responsibility and Democracy," was organized by historians from three of Turkey's leading universities, Bogaziçi, Istanbul Bilgi, and Sabanci.

The organizers said the conference would have been the first in Turkey on the Armenian question not set up by state authorities or government-affiliated historians. Government officials had pressured the organizers, first to include participants of the government's choosing, then to cancel the event.

Armenians, most of whom are Christians, have long said that the killings amounted to genocide, and several European nations have even passed legislation agreeing with this view. With Turkey pressing for admission to the European Union, which would make it the first predominantly Muslim country to join the bloc, the Armenian issue has become freshly contentious. European heads of state have repeatedly raised the subject with Turkey's government, which, despite its eagerness to demonstrate its European credentials, flatly rejects the notion that what occurred amounted to genocide.

The conference at Bogaziçi University, which is also known in English as Bosphorus University, would have marked the culmination of several years of newly invigorated academic discussion on the Armenian issue. Fatma Müge Gocek is an associate professor of sociology at the University of Michigan at Ann Arbor and was on the advisory committee for the conference. She is working on a book called *Deciphering Denial: Turkish Historiography on the Armenian Massacres of 1915*, and says that the Armenian issue is a hot topic for Turkish historians now, in part because of Turkey's European Union bid.

"All of these human-rights issues are being taken on the agenda now," Gocek said, "and this one is so closely connected with the issue of Turkish nationalism that it becomes extremely difficult to separate the two in people's minds."

Gocek and colleagues have been conducting scholarly workshops on the Armenian issue in the United States and Europe. When they decided that the time was right to hold such a discussion in Turkey, they decided to invite only participants of Turkish origin. "We wanted to make a stand, saying that the ones saying this are not foreigners, it is Turks themselves."

According to Gocek, government officials asked the organizers to include participants who would represent the official state thesis, which holds that there was no genocide. After the organizers declined to include government-affiliated historians, the governor of Istanbul called Ayse Soysal, the rector of Bogaziçi University, and asked her to cancel the meeting. She declined, Gocek said, and also rebuffed government requests for copies of the papers that would be presented at the conference. The Michigan professor added that the request for the papers could not have been met because none had been circulated before the conference.

With interest building—some 720 observers had registered to attend the sessions and listen to the discussions—the conference also became a subject of heated discussion on the floor of the nation's parliament. Justice Minister Cemil Cicek called the conference a "dagger in the back of the Turkish people" and said it amounted to "treason."

In such a polarized and tense climate, Gocek said, the organizers decided that security might become a problem and chose to postpone the conference. Some education officials who had taken issue with the conference agenda later said they regretted the organizers' decision to postpone it. "We believe this is a mistake," said Aybar Ertepinar, vice president of the Council of Higher Education, a government-financed organization that oversees Turkey's universities.

He explained that the government had been uncomfortable with some of the organizers' plans, which it viewed as one-sided. "They stated that they are going to invite speakers of a certain breed plus a certain audience, and that it is not open to everybody," Ertepinar said. "That makes it ideological rather than scientific, and we found that rather

unfortunate. That doesn't sound scholarly. You could hold such a meeting in a hotel conference room, but if you call it a scientific meeting, it should be open to all views, all audiences, and not restricted. For example, nobody from the higher-education council was invited to take part."

Still, Ertepinar said he thought that if the conference had gone ahead, the organizers "would have seen their mistake." Ertepinar insisted that he is in favor of open academic discourse on the Armenian issue. "The universities should all have Armenian institutes," he said, but Europe cannot be allowed to dictate the academic agenda.

For Gocek, who was still in Istanbul, along with many others who had planned to attend the conference, the Armenian issue has taken a back seat to the more fundamental issue of academic freedom. "What is worrisome about this is the attack on freedom of expression that is supposed to be guarded at universities," she said. "These are supposed to be bastions of free expression. All this fuss was about the papers of a conference and the people attending it, without even giving them the chance to give the papers or talk about the issues. That's the most egregious part. It would be fine if they listened and disagreed and took a stand after listening." Reported in: *Chronicle of Higher Education* online, May 27. □

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*(from the bench . . . from page 174)*

In dismissing Delaware's argument that its citizen-only rule was necessary "to define the political community and strengthen the bond between citizens and their government officials," Farnan wrote that "[I]t is difficult to understand how . . . external scrutiny might undermine the bond between [Delaware] citizens and their government."

Farnan also noted the ease with which noncitizens could circumvent the citizen-only rule by recruiting citizens to make requests on their behalf. During discovery, the state admitted that it enforces its citizen-only rule merely by glancing at the requester's mailing address. Reported in: Reporters Committee on Freedom of the Press, May 17.

**New York, New York**

A federal judge in New York told the Defense Department May 26 that it would have to release perhaps dozens of photographs taken by an American soldier of Iraqi detainees in the Abu Ghraib prison in Iraq. The judge, Alvin K. Hellerstein, said at a hearing that photographs would be the "best evidence" in the public debate about the abuse of Iraqi prisoners by American soldiers at Abu Ghraib.

The hearing, in Federal District Court in Manhattan, came in a Freedom of Information Act suit filed by the American Civil Liberties Union to obtain material about military prisons in Iraq and Guantánamo Bay, Cuba.

In response to the suit, the government released more than 36,000 pages of documents that shed sometimes dramatic light on conditions and interrogation practices in American military prisons. The photographs covered by Judge Hellerstein's decision would be the first released under the suit.

The judge focused on 144 photographs that were turned over to Army investigators last year by Specialist Joseph M. Darby, a reservist who was posted at Abu Ghraib. A small number of the pictures have already been published, including those showing naked detainees piled in a pyramid and simulating sex while their American military captors looked on.

In a closed session in his chambers, Judge Hellerstein looked at a sample of nine of the photographs presented by Sean Lane, an assistant United States attorney. The judge instructed the government to release some of them as they were and to black out faces in others so the prisoners could not be identified, according to an account of the meeting Lane gave to ACLU lawyers.

"There is another dimension to a picture that is of much greater moment and immediacy" than a document, Judge Hellerstein said in court. He rejected Lane's argument that releasing the pictures would violate the Geneva Conventions because some prisoners might be identified and "further humiliated."

The government could appeal the decision. Megan Lewis, a lawyer who argued on behalf of the ACLU, said the photographs "could be extremely upsetting and depict conduct that would outrage the American public and be truly horrifying." Reported in: *New York Times*, May 27.

## privacy

**Atlanta, Georgia**

A book identifying a Drug Enforcement Agency informant and describing his activities did not invade his privacy, the U.S. Court of Appeals for the Eleventh Circuit in Atlanta ruled in May in an unpublished and unsigned opinion. A three-judge panel upheld a trial court ruling that the information disclosed in the book was either already available in public court documents or was protected by the First Amendment because it concerned a matter of public interest.

In 2001, former New York City Police Commissioner Bernard B. Kerik published a memoir titled *The Lost Son: A Life in Pursuit of Justice*. The book detailed his experiences investigating drug crimes and included references to Paul Lir Alexander, a confidential DEA informant and former agent of Mossad, Israel's intelligence agency, who pleaded guilty in 1993 to conspiracy to import cocaine. He was sentenced to fourteen years in prison and is scheduled for early release in June.

Alexander sued Kerik and the book's publisher, HarperCollins, in U.S. District Court in Brunswick, Georgia,

alleging negligence and invasion of privacy, and claiming that the revelation of his activities as an informant endangered his life and the lives of his family members.

In March 2004, Judge Anthony Alaimo ruled in favor of Kerik and HarperCollins on the grounds that Alexander's status as a DEA informant had already been disclosed in publicly available court documents and that the First Amendment provides an absolute privilege to publish such information. Alexander's status as a DEA informant and Mossad agent also had previously been published elsewhere, so Kerik's publication of already public information was not an invasion of privacy, the court ruled.

Alaimo did rule that details of Alexander's informant activities had not previously been made public, but because they concerned a matter of public interest, the First Amendment protected their publication. "Given that Alexander was importing large quantities of illegal drugs during the same time period he was 'assisting' the DEA, the details of Alexander's involvement particularly involve a matter of public interest," Alaimo wrote.

Alexander appealed the ruling, which was affirmed by the Court of Appeals May 18 in a short opinion. Reported in: Reporters Committee on Freedom of the Press, May 25.

**Marion, Indiana**

Planned Parenthood of Indiana has to show state investigators the medical records of some of its youngest patients, a judge ruled May 31. The judge rejected the organization's contention that disclosing such records could have a chilling effect on patients across the state.

Since March, Attorney General Steve Carter has been seeking the records of more than eighty patients younger than fourteen, saying his Medicaid fraud unit is trying to determine whether children have been neglected because molesting incidents were not reported to the authorities as required. Under Indiana law, anyone under fourteen who is sexually active is considered a victim of sexual abuse, and health providers are required to report such cases to the state authorities.

In his ruling, Judge Kenneth H. Johnson of Marion Superior Court denied the Planned Parenthood request for a preliminary injunction against Carter's office, which has obtained parts of eight patients' records and is seeking the records of seventy-six others.

"The great public interest in the reporting, investigation and prosecution of child abuse trumps even the patient's interest in privileged communication with her physician, because in the end, both the patient and the state are benefited by the disclosure," Judge Johnson wrote in a twenty-three-page decision.

The chief executive officer of Planned Parenthood of Indiana, Betty Cockrum, said it would fight the ruling and continue to protect the records of clients—the more than 100,000 patients who went to the forty Indiana health centers last year. "It's surprising and disappointing," Cockrum said. "Patients beyond Planned Parenthood's are looking at this decision with some anxiety. People believe their medical records are sacred."

Kenneth J. Falk, a lawyer for the Indiana Civil Liberties Union who is representing Planned Parenthood, said he was seeking a stay of the ruling and would take the case to the state court of appeals if necessary. Nationally, Planned Parenthood officials and other supporters have likened the situation in Indiana and a similar request for medical records in Kansas to fishing expeditions and say they fear it is part of a strategy to intimidate providers of reproductive health services.

Cockrum also questioned the nature of the investigation by the Medicaid fraud unit, saying most of the cases dated from several years ago and hardly seemed to be the emergency that Carter has portrayed. She said no case involved abortions.

"If we're really concerned about sexual predators, I'm pretty sure this is not the most efficient and effective way to deal with that," she said. "The most recent case was from eighteen months ago. Show me the sense of urgency on this."

Staci Schneider, a spokeswoman for Carter, a Republican, said the Medicaid fraud office was simply pursuing an issue it was required to pursue, the possibility of wrongdoing by a Medicaid provider—Planned Parenthood, in this case—for failing to report child abuse.

"We have a job to do and we need to investigate alleged wrongdoing," Schneider said, adding that the office had conducted 1,000 investigations in the last year that required some reviews of medical records. "This is part of the process."

She said the investigators would not try to seize the rest of the records immediately, but would wait until any appeals were completed and a final decision was reached. Doctors and clinic workers who fail to cooperate with Medicaid fraud investigators can be removed from the program. "That," Schneider said in the Planned Parenthood case, "is an extreme remedy and one we would hope to avoid." Reported in: *New York Times*, June 1.

## defamation

**Kansas City, Kansas**

A Kansas criminal defamation law is not unconstitutionally vague or overly broad because the law only punishes speech that can be proven false and is spoken with actual malice—meaning that the speaker knew it was false or recklessly disregarded whether it was true or not, a federal judge in Kansas City, ruled last week in two separate cases. The nearly identical rulings by U.S. Chief District Court Judge John W. Lungstrum in two related cases arose from a 2003 mayoral election in Baxter Springs.

The *Baxter Springs News* published a March 2003 letter-to-the-editor by local businessman Charles How and a guest editorial by columnist Ronald Thomas criticizing City Clerk Donna Wixon. How later became a mayoral candidate. Two days after the letter and editorial ran, Wixon swore out a criminal complaint against How, Thomas and the newspaper's publisher for violating the city's criminal defamation ordinance. The ordinance, which is adapted from a state criminal defamation law, carries a maximum penalty of a $2,500 fine and one-year imprisonment.

The law defines criminal defamation as "communicating to a person orally, in writing, or by any other means, information, knowing the information to be false and with actual malice, tending to expose another living person to public hatred, contempt or ridicule; tending to deprive such person of the benefits of public confidence and social acceptance; or tending to degrade and vilify the memory of one who is dead and to scandalize or provoke surviving relatives and friends."

City Attorney Robert Myers initiated prosecution in state court, but removed himself from the case citing a conflict of interest. When the city failed to appoint a special prosecutor by June 2003, the trial judge dismissed the charges, ruling that they could be brought again by a special prosecutor. Following the dismissal, Wixon and Myers announced that the charges would be brought again.

How and Thomas separately sued the city, Wixon, and Myers in federal court later in 2003, alleging that the criminal defamation law was unconstitutional, and charging the defendants with abuse of process. They argued that the law violated the Fourteenth Amendment's due process guarantees because it was too vague for an ordinary person to understand what was prohibited, and that the law violated the First Amendment because it prohibited protected as well as unprotected speech.

Lungstrum ruled that the state law was not unconstitutionally vague because it only prohibits communication that is known to be false and communicated with actual malice. Lungstrom found that the additional descriptive language in the law served to narrowed its reach, not make it vague, according to the May 10 rulings.

Lungstrom also ruled that the law was not overly broad because the language of the law "insures that criminal charges will only be brought when it can be proven that the statement, whether phrased as an opinion or otherwise, is false." Lungstrom did not dismiss How and Thomas' claims that they were being improperly prosecuted, and their cases will proceed on those claims. Reported in: Reporters Committee on Freedom of the Press, May 18.

**Lancaster, Pennsylvania**

A woman whom three newspapers described as being named in a domestic-violence petition when she was a not a defendant can pursue her defamation claim against the papers because the stories were not protected by the fair report privilege, a Pennsylvania appeals court ruled May 24. Though Pennsylvania recognizes the fair report privilege, which protects journalists from defamation liability when they report on government proceedings, it did not apply to three Lancaster newspapers which implied in late 1997 and early 1998 that lawyer Gail Weber was a defendant in a domestic dispute, the state Superior Court ruled.

"The articles do contain literal truth, but the 'spin' on that truth is misleading," Judge Maureen Lally-Green wrote for the appellate court. The *Solanco Sun Ledger*, *Sunday News* and *Lancaster New Era* reported on a petition for a restraining order filed by Dawn Smeltz against her domestic partner, Patricia Kelly, in late 1997. The petition contained the sentence: "Patti's friend, Gail Weber, phoned me at work, harassing me." Weber sued, alleging that the newspapers' stories left the false impression that she was a defendant.

The trial court granted summary judgment to the papers in 2004, ruling that the state's fair report privilege immunized them from liability. After the appeals court asked for a more thorough opinion, the lower court earlier this year reaffirmed that the privilege applied to most of Weber's claims.

A three-judge panel of the state Superior Court disagreed, ruling that a "reasonable jury" could conclude that the articles convey the false impression that Weber was a defendant. The articles' headlines helped convey that untrue notion, the court said.

"While it is literally true that Weber was 'named' and 'accused' in the petition, the fact remains that she was mentioned only incidentally in a petition that overwhelmingly concerns Officer Kelley. The article's headline and lead paragraphs, however, do convey the misleading impression that Weber was named as a defendant in Smeltz's petition," Lally-Green wrote.

The appeals court rejected an argument by the papers that Weber, a lawyer in a private-practice law firm, is a public official and, therefore, must prove the papers acted with "actual malice"—knowledge of falsity or reckless disregard for the truth. The trial court did not rule on the issue, and the appellate court ruled that Weber was not so famous or notorious as to be a public figure.

George C. Werner, Jr., the attorney for Lancaster Newspapers, Inc., the company's papers and reporter Gilbert Smart, and John C. Connell, who represents Ledger Newspapers, the Sun Ledger and reporter Lynn Ney, told The Associated Press that their clients will appeal.

"The court said you can say something that is literally true but somehow spin the truth," Connell said. "It just doesn't make sense. We intend to defend it vigorously." Reported in: Reporters Committee on Freedom of the Press, May 25. □

*(is it legal . . . from page 184)*

Steinbach said it was beside the point that the student is viewed by many as nonviolent, especially since the posting urged others to join in violence. "What if a student had taken him seriously and an incident had occurred? The institution would have had a tragedy and been subject to ridicule and lawsuits." Reported in: insidehighered.com, March 29.

**Hanover, New Hampshire**

Dartmouth College alumni, voting in a hotly contested election that caught the attention of conservative magazines and bloggers, have chosen as trustees two dark-horse candidates who mounted petition campaigns to get on the ballot and ran on platforms criticizing the college's commitment to free speech.

Dartmouth announced May 12 that Peter M. Robinson and Todd J. Zywicki had won the election, in which 24.3 percent of the college's alumni voted. Robinson is a Hoover Institution fellow and former speechwriter for Ronald Reagan. Zywicki is a visiting professor at Georgetown Law School and a contributor to the Volokh Conspiracy, a blog with a libertarian bent.

Dartmouth alumni choose seven representatives to the college's seventeen-member Board of Trustees. The Alumni Council usually chooses a slate of four candidates when two seats are open, as was the case this year. Robinson and Zywicki attracted enough signatures on their petitions to get on the ballot along with the four nominated by the Alumni Council.

The controversy had its roots in last year's election, in which T. J. Rodgers was elected to the board after his own petition campaign—the first in Dartmouth's history. He said at the time that concerns about free speech at the college were a key reason he wanted to join the board. He complained that college administrators were enforcing a speech code based on subjective definitions of what constituted bigoted remarks, but Dartmouth officials denied that this was the case.

Rodgers backed both of this year's winners, and some of the campaign material distributed to alumni indicated that Robinson and Zywicki supported Rodgers's views on free-speech issues. Reported in: *Chronicle of Higher Education* online, May 13.

**Eugene, Oregon**

The president of the University of Oregon has backed away from some of the more controversial parts of a proposed five-year diversity plan after some professors balked at it. Because of their objections, the plan will be sent to a committee of faculty members for further consideration. The draft plan, which was released in May, called for changing tenure and post-tenure reviews to include assessments of professors' "cultural competency." It also called for hiring thirty to forty professors in the next seven years in several diversity-related areas, including race, gender, disability, and gay-and-lesbian studies.

The plan sparked complaints from many professors. Some were frustrated by what they saw as a secretive process that created the plan, saying that faculty members did not have a large enough role in drafting it. Others were disturbed by the proposal to change tenure reviews.

"I was hired to teach chemistry and do research," said Michael Kellman, a chemistry professor. "I wasn't hired to be evaluated and even interrogated about cultural competency, whatever that is."

In a letter to the president, David B. Frohnmayer, twenty-four professors called the draft plan "frightening and offensive." They complained that it would spend too much money on "diversity-related bureaucracy."

Frohnmayer said that administrators had "taken a step back from the draft plan, given the extent of the response. We're wedded to the objectives of the plan, but not to particular steps in any lockstep way," he said. "We're a community that lives to move with a greater sense of consensus."

The plan foresees increasing diversity by changing "the ethnic makeup of the freshman class, the racial and gender balance of tenured faculty, accessibility for the disabled, and the range of perspectives shared in campus classrooms around issues of sexual orientation, gender identity, religious differences, and other characteristics that make up the campus community."

Frohnmayer sent the plan to a committee, which is made up mostly of professors, and asked them to develop a new document that more people at the university can agree upon. "It was prominently labeled as a draft," he said. "It was never meant as a fait accompli. This was a first attempt to develop a dialogue."

At the same time, the president said he understood the concerns some professors had about the phrase "cultural competency." To him, he said, the phrase means that every student, regardless of background, has an opportunity to learn. A diversity center at the university defines the term as "an active process and ongoing pursuit of self-reflection, learning, skill development, and adaptation, practiced at individual and systems levels, in order to effectively engage a culturally diverse population."

Regardless, the president said, not defining the words in the draft plan was a mistake. "I think that's a legitimate concern because there has tended to be a buzz around those words," he said. "There are those that believe this will create a role for some unseen culture cop."

Not all faculty members were disturbed by the diversity plan. Matthew Dennis, a professor of history, said some critics had overreacted, although he acknowledged that the plan could have been written better and agreed that not defining some terms was a mistake.

"There are reasonable concerns that can be worked out, especially if reasonable discussion aren't disrupted by incendiary discussions coming from off campus," Dennis said.

As the plan was sparking controversy, its chief architect announced that he was leaving the university. Gregory J. Vincent, vice provost for institutional equity and diversity at Oregon, is moving to the University of Texas at Austin to become vice provost for inclusion and cross-cultural effectiveness. Vincent said his decision was not related to the reaction to the diversity plan. Frohnmayer, the president, said the timing of Vincent's departure was coincidental. Reported in: *Chronicle of Higher Education* online, May 27.

## privacy

**Washington, D.C.**

The FBI on May 24 asked the U.S. Congress for sweeping new powers to seize business or private records, ranging from medical information to book purchases, to investigate terrorism, without first securing approval from a judge. Valerie Caproni, FBI general counsel, told the U.S. Senate Intelligence Committee her agency needed the power to issue what are known as administrative subpoenas to get information quickly about terrorist plots and the activities of foreign agents.

Civil liberties groups have complained the subpoenas, which would cover medical, tax, gun-purchase, book purchase, travel, and other records and could be kept secret, would give the FBI too much power and could infringe on privacy and free speech.

"This type of subpoena authority would allow investigators to obtain relevant information quickly in terrorism investigations, where time is often of the essence," Caproni testified.

The issue of administrative subpoenas dominated the hearing, which was called to discuss reauthorization of sections of the USA Patriot Act due to expire at the end of this year. The act was passed shortly after the Sept. 11, 2001, attacks. However administrative subpoena power was not in the original law. The proposed new powers, long sought by the FBI, were added by Republican lawmakers, acting on the wishes of the Bush administration, to the new draft of the USA Patriot Act.

Committee chair, Kansas Sen. Pat Roberts (R), noted that other government agencies already had subpoena power to investigate matters such as child pornography, drug investigations and medical malpractice. He said it made little sense to deny those same powers to the FBI to investigate terrorism or keep track of foreign intelligence agents.

But opponents said other investigations usually culminated in a public trial, whereas terrorism probes would likely remain secret and suspects could be arrested, deported or handed over to other countries without any public action. Reported in: Reuters, May 24.

**Ann Arbor, Michigan**

Two-year-old federal rules intended to ensure patients' privacy have the potential to cripple medical research, scientists at the University of Michigan at Ann Arbor have found. The privacy standards of the Health Insurance Portability and Accountability Act of 1996, known as HIPAA, could essentially shut down studies intended to evaluate the quality of health care, they reported in the *Archives of Internal Medicine*.

HIPAA's privacy rule, which went into effect in April 2003, creates new requirements for protecting medical information. But the rule's details are still being hammered out. Michigan officials and scientists thought the rule could be strictly interpreted to mean that discharged patients, such as those who had been treated for heart attacks, would have to give written consent before any researchers could contact them to do follow-up surveys. Previously, the patients were simply telephoned to ask for permission to include them in surveys.

Kim A. Eagle, a professor of internal medicine, wanted to find out how such written consent could affect the number of patients who agreed to participate in follow-up research. He led a team of researchers who compared the response rates from heart patients during two time periods.

During the first period, May 1999 to August 2001, the researchers called the patients six months after their treatment to ask them to participate in a questionnaire. Then, from September 2001 to March 2003—still before the HIPAA privacy standards took effect—the researchers sent a consent form by mail.

Of the 1,221 patients contacted by telephone during the first period, 1,177—or 96 percent—agreed to participate in the follow-up questionnaire. But of the 855 patients contacted by mail during the later period, only 329—just 38 percent—granted consent. Fourteen patients declined to participate. Demonstrating the deficiency of a mail-based system, 490 patients did not respond and 22 of the consent requests were undeliverable.

What's more, following the new procedures for obtaining consent added some $8,700 to the first-year cost of surveying patients. "Strictly interpreted," said Dr. Eagle, "the Privacy Act could have a profound negative impact on the ability of investigators to do observational research that is clearly intended for the public good." Such research, he said, aims to improve the quality of health care, not to test experimental treatments.

Michigan subsequently decided that HIPAA's privacy rules could be interpreted to allow telephoned consent. But Dr. Eagle said he worried that other institutions may interpret the standards more rigidly, effectively paralyzing their

observational medical research. Reported in: *Chronicle of Higher Education* online, May 25.

## broadcasting

**New York, New York**

The 169 stations carrying the Fox Television Network are expected to challenge the federal government's indecency crackdown by refusing to pay the proposed $1.18 million FCC fine for a raunchy *Married by America* episode featuring strippers and whipped cream. By repudiating what would be the largest indecency levy against a TV program, the stations fined $7,000 each are essentially daring the government to haul them into court. Under federal law, stations are under no legal obligation to pay FCC indecency fines unless the Justice Department takes them to court and wins a judge's order.

The dare to Washington comes as industry and free-speech activists are putting together a coalition to combat legislation on Capitol Hill that would hike maximum indecency fines from $32,500 to $500,000. The bill has been passed by the House and is awaiting a Senate vote.

At deadline, the American Civil Liberties Union was drafting an appeal to media companies and activists to mount a unified front against the legislation. As the opposition to tougher restrictions on broadcasters mounted, lawmakers and regulators further backed off threats to bring cable under the FCC's indecency rules.

Speaking at the National Cable and Telecommunications Association Show in San Francisco, House Judiciary Committee Chairman James Sensenbrenner (R-WI) said he opposed extending indecency prohibitions to cable, which provides easy-to-use channel-blocking capabilities. Cable is doing what needs to be done in giving parents the tools to make sure kids are not seeing inappropriate stuff, he said. Some members of the Senate Judiciary Committee have lobbied for restrictions on pay TV in indecency regulation that makes it to the Senate floor. If a cable provision passes the Senate, Sensenbrenner promised to educate House members to dissuade them from following the Senate's lead.

New FCC Chair Kevin Martin also favors self-regulation of cable rather than additional restrictions. The cable industry, he said at NCTA, has an opportunity to voluntarily step up. Under FCC rules, broadcasters are prohibited from airing indecent programming between 6 A.M. and 10 P.M., when children are most likely to be watching. To be considered indecent, a program must depict genitals or sexual and excretory activities in a patently offensive manner.

If Fox stations refused to pay a fine for *Married by America*, they would be exercising a legal strategy communications lawyers often threaten but rarely use. Lawyers say Justice is unlikely to sue any station that fails to pay the standard fine. Despite the easy escape, however, nearly all stations pay up because they don't want to annoy the FCC, which controls license renewals, cable-carriage disputes and other regulatory actions critical to a station's survival.

But after a year of one record-breaking fine after another, broadcasters are eager to fight the FCC over indecency. Besides, lawyers for Fox Television's thirty-five stations and the network's 134 affiliates are gambling that the FCC's legal case is so weak that even the lure of preserving the biggest indecency fine in history won't pull Justice into court.

"My advice is to not pay," said Joseph Di Scipio, an attorney for Cohn and Marks who represents Fox affiliates. "I don't think the government has a good case at all."

The *Married by America* fine could be reversed just on factual grounds, said John Crigler, a First Amendment lawyer for Washington firm Garvey Schubert Barer. There's a lot of argument about whether the episode meets the FCC's indecency standard. In their appeal to the FCC, Fox lawyers insisted the episode didn't come close to violating the FCC's indecency standard. Nudity was obscured or pixellated, and the show didn't dwell on any potentially offensive scene, they said.

The *Married by America* episode, if defended successfully, could result in the FCC stance on indecency being declared unconstitutional. But if the Justice Department declines to sue Fox stations, the industry's main avenues of attack would lie with NBC's appeal of an FCC finding against the 2003 Golden Globes, in which rock star Bono blurted out the f-word, or Viacom's appeal of the $550,000 fine proposed against CBS-owned stations for Janet Jackson's 2004 Super Bowl breast flash. Reported in: *Broadcasting and Cable*, April 11.

**Washington, D.C.**

A California Democrat accused the Bush administration April 14 of failing to cooperate fully with the inspector general at the Education Department in an investigation of the government's hiring of Armstrong Williams, a prominent conservative commentator, to promote the president's signature education legislation. The comments of the Democrat, Representative George Miller of California, came as the Federal Communications Commission and the Senate stepped into a second controversy over the public relations policies of the Bush administration, and moved toward strengthening the rules that govern how video news releases are produced and broadcast.

The Senate voted 98 to 0 to approve an amendment that would force federal agencies over the next year to disclose the origins of video releases. The releases have been repeatedly presented as real news accounts and broadcast by some television stations with no indication that they came from the government.

The measure, sponsored by Senator Robert C, Byrd, Democrat of West Virginia, requires "clear notification within the text or audio of the prepackaged news," reinforcing an earlier ruling by the Government Accountability Office that White House officials have refused to embrace.

Hours before the Senate vote, President Bush, in a question-and-answer session with newspaper editors in Washington, said the government origins of such releases should be made clear. "It's deceptive to the American people if it's not disclosed," Bush said. But he said responsibility lay with broadcasters to disclose the origins of the material. "It's incumbent upon people who use them to say, this news clip was produced by the federal government," he said.

In the Williams matter, Miller, the ranking Democrat on the Committee on Education and the Workforce, said he had been briefed by Jack Higgins, the Education Department inspector general, about the internal investigation into the commentator's promotion of the No Child Left Behind Act. "It appears that all of the information about what took place here will not be available," Miller said.

He said that the inspector general had been "denied access" to some current and former White House employees and that Education Secretary Margaret Spellings was considering invoking special privileges that would force the investigator to shield parts of his findings from the public.

White House officials said that by statute, their employees were not required to participate in investigations at the agencies and that a staff member who had been detailed to the Education Department had, in fact, been interviewed by the inspector general.

The Federal Communications Commission, meanwhile, is beginning to assert itself in the debate over the prepackaged news segments. After an article in the *New York Times* revealed in March that federal agencies had produced hundreds of news segments under the administration, more than 40,000 people petitioned the agency to take action against stations that broadcast such segments without disclosing the government's role.

The agency said that it intended to study the use of prepackaged news, and it solicited comments about how such segments are produced, distributed and broadcast. At the same time, the agency is reminding broadcasters that viewers are entitled under existing FCC rules to know who seeks to persuade them. In a public notice, the commission said that broadcasters "generally must clearly disclose to members of their audiences the nature, source and sponsorship of the material that they are viewing." This requirement is strongest, the notice stated, when "programming involves political material or the discussion of a controversial issue."

Yet while the notice appears to urge more vigorous disclosure, it also states that no disclosure is necessary when news segments are furnished to stations "without charge or at a nominal charge." Video news releases are customarily provided to news stations without charge.

A spokeswoman for the commission, Rebecca Fisher, said this exemption applied only to news segments that were neither political nor controversial. Fisher said she was not certain who would judge what is political or controversial.

Nonetheless, the commission's warning drew protests from broadcasting groups. "Any time you have the government interfering in news content, you have a huge problem," said Barbara Cochran, executive director of the Radio-Television News Directors Association. "How this material is identified should be at the discretion of the news departments." Reported in: *New York Times*, April 15. □

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*(debate . . . from page 145)*

those powers should be significantly expanded to give the FBI new authority to demand records and monitor mailings without approval from a judge.

The ranking Republican and Democratic leaders on the committee set the tone for the hearing at the outset. "We expect the men and women of the FBI to protect us," said Senator Roberts, who leads the committee, "and yet some advocate constraints that would tie their hands unnecessarily."

Minutes later, Senator John D. Rockefeller, IV, of West Virginia, the ranking Democrat on the panel, fired back by urging the Senate to explore fully any proposals to expand the FBI's authority, including one provision in the committee proposal that would allow the bureau to demand records in terror investigations through what are known as administrative subpoenas without going before a judge.

"Has the Department of Justice demonstrated to the committee that any investigations have faltered, even for one critical moment, because of the lack of administrative subpoena authority?" Rockefeller asked.

One witness, Valerie Caproni, the FBI general counsel, said that while the new subpoena power would allow investigators to move much more quickly in terror investigations, she could not point to a specific instance in which national security had been harmed because of a delay in getting records through already-available means like intelligence and criminal warrants.

"Can we show you that, because we did not get the record, a bomb went off?" Caproni asked. "We cannot."

At a separate hearing nearby, the Appropriations Committee gathered to hear from Attorney General Alberto R. Gonzales and Director Robert S. Mueller, III, of the FBI on budget matters, but several senators quickly moved off agenda to ask about the future of the antiterrorism law. Both

Gonzales and Mueller offered forceful defenses, arguing that it would do significant harm to national security if Congress failed to renew the law.

"It would be going back ten years if the PATRIOT Act were not reauthorized," Mueller said.

Critics of the law acknowledged that the Bush administration and Republican leaders, through the proposal to expand the FBI's powers, might have succeeded in shifting the focus of the debate and putting advocates of civil liberties on the defensive.

"We should be placing additional safeguards on the PATRIOT Act, not expanding it," Senator Russell D. Feingold, (D-WI) said.

Republican and administration officials said the proposal drawn up by the committee was a natural outgrowth of months of discussion on how to refine and improve counterterrorism law, and they noted that the administration had repeatedly talked about the need to expand the FBI's subpoena power. But Senator Dianne Feinstein, a California Democrat on the committee, said she was caught off guard by the proposal because, until now, the administration had suggested giving the FBI greater subpoena power in criminal cases, not in more wide-ranging intelligence investigations.

Some civil rights advocates said they considered the new proposal to be a stealth "power grab" by the FBI and the administration at a time when the Senate had been preoccupied by debate over judicial filibusters. They also said the proposal might dim chances for future compromise and lead instead to a drawn-out legislative battle in Congress.

The committee's proposal "really does fly in the face of some of the rhetoric coming out of the Justice Department lately," said Anthony D. Romero, executive director of the ACLU, which led the push to scale back the antiterrorism law. "If these are the types of changes they are open to considering, we are not optimistic about being able to find much common ground."

Attention in previous House and Senate hearings had been focused on the controversial Section 215 of the Act, renewal of which librarians have opposed. The Senate and House held oversight hearings April 5 and 6 on the Act, the first in a series of planned congressional debates to consider whether to renew the sixteen portions of the law set to expire at the end of the year.

Testifying before the Senate Judiciary Committee, Attorney General Gonzales and FBI Director Mueller defended the expiring provisions, including Section 215, which allows the Justice Department to conduct searches of library and bookstore records without a subpoena. But Gonzales also said he would consider limited changes, such as amending the law to allow those served with subpoenas to contact a lawyer. Sen. Russ Feingold (D-WI), the only senator to vote against the PATRIOT Act in 2001, praised Gonzales's approach as a "welcome change after three-and-a-half years of the Justice Department adamantly opposing any modifications and belittling critics."

Shortly before the hearings began, the Justice Department released newly declassified information about the PATRIOT Act's use, including a report that Section 215 had been used thirty-five times since late 2003. While Gonzales emphasized that the DOJ had never used the provision to obtain records from libraries or bookstores, he rejected the idea that libraries should be exempt from Section 215.

"The department has no interest in rummaging through the library records or the medical records of Americans," Gonzales said. However, "there may be an occasion where having the tools of 215 to access this kind of information may be very helpful to the department in dealing with the terrorist threat," he added. "It's comparable to a police officer who carries a gun for fifteen years and never draws it. Does that mean that for the next five years he should not have that weapon because he had never used it?"

The following day, Gonzales testified before the House Judiciary Committee, and legislators in both the House and Senate reintroduced versions of the Security and Freedom Enhancement (SAFE) Act, a bipartisan bill that would scale back the Patriot Act.

In response to these initial hearings, ALA President Carol Brey-Casiano issued a statement, which read in part: "The American Library Association (ALA) is deeply concerned about statements made before the Senate Judiciary Committee by FBI Director Robert Mueller during hearings on the USA PATRIOT Act. Director Mueller informed committee members he did not know of any written laws that protect the privacy of library records, and agreed with statements made by Senator Sessions (R-AL) that the privacy of an individual's library records should not be given special protection under the law.

"Library records are, in fact, protected by written laws. In forty-eight states, laws declare that a person's library records are private and confidential; the remaining two states, Kentucky and Hawaii, have attorneys' general opinions recognizing the confidentiality of library records.

"States created library confidentiality laws to protect the First Amendment right to read and inquire without government interference, a freedom Americans hold dear. Libraries provide the forum for the exercise of this freedom, assuring each person that there is a place for free and open inquiry without the government peering over one's shoulder. State library confidentiality laws provide library staff with a clear framework for responding to law enforcement inquiries while safeguarding against random searches, fishing expeditions or invasions of privacy.

"The ALA urges every person concerned about preserving their freedom to read freely to inform Senator Sessions and their own senators and members of Congress that

reader privacy is important, and that library records deserve protection."

Congressional committees heard further testimony from administration officials April 27 and 28 on the effectiveness of those provisions set to expire at the end of the year—including Section 215. Members of the Senate Intelligence Committee pushed for more information on the use of some of the most controversial provisions. "We need to have a more public disclosure to enhance the public's confidence in the way in which this additional and broader authority is being used," said Sen. Olympia J. Snowe (R-ME).

"Libraries should not be carved out as safe havens for terrorists and spies," federal attorney Ken Wainstein told the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security April 28, noting that terrorists had used public libraries to check airline reservations before the September 11 attacks.

Some lawmakers agreed that narrowing Section 215 to exempt libraries would be a mistake. "We put Americans' lives at risk if we foolishly provide sanctuaries—even in our public libraries—for terrorists to operate," said Rep. F. James Sensenbrenner Jr. (R-WI).

In an April 28 statement, ALA President Carol Brey-Casiano pointed out that in one case, the reason the FBI knew that terrorists had used a library "is because the librarian alerted them to this fact after recognizing the terrorists when she saw them on television. The FBI returned to the library with a warrant and had the full cooperation of the library staff when they seized the library's computer terminals."

"The testimony presented today in fact points out that library staff will readily cooperate with law enforcement when presented with a properly executed judicial order," she added, noting that the incident had occurred well before the USA PATRIOT Act was passed.

"Using the public library is one of the benefits of living in our free and democratic society," Brey-Casiano continued. "The First Amendment promises everyone in the United States a fundamental right of free speech and free inquiry. Every person is entitled to read anything about a topic or opinion without the government looking over his or her shoulder. When there is evidence of a crime or evidence that a crime is about to be committed, law enforcement officers can obtain search warrants and subpoenas permitting them to access the records of the suspected criminal.

"Library patrons use our nation's libraries with an expectation of privacy because in forty-eight states, laws declare that a person's library records are private and confidential; the remaining two states, Kentucky and Hawaii, have attorneys' general opinions recognizing the confidentiality of library records. All of these laws existed before the USA PATRIOT Act was enacted.

"The USA PATRIOT Act preempts the privacy protections provided by state library confidentiality laws, which balance protection of library patron records with the needs of law enforcement. Because the USA PATRIOT Act does not require the FBI to name an individual or to give specific reasons to believe he is engaged in terrorism, Section 215 has the potential to open patrons' reading and research records to a 'fishing expedition.'

"Like all Americans, librarians are concerned about our nation's security. Even so, targeting libraries won't make us safer. The PATRIOT Act should be amended to preserve the right to free inquiry promised by our Constitution. The freedom to use the public library is one of the benefits of living in a free and open society."

Brey-Casiano met on May 2 with Attorney General Gonzales to discuss library concerns over section 215 of the USA PATRIOT Act. The Attorney General reached out to the library community several weeks earlier, inviting Brey-Casiano to Justice Department offices in an attempt to facilitate dialogue about the needs of law enforcement and the privacy concerns of librarians.

Brey-Casiano took the opportunity presented by the meeting to reiterate the importance of preserving the fundamental rights of free speech and free inquiry by protecting the privacy rights of the library user. She assured the Attorney General that librarians' opposition to the PATRIOT Act is not an attempt to strip law enforcement of the power to investigate crimes or terrorism; it is an effort to assure that the government does not have the power to monitor reading habits of the public. The American Library Association believes that government powers should be focused and subject to clear standards and judicial review and oversight.

Brey-Casiano said, "portions of the USA PATRIOT Act abridge people's First Amendment right to read and think freely. In this country, we are entitled to read and research a topic or opinion without the fear that the government is looking over our shoulder."

The ALA offered concrete suggestions to the Attorney General that would remedy the unnecessarily broad provisions of the PATRIOT Act that threaten civil liberties. ALA suggested, among other things, a return to pre-PATRIOT safeguards on FISA Court orders to business records and "tangible things" that would require that the order name a person and specify a reason to believe that the named person is an agent of a foreign power. Other suggestions included requirements that the court order specify the records sought on an individual and that the statute provide meaningful opportunity for a recipient to challenge a FISA court order.

At the meeting, the Attorney General expressed his support for libraries and his interest in continuing the dialogue with ALA to reach an accommodation. Brey-Casiano said, "ALA welcomes the opportunity to talk with Attorney General Gonzales about the concerns the library community has about portions of the USA PATRIOT Act that intrude on civil liberties."

On May 27, the ALA thanked Oregon Senator Ron Wyden for his efforts to protect library patrons' privacy

with an amendment proposed in advance of that day's Senate Intelligence Committee closed-door markup of USA PATRIOT Act legislation. ALA, along with other civil liberties groups, had asked the committee to make the markup public, but the committee refused.

Senator Wyden's amendment to the PATRIOT Act would require semi-annual reports on the voluntary disclosure of business records for foreign intelligence purposes. The FBI already reports its use of search warrants and subpoenas for library records to the Senate committee every six months. The FBI has indicated that, in addition to these methods, it also uses "discreet inquiries" to libraries to obtain records. The proposed amendment would ensure that the FBI reports the number of requests for records that are not followed up with a warrant or subpoena, and the number of successful requests.

Despite this amendment, however, the ALA believes there remain serious problems with the bill the Intelligence Committee is scheduled to consider, including its broad expansion of FBI authority to use administrative subpoenas to get records with no judicial oversight. "We fear that librarians are being intimidated into turning over library records to FBI agents without a warrant or subpoena," said Emily Sheketoff, executive director of the ALA Washington Office. "Senator Wyden's amendment would allow the Congress to know more about FBI activity in libraries and it would also ensure that the FBI does not use scare tactics to gather library patrons' reading records."

"America's libraries and the families who use them shouldn't be subject to secret investigations and strong-arm tactics with no accountability attached," said Wyden. "I want to make certain that safeguards are in place to preserve the freedom and integrity of these vital institutions." Reported in: ALA Press Releases, April 7, 28, May 3, 27; *American Libraries* Online, April 8, 29, May 27; EPIC Alert, April 7; *New York Times*, May 25. □

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*(Muzzle . . . from page 150)*

as a Confederate battle flag; administrators at Poway High School in California for punishing a student for wearing a T-shirt that said "Homosexuality is shameful"; and the superintendent of Climax-Shelly School District in Minnesota for banning the display of the city of Climax's T-shirt, which bore the message "Climax—more than a Feeling."

"Year in and year out the largest single identifiable category has been public school administrators," said Robert O'Neil, the founder of the Thomas Jefferson Center and a leading free-speech expert. "Every year we see incidents with respect to clothing, editorials, and graduation speeches," he told the First Amendment Center Online. "This year was no different. We awarded three muzzles based on the censorship of student clothing, one based on the suppression of an editorial, and one based on the retaliation [against] a student graduation speaker. The dominance of these three areas was shown again."

One explanation for the high number of censorship incidents at public schools, O'Neil said, is the "sheer number of opportunities for suppression of expression in public schools, which exceeds any other area of public life."

"There are so many opportunities for students to test or challenge school officials' commitment to free expression," he said. "Students and administrators coming to a collision is a natural confrontation between the experimental nature of students and the post-Columbine attitude of administrators."

O'Neil said that the "particular irony" of this conflict is that public school officials often engage in censorship in a place that affords the "best opportunity" to teach about the Constitution and the Bill of Rights. "It is a particular source of regret that not only do many of these incidents present a lost teaching opportunity, but they also present the teaching of a negative lesson," O'Neil said.

Another theme of this year's Muzzles was the relatively high number of incidents involving the cultural conflict over gay rights. Three Muzzles were awarded this year over the suppression of that debate.

The gay-rights debate "presented itself in different ways," O'Neil said. "You had an individual student punished for expressing a homophobic viewpoint, a school newspaper that wished to convey a point-counterpoint article about a gay-and-lesbian student club and a legislator who was, at the very least, less than sensitive to the issue of sexual orientation."

Asked why there were more of these incidents, O'Neil replied: "There is a higher visibility and greater willingness of people on both sides of the debate to express themselves publicly on a politically volatile issue and an issue in which there is political support to be had."

This year's Muzzles also embraced both major national political parties. "Censorship is bipartisan," O'Neil said. "Here as in other areas, there is more than enough blame that goes on both sides. We see censorship from those with whom we might tend to agree and those with whom we might tend to disagree."

For the second straight year, the Thomas Jefferson Center awarded a Muzzle to a private sports entity. Last year it was the Baseball Hall of Fame. This year it was NASCAR, the National Stock Car Racing Commission, for imposing penalties upon popular driver Dale Earnhardt, Jr., for saying "shit" during a television interview immediately after winning a race at Talladega Superspeedway.

"Major professional sports are an important sector of national life," O'Neil said. "If they transgress with regard to speech or press, it seems important to discuss it. If NASCAR had only fined the driver, that might not have been as big a problem. But they also docked the driver 25 points. We felt that that was such a severe sanction for the use of a single commonly used word."

He noted that NASCAR, as a private organization, cannot actually "violate" the First Amendment. Such violations occur only if government entities infringe on free expression.

"We realize that private organizations are free to adopt whatever policies they want," O'Neil said. "But we have always been concerned with free expression beyond the core First Amendment safeguards and we have found it helpful to identify private actors who threaten the spirit of free expression."

Other Muzzles:

- Awards to the U.S. State Department for denying entry to sixty-one Cuban scholars for vague national-security concerns, and to the Department of Homeland Security for revoking the work visa of Muslim scholar Tariq Ramadan, who had been hired by the University of Notre Dame.
- Alabama State Rep. Gerald Allen for proposing legislation that would prohibit the use of state funds to purchase textbooks that "recognize or promote homosexuality as an acceptable lifestyle."
- The Motion Picture Classification and Rating Administration for giving the movie *Team America* an NC–17 rating because of a sex scene between two wooden toys. Reported in: First Amendment Center Online, April 12. □

# intellectual freedom bibliography

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