newsletter on intellectual freedom

IFC ALA

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most frequently challenged books of 2004

Robert Cormier's *The Chocolate War* tops the list of most challenged books of 2004, according to the American Library Association's (ALA) Office for Intellectual Freedom. The book drew complaints from parents and others concerned about the book's sexual content, offensive language, religious viewpoint and violence. This year marks the first in five in which the Harry Potter series does not top or appear on the ALA's annual list.

The ALA Office for Intellectual Freedom received a total of 547 challenges last year. A challenge is defined as a formal, written complaint, filed with a library or school requesting that materials be removed because of content or appropriateness. According to Judith F. Krug, director of the Office for Intellectual Freedom, the number of challenges reflects only incidents reported, and for each reported, four or five remain unreported.

"With several news reports just in the past week of books like *Bless Me, Ultima,* by Rudolfo Anaya, being removed from schools, we must remain vigilant," said ALA President Carol Brey-Casiano. "Not every book is right for every person, but providing a wide range of reading choices is vital for learning, exploration and imagination. The abilities to read, speak, think and express ourselves freely are core American values."

Anaya's award-winning book was banned from the curriculum in Norwood High School, Colorado, for offensive language. Young adult novelist Chris Crutcher's books also have come under fire in Kansas, Alabama and Michigan this year.

Four of the ten books on the "Ten Most Challenged Books of 2004" were cited for homosexual themes—which is the highest number in a decade. Sexual content and offensive language remain the most frequent reasons for seeking removal of books from schools and public libraries. The books, in order of most frequently challenged, were:

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in this issue

targets of the censor

books

periodicals

film

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coalition forms to combat PATRIOT Act restrictions

Battle lines were drawn March 22 in the debate over the government's counterterrorism powers, as an unlikely coalition of liberal civil-rights advocates, conservative libertarians, gun-rights supporters and medical privacy advocates voiced their objections to crucial parts of the law that expanded those powers after the attacks of September 11, 2001.

Keeping the law intact "will do great and irreparable harm" to the Constitution by allowing the government to investigate people's reading habits, search their homes without notice and pry into their personal lives, said Bob Barr, a former Republican congressman who is leading the coalition.

Barr voted for the law, known as the USA PATRIOT Act, in the House just weeks after the attacks but has become one of its leading critics, a shift that reflects the growing unease among some conservative libertarians over the expansion of the government's powers in fighting terrorism. He joined with other conservatives as well as the American Civil Liberties Union to announce the creation of the coalition, which hopes to curtail some of the law's more sweeping law-enforcement provisions.

But Bush administration officials affirmed their strong support for the law as an indispensable tool in tracking, following and arresting terrorist suspects. As one of his top legislative priorities, President Bush has prodded Congress repeatedly to extend critical parts of the law that are set to expire at the year's end.

The coalition of liberals and conservatives said it had no quarrel with the majority of the expanded counterterrorism tools that the law provided, some of which amounted to modest upgrades in the government's ability to use modern technology in wiretapping phone calls and the like. But the group said it would focus its efforts on urging Congress to scale back three provisions of the law that let federal agents conduct "sneak and peek" searches of a home or business without immediately notifying the subject of such searches; demand records from institutions like libraries and medical offices; and use a broad definition of terrorism in pursuing suspects.

The group, calling itself Patriots to Restore Checks and Balances, asked Bush in a letter to reconsider his "unqualified endorsement" of the law. "We agree that much of the PATRIOT Act is necessary to provide law enforcement with the resources they need to defeat terrorism," the letter said, "but we remain very concerned that some of its provisions go beyond its mission and infringe on the rights of law-abiding Americans, in ways that raise serious constitutional and practical concerns."

Although Congressional action is still probably months away, both sides are already girding for an intense debate. Previous efforts to curtail parts of the law have won significant support in Congress, but the administration and Republican leaders have ultimately beaten back the challenges. Barr said he considered the debate "the single most important issue" facing Congress.

The Bush administration has offered a sharp rebuttal to growing attacks on the law in the last two years, saying that federal agents have used their new powers sparingly and judiciously. Administration officials note that the Justice Department's inspector general and other groups that have examined the law have not documented any abuses of power.

Critics, however, counter that because most aspects of the law's use in terrorism cases remain classified, it has been very difficult to assess how it is being utilized.

Attorney General Alberto R. Gonzales has indicated that he is open to a dialogue on the future of the law and possible changes, and his chief spokeswoman, Tasia Scolinos, affirmed that pledge. "The Department of Justice has spearheaded the call for active discussion and meaningful dialogue on the reauthorization of the PATRIOT Act," she said.

Justice Department officials said they believed that the coalition's apparent acceptance of all but three elements of the law signaled that the two sides could find room for negotiation on the remaining areas of disagreement. But coalition members said that the Bush administration's commitment to a dialogue struck them as somewhat half-hearted. Paul Weyrich, who is chairman of the Free Congress Foundation and a prominent conservative who joined the coalition, said he thought the administration, and in particular the former attorney general, John Ashcroft, had adopted an "absolutist" defense of the law.

Weyrich said he took offense at comments by Ashcroft suggesting that if people raised concerns about the law, "you were aiding and abetting terrorists. I don't think my colleagues here ought to be put in that position."

Other conservatives who voiced concerns included Grover Norquist, president of Americans for Taxpayer Reform; David Keane, chairman of the American Conser-vative Union, and leaders of the Second Amendment Foundation and other gun-rights groups.

Barr said the group hoped "to compete with the bully pulpit of the White House" in prompting a more complete airing of the issues. "Missing from the debate has been a substantial discussion and analysis about restoring the checks and balances in the Constitution" while fighting terrorism, he said. Reported in: *New York Times*, March 23. □

librarians, book groups cheer reintroduction of Freedom to Read Protection Act

Organizations representing librarians, booksellers, publishers and writers gathered on Capitol Hill March 9 to cheer the reintroduction of the Freedom to Read Protection

Act, promising to mobilize readers and book lovers all over the country to press for the restoration by the end of 2005 of privacy safeguards stripped by the USA PATRIOT Act.

Representative Bernie Sanders (I-VT) announced the reintroduction of the Freedom to Read Protection Act at a press conference. He was joined by Representatives Sheila Jackson Lee (D-TX), Barbara Lee (D-CA), Jerry Nadler (D-NY), Tom Udall (D-NM), and representatives of the American Library Association, the American Booksellers Association, the Association of American Publishers, and PEN American Center.

The Freedom to Read Protection Act restores the requirement that federal law enforcement agencies demonstrate that there is probable cause to believe the individual whose records are being sought is involved in espionage or terrorism-related activities. Section 215 of the USA PATRIOT Act significantly expanded the government's power to seize business records, even the records of individuals not suspected of terrorism or any other crime, by using orders from a secret foreign intelligence court; a bookstore or library receiving such an order has no legal avenue to challenge the seizures and is barred by a gag order from informing anyone that the records have been searched.

"Last year, booksellers, librarians, publishers and writers launched the Campaign for Reader Privacy to restore safeguards for the privacy of bookstore and library records," Oren Teicher, chief operating officer of the American Booksellers Association, said. "We collected more than 200,000 signatures on petitions in bookstores and libraries, and on our Web site, www.readerprivacy.org, and we are going back to the grassroots this year to collect even more."

ALA Washington Office Executive Director Emily Sheketoff added, "the freedom to read what we choose without the government looking over our shoulder is perhaps the most basic of all the rights guaranteed by the Constitution. In seeking to curb the overly broad provisions of Section 215, we are not trying to thwart government efforts to investigate terrorists. However, we do not believe that the government needs unsupervised, secret powers to learn what ordinary Americans are reading."

Former Congresswoman Pat Schroeder, president and chief executive officer of the Association of American Publishers, said: "Americans understand the need for accurate intelligence and heightened security to prevent acts of terror. But unless we protect ourselves without sacrificing our freedom, any "security" we achieve is meaningless. This year, with Section 215 due to expire, gives us a golden opportunity and every person in this country who values the right to read freely needs to demand that Congress restore the safeguards on our privacy and our freedom to read."

Francine Prose, novelist and vice president of PEN American Center, emphasized that writers, like all Americans, support strong, targeted laws to confront terrorism and prevent terrorist attacks. But PEN, an international human rights and free expression organization, has documented how, in many countries struggling with real terrorist threats, anti-terror laws exceed their stated purpose. "We have seen time and again how weakening legal protections for individuals may create shortcuts for law enforcement, but that shortcuts inevitably lead to errors and abuses," Prose said.

"The Justice Department has yet to explain to Congress or the American people why the FBI needs the power to review the records of what you and I are reading," Prose added. "The government already had the power to review the records of anyone suspected of being a terrorist or a spy, and the one example it has cited for why it needs the powers, the case of an alleged supporter of al-Qaeda who used New York Public Library computers, is one where we believe the power it possessed before 9/11 would have allowed it to get the information it needed."

The Freedom to Read Protection was first introduced in 2003 and was co-sponsored by more than 150 members of Congress, including both Democrats and Republicans. Although the bill did not come up for a vote, Representative Sanders introduced an amendment that would have denied Justice Department funds to carry out Section 215 searches of libraries and bookstores. While the amendment went down to the narrowest defeat last July, the fight on the House floor reflected what one newspaper termed "the growing consensus on Capitol Hill that too much liberty and privacy was given up under the Patriot Act."

The reintroduced Freedom to Read Protection Act and Sen. Russell Feingold's Library, Bookseller and Personal Records Privacy Act (S. 317) are among a number of bills that would strengthen civil liberties protections that were weakened by the USA PATRIOT Act and other post 9/11 antiterrorism legislation. It is expected that the Security and Freedom Ensured (SAFE) Act, which also restores reader privacy, will be reintroduced this year. Its authors are Senators Larry Craig (R-ID) and Richard Durbin (D-IL). □

government secrecy continued to rise in 2004

The production of national security secrets continued to accelerate last year, rising to 16 million classification decisions in 2004 from 14 million the year before, according to new government statistics. Since the Bush Administration took office in 2001, annual classification activity has increased by a staggering 75 percent.

The latest figures were presented in congressional testimony by William Leonard, director of the Information Security Oversight Office. "Based upon information fur-

nished our office, the total number of classification decisions increased from 9 million in FY 2001 to 11 million in FY 2002, 14 million in FY 2003 and 16 million in FY 2004," he said.

Leonard preemptively cautioned that not all of this new secrecy is unwarranted. "For the sake of precision, I would note that, during the period from FY 2002 through FY 2004, the U.S. Government built a new structure for homeland security and engaged in wars in Afghanistan, Iraq and against al-Qaeda, so it cannot be said conclusively from these data that the increase during this period in the number of classification decisions was due solely or even substantially to the phenomenon of 'over-classification'," he told a House subcommittee March 2.

A different set of questions was left unasked and unanswered in this account: Did excessive classification activity leave the nation needlessly unprepared for the attacks of September 11? Did excessive secrecy prematurely foreclose debate on the best way to constrain Iraqi WMD programs and confront Saddam Hussein? Has secrecy inhibited accountability for violations of human rights norms?

Leonard testified at a hearing of the House Government Reform Subcommittee on National Security, chaired by Rep. Christopher Shays (R-CT), on the subject of "Over-classification and Pseudo-Classification." Reported in: *Secrecy News*, March 8. □

journalists push for open government

Seven journalism organizations and The Associated Press are joining to promote accessible, accountable and open government. The Sunshine in Government Initiative seeks to combat what the groups see as increased government secrecy since the 2001 terrorist attacks. The coalition will lobby for legislation and seek to educate the public about First Amendment issues.

"National security depends on public trust," AP Presi-dent and CEO Tom Curley said. "The trend toward secrecy is the greatest threat to democracy. We must be vigilant at explaining and fighting for accountable government in every jurisdiction."

The initiative was announced ahead of "Sunshine Week," a weeklong campaign for government openness spearheaded by the AP and more than fifty news outlets, journalism groups, universities and the American Library Association.

A bill sponsored by Sens. John Cornyn (R-TX) and Patrick Leahy (D-VT), proposes creation of a sixteen-member advisory commission that would conduct a study to determine ways to speed the release of records under the Freedom of Information Act.

Under the act, government agencies must give the public access to government information unless the information falls under certain exemptions. However, the agencies can decide on their own to disclose the exempted information.

Another bill sponsored by Cornyn and Leahy, called the OPEN Government Act of 2005, seeks to speed release of information sought in FOIA requests, which now can take months or years. It's been endorsed by the Sunshine Initiative and dozens of interest groups in journalism and across the political spectrum, from the liberal American Civil Liberties Union to the conservative Heritage Foundation.

Andy Alexander, chairman of the American Society of Newspaper Editors' Freedom of Information Committee, said he was pleased the Senate is taking up the issue. "One of the reasons that we initiated 'Sunshine Week' was to prompt a public discussion on the importance of Freedom of Information," said Alexander. "The fact that there's actually a hearing on the subject after decades of congressional silence is a heartening step."

The seven media organizations involved in the Sunshine Initiative are the American Society of Newspaper Editors, Society of Professional Journalists, Coalition of Journalists for Open Government, National Newspaper Association, Reporters Committee for Freedom of the Press, Radio–-Television News Directors Association and the Newspaper Association of America. Reported in: *San Jose Mercury-News*, March 10. □

El Segundo finds authors too un-American for its library

Authors Agatha Christie and Jack London will not be honored by having their names on two new reading rooms at the El Segundo, California, Public Library, thanks to the city council's rejection of the library's choices. At a March 15 meeting, council members objected to Agatha Christie because she was British and to native Californian Jack London because he was a socialist at one time.

"I'm a great fan of Agatha Christie. Murder mystery novels is what I read. But she's a British citizen," Councilman John Gaines said. "And I'm also a great fan of Jack London. I read all his books as a kid. But quite frankly, he was a world-renowned communist."

The two authors had been proposed for naming two small reading rooms recently constructed with a $321,000 city grant. Library Director Debra Brighton said she was surprised by the council's rejection, adding that the names were endorsed by library staff, trustees, and Friends who had chosen them from a list of twenty-five that included Jane Austen, Pearl Buck, and Ernest Hemingway. She noted that London had denounced socialism "in the latter part of

his years," and that Christie's books have been "only outsold by the Bible and Shakespeare."

Councilman Jim Boulgarides said the city's objection was "silly" and advised Brighton to run background checks the next time. "My colleagues decided we needed a political and nationality litmus test," he said. "I didn't think that was necessary." Reported in: *American Libraries* Online, March 18. □

news or government propaganda?

It is the kind of TV news coverage every president covets.

"Thank you, Bush. Thank you, U.S.A.," a jubilant Iraqi-American told a camera crew in Kansas City for a segment about reaction to the fall of Baghdad. A second report told of "another success" in the Bush administration's "drive to strengthen aviation security"; the reporter called it "one of the most remarkable campaigns in aviation history." A third segment, broadcast in January, described the administration's determination to open markets for American farmers.

To a viewer, each report looked like any other ninety-second segment on the local news. In fact, the federal government produced all three. The report from Kansas City was made by the State Department. The "reporter" covering airport safety was actually a public relations professional working under a false name for the Transportation Security Administration. The farming segment was done by the Agriculture Department's office of communications.

Under the Bush administration, the federal government has aggressively used a well-established tool of public relations: the prepackaged, ready-to-serve news report that major corporations have long distributed to TV stations to pitch everything from headache remedies to auto insurance. In all, at least twenty federal agencies, including the Defense Department and the Census Bureau, have made and distributed hundreds of television news segments in the past four years, records and interviews show. Many were subsequently broadcast on local stations across the country without any acknowledgement of the government's role in their production.

This winter, Washington has been roiled by revelations that a handful of columnists wrote in support of administration policies without disclosing they had accepted payments from the government. But the administration's efforts to generate positive news coverage have been considerably more pervasive than previously known. At the same time, records and interviews suggest widespread complicity or negligence by television stations, given industry ethics standards that discourage the broadcast of prepackaged news segments from any outside group without revealing the source.

Federal agencies are forthright with broadcasters about the origin of the news segments they distribute. The reports themselves, though, are designed to fit seamlessly into the typical local news broadcast. In most cases, the "reporters" are careful not to state in the segment that they work for the government. Their reports generally avoid overt ideological appeals. Instead, the government's news-making apparatus has produced a quiet drumbeat of broadcasts describing a vigilant and compassionate administration.

Some reports were produced to support the administration's most cherished policy objectives, like regime change in Iraq or Medicare reform. Others focused on less prominent matters, like the administration's efforts to offer free after-school tutoring, its campaign to curb childhood obesity, its initiatives to preserve forests and wetlands, its plans to fight computer viruses, even its attempts to fight holiday drunken driving. They often feature "interviews" with senior administration officials in which questions are scripted and answers rehearsed. Critics, though, are excluded, as are any hints of mismanagement, waste or controversy.

Some of the segments were broadcast in some of nation's largest television markets, including New York, Los Angeles, Chicago, Dallas, and Atlanta.

The practice, which also occurred in the Clinton administration, is continuing despite President Bush's call for a clearer demarcation between journalism and government publicity efforts. "There needs to be a nice independent relationship between the White House and the press," Bush told reporters in January, explaining why his administration would no longer pay pundits to support his policies.

In interviews, though, press officers for several federal agencies said the president's prohibition did not apply to government-made television news segments, also known as video news releases. They described the segments as factual, politically neutral and useful to viewers. They insisted that there was no similarity to the case of Armstrong Williams, a conservative columnist who promoted the administration's chief education initiative, the No Child Left Behind Act, without disclosing $240,000 in payments from the Education Department.

What is more, these officials argued, it is the responsibility of television news directors to inform viewers that a segment about the government was in fact written by the government. "Talk to the television stations that ran it without attribution," said William A. Pierce, spokesman for the Department of Health and Human Services. "This is not our problem. We can't be held responsible for their actions."

Yet in three separate opinions in the past year, the Government Accountability Office, an investigative arm of Congress that studies the federal government and its expenditures, has held that government-made news segments may constitute improper "covert propaganda" even if their origin is made clear to the television stations. The point, the office said, is whether viewers know the origin. Last month, in its most recent finding, the GAO said federal agencies may not produce prepackaged news reports "that conceal or do not clearly identify for the television viewing audience that the agency was the source of those materials."

It is not certain, though, whether the office's pronouncements will have much practical effect. Although a few federal agencies have stopped making television news segments, others continue. On March 11, the Justice Depart--ment and the Office of Management and Budget circulated a memorandum instructing all executive branch agencies to ignore the GAO findings. The memorandum said the GAO failed to distinguish between covert propaganda and "purely informational" news segments made by the government. Such informational segments are legal, the memorandum said, whether or not an agency's role in producing them is disclosed to viewers.

Even if agencies do disclose their role, those efforts can easily be undone in a broadcaster's editing room. Some news organizations, for example, simply identify the government's "reporter" as one of their own and then edit out any phrase suggesting the segment was not of their making.

In a recent segment produced by the Agriculture Department, the agency's narrator ended the report by saying "In Princess Anne, Maryland, I'm Pat O'Leary reporting for the U.S. Department of Agriculture." Yet AgDay, a syndicated farm news program that is shown on some 160 stations, simply introduced the segment as being by "AgDay's Pat O'Leary." The final sentence was then trimmed to "In Princess Anne, Maryland, I'm Pat O'Leary reporting."

Brian Conrady, executive producer of AgDay, defended the changes. "We can clip 'Department of Agriculture' at our choosing," he said. "The material we get from the USDA, if we choose to air it and how we choose to air it is our choice."

Not long ago, Karen Ryan was a much sought-after "reporter" for news segments produced by the federal government. A journalist at ABC and PBS who became a public relations consultant, Ryan worked on about a dozen reports for seven federal agencies in 2003 and early 2004. Her segments for the Department of Health and Human Services and the Office of National Drug Control Policy were a subject of the accountability office's recent inquiries.

The GAO concluded that the two agencies "designed and executed" their segments "to be indistinguishable from news stories produced by private sector television news organizations." A significant part of that execution, the office found, was Ryan's expert narration, including her typical sign-off—"In Washington, I'm Karen Ryan reporting"—delivered in a tone and cadence familiar to television reporters everywhere.

When *The New York Times* first described her role in a segment about new prescription drug benefits for Medicare patients, reaction was harsh. In Cleveland, *The Plain Dealer* ran an editorial under the headline "Karen Ryan, You're a Phony," and she was the object of late-night jokes by Jon Stewart and received hate mail.

In essence, video news releases seek to exploit a growing vulnerability of television news: Even as news staffs at the major networks are shrinking, many local stations are expanding their hours of news coverage without adding reporters.

Federal agencies have been commissioning video news releases since at least the first Clinton administration. An increasing number of state agencies are producing television news reports, too; the Texas Parks and Wildlife Department alone has produced some five hundred video news releases since 1993.

Under the Bush administration, federal agencies appear to be producing more releases, and on a broader array of topics. Several large agencies, including the Defense Department, the State Department and the Department of Health and Human Services, acknowledge expanded efforts to produce news segments. Many members of Bush's first-term cabinet appeared in such segments.

A recent study by Congressional Democrats offers another rough indicator: the Bush administration spent $254 million in its first term on public relations contracts, nearly double what the last Clinton administration spent.

Karen Ryan was part of this push—a "paid shill for the Bush administration," as she self-mockingly puts it. It is, she acknowledges, an uncomfortable title. When she went to interview Tommy G. Thompson, then the health and human services secretary, about the new Medicare drug benefit, it was not the usual reporter-source exchange. First, she said, he already knew the questions, and she was there mostly to help him give better, snappier answers. And second, she said, everyone involved is aware of a segment's potential political benefits.

Her Medicare report, for example, was distributed in January 2004, not long before Bush hit the campaign trail and cited the drug benefit as one of his major accomplishments. The script suggested that local anchors lead into the report with this line: "In December, President Bush signed into law the first-ever prescription drug benefit for people with Medicare." In the segment, Bush is shown signing the legislation as Ryan describes the new benefits and reports that "all people with Medicare will be able to get coverage that will lower their prescription drug spending."

The segment made no mention of the many critics who decry the law as an expensive gift to the pharmaceutical industry. The GAO found that the segment was "not strictly factual," that it contained "notable omissions" and that it amounted to "a favorable report" about a controversial program.

And yet this news segment, like several others narrated by Ryan, reached an audience of millions. According to the accountability office, at least forty stations ran some part of the Medicare report. Video news releases distributed by the Office of National Drug Control Policy, including one narrated by Ryan, were shown on three hundred stations and reached 22 million households. Accor--ding to Video Monitoring Services of America, a company that tracks news programs in major cities, Ryan's segments on behalf of the government were broadcast a total of at least sixty-four times in the forty largest television markets.

Even these measures, though, do not fully capture the reach of her work. Consider the case of News 10 Now, a cable station in Syracuse owned by Time Warner. In February 2004, days after the government distributed its Medicare segment, News 10 Now broadcast a virtually identical report, including the suggested anchor lead-in. The News 10 Now segment, however, was not narrated by Ryan. Instead, the station edited out the original narration and had one of its reporters repeat the script almost word for word.

The station's news director, Sean McNamara, wrote in an e-mail message, "Our policy on provided video is to clearly identify the source of that video." In the case of the Medicare report, he said, the station believed it was produced and distributed by a major network and did not know that it had originally come from the government.

Ryan said she was surprised by the number of stations willing to run her government segments without any editing or acknowledgement of origin. As proud as she says she is of her work, she did not hesitate, even for a second, when asked if she would have broadcast one of her government reports if she were a local news director.

"Absolutely not."

"Clearly disclose the origin of information and label all material provided by outsiders." Those words are from the code of ethics of the Radio–Television News Directors Association, the main professional society for broadcast news directors in the United States. Some stations go further, all but forbidding the use of any outside material, especially entire reports. And spurred by embarrassing publicity last year about Karen Ryan, the news directors association is close to proposing a stricter rule, said its executive director, Barbara Cochran.

Whether a stricter ethics code will have much effect is unclear; it is not hard to find broadcasters who are not adhering to the existing code, and the association has no enforcement powers.

The Federal Communications Commission does, but it has never disciplined a station for showing government-made news segments without disclosing their origin, a spokesman said.

Could it? Several lawyers experienced with FCC rules say yes. They point to a 2000 decision by the agency, which stated, "Listeners and viewers are entitled to know by whom they are being persuaded."

On September 11, 2002, WHBQ, the Fox affiliate in Memphis, marked the anniversary of the 9/11 attacks with an uplifting report on how assistance from the United States was helping to liberate the women of Afghanistan. Tish Clark, a reporter for WHBQ, described how Afghan women, once barred from schools and jobs, were at last emerging from their burkas, taking up jobs as seamstresses and bakers, sending daughters off to new schools, receiving decent medical care for the first time and even participating in a fledgling democracy. Her segment included an interview with an Afghan teacher who recounted how the Taliban only allowed boys to attend school. An Afghan doctor described how the Taliban refused to let male physicians treat women.

What the people of Memphis were not told, though, was that the interviews used by WHBQ were actually conducted by State Department contractors. The contractors also selected the quotes used from those interviews and shot the video that went with the narration. They also wrote the narration, much of which Clark repeated with only minor changes.

And the viewers of WHBQ were not the only ones in the dark. Clark, now Tish Clark Dunning, said that she, too, had no idea the report originated at the State Department. "If that's true, I'm very shocked that anyone would false report on anything like that," she said.

How a television reporter in Memphis unwittingly came to narrate a segment by the State Department reveals much about the extent to which government-produced news accounts have seeped into the broader new media landscape. The explanation begins inside the White House, where the president's communications advisers devised a strategy after September 11, 2001, to encourage supportive news coverage of the fight against terrorism. The idea, they explained to reporters at the time, was to counter charges of American imperialism by generating accounts that emphasized American efforts to liberate and rebuild Afghanistan and Iraq.

An important instrument of this strategy was the Office of Broadcasting Services, a State Department unit of thirty or so editors and technicians whose typical duties include distributing video from news conferences. But in early 2002, with close editorial direction from the White House, the unit began producing narrated feature reports, many of them promoting American achievements in Afghanistan and Iraq and reinforcing the administration's rationales for the invasions. These reports were then widely distributed in the United States and around the world for use by local television stations. In all, the State Department has produced fifty-nine such segments.

United States law contains provisions intended to prevent the domestic dissemination of government propaganda. The 1948 Smith–Mundt Act, for example, allows Voice of America to broadcast pro-government news to foreign audiences, but not at home. Yet State Department officials said that law does not apply to the Office of Broadcasting Services. In any event, said Richard A. Boucher, a State Department spokesman: "Our goal is to put out facts and the truth. We're not a propaganda agency."

Even so, as a senior department official, Patricia Harrison, told Congress last year, the Bush administration has come to regard such "good news" segments as "powerful strategic

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Nixon Library cancels conference on Vietnam era

The Richard Nixon Library and Birthplace has called off an academic conference focusing on the history of Presi-dent Nixon and the Vietnam War, citing financial considerations and a lack of interest. Cancellation of the event, which was to have been held April 28 and 29 in conjunction with nearby Whittier College, Nixon's alma mater, angered many historians and scholars, who said the private library is seeking to squelch discussion about the Nixon presidency.

"I thought the library had decided to bite the bullet and have historians honestly talk about Nixon with their peers," said Jeffrey P. Kimball, a professor of history at Miami University, in Ohio, and the author of *Nixon's Vietnam War* (University Press of Kansas, 1998). Kimball was scheduled to be one of twenty-six panelists.

Richard Quinn, assistant director of the library, said organizers had decided to call off the conference after only seven people registered out of a mailing of 10,500 invitations. In a letter to conference participants, John H. Taylor, executive director of the Nixon library, said the budget was based on two hundred attendees' paying $180 for the two-day event. It was to have been held on the Whittier campus and at the library, in Yorba Linda, California.

Quinn said that the library has been putting together conferences for fifteen years and that organizers "know how to read the vital signs of what's going to be a successful conference." He called the response rate "a bit embarrassing" and said planners would regroup to consider whether to stage another conference on Vietnam, perhaps next year.

In a written statement, Susan Gotsch, vice president for academic affairs and dean of the faculty at Whittier, said that "without the library's significant monetary support, and without the appeal represented by a joint presentation from the two institutions, Whittier College has concluded that pursuing this conference alone at this time is not an option."

"We are greatly disappointed by this outcome," she said.

The library and the college had differed over whether to feature Nixon-era officials, like former Secretary of State Henry A. Kissinger, at the conference. Library administrators argued that the officials' participation would have raised the profile of the conference and added policy makers' perspectives to the event, while college organizers said the officials' presence would have brought little to the academic discussion.

The cancellation came at a delicate moment for the library as it prepares to accept 46 million pages of records and 3,700 hours of recordings from the Nixon presidency from the National Archives and Records Administration. Congress, fearful that President Nixon would destroy papers and tapes when he resigned in 1974, passed a law at that time giving the government possession. Lawmakers last year amended the legislation to allow the papers to be transferred to the presidential library.

In response to the cancellation, sixteen scholars asked Congress to suspend the proposed transfer of Richard Nixon's presidential records from the National Archives to the Nixon Library and Birthplace, expressing concerns that the library would limit public access to the materials and jeopardize their preservation.

"The question is whether our historical needs are being taken care of," Stanley I. Kutler, one of the signers of the letter and a professor emeritus of history and law at the University of Wisconsin at Madison, said in an interview. "This letter is asking whether this library is responsible and able to be trusted, or if it's some sort of partisan outpost."

John H. Taylor, executive director of the library, admitted that the planning for the conference had been mismanaged. But he said that the library's withdrawal from the event had "nothing to do with our foundation's unwavering commitment to total access to these records."

"The unprofessional behavior of the Nixon Library leadership calls into question that institution's fitness to join the Presidential Library system," the letter said.

The private library, in Yorba Linda, Calif., receives no federal money now but is seeking government support in association with the transfer of the Nixon Presidential Materials collection fr-om a National Archives and Records Administration facility in College Park, Md., to Yorba Linda.

In the letter, the scholars criticized the library's request for $3 million to cover the costs of transferring the materials and "millions more" to build a new wing to house them.

President Bush did not approve the $3-million transfer fee as part of National Archives' allocation in his 2006 budget proposal, and the scholars urged legislators to support that "fiscally responsible decision."

The scholars also expressed concern that there was no legally binding agreement that the records, once at the Nixon library, would be united with Nixon's other materials from before and after his career in the White House. Access to some of those other materials might be limited, they said.

Taylor said that the library has had discussions with Congress, the executive branch, and the National Archives about how it is in the public's interest to have the materials reunited. He also said that the presidential materials would not be transferred unless there was a binding agreement with the National Archives to have a unified collection.

The scholars recommended that Congress hold oversight hearings on the arrangements between the National Archives and the library. They also said legislators should require the creation of an independent review board to monitor the existing and future presidential libraries.

The American Library Association, in a similarly worded letter also sent to Congress on Thursday, echoed the concerns expressed by the scholars. Reported in: *Chronicle of Higher Education* online, March 8, 11. □

Hays Library receives Immroth Award

The Hays, Kansas, Public Library Board of Trustees have been named the recipients of the John Phillip Immroth Memorial Award for Intellectual Freedom for 2005, presented by the American Library Association (ALA) Intellectual Freedom Round Table (IFRT).

The Immroth Award honors intellectual freedom fighters in and outside the library profession who have demonstrated remarkable personal courage in resisting censorship. The award consists of $500 and a citation.

The Immroth Award Committee recognized the Hays (Kansas) Public Library Board of Trustees because, in the words of Chair Laurence Miller, "The Board persevered long after many others would have been discouraged and defeated. The result has been a series of victories that have made Hays Public Library a role model for other libraries throughout the country."

Starting with an effort to remove Jennifer Aho's *Learning about Sex* in 1981, to a controversy in 1998 over *Daddy's Roommate*, to the current pressures to limit access to the Internet, the Board has resisted and defeated censorship efforts that "call the roll" of major censorship issues of the last quarter century. The Board also has fought off organized efforts to "pack" its membership with censors.

The Immroth Award will be presented Saturday, June 25, 2005, at a special awards reception at the ALA Annual Conference in Chicago. ☐

in review

The Encyclopedia of Civil Liberties in America. David Schultz and John R. Vile, eds. Sharpe Reference, 2005. 1141 p.

Living in a post-9/11 world has meant a number of changes for our society, both practically and philosophically. While many people endure the stricter security measures at airports, most have not been arrested, jailed, or even deported without trial. Those in the first category may feel a slight annoyance at this impediment to their right to travel, but may not think about the fundamental shift in values signaled by the hardships of those in the second category. As our society continues to struggle with its future direction at home and abroad, a review of the civil liberties that have long defined our unique national character is timely and necessary.

A good place to start this review is *The Encyclopedia of Civil Liberties in America.* Meant to complement *The Encyclopedia of Civil Rights in America* (Sharpe Reference, 1998), this new work covers a different range of topics, with the chief rationale for distinguishing between these closely allied fields explained in the preface: "Typically, civil rights issues center chiefly on rights related to the Equal Protection Clause of the Fourteenth Amendment . . . , whereas civil liberties issues center on the Bill of Rights . . . and elsewhere in the Constitution." (xxxi)

The introduction then provides a useful historical sketch of civil liberties, tracing their development from Greek city-states and English expressions of freedom to the American Revolution and subsequent events in the United States, including the impact of the 9/11 terrorist attacks.

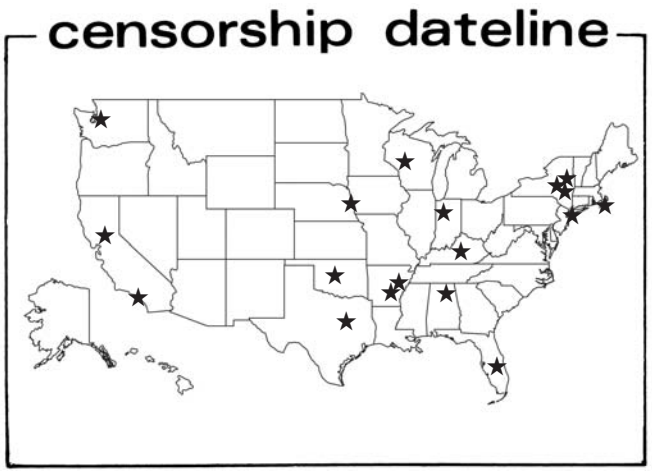
Editing the first comprehensive reference work on civil liberties is no small task. Schultz and Vile have assembled an impressive team of contributors and a broad collection of articles, with topics ranging from conceptual overviews of censorship and privacy to summaries of pertinent case law and biographies of notable figures, such as Supreme Court justices and champions of civil liberties. The historical breadth is impressive, with entries going back to the Greek roots of civil liberties and the Magna Carta and continuing forward to the USA PATRIOT Act and various federal laws on Internet filtering.

As for topical coverage, Schultz and Vile have cast their nets widely to cover all aspects of civil liberties. Gun control, human cloning, disability rights, evolution, freedom of the press, labor strikes, police power—all are brought together to remind readers of how central civil liberties are to so many aspects of our society. Rounding out the third volume are a few primary source documents, such as the Virginia Declaration of Rights (1776) and the Bill of Rights (1789); a chronology of important events, documents, and court cases; and a bibliography assembled from the further reading suggestions of each entry.

While the alphabetical listing of entries allows the reader to browse with some confidence, a few less-than-intuitive article titles (e.g., *Right to Privacy* instead of *Privacy, Right* to or even just *Privacy*) require the use of either the indexes (case law or general) or the topic finder. These finding aids are included in all volumes, which is an improvement compared to the earlier companion title on civil rights. Since the general index uses the article titles instead of more generic terms, sometimes the aforementioned problem can be solved only by using the topic finder, where the reader will finally find the topic Privacy and Reproductive Rights with a reference to the Right to Privacy article.

Cross-referencing in both the indexes and the topic finder is incomplete, with obvious gaps like omitting the *First Amendment* entry under the *Speech* topic finder. In at least one case, the cross-referencing goes beyond incompleteness to inaccuracy, with a "see" reference from *Gay Rights* going only to *Transgender Legal Issues in the*

(continued on page 137)



libraries

Limestone County, Alabama

The Limestone County School District rejected the recommendation of the district superintendent March 7 and ordered the removal of the young adult novel *Whale Talk* from all five high-school libraries in the school system, citing the book's use of profanity. "We can't allow students to go down our halls and say those words, and we shouldn't let them read it," said board member James Shannon. "That book's got a lot of bad, bad words."

Superintendent Barry Carroll had backed the recommendation of a materials review committee, whose written report states: "The message of the book is more important than the language used." The novel, which tells the story of a group of social-outcast high-schoolers who form a swim team, uses explicit dialogue to depict the impact of child abuse and prejudice in what author and family therapist Chris Crutcher calls the "native tongue" that victims use in therapy.

In an open letter to the adult populace of Limestone County—in particular the school board—Crutcher contended, "By showing our fear of issues and language that are 'everyday' to our children, we take ourselves off that short list of people to turn to in a real crisis."

A frequently challenged title this year, *Whale Talk* was removed in January from the suggested reading list for a pilot English-literature curriculum by the superintendent of the South Carolina State Board of Education. A month later, the book came under fire at the Grand Ledge (Michigan) High School. Reported in: *American Libraries* Online, March 11.

Merced, California

In response to a complaint from the mother of a middle-schooler, the Merced City School District has pulled the novel *Life Is Funny*, by E. R. Frank, from the shelves of two middle-school libraries. "It's a book that I believe isn't even appropriate for high school," reacted Assistant Superintendent RoseMary Duran, who ordered the book's removal after a February 28 phone conversation with complainant Necola Adams.

Adams, whose twelve-year-old daughter Hailey brought the book to her mother's attention, objected to what she characterized as an "X-rated" passage describing two teens' first experience with sexual intercourse.

"There's a lot of things influencing our kids. We don't need it in the schools," she said, noting that she and her husband screen the music and movies they allow their children to enjoy.

One of the titles on the 2001 Quick Picks for Reluctant Young Adult Readers list issued by the American Library Association's Young Adult Library Services Association, *Life Is Funny* recounts through a series of vignettes seven years in the intertwined lives of eleven Brooklyn teens who deal with such issues as abuse, drug addiction, promiscuity, and pregnancy. "The reviews are very, very, very good," Director of Curriculum and Staff Development Nanette Rahilly said, adding that officials "upon scrutiny" found the novel "highly inappropriate for our students." She went on to speculate that school librarians probably ordered it as part of a preselected accelerated-reading list without having read it themselves. Reported in: *American Libraries* Online, March 4.

Lake Wales, Florida

A Lake Wales elementary school agreed to remove a children's book from its library after a parent complained about some of the work's subject matter. Spook Hill Elementary's media committee voted February 23 to remove *Anastasia Again*!, by Lois Lowry, from its library shelves.

The book is intended for children nine through twelve—and is the second in a series about the life of a preteen girl named Anastasia Krupnick. The vote came after parent Kristi Hardee raised concerns about some of the book's material.

In *Anastasia Again*!, the girl is forced to deal with her parents' decision to move from their apartment in the city to the suburbs. But Hardee complained that the book's references to beer, *Playboy* magazine and Anastasia making light of wanting to kill herself were inappropriate for children. She sought to have five other books from the series removed, but the committee only voted to ban *Anastasia Again*! Reported in: First CoastNews.com, February 24.

Shelbyville, Kentucky

Joe and Candy Riley want the book *Alice on the Outside* to stay outside of their daughter's school, but a committee which considers such complaints opted for a temporary compromise. Saying the book is too sexually explicit for middle school students, the Rileys took their complaint to the East Middle School's Book Challenge Committee, where members reached their compromise March 22. The book, which was on loan in the school library, will be available in the librarian's office only, and only with parental permission.

The Rileys say the book, which is recommended by the book's publisher, Simon and Schuster, for children ages ten to fourteen, contains explicit sexual content not suitable for children that age.

Written by Phyllis Reynolds Naylor, the book is one of a series following the character of Alice as she grows up. In *Alice on the Outside*, the character of Alice questions an adult family member about things relating to sex, including how it feels to have intercourse and masturbation. The author uses graphic terms throughout the book. The Rileys also say the author advocates lesbianism and multiple sex partners.

According to Shelby County Public Schools policy, the East Middle Book Challenge Committee had ten days to respond to the Rileys' challenge. Comprised of Principal Patty Meyer, librarian Louise Watts, seventh-grade teachers Debbie Meredith and Suzanne Guelda, and parents Sandy Phillips and Angela Best, committee members each voiced concerns about or support for the book before agreeing to the compromise.

Meredith said reading the book was like talking to a seventh-grade girl, and that she thinks the author deals with the issues contained in the book well. "I think the total message is a great one," Meredith said.

Guelda agreed, stating that Alice, the main character, seeks advice from someone that she loves and trust for her embarrassing questions. "That was the overall theme, and I really would hate to see it pulled," Guelda said.

However, both parents on the committee agreed with the Rileys.

Although Phillips, whose daughter is in sixth grade, said she felt that the story was a good one, she said she had a problem with the words the author used and the maturity level of the content. "I understand a child would seek answers to these questions," Best said. "But the sex is way too much for this age group. I wouldn't let my daughter read it."

"Reading is a choice, and as such, I think it should stay on the shelf," Watts said. "I think they have the right to make choices. It's called intellectual freedom. We don't want to get into rating books."

Best, however, disagreed. "We as the public, sending our kids to public school, have to rely on the librarian to make these choices for our kids," she said. "I'm still for pulling the book."

After an initial 4–2 vote to keep *Alice on the Outside* available, the committee compromised and will make its recommendation to Superintendent Elaine Farris, who will make the final decision. Reported in: *Shelbyville Sentinel-News*, March 23.

Omaha, Nebraska

Less than a month after rescinding a years-old policy barring patrons under eighteen from borrowing films rated R, the board of the Omaha Public Library voted 7–1 at a March 16 meeting to reinstate it. The reversal was prompted by public criticism of the trustees' February decision to allow age-neutral checkout privileges for films unless a parent or guardian requested that a block be placed on the library card of a minor.

At the meeting, area resident Bonnie Beacom testified, "There are so many negative influences out there, and I really don't think the public library should be something we have to protect our kids from." The lone board member who dissented, Carol Gendler, responded, "It should be a parent's decision as to what children check out at the library."

Among the trustees voting to reinstate the original policy was Cliff Herd, who had originally backed the February revision and was one of two candidates seeking to unseat an Omaha city council member in the April 5 primary. He explained that the board "wanted to respond to [the community's] concern and not have those materials available to juvenile cardholders." One of Herd's opponents in the primary, Mike Cavanaugh, has been outspoken in favoring checkout restrictions for minors, and issued a press release praising the policy reinstatement. Reported in: *American Libraries* Online, March 18.

Oklahoma City, Oklahoma

Oklahoma state legislators are calling a popular children's book about a gay prince "obscene" and saying it should reserved only for adults. Seventy members of the legislature signed a petition calling for the book to be removed from the children's section and placed in the adult section of libraries.

The book, *King and King*, by Linda De Haan and Stern Niljand, has been under attack by conservatives in several states for nearly two years. In it, Prince Bertie searches for love through a bevy of eligible princesses before falling for Prince Lee. The thrity-two-page book ends with the two princes sharing a kiss.

King and King is aimed at elementary school children and helps teach diversity.

"I don't want to restrict free speech [but] parents don't even know a lot of times that these kinds of materials are available for children to check out," said Mike Jackson (R-Enid)

"I just found it offensive that it was a children's book with a homosexual theme. I just don't think that's appropriate for children's reading. It offends me," said Curt Roggow, another Enid Republican.

The lawmakers presented their petition to the Metropolitan Library Commission which oversees libraries in Oklahoma County. The Commission has not issued a reply. Reported in: 365Gay.com, March 29.

Seattle, Washington

Five federal officials, including three from the Central Intelligence Agency, removed eight documents from the University of Washington library's collection of the papers of the late Sen. Henry M. (Scoop) Jackson, and blacked out details on about ten others. Library officials said they do not know which documents were taken, and the federal authorities are not talking.

The action, taken in February by a team from the External Referral Working Group, an interagency organization charged with overseeing the disposition of federal documents, was prompted by a report to federal authorities by the library ten years ago. At that time, a researcher discovered a document stamped "classified" among the papers of Senator Jackson, who represented Washington State in the United States Senate from 1940 until his death, in 1983. Soon afterward, his widow, Helen Jackson, donated his papers to the university.

Since then, hundreds of researchers have studied the papers, but it was not until February that the team of federal investigators—from the Departments of Defense and of Energy as well as the CIA—came to the special-collections division of the university's Suzzallo-Allen Library. For three days they pored over about 470 of the 1,200 boxes of papers in the collection, most of which date from Jackson's long career in Congress.

The investigators told library officials that the document that had raised concern ten years ago had now been declassified, but that they had discovered eight still-classified documents in the collection.

Library officials said they believed the removed documents included some correspondence and a memorandum, but they did not know any more than that. "I can't tell you what was taken; I honestly don't know," said Carla Rickerson, the library's director of special collections. "They're classified, so once they were removed, we can't see them."

Presumably, she said, they were classified documents that had been overlooked when the library processed the large Jackson collection after acquiring it, and made it available to the public.

Rickerson said it is not unusual to find documents marked "classified," "confidential," or "secret" among new donations of papers from figures like Jackson, who was a senior figure on issues of national defense, foreign policy, and the environment. "But usually we review them for that before we process them," she said. "It's unusual to find them now, because we thought they'd been completely reviewed."

The university's facilities security officer, Kelley P. Knickerbocker, said the removed documents, which are now under her supervision, have been secured in a vault on another part of the campus. Knickerbocker's post is one that must exist at all institutions that receive federal defense contracts. Facilities security officers are trained by federal agencies to ensure that classified materials are handled in keeping with federal regulations.

Knickerbocker said that, in addition to removing eight documents from the collection, the investigators had discovered about ten other documents whose authors they deemed to be classified information. So the agents blacked out that information from the documents before returning them to the collection. "It wasn't that the content even was classified," she said.

Such removals and redacting are "not uncommon," she said. What is unusual, however, is how long it took federal officials to act on the university's request for clarification of the status of the document discovered ten years ago.

"We were very pleased that, in 470 boxes, they only came out with about ten items," she said. "That means our initial review was a good one. We had cleared the collection of most of the sensitive material."

She suggested that the decade-long delay in the federal officials' follow-up underscored that such work is "not high in their priorities." Reported in: *Chronicle of Higher Education* online, February 21.

schools

Lowell, Indiana

The parents of a sixth-grader are challenging the book *Daughters of Eve* and its appropriateness on the middle grade approved reading list. Amy and James Hendrick said their twelve-year-old daughter selected the book by Lois Duncan, but was unaware of its content. The book is about a high school teacher who "uses the guise of feminist philosophy to manipulate the lives of a group of girls with chilling results."

Duncan is the popular author of *I Know What You Did Last Summer* and other titles. Lowell Middle School Principal John Alessia called her the "Judy Blume of this generation."

After reading the book themselves and finding profanity and sexual content, Amy Hendrick said she and her husband approached the school, and were unsatisfied with the response they received. However, Ursula Andrews, assistant superintendent of curriculum, said the School Board has a process in place for such situations, and that process was followed. Specifically, a committee met to discuss the Hendricks' concerns and provided its findings to the school board, she said.

"The decision now is in the hands of the School Board," Andrews said. She declined to discuss the details of those findings, but according to Amy Hendrick, the committee determined that because her daughter made the choice to

read the book the school district does not plan to take any action.

If the parents are not happy with the findings, Andrews said, they may appeal.

Hendrick said her daughter chose the book based on the point system set up by the school. All students are required to read a book from the approved reading list every nine weeks. Each book is assigned a point value based on the difficulty of the reading level, with more difficult books receiving higher points. Students earn rewards based on the points amassed through reading the books.

Hendrick said her daughter reads at a high school level and chose *Daughters of Eve* because, "She didn't want them to think she wasn't reading to their expectations."

Alessia, who sat on the committee, said the book published in 1979 has never been challenged in Lowell. He said he could find only one instance, in Fairfax, Virginia, where the book was removed from middle school classrooms.

Andrews, who read the book after the couple expressed concern, said, "There are major, valuable lessons (in the book), but they are mature."

Amy Hendrick said she and her husband are not interested in banning the book, but would like to see PG-13 stickers or something similar on the book to alert parents. Another alternative, she said, would be to remove the book from the sixth grade reading list. "My daughter's age level and reading level do not coincide," Amy Hendrick said. Reported in: nwtimes.com, February 18.

Shelbyville, Kentucky

The Slave Dancer is a work of historical fiction depicting the slave trade of the 1840s. To Sharon Yocum, whose eighth-grade daughter is reading the book in her English class at East Middle School, it is a too-graphic depiction of the slave trade.

The students in Joy Weitzel's English class had been reading *The Slave Dancer* for two weeks and were about to finish the book. But on March 21, Yocum took her daughter out of the class when the teacher played a tape recording of the book; she has kept her out of the class all week. Yocum said her daughter was bothered by the description of beatings.

"She got really upset when she read about how cruel they were," Yocum said. "It was too graphic when it described the beating."

The girl was also upset that the "N" word was used in the book. She told her mother that when it was read, some of the students in the class snickered and giggled. Yocum's daughter is the only African American in the class.

The book uses the "N" word thirteen times, Yocum said; she has the pages marked with yellow Post-It notes where the word appears. Yocum did not take her daughter out of school for the whole day but had her leave school while Weitzel's English class was in session.

The "N" word is inappropriate in a book used in school, Yocum said. "They say they get on kids who use that word on one another,but how can they do that when they are teaching from a book with the word in it? They are sending mixed signals."

Yocum called in the help of the Rev. Louis Coleman of the Justice Resource Center in Louisville and a group of black ministers, including the Rev. Robert Marshall and the Rev. Joe Overall, to take up her cause. Coleman met with East Middle Principal Patty Meyer. In an interview after that meeting, Coleman said he asked that the book be discontinued and no points be deducted from Yocum's daughter's grade.

"We're here to support this mother who doesn't want her daughter exposed to a word that is demeaning," Coleman said. "That is not a very positive educational environment."

Shelby County Public Schools Superintendent Elaine Farris met with Weitzel and Meyer. Farris said the school will review the use of the book next year, but her primary concern was that a student was made to feel uncomfortable in a classroom because of her race.

"Will we continue to use books with those words? Maybe; maybe not," Farris said. "The important thing is that we be sensitive to the students we are teaching. What may not have been offensive to one student may be offensive to another. Could we have done something different? That's the issue we will have to address in how we teach these books."

The Slave Dancer, by Paula Fox, is a 1973 Newberry Award winner. The story, set in the 1840s, is of a white boy who is kidnapped and hauled aboard a ship bound for the slave trade in Africa. The boy's job is to play the fife and "dance" the slaves to keep their muscles in shape. The schools' Public Relations Coordinator Duanne Puckett said the book was chosen by East Middle Schools eighth-grade social studies team as part of a unit on the Civil War.

"The team decided it was an excellent example for teaching about slavery," Puckett said.

A number of American classics, including *Huckleberry Finn*, by Mark Twain, have the "N" word used frequently. Coleman said those books do not belong in schools. "Some people are not sensitive to that word, but some are," Coleman said.

Yocum has filed a report with the schools complaining about the book. The schools' policy is to review any complaints and make a recommendation about using the book within ten days. Puckett said the book "probably would not be used again next year."

The schools offered to allow Yocum's daughter to read an alternative book and make up her classroom work with other assignments so her grade would not be affected. The teacher also stopped playing the tape recording of the book.

Yocum said she will take her daughter back to class only after the group is finished with the book. She will not require her daughter to read another book. "She should not

have to read another book because that book is not appropriate," Yocum said.

Yocum said she will "take it another step" if her daughter's grade suffers because she will not read another book because "everyone should be treated equally." *Shelbyville Sentinel-News*, March 24.

New York, New York

The New York City Department of Education will prohibit a professor of Arab studies at Columbia University from appearing in an occasional training program for secondary-school teachers, citing the professor's criticism of Israel. Rashid Khalidi, director of Columbia's Middle East Institute, had spoken at one of a series of teacher-development workshops, paid for by the university, about Middle Eastern culture and politics. But after *The New York Sun* published an article assailing Khalidi's involvement in the program, Joel I. Klein, the city's schools chancellor, announced that the professor would no longer be allowed to participate.

"Considering his past statements, Rashid Khalidi should not have been included in a program that provided professional development for DOE teachers, and he won't be participating in the future," Jerry Russo, Klein's press secretary, wrote in an e-mail message to the *Sun*.

In the past year, Khalidi participated in two training sessions. Neither generated any controversy. But Columbia's Arab-studies professors have come under heavy fire from politicians and newspapers like the *Sun*, which have accused the professors of promoting pro-Palestinian views, disparaging Israel, and intimidating pro-Israel students.

Last fall Anthony Wiener, a Democratic member of Congress who is now running for mayor of New York, urged Columbia to fire a colleague of Khalidi's—Joseph A. Massad, a professor of Arab politics—for his purportedly heated attacks on Israel. The criticism was alleged to have taken place in class, where Massad was said to have badgered students.

Khalidi criticized Wiener and the *Sun* for attacking Columbia professors and the field of Arab studies in general. "I think there's a broad attack on professors of the Middle East, and it's based on calumnies, innuendo, and taking situations out of context," he said.

Khalidi also blamed the Columbia administration's "supine" response to the controversy, which, he said, has emboldened his critics. In the wake of the allegations about Massad, the university established a committee to look into claims that students were intimidated in class. Hundreds of people, mostly college faculty members, have signed a petition urging Lee C. Bollinger, Columbia's president, to defend Massad and to condemn the accusations leveled at the professor.

Khalidi was among the petition's signers. "The sooner there's an organized response to these people who have absolutely no scruples about twisting the truth, the better," he said.

Columbia officials have not officially commented on the city schools' decision to ban Khalidi from the training program. In a statement released after Massad came under fire last fall, Bollinger pledged to uphold the university's policy on freedom of expression, but added, "We believe that the principle of academic freedom is not unlimited." Reported in: *Chronicle of Higher Education* online, February 22.

Arrowhead, Wisconsin

When Karen and Kurt Krueger picked up their son's Modern Lit book, *The Perks of Being a Wallflower*, by Stephen Chbosky, they were in for an education they weren't quite expecting, with passages describing a date rape, teen suicide and extensive profanity. "We were shocked and appalled," says Karen Krueger. "We had to do something."

And so they did. The Kruegers contacted Arrowhead High School with their concerns and ultimately filed a formal written complaint, requesting that the book be removed from the curriculum. The issue went before the Arrowhead School Board and an ad-hoc review committee. The school board decided in mid-December to keep the book in the curriculum, although reading the book is optional and parents can choose to have their children read something else.

Christopher Ahmuty, executive director of the American Civil Liberties Union of Wisconsin, said the ACLU is monitoring the situation at Arrowhead High School. "It is our understanding that accommodations have been made for those parents who feel that the book is offensive," he says. "If a parent wants to make that decision, we don't have a problem with it. But that decision becomes problematic when it relates to other students, such as in a library or classroom."

Karen Krueger, however, questions the extension of First Amendment rights to minors. "The Constitution applies to taxpaying adults," she notes. "And as taxpaying adults—as parents—we are responsible for our minor children.

"Is this censorship?" she asked. "To me, it is more an issue of choice, which is not censorship. Choice means choosing one text over another. I think there are better choices and better books out there for students to be reading. Keep the book in the library but take it out of the classroom."

In the school's textbook justification for *The Perks of Being a Wallflower*, the book is considered appropriate due to the issues it addresses as well as its ability to act as a "gateway to other, more difficult, literature." The book was proposed with some understanding of its controversial nature, noting that in the past, "Some have felt these topics are not appropriate for a high school class." Alternative, appropriate books are suggested. The justification also notes that students are given the opportunity to write an essay on the appropriateness of the book and many of the sociological issues are addressed in class discussions.

Despite the book's professional pedigree, the Kruegers also believe that the community's standards are not being considered. "The school board members know and are a part of the community," she says, noting that about fifty

community members have consistently attended the school board meetings in response to the *Perks* issue. "Look at our voting records, look at our community's standards. We are not alone in our concern."

As of late December, *Perks* remained part of the Modern Literature course curriculum. The end result, thus far, does not satisfy the Kruegers. "We're disheartened on so many levels," admits Krueger. Reported in: gmtoday.com, February 25.

student press

Fordyce, Arkansas

Fordyce High School officials announced at a school board meeting March 14 that they plan to fire the teacher who advises the student newspaper, Jennifer Baker, who claims a recently instituted policy requiring principal Bobby Brown to review articles before publication violates the Arkansas Student Publications Act. Baker opposes the policy and said it needs to be repealed or rewritten.

The Arkansas Student Publications Act requires school districts to adopt policies allowing students the right to express themselves, including the right of expression in school-sponsored publications. Student expression is permitted whether the publication is created on school grounds, financially supported by the school or operates as part of a course.

Brown introduced his policy on January 27 after objecting to content in two issues of the newspaper, including an article that was critical of the school's test schedule and a student's quote regarding her Valentine's Day plans to, "Cook for [my boyfriend] and watch a few love videos. Maybe a little later on something special will go down." The administration perceived the quote as sexual and inappropriate.

Brown said Baker had failed to "properly supervise," which had resulted in "inaccuracies" and "distasteful content" being published in the newspaper.

Brown did not recommend that the district rehire Baker, who has voiced her opposition since the policy was instituted, for the 2005–2006 school year. Because she was the only teacher not recommended for rehire, Baker, a first-year teacher at the school, said she believed the decision was due to her stance against Brown's policy. Baker said the superintendent, Wayne Freppon, confirmed her suspicion the day after the school board meeting.

"I came right out and asked [Freppon], 'Is it your opinion that administrators want me gone?'" Baker said. "And he said 'yes.'" According to district policy, the school has until May 1 to provide documentation of her teaching error and ways officials attempted to help Baker improve. According to Baker, Freppon told her the administration is "looking" for a reason to fire her.

Baker said she is grateful for the chance to "stand up for what's right in the face of adversity. [The policy] has made me reevaluate why I became an educator," Baker said. "I believe educators should embrace diversity, especially the diversity of opinion."

At the March 14 meeting, the school board temporarily lifted Brown's prior review policy with a 3–2 vote. The decision is pending until the school board receives an opinion from Arkansas School Boards Association attorney Kristin Gould, who is reviewing the policy to determine if it is legal. In addition to the policy, Gould has been reviewing the 1995 Arkansas Student Publications Act and federal law.

Jayce Ables, co-editor of the *Hi-Times*, said she and the staff were "glad" the policy had been temporarily lifted, but also anxious because the decision is not final. Baker said she believed that even though the policy was lifted it may not deter the administration from trying to review the content of the newspaper. "If [the administration] reads something this month they don't like, they could enforce [the policy] again," Baker said.

Baker said if the school board does not rewrite the policy, she and the newspaper editors will seek legal action against the school. Reported in: Student Press Law Center, March 25.

Fullerton, California

Civil rights lawyers have entered the fray over the actions of an Orange County student journalist, urging school district officials to reverse their decision to punish her for an article published in a campus newspaper. In a strongly worded, three-page letter, the American Civil Liberties Union of Southern California criticized officials at Troy High School in Fullerton for removing senior Ann Long as editor-in-chief of the *Oracle*.

Long, 18, was unseated in February after printing an article in which she chronicled the decisions of three students to reveal their homosexuality and bisexuality to family and friends.

"We're asking the school to put Ann back in her position," said Ranjana Natarajah, the ACLU lawyer who sent the letter to Fullerton Joint Union High School Supt. George Giokaris. "None of the justifications the school has given [for punishing Long] fit."

The letter was co-signed by representatives of the California Safe Schools Coalition, the Gay-Straight Alliance and the National Center for Lesbian Rights.

School and district officials have offered various reasons for removing Long. They first accused her of violating a state law that prohibits asking students about their sexuality without parents' consent. Officials instead admonished Long for breaking widely held journalist standards and for allegedly ignoring orders from her teacher to obtain permission from the parents mentioned in the article. Long has

repeatedly denied that her teacher instructed her to get the parents' consent.

Natarajah faulted the district for violating a state law that offers broad protection for student journalists and requires school officials to prove that a story is libelous, obscene or will threaten safety before they can interfere.

Natarajah also challenged school officials' assertion that they did not object to Long writing about homosexuality, questioning why they allowed a previous article on pregnant students.

"We fail to see how Ms. Long's article differs materially from the pregnancy article. If the school punished Ms. Long solely because her article concerned perspectives on sexual orientation with which the school disagrees, that would certainly violate" the law, she wrote.

Long said she had no immediate plans to pursue legal action. Reported in: *Los Angeles Times*, March 8.

Ithaca, New York

The censorship of a cartoon in the February edition of Ithaca High School's student newspaper, the *Tattler*, incited debate regarding First Amendment rights. Editor-in-Chief Rob Ochshorn, a senior, said the paper's relationship with the school changed when the administration imposed new guidelines for the *Tattler* at the end of January.

"The district says the *Tattler's* function is to teach students about journalism," Ochshorn said. "We are saying the function is to provide an outlet for student expression."

Under the new guidelines, the adviser of the newspaper has the right to change, edit or remove content that "would substantially interfere with the district's work or impinge upon the rights of other students" or "is inconsistent with the legitimate pedagogical concerns of the district."

When the *Tattler's* adviser, Stephenie Vinch, removed a cartoon intended to appear with a Valentine's Day article about love and sexual education, the story ran with an empty box in its place. The cartoon depicted a health education teacher pointing to a blackboard with stick figures arranged in sexual positions. The text read, "Test on Monday."

Ochshorn, along with other editorial board members, appealed to Principal Joe Wilson, who decided not to reverse Vinch's decision or remove the new guidelines. Ochshorn said the students have appealed to Superintendent Judith Pastel.

In a letter to Ochshorn, Wilson said the cartoon was "obscene and not suitable for immature audiences, and consequently, was inconsistent with the educational mission and concerns of the District."

Andrew Alexander, the *Tattler's* news editor, said rumors of new guidelines began after critical reporting of Wilson's policies and complaints over a review of Ralph's Ribs. "Most of the administration seems to feel the purpose of a newspaper is not so much to inspire criticism and start debate, but rather to make everybody feel better and make everyone proud of the high school," Alexander said.

William Russell, assistant superintendent of instruction and curriculum, said criticism of the principal was not a reason for new guidelines. Russell said students believed the adviser's role was to offer advice that they were free to reject, but he said this was never the case.

Mike Heistand, attorney for the Student Press Law Center in Arlington, Virginia, said school administrators assume that they have an unlimited license to censor anything. "The court has made it clear that students in schools do not lose all of their First Amendment protection simply because they walk in the door," Heistand said.

When asked if the school was willing to compromise with the students, Russell would not answer directly.

Ochshorn said the administration is trying to turn the *Tattler*, a traditionally open forum, into a closed forum. He said he is willing to take the dispute to court if necessary.

"The Student Press Law Center has assured us that if we take this to court, we will win," Ochshorn said.

Heistand said the center would also help the students find a pro bono lawyer. Reported in: *The Ithacan*, March 3.

colleges and universities

Jonesboro, Arkansas

Ministers from twenty churches have banded together to protest rap performer Nelly's upcoming performance at Arkansas State University. "When we started seeing some of the vile and filthy lyrics . . . we thought we should get involved," said the Rev. Adrian Rodgers of the Fullness of Joy Church. "Jonesboro is a wonderful city because of what does not come here."

Rodgers said he was concerned about lyrics that include references to drugs, sex and violence and songs that he said are demeaning to women. He and the other pastors urged area residents not to buy tickets to the March 12 concert because they are worried that bringing such acts to Jonesboro would lead to problems.

"Tear the tickets up," Rodgers said. "Do not go and do not allow your children to go."

Tim Dean, director of ASU's Convocation Center, where the concert was to be held, said ticket sales were brisk. "It would appear that with ticket sales over 5,000, many others have expressed their right and find Nelly's music entertaining and worth spending their time and money on," Dean said. The ministers said that even if they don't stop Nelly from coming to town, they hope their protests will prevent other rappers from scheduling shows in Jonesboro. Reported in: Associated Press, March 3.

Cambridge, Massachusetts

The woman who epitomised the 1979 Nicaraguan revolution that overthrew the dictator Anastasio Somoza has been denied entry to the United States to take up her post as a

Harvard professor on the grounds that she had been involved in "terrorism". The decision to bar Dora Maria Tellez, one of the best-known figures in recent Latin American history, who has frequently visited the United States in the past, has been attacked by academics and writers.

It came at a time when President George Bush has appointed as his new intelligence chief a man associated with the "dirty war" against the Sandinistas in Nicaragua.

A spokeswoman for Harvard University said it was "very disappointed" that Tellez would not be taking up her appointment.

Tellez was a young medical student when she became a commandante with the leftwing Sandinistas in their campaign to topple the dictator. She was Commander 2 in 1978 when a group of guerrillas took over the National Palace and held 2,000 government officials hostage in a two-day standoff. After negotiations, she and the other guerrillas were allowed to leave the country. The event was seen as a key moment that indicated the Somoza regime could be overthrown.

Tellez later led the brigade that took Leon, the first city to fall to the Sandinistas in the revolution, and she is celebrated as one of the popular figures of the revolution. She became minister of health in the first elected Sandinista administration.

Last year Tellez, now a historian, was appointed the Robert F. Kennedy visiting professor in Latin American studies in the divinity department at Harvard, a post which is shared with the Rockefeller Centre for Latin American Studies. She was due to start teaching students this spring.

The U.S. state department has told her she is ineligible because of involvement her in "terrorist acts". A spokesman for the department confirmed that she had been denied a visa under a section making those who had been involved in terrorist acts ineligible. He said he could not comment further on the reasons for the ban.

"I have no idea why they are refusing me a visa," said Tellez from her home in Managua. "I have been in the United States many times before—on holidays, at conferences, on official business."

A number of academics and writers are protesting the ban. "It is absurd," said Gioconda Belli, the Nicaraguan writer who was also an active member of the Sandinistas and is now based in Los Angeles. "Dora Maria is an outstanding woman who fought against a dictatorship. If fighting against tyranny is 'terrorism' how does the United States justify the invasion of Iraq? It is an insult."

Belli, whose memoirs of her time as a Sandinista, *The Country Under My Skin*, was published two years ago, said many people were puzzled and angry about the decision. Professor Andres Perez Baltodano, a Nicaraguan sociologist based in Toronto, said: "Dora Maria is as much a terrorist as George Washington." He described the taking of the National Palace as a heroic act which had helped to lead to the overthrow of a dictator.

The U.S., under President Ronald Reagan, opposed the Sandinistas even after they had been elected in 1984 and supported the contras, or counter-revolutionaries in their attempts to overthrow them. In the 1987 Irangate scandal, it was discovered that the United States was secretly supplying arms to Iran in exchange for money being channeled to the contras. When Bush took office he rehabilitated a number of people associated with the contras and one, John Negroponte, is now his chief of intelligence responsible for dealing with terrorism. Reported in: *The Guardian*, March 3.

Clinton, New York

A Hamilton College program director has resigned after igniting a furor by inviting to the campus a controversial professor who compared September 11 victims to Nazis. Nancy Rabinowitz said she was resigning "under duress" as director of the Kirkland Project for the Study of Gender, Society and Culture. She will continue to teach comparative literature.

Her departure came on the heels of a February 3 speaking invitation extended to University of Colorado Professor Ward Churchill, whose essay written shortly after the September 11 terrorist attacks compared the World Trade Center victims to "little Eichmanns," a reference to Adolf Eichmann who ensured the smooth running of the Nazi system.

Rabinowitz also drew fire in November when the program she headed offered a temporary teaching position to 1960s radical Susan Rosenberg. "I would have preferred to stay on until I took my long-awaited sabbatical," Rabinowitz said in a statement posted on the Kirkland Project web site and released by the school. She has been the project's only director since the program was founded in 1996.

"What the project needs now is someone more adept at the kind of political and media fight that the current climate requires. Therefore, it is in the interests of the mission of the project itself and for no other reason that I am yielding to requests that I resign," she said.

Rabinowitz's statement said much of the criticism had been directed at her personally, which "in turn, has been destructive to the project and to the educational mission of the college."

Churchill was forced to resign as a department chair at Colorado in the aftermath of his essay's revelation. In the piece, Churchill also suggested many of those killed in the World Trade Center attacks deserved their fate, and spoke of the "gallant sacrifices" of the "combat teams" that struck America.

The essay attracted little attention until Churchill was invited to speak at Hamilton, a liberal arts school with 1,750 students located about forty miles east of Syracuse. His appearance was ultimately canceled by Hamilton's administration, which cited security risks after death threats were directed at both college officials and Churchill.

The Kirkland Project also generated disapproval for inviting Rosenberg to teach a half-credit course on memoir writing. Rosenberg was indicted but never tried for a 1981

armored-car robbery that left a guard and two police officers dead. She was sentenced for fifty-eight years on charges of weapons possession, but President Clinton granted her clemency in 2001 after she served sixteen years.

According to the college catalogue, "The Kirkland Project for the Study of Gender, Society and Culture is a campus organization committed to intellectual inquiry and social justice, focusing on issues of race, class, gender and sexuality, and other facets of human diversity. Through educational programs, research and community outreach, the project seeks to build a community respectful of difference."

Rabinowitz came to central New York in 1974 when she joined the faculty at Kirkland College, which then merged with Hamilton in 1978. Reported in: *Newsday*, February 11.

New York, New York

A faculty committee charged with investigating complaints that professors in Columbia University's Middle Eastern studies department had intimidated pro-Israel, Jewish students has found no evidence that faculty members made anti-Semitic statements. But in a report released March 31 the panel did find one instance in which a professor had "exceeded commonly accepted bounds" of classroom behavior when he publicly and harshly criticized a student who, he believed, was defending Israel's treatment of Palestinians.

The professor, Joseph A. Massad, was one of two faculty members mentioned in the committee's report, which also described a lack of civility on the campus and an abundance of tension in classrooms, where pro-Israel students have disrupted lectures and professors have felt they were being watched and reported on. The committee also found that the university's failure to quickly deal with students' complaints of intimidation had "led to an acute erosion of trust between faculty and students."

Massad criticized the committee as "illegitimate" and its report as "inaccurate and unfair."

Lee C. Bollinger, Columbia's president, appointed the panel in December, after the release of *Columbia Unbecoming*, a short film in which students at Columbia and Barnard College accused professors of intimidation and harassment in and out of class. The David Project, a pro-Israel group based in Boston, produced the film, whose allegations prompted overwhelming concern among Jewish groups, alumni, and defenders of academic freedom. Shortly after the film's release last fall, a member of Congress called on the university to fire Massad.

"The committee is to be commended for fairly and honestly evaluating behavior and conduct in the classroom," Bollinger said. Some people have misunderstood the panel's purpose, he said, which was "not to look into claims of bias in teaching or politicization or anti-Semitism in the classroom."

The ad hoc committee, many of whose members have been criticized in news accounts for holding anti-Israel views, included Lisa Anderson, dean of the School of International and Public Affairs; Farah Jasmine Griffin, a professor of English and comparative literature; Jean Howard, a professor of English and vice provost for diversity initiatives; and Ira Katznelson, a professor of political science and history and the committee's chairman. Floyd Abrams, the well-known First Amendment lawyer and a visiting professor in the School of Journalism, served as an adviser.

"The report skillfully and carefully defends the academic freedom of the Columbia faculty," Abrams said. "At the same time it assures that the right of Columbia students to learn in a civil and open-minded environment is protected."

The committee met with sixty-two students, alumni, faculty members, and administrators, and considered sixty written statements, some submitted anonymously. In its report, it said it could find no evidence that students had received lower grades because of their views. Members of the panel were most concerned about three alleged episodes of intimidation from the 2001–2 academic year, before Bollinger became president.

The most serious involved Massad, an assistant professor in the department of Middle East and Asian languages and cultures. The professor, who does not have tenure, taught a class on "Palestinian and Israeli Politics and Soc--ieties." According to the report, Deena Shanker, a student in the class, recalled asking the professor if it was true that Israel sometimes gave a warning before bombing a Palestinian property so that people would not get hurt. Massad, she said, became enraged and yelled, "If you're going to deny the atrocities being committed against Palestinians, then you can get out of my classroom!"

According to the report, two students corroborated Shanker's account, while Massad "has denied emphatically" that the incident took place and told the panel that he would never ask a student to leave his class. Two graduate teaching assistants and an undergraduate did not recall the episode, and it was not recorded in teaching evaluations that were made available to the committee.

Still, the panel found Shanker's account "credible" and said that Massad "exceeded commonly accepted bounds by conveying that her question merited harsh public criticism."

Massad called the report's conclusion "inaccurate and unfair." The report "gives no reason why Shanker's account and her witnesses are more credible than mine and my witnesses," he said. "This illegitimate committee has bowed to the very outside pressure which it criticizes as well as the pressure coming its way from the Columbia administration."

Abrams, the committee's adviser, defended its work. "Everything that was done was fact-based and a good-faith effort," he said. Regarding the question that Massad raised, of how the committee could end up believing one side more than the other, Abrams said, "That's what juries do all the time."

Bollinger declined to comment on Massad's statement, saying only that he had complete confidence in the panel's judgment.

The committee could not determine the credibility of two other alleged incidents, one of which involved an Israeli student's account of an interaction with Massad at an off-campus lecture. Tomy Shoenfeld told the committee that he had attended a lecture by the professor on the Israeli-Palestinian conflict. Schoenfeld said he had asked a question and identified himself as an Israeli student, according to the committee's report. Massad then asked him whether he served in the military. When Schoenfeld said yes, Massad asked him, twice, how many Palestinians he had killed. Schoenfeld refused to answer and then asked Massad how many members of his family had celebrated on September 11, 2001.

According to the committee, Massad said that he had no recollection of the episode and that he had never met Shoenfeld. The panel concluded that the incident fell "into a challenging gray zone, neither in the classroom, where the reported behavior would not be acceptable, nor in an off-campus political event, where it might fit within a not unfamiliar range of give and take regarding charged issues."

The third incident allegedly involved George Saliba, a full professor in the department of Middle East and Asian languages and cultures, who taught the course "Introduction to Islamic Civilization." According to the report, Lindsay Shrier, a student, said the professor had told her after class that she was not a Semite because she had green eyes, which meant that she had "no claim to the land of Israel."

Saliba told the committee that the student perhaps misunderstood an argument he sometimes made that biological or genetic arguments are not persuasive as the basis for claims to land. The committee concluded that, "however regrettable a personal reference might have been, it is a good deal more likely to have been a statement that was integral to an argument about the use of history and lineage than an act approaching intimidation."

Saliba said that he would never make such a "personal reference." The committee's evidence for it, he said, "is the statement of the student who is recollecting my exact words from a four-year-old memory." He continued by saying that the student had given an inconsistent account of where the alleged incident took place. Basing its conclusion in the report "on such a faulty memory is doubly 'regrettable' on the part of the committee," he said.

In its report, the committee most harshly criticized the university, itself, for not having clear channels and procedures that students and faculty members could use to air their complaints. "As a result of these failures, outside advocacy groups devoted to purposes tangential to those of the university were able to intervene to take up complaints expressed by some students," the report said.

The committee recommended that the university institute accessible, transparent, and well-publicized grievance procedures "geared toward the speedy resolution of complaints and the appropriate protection of privacy."

The committee also urged Columbia to improve its advising system and said that faculty members have a duty of civility and respect toward one another.

Bollinger said that, within the next two weeks, the university would announce specific steps based on the report's recommendations. The institution, he said, would develop new grievance procedures for students and faculty members. He said he wanted to make the procedures "more uniform, obvious, and transparent." Bollinger declined to discuss whether Massad would face disciplinary action. Reported in: *Chronicle of Higher Education* online, April 1.

Syracuse, New York

As a substitute teacher in the public schools here, Scott McConnell says students are often annoyed that he does not let them goof off in class. Yet he was not prepared for the sixth grader who walked up to his desk in November, handed in an assignment, and then swore at him. The profanity transported him back to his own days at Robert E. Lee Elementary School in Oklahoma in the 1980's, when there was a swift solution for wiseacres: the paddle.

"It was a foot-long piece of wood, and hung on every classroom wall like a symbol, a strong Christian symbol," said McConnell, who is 26. "Nobody wanted that paddle to come down." He said he had been a disruptive student, and routinely mouthed off until his fourth-grade teacher finally gave him three whacks to the backside. Physically, it did not hurt. But he felt humiliated and humbled. "I never wanted that again," McConnell recalled. "It was good for me."

Supporting corporal punishment is one thing; advocating it is another, as McConnell recently learned. Studying for a graduate teaching degree at Le Moyne College, he wrote in a paper last fall that "corporal punishment has a place in the classroom." His teacher gave the paper an A-minus and wrote, "Interesting ideas—I've shared these with Dr. Leogrande," referring to Cathy Leogrande, who oversaw the college's graduate program.

Unknown to McConnell, his view of discipline became a subject of discussion among Le Moyne officials. Five days before the spring semester began in January, McConnell learned that he had been dismissed from Le Moyne, a Jesuit college. "I have grave concerns regarding the mismatch between your personal beliefs regarding teaching and learning and the Le Moyne College program goals," Dr. Leogrande wrote in a letter, according to a copy provided by McConnell. "Your registration for spring 2005 courses has been withdrawn."

A mild-mannered former private in the Army, McConnell has taken up a free-speech banner with a tireless intensity, casting himself as a transplant from a conservative state abused by political correctness in more liberal New York. He also said that because he is an evangelical

Christian, his views about sparing the rod and spoiling the child flowed partly from the Bible, and that Le Moyne was "spitting on that."

He is working with First Amendment groups to try to pressure Le Moyne into apologizing and reinstating him, and is considering legal action as well as a formal appeal to the college. He says Le Moyne misconstrued his views: he believes children should not be paddled without their parents' permission. He said that even then, the principal, as the school's head disciplinarian, should deliver the punishment.

"Judges live in the real world, and I think they would see that Scott got an A-minus on his paper and was expressing views on a campus that supports academic freedom," said David French, president of the Foundation for Individual Rights in Education, a group based in Philadelphia that is supporting McConnell. "It's hard to see a court looking kindly on Scott's expulsion."

Le Moyne's provost, John Smarrelli, said the college had the right as a private institution to take action against McConnell because educators had grave concerns about his qualifications to teach under state law. New York is one of twenty-eight states that ban corporal punishment; most of those that allow it are in the South and West. Most states did not ban corporal punishment until the late 1980's, after parents, educators, and other advocates began pressing for the laws. More than 342,000 students received corporal punishment in the 1999–2000 school year, in the most recent figures from the federal Education Department.

Because it has an accredited school of education, moreover, Le Moyne officials said that the college was required to pledge that its graduates will be effective and law-abiding teachers who will foster a healthy classroom environment.

"We have a responsibility to certify people who will be in accordance with New York State law and the rules of our accrediting agencies," Smarrelli said. In McConnell's case, he said, "We had evidence that led us to the contrary."

McConnell said that he had been only conditionally admitted to the graduate program; typically, such students earn full admission by earning good grades and meeting other requirements. McConnell added that he had earned mostly A's and his fate rested largely on his November paper.

Smarrelli said that the paper itself was "legitimate" and "reasonable," because the assignment sought McConnell's plan for managing a classroom. Yet McConnell's views were clearly not in the mainstream of most teachers' colleges. For example, many educators focus on nurturing students' self-esteem, but McConnell scoffed at that idea in his paper. He said he would not favor some students over others, regardless of any special needs some might have.

"I will help the child understand that respect of authority figures is more important than their self-esteem," he wrote.

Some professors and college officials also were concerned that McConnell wrote that he opposed multiculturalism, a teaching method that places emphasis on non-Western cultures. McConnell said he disliked "anti-American multiculturalism," and gave as an example a short story on the September 11 attacks intended for classroom use. The story, published in a teachers' magazine in 2002 by the National Council for the Social Studies, was about young American boys teasing an Iraqi boy named Osama.

Smarrelli said Le Moyne had to ensure that its students had the judgment, aptitude, temperament and other skills to succeed in challenging their students. But Smarrelli acknowledged that Le Moyne had not warned students like McConnell that they could be removed for expressing controversial beliefs, nor had the college said that education students must oppose corporal punishment or support multiculturalism.

Joseph P. Frey, the assistant commissioner for quality assurance in the New York State Education Department, who monitors colleges and graduate schools, said he could not offer an opinion on the McConnell case because he did not know the specifics.

Frey said: "One valid question is, 'Is the paper an academic exercise in terms of theories of education, or is it a belief that this is how McConnell will carry out corporal punishment in the classroom no matter what?'"

Frey added, however, that private colleges have broad latitude in accepting or rejecting students. And he said that graduate education schools might face a threat to their accreditation, or legal action by school districts, if they produce teachers who fall into trouble. Reported in: *New York Times,* March 10

film

Fort Worth, Texas

The fight over evolution has reached the big, big screen. Several Imax theaters, including some in science museums, are refusing to show movies that mention the subject—or the Big Bang or the geology of the earth—fearing protests from people who object to films that contradict biblical descriptions of the origin of Earth and its creatures.

The number of theaters rejecting such films is small, people in the industry say—perhaps a dozen or fewer, most in the South. But because only a few dozen Imax theaters routinely show science documentaries, the decisions of a few can have a big impact on a film's bottom line—or a producer's decision to make a documentary in the first place.

People who follow trends at commercial and institutional Imax theaters say that in recent years, religious controversy has adversely affected the distribution of a number of films, including *Cosmic Voyage*, which depicts the universe in dimensions running from the scale of subatomic particles to clusters of galaxies; *Galapagos*, about the islands where Darwin theorized about evolution; and *Volcanoes of the Deep Sea*, an underwater epic about the

bizarre creatures that flourish in the hot, sulfurous emanations from vents in the ocean floor.

Volcanoes, released in 2003 and sponsored in part by the National Science Foundation and Rutgers University, has been turned down at about a dozen science centers, mostly in the South, said Dr. Richard Lutz, the Rutgers oceanographer who was chief scientist for the film. He said theater officials rejected the film because of its brief references to evolution, in particular to the possibility that life on Earth originated at the undersea vents.

Carol Murray, director of marketing for the Fort Worth Museum of Science and History, said the museum decided not to offer the movie after showing it to a sample audience, a practice often followed by managers of Imax theaters. Murray said 137 people participated in the survey, and while some thought it was well done, "some people said it was blasphemous."

In their written comments, she explained, they made statements like "I really hate it when the theory of evolution is presented as fact," or "I don't agree with their presentation of human existence."

On other criteria, like narration and music, the film did not score as well as other films, Murray said, and over all, it did not receive high marks, so she recommended that the museum pass. "If it's not going to draw a crowd and it is going to create controversy," she said, "from a marketing standpoint I cannot make a recommendation" to show it.

In interviews, officials at other Imax theaters said they had similarly decided against the film for fear of offending some audiences. "We have definitely a lot more creation public than evolution public," said Lisa Buzzelli, who directs the Charleston Imax Theater in South Carolina, a commercial theater next to the Charleston Aquarium. Her theater had not ruled out ever showing "Volcanoes," Buzzelli said, "but being in the Bible Belt, the movie does have a lot to do with evolution, and we weigh that carefully."

Pietro Serapiglia, who handles distribution for the producer Stephen Low of Montreal, whose company made the film, said officials at other theaters told him they could not book the movie "for religious reasons," because it had "evolutionary overtones" or "would not go well with the Christian community" or because "the evolution stuff is a problem."

Hyman Field, who as a science foundation official had a role in the financing of *Volcanoes*, said he understood that theaters must be responsive to their audiences. But Field he said he was "furious" that a science museum would decide not to show a scientifically accurate documentary like *Volcanoes* because it mentioned evolution.

"It's very alarming," he said, "all of this pressure being put on a lot of the public institutions by the fundamentalists."

People who follow the issue say it is more likely to arise at science centers and other public institutions than at commercial theaters. The filmmaker James Cameron, who was a producer on *Volcanoes*, said the commercial film he made on the same topic, *Aliens of the Deep*, had not encountered opposition, except during post-production, when "it was requested from some theaters that we change a line of dialogue" relating to sun worship by ancient Egyptians. The line remained, he said.

Cameron said he was "surprised and somewhat offended" that people were sensitive to the references to evolution in *Volcanoes.*

"It seems to be a new phenomenon," he said, "obviously symptomatic of our shift away from empiricism in science to faith-based science."

Some in the industry say they fear that documentary filmmakers will steer clear of science topics likely to offend religious fundamentalists. Large-format science documentaries "are generally not big moneymakers," said Joe DeAmicis, vice president for marketing at the California Science Center in Los Angeles and formerly the director of its Imax theater. "It's going to be hard for our filmmakers to continue to make unfettered documentaries when they know going in that 10 percent of the market" will reject them.

Others who follow the issue say many institutions are not able to resist such pressure. "They have to be extremely careful as to how they present anything relating to evolution," said Bayley Silleck, who wrote and directed *Cosmic Voyage*. Silleck said he confronted religious objections to that film and predicted he would face them again with a project he is working on now, about dinosaurs.

Of course, a number of factors affect a theater manager's decision about a movie. Silleck said an Imax documentary about oil fires in Kuwait "never reached its distribution potential" because it had shots of the first Persian Gulf War. "The theaters decided their patrons would be upset at seeing the bodies," he said.

"We all have to make films for an audience that is a family audience," he went on, "when you are talking about Imax, because they are in science centers and museums." He added, however, "there are a number of us who are concerned that there is a kind of tacit overcaution, overprotectedness of the audience on the part of theater operators."

In any event, censoring films like *Volcanoes* is not an option, said Field, who said Low, the film's producer, got in touch with him when the evolution issue arose to ask whether the film should be altered. "I said absolutely not," recalled Field, who retired from the National Science Foundation last year.

Low said that arguments over religion and science disturbed him because of his own religious faith. In his view, he said, science is "a celebration of what nature or God has done. So for me, there's no conflict."

Dr. Lutz, the Rutgers oceanographer, recalled a showing of *Volcanoes* he and Low attended at the New England

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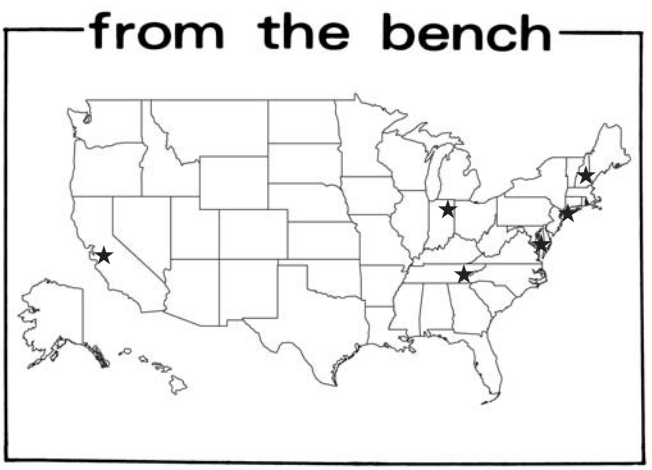


U.S. Supreme Court

The justices of the Supreme Court appeared to wrestle with contradictory impulses March 2 as they heard arguments in two cases challenging government displays of the Ten Commandments. On the one hand, they were searching for a broad principle that could decide not only these disputes, but future ones as well. On the other hand, they appeared powerfully drawn to deciding the two cases on their specific facts, even at the risk of inviting an endless parade of future cases.

Was the twenty-two-acre park surrounding the Texas Capitol, where a Ten Commandments monument sits among sixteen other displays, all of them nonreligious, the equivalent of an outdoor museum or sculpture garden? Fine: maybe just such a mixed display might pass constitutional muster, even if a stand-alone Ten Commandments in a future case might prove more troublesome.

Did it matter that the two Kentucky courthouses now seeking to display a framed Ten Commandments surrounded by nine nonreligious historical documents had at first hung unadorned copies of the Commandments and did not add the other documents until after a lawsuit was filed? If so, if that history provided the constitutional taint that led a federal appeals court to order removal of the entire display, then the answer to whether a display without such a history would be acceptable could wait for another day.

By the end of two hours of argument, it was not clear how the justices would resolve the dilemma they created for themselves when, after twenty-five years of silence on the Ten Commandments, they agreed to decide these two cases. Justice Antonin Scalia, unsurprisingly, expressed a definitive view, consistent with his long-held position in religion cases. He called the Ten Commandments "a symbol of the fact that government derives its authority from God," adding, "That seems to me an appropriate symbol to put on government grounds."

But Justice Sandra Day O'Connor, who may well be in a position to cast the deciding vote, appeared uncertain as she tried out various approaches to resolving the cases on narrow grounds. Referring to the Texas monument, erected in 1961 by the Fraternal Order of Eagles, she wondered aloud whether "at some point" the preservation of an "old object" might itself provide an independent, nonreligious justification for keeping the Ten Commandments on the Capitol grounds.

The justices' visible struggle reflected the fact that the Supreme Court's own precedents provide relatively little guidance on how to tell the difference between religious displays that amount to an unconstitutional "establishment" of religion and those that acknowledge religion in such a minimal or contextual way that the Constitution is not offended, even if some individuals are.

In 1980, the court invalidated a Kentucky law that required the posting of the Ten Commandments in every public school classroom, but no one seemed to suggest that the old case provided an answer to the new ones. In the new cases, one federal appeals court upheld the Texas display even as another struck down the two in Kentucky.

Would it be permissible for the Texas Legislature to post the Ten Commandments, not in a park, but in the halls of the Capitol, Justice O'Connor asked Erwin Chemerinsky, who was representing the Austin man who challenged the display. No, replied Chemerinsky, a professor at Duke University Law School, because that would be a sign of government endorsement of religion.

But the Supreme Court itself has upheld the practice of beginning a legislative session with a prayer, Justice O'Connor pointed out. "It can't be that just because a prayer is permissible, everything becomes permissible," Chemerinsky replied, adding that a legislature could not mount a large Latin cross on the top of a state capitol. "It's so hard to draw the line!" Justice O'Connor exclaimed.

Justice Stephen G. Breyer said he had reluctantly and tentatively come to the conclusion that there was no way to decide religious display cases other than by evaluating the divisive nature of the display case by case.

The Ten Commandments are "enormously divisive," Chemerinsky responded, urging that the court "not ignore social reality." He mentioned the crowds that the arguments themselves drew to the court, as well as the dispute in Alabama two years ago over the display of a large Ten Commandments monument in the courthouse by the state's chief justice at the time, Roy Moore.

Justice Scalia asked whether the marshal's invocation that begins each Supreme Court session, "God save the

United States and this honorable court," was not also "divisive, because there are people who don't believe in God."

Chemerinsky replied that it was important to draw a distinction between "minimal and maximum religious content." The message of the Ten Commandments was deeply religious he said, adding that "all of these are God's commands to his people."

Justice David H. Souter asked whether a tablet containing only the last five commandments, the injunctions against killing, stealing, and so on, might be constitutional because, unlike the first five, they did not necessarily imply religious belief.

That would be a harder case, Chemerinsky replied, but such a tablet would still be unconstitutional because it would still convey the Ten Commandments' message. What about a "piece of stone" simply carved with the various "thou shalt nots," Justice Souter asked. That would be acceptable as a "reflection of law" rather than religion, Chemerinsky replied.

"Who are you kidding?" Justice Scalia broke in, adding that "everyone knows" that the reference would be to the Ten Commandments. "Context matters enormously," Chemerinsky said.

Greg Abbott, the Texas attorney general, described the Ten Commandments as a "recognized symbol of law" and defended the state's display as having the secular purpose of "recognizing historic influences" on the legal system.

The attorney general's argument distressed Justice Scalia. "You're watering it down to say the only message is a secular message," the justice said. "I can't agree with you. 'Our laws come from God.' If you don't believe it sends that message, you're kidding yourself."

Later, Justice Scalia told Abbott, "I would consider it a Pyrrhic victory for you to win on the grounds you're arguing."

In both the Texas case, *Van Orden* v. *Perry*, and the Kentucky case, *McCreary County* v. *American Civil Liberties Union*, the Bush administration argued on behalf of the displays. "The Ten Commandments have an undeniable religious significance, but also a secular significance as a code of law and a well-recognized symbol of law," Paul D. Clement, the acting solicitor general, told the justices. He added: "The Establishment Clause should not be interpreted to force the state to send a message of hostility toward religion."

The question was one of degree, Clement suggested. In answer to a question from Justice Anthony M. Kennedy, he said that Chief Justice Moore in Alabama "probably" crossed the constitutional line when he turned the courthouse rotunda into the equivalent of a "religious sanctuary." Clement added: "The state can have a permissible acknowledgment of religion, and I don't think in this case the State of Texas has gone too far."

In defending the Kentucky courthouse displays, Mathew D. Staver, a lawyer with Liberty Counsel, a Florida group associated with the Rev. Jerry Falwell, said the appeals court had "ignored the overall context" when it ordered the removal of courthouse displays that contained the Ten Commandments surrounded by the text of nine historic documents, including the Mayflower Compact.

But it was the context that the justices questioned, several dwelling on the original 1999 displays that contained the Ten Commandments alone. The two counties, McCreary and Pulaski, had decided to "switch rather than fight," Staver said, and should be "rewarded, not punished, for trying to get things right."

But "the courts cannot turn a blind eye to a sham secular purpose," David A. Friedman, general counsel of the American Civil Liberties Union of Kentucky, told the justices. Friedman said a "reasonable observer" would know the history and understand the counties' real purpose. Reported in: *New York Times*, March 3.

The much-heralded Supreme Court showdown in the Grokster case March 29 between old-fashioned entertainment and new-fangled technology found the justices surprisingly responsive to warnings from Grokster and its allies that a broad definition of copyright infringement could curtail innovation.

Justice David H. Souter asked Donald B. Verrilli, Jr., the lawyer arguing for the Hollywood studios and the recording industry, to envision "a guy sitting in his garage inventing the iPod."

"I know perfectly well that I can buy a CD and put it on my iPod," Justice Souter said. "But I also know if I can get music without buying it, I'm going to do so." Since that possibility was so obvious, he continued: "How do we give the developer the confidence to go ahead? On your theory, why isn't a foregone conclusion from the outset that the iPod inventor is going to lose his shirt?"

That David Souter, the least technically minded of the justices, who still drafts his opinions by hand on a legal pad, could even invite a dialogue about iPods, much less suggest that he could be tempted to engage in illegal file sharing, was an indication of how this confrontation of powerful interests had engaged the court.

But by the end of the lively argument, any prediction about what the court will actually decide appeared perilous. The justices themselves seemed taken aback by the procedural complexities of the case, *Metro-Goldwyn-Mayer Studios* v. *Grokster, Ltd.*, which moved through the lower federal courts on summary judgment, without a trial.

Some justices appeared tempted by the prospect of allowing the studios and record companies to get to trial on a legal theory that the lower courts did not address: that Grokster and the other defendant, StreamCast Networks, which offers the Morpheus file-sharing service, are liable for copyright infringement for having actively induced consumers to use their software to commit widespread copyright infringement.

The federal district court in Los Angeles, in a decision affirmed last year by the United States Court of Appeals for the Ninth Circuit in San Francisco, took a different approach, ruling that the file-sharing networks were not liable because their services were "capable of substantial non-infringing uses." The lower courts took that test from the Supreme Court's 1984 decision that absolved the Sony Corporation, manufacturer of the Betamax video recorder, of copyright liability for infringing uses that consumers might make of the product.

The Sony decision provided the right answer, and that should be the end of the case, Richard G. Taranto, arguing for Grokster and StreamCast, told the court. He said it was "critical" for the Supreme Court to adhere to the "clear Sony rule" for the sake of "innovation protection."

Justice Ruth Bader Ginsburg objected, noting that the 1984 decision "goes on for 13 more pages" after articulating the test that provided Sony's defense. "If the standard was that clear, the court would have stopped there," Justice Ginsburg continued. "I don't think you can take one sentence from a rather long opinion and say 'Ah-ha, we have a clear rule.'"

In briefs filed as "friends of the court," the file-sharing networks' allies in various technology industries and civil liberties organizations have depicted file sharing as a useful, if not vital, means of expanding knowledge through the inexpensive transmission and Internet archiving of lawful, public-domain material. As long as the non-infringing uses were not "far-fetched," Taranto said, the defense that applied to videocassette recorders should be available for his clients' "autonomous communication tool," as he described file sharing.

Whether this argument makes headway may depend on the technological universe that the court considers in applying it. Grokster and StreamCast are asking the court to look at all possible uses of file sharing, not just the use that is made of their own software. The plaintiffs, backed by the Bush administration, are asking the court to focus on the defendants' own business.

Paul D. Clement, the acting solicitor general, told the justices that while the Ninth Circuit had used as its test "the mere theoretical capability of non-infringing uses," the Supreme Court should look at the actual "business model" used by the defendants. It was an "extreme case," Mr. Clement said, a model built on "copyright infringement without liability, with the full knowledge that the draw is unlawful copying."

"Sony could have set up a 'theoretical capability' test, but it didn't," Clement continued. Instead, he pointed out, the Sony decision required evidence of a "substantial" non-infringing use. The court in that decision found that consumers used their VCR's primarily for recording television programs that they could watch later, a non-infringing use referred to as time-shifting.

Justice Antonin Scalia said he was concerned that non-infringing uses of a new technology might need some time to become established; in the meantime, the developer would be defenseless against a copyright infringement suit. "What I worry about is a suit right out of the box," he said. "Do you give a company a couple of years to show 'substantial' non-infringement?"

Clement replied that in the government's view, there should be "a lot of leeway at the beginning." But that was "not this case," he said, asserting that Grokster and Morpheus had "a business plan from day one to capitalize on Napster."

Napster, the original file-sharing network, was put out of business by a Ninth Circuit ruling in 2001 that it was secondarily liable for the copyright infringement committed by its users. The Ninth Circuit found that Grokster differed significantly from Napster because its software permits users to share files with one another directly, rather than going through a central server.

Verrilli, the plaintiffs' lawyer, urged the justices not to rely on that distinction. "There is a shell game going on here," he said. "Our position is that we're entitled to injunctive relief against the continued operation of this gigantic machine that was built on infringement."

In a second argument March 29, the court heard an appeal by the Federal Communications Commission and the cable industry of another Ninth Circuit ruling, this one with implications for the development of the high-speed Internet access business. The Ninth Circuit rejected the commission's view that companies offering cable modem service should be considered in the "information service" rather than telecommunications business, and as such were exempt from the extensive regulation to which federal law subjects conventional telephone companies.

At issue is the ability of Internet service providers to force cable companies to open their broadband lines. The outcome of the case, *National Cable and Telecommunications Association* v. *Brand X Internet Services*, is likely to depend on how much deference the justices decide to give to the FCC. Based on the argument, the outlook is uncertain. Reported in: *New York Times*, March 29.

The Supreme Court declined March 28 to consider whether journalists have constitutional protections allowing them to safely report defamatory comments made by public figures, so long as the comments are described in a neutral way. Without comment, justices let stand a state court ruling in favor of two Parkesburg, Pennsylvania, officials who sued over a 1995 article in the *Daily Local News* in West Chester, Pennsylvania. As a result, journalists publishing in Pennsylvania will need to scrutinize public statements more closely for truth or face potential liability.

The article described borough Councilman William T. Glenn, Sr., as "strongly implying" council president James B. Norton, III, and Mayor Alan M. Wolfe to be "queers and child molesters," according to the state ruling. The article described Norton and Wolfe as denying the charges and calling the comments "bizarre" and "sad."

A jury ordered Glenn to pay the two men $17,500 in damages for defamation but found that reporter Tom Kennedy, then-editor William Caufield and newspaper owner Troy Publishing Co. were not liable, partly because of the trial judge's instruction on the so-called neutral reportage privilege.

That privilege, recognized by some state and federal courts, lets the press convey a reputable public figure's defamatory comment as long as it is reported neutrally and accurately.

The Pennsylvania Supreme Court disagreed, ruling that no such privilege exists under U.S. or Pennsylvania constitutions. It ordered a new trial to decide the journalists' liability under an "actual malice" standard that asks whether the defamatory statements were published with reckless disregard for the truth.

The appeal by the Pennsylvania newspaper was backed by more than a dozen media organizations and advocates, who argued the ruling will unconstitutionally chill news coverage of political campaigns where charges and countercharges are commonplace. For example, they argued, journalists in the 2004 presidential campaign could not have safely reported or discussed the Swift Boat Veterans for Truth political ads disparaging Sen. John Kerry's military service, or charges about President Bush's former National Guard service, if they doubted their validity—even if they had interviewed others who disagreed.

"It is the citizens' right to hear what their elected representatives have to say about their adversaries unvarnished, to evaluate the merits of those statements, and to make their own decisions about their import," the media groups wrote in a joint friend-of-the-court filing.

The case is *Troy Publishing Co.* v. *Norton and Wolfe*. Reported in: Associated Press, March 29.

schools

Fort Wayne, Indiana

Fort Wayne Community Schools officials violated a high school student's free-speech rights when they suspended him for wearing a T-shirt bearing the likeness of an M-16 rifle and the text of the Marine Corps creed, a federal court ruled on March 11. The district suspended Nelson Griggs in 2003 for violating a provision of the school dress code that prohibits students from wearing clothing depicting "symbols of violence."

Griggs and his father, David, sued the school system in U.S. District Court in Fort Wayne in February 2004, arguing the dress code was overly broad.

U.S. Magistrate Judge Roger B. Cosbey agreed in his thirty-page ruling. "Schools are under undeniable pressure to prevent student violence," and the anti-violence section of the dress code is "a reasonable, constitutional tool toward that end," Cosbey wrote. But in the case of Griggs' Marine creed shirt, officials went too far, the ruling said.

"Griggs' shirt has no relation to the (school) board's legitimate concerns about school violence, nor is it likely to disrupt the educational process," wrote Cosbey.

Nelson Griggs wore the T-shirt to Elmhurst High School in March 2003 and was told by an official he would be disciplined if he wore it again. But Griggs believed the shirt was protected under the First Amendment and wore it again the next day, court documents said.

At that point, Elmhurst's principal ordered the teen to serve an in-school suspension and told him he would be given an out-of-school suspension if he wore the shirt again, the documents said. Griggs did not wear the shirt again and the dispute was not entered in his school record, according to court documents.

The dispute over the shirt occurred about six months after Elmhurst senior Cheri Sue Hartman was kidnapped, tortured and shot, the ruling noted, and students still were trying to cope with the effects of her murder. The murder did not happen near the school, but relatives of Hartman and those later convicted in her death still attended the school and occasionally confronted each other, court documents said.

School officials objected in particular to a part of the text on the shirt that read, "I must shoot straighter than my enemy who is trying to kill me. I must shoot him before he shoots me," the document said.

The creed, written by a Marine Corps general after the attack on Pearl Harbor, focuses on the relationship between a Marine and his or her rifle, and is also known as "My Rifle." Reported in: Associated Press, March 14.

Concord, New Hampshire

Citing the editors' First Amendment rights, a judge refused to delay publication of a high school yearbook while a student fights to include a photo showing him posing with a shotgun. Londonderry High School officials told Blake Douglass, an avid trap- and skeet-shooter, that the photo could appear in the yearbook's "community sports" section but not as his senior portrait. Douglass filed suit, arguing the decision violated his freedom of speech and expression.

However, U.S. District Court Judge Steven McAuliffe ruled February 14 that Douglass was unlikely to win because the decision was made by the yearbook's student editors and not school administrators. Because the students are private individuals, the judge said, Douglass doesn't have a valid claim that the state had violated his constitutional right to free speech. Private decisions about what to publish and what to exclude, like those made by newspaper editors, are protected by the First Amendment, he said.

"Obviously, we're very pleased," Principal James Elefante said. "Our goal was to continue on and get the year-

book out for the kids." He said that before announcing the decision to reject Douglass' photo, he consulted with the yearbook's editorial staff and its two advisers.

Douglass' lawyer, Penny Dean, said that until a hearing in January, the school had always said it was the administration, not the editors, who made the decision on the photo. "Now they claim the students did," Dean said. Reported in: salon.com, February 15.

press freedom

Washington, D.C.

Two reporters who have refused to name their sources to a grand jury investigating the disclosure of the identity of a covert CIA agent should be jailed for contempt, a three-judge panel of the federal appeals court in Washington unanimously ruled February 15. Citing a 1972 decision of the United States Supreme Court, the panel held that the reporters, Judith Miller of *The New York Times* and Matthew Cooper of *Time* magazine, have no First Amendment protection from grand jury subpoenas seeking the names of their sources. It can be a crime for government officials to divulge the identities of covert agents.

The 1972 decision, *Branzburg* v. *Hayes*, considered four consolidated grand jury cases, including one in which a reporter witnessed illegal drugs being made. The panel said the Supreme Court's "transparent and forceful" reasoning applied to the two reporters before the appeals court.

"In language as relevant to the alleged illegal disclosure of the identity of covert agents as it was to the alleged illegal processing of hashish," Judge David B. Sentelle wrote for the panel, "the court stated that it could not 'seriously entertain the notion that the First Amendment protects the newsman's agreement to conceal the criminal conduct of his source, or evidence thereof, on the theory that it is better to write about a crime than to do something about it.'"

But the judges disagreed about whether evolving legal standards reflected in lower-court decisions and state statutes might provide a separate, nonconstitutional basis for protection to reporters in some circumstances, under a so-called common law privilege. That dispute was, however, of no immediate help to Miller and Cooper, as all three judges agreed that the special prosecutor in the case, Patrick J. Fitzgerald, had overcome whatever protection was available.

The reporters will ask the full appeals court, the United States Court of Appeals for the District of Columbia Circuit, to hear the case, their lawyers said. Should that fail, they will ask the United States Supreme Court to review it. Those steps could take weeks or months, a spokeswoman for The New York Times Company, Catherine J. Mathis, said.

Unless the appeals court alters its usual procedures, the reporters will remain free at least until the it rules on their request for a rehearing.

The case has its roots in an opinion article published in *The Times* on July 6, 2003. In it, a former diplomat, Joseph C. Wilson, IV, criticized a statement made by President Bush in his 2003 State of the Union address. Wilson based his criticism on a trip he had taken to Africa for the CIA the previous year.

Eight days after Wilson's article was published, Robert Novak, the syndicated columnist, reported that "two senior administration officials" had told him that Wilson's wife, Valerie Plame, was "an agency operative on weapons of mass destruction." Wilson has said the disclosure of his wife's affiliation with the Central Intelligence Agency was retaliation for his criticism. Others have said that the disclosure put his criticism in context by suggesting that Wilson's trip was not a serious one but rather a nepotistic boondoggle.

It is not known whether Novak has received a subpoena or, if he did, how he responded.

Cooper and two other *Time* reporters published an article on the magazine's Web site three days after Novak's column. It questioned the administration's motives for disclosing Plame's identity and said that the magazine had received similar information. Miller has not written on the Plame matter, though she conducted interviews in contemplation of a possible article.

"This apparent self-restraint spares Miller and Cooper no obligation to testify," Judge David S. Tatel wrote in a concurring opinion. The crime, if there was one, was the communication from government officials to the reporters, he said. "It thus makes no difference," Judge Tatel continued, "how these reporters responded to the information they received."

Last fall, Miller and Cooper were held in contempt of court by Chief Judge Thomas F. Hogan of the United States District Court in Washington. He ordered them jailed for as long as eighteen months. They will be released, he said, if they agree to testify.

All three judges filed concurring opinions on the existence and potential scope of a common law privilege. Judge Sentelle, who was appointed by President Ronald Reagan, wrote in his concurrence that the *Branzburg* decision had definitively rejected protections under both the First Amendment and the common law. The reporters' arguments, he wrote, "should appropriately be made to the Supreme Court." But he added that Congress, rather than the courts, is the better forum for the consideration of whether reporters deserve protection.

Arthur Sulzberger, Jr., the chairman of The New York Times Company and the publisher of *The Times*, said the newspaper would act forcefully in both forums. "The Times will continue to fight for the ability of journalists to provide the people of this nation with the essential information they need to evaluate issues affecting our country and the world," he said in a statement. "And we will challenge today's decision and advocate for a federal shield law that

will enable the public to continue to learn about matters that directly affect their lives."

Judge Tatel, who was appointed by President Bill Clinton, wrote in his concurrence that the case "involves a clash between two truth-seeking institutions: the grand jury and the press." The appropriate way for federal courts to balance those interests, he wrote, is through a common law privilege based on at least qualified protections available to reporters in forty-nine states and the District of Columbia. The privilege, in Judge Tatel's formulation, would weigh the harm caused by the disclosure against its newsworthiness.

Under that standard, however, Judge Tatel said, the two reporters must lose. The disclosure of Plame's identity, he said, harmed national security while contributing little to the national debate.

Judge Karen L. Henderson, who was appointed by the first President George Bush, said the question of a common law privilege was left open by the *Branzburg* decision. But she said this case, in which all three judges agreed that any privilege would not help the reporters, was the wrong vehicle in which to address the issue.

Subpoenas seeking reporters' sources are on the rise, according to experts in media law. In December, a federal judge in Rhode Island sentenced a reporter there, Jim Taricani, to six months of house arrest for refusing to name a source. In a third case, Fitzgerald, acting as the United States attorney in Chicago, is seeking the phone records of Miller and another *Times* reporter in a case concerning two Islamic charities (see following article).

Geoffrey R. Stone, a law professor at the University of Chicago and the author of *Perilous Times*, a history of free-speech law, said the reporters in the Plame case face an uphill fight should the case reach the Supreme Court. "The court, rightly, almost never creates a First Amendment exception as a matter of constitutional law to a rule not directed at speech," he said. "And I don't think courts want to be in the business of defining who reporters are."

That second issue engaged Judge Sentelle, who suggested that it is impossible to say who is a reporter in the Internet era. "Does the privilege also protect the proprietor of a Web log: the stereotypical 'blogger' sitting in his pajamas at his personal computer posting on the World Wide Web his best product to inform whoever happens to browse his way?" Judge Sentelle asked.

Judge Tatel responded that resolving the "definitional conundrums" that "unconventional forms of journalism" raise could await resolution in cases actually involving those issues.

Aspects of the case remain secret. Fitzgerald submitted secret evidence to the appeals court that neither the reporters nor their lawyers were allowed to see. And the public version of Judge Tatel's concurrence includes eight blank pages along with the notation that they have been redacted.

That is scary, Miller said. "I risk going to jail," she said, "for a story I didn't write, for reasons a court won't explain." Reported in: *New York Times*, February 15.

New York, New York

A federal judge ruled in New York February 24 that a federal prosecutor could not inspect the phone records of two reporters for the *New York Times* in an effort to learn their confidential sources. The prosecutor, Patrick J. Fitzgerald, the United States attorney in Chicago, had argued that he needed the records for a grand jury's investigation of government misconduct in the disclosure to the reporters of impending government actions against two Islamic charities.

In the decision, Judge Robert W. Sweet of the U.S. District Court in Manhattan ruled that Fitzgerald had not offered evidence sufficient to overcome what the judge characterized as the substantial legal protections available to the reporters, Judith Miller and Philip Shenon.

Judge Sweet's legal analysis was markedly different from that of a three-judge panel of the United States Court of Appeals for the District of Columbia Circuit, which last week ordered Miller and Matthew Cooper of *Time* magazine jailed for refusing to testify before a different grand jury, this one investigating the disclosure of the identity of an undercover CIA agent.

Fitzgerald is the prosecutor in the Washington case, too. The reporters in that case remain free while they pursue appeals.

The New York decision considered the relatively novel questions of whether, how and under what legal standards reporters are entitled to challenge subpoenas directed to third parties holding records that could disclose confidential sources. Judge Sweet, who was appointed by President Jimmy Carter, ruled that telephone records are the functional equivalent of testimony from the reporters themselves. He also held that *The New York Times* was entitled to object to subpoenas for phone records by filing a civil suit in New York rather than a motion to quash them in Chicago.

But the broader importance of the decision was its interpretation of a 1972 Supreme Court decision, *Branzburg* v. *Hayes*. The previous week, the Washington appeals court ruled that *Branzburg* definitively held that reporters have no First Amendment right to resist grand jury subpoenas seeking their confidential sources. Judge Sweet wrote that the federal appeals court in New York, the United States Court of Appeals for the Second Circuit, has interpreted the case differently, understanding it to require prosecutors to overcome a hurdle before they can seek reporters' sources.

Floyd Abrams, who represents the reporters in both cases, said Judge Sweet's decision may prove useful in the Washington case. "We'll bring it to the attention of the D.C. Circuit in our appeal for rehearing" before the full court, he said. "It also helps in framing the issue for potential Supreme Court review." Reported in: *New York Times*, February 24.

Internet

San Francisco, California

The California Supreme Court on March 3 set aside a jury's verdict requiring two former Varian Medical Systems workers to pay $775,000 for posting defamatory remarks about company executives on the Internet. The decision was a major victory for individuals who invoke their First Amendment rights while defending themselves against defamation lawsuits. The justices ruled that the case against the Varian workers went to a jury prematurely, before the appeals courts could decide whether the speech was protected.

"You have a right not to be dragged through the courts because you exercised your constitutional rights," Justice Janice Brown wrote for the 6–1 court.

Brown, whose nomination by President Bush to the U.S. Court of Appeals for the District of Columbia is pending, said only after the courts conclude that the speech at issue is not protected under the First Amendment can a defamation case go to a jury trial.

Media groups waded into the case in favor of the two former employees of the Palo Alto company. They argued that a 1999 California law, one of the nation's strongest in guarding free speech, required the justices to rule the way they did so people are not randomly sued solely because their speech is unpopular.

The decision means the two ex-employees can appeal a Santa Clara County judge's order that their speech was not protected under the First Amendment.

The case concerned Michelangelo Delfino, an engineer fired from the medical-device company in 1998, and his colleague Mary Day, who quit. Following their departures from Varian, the pair posted thousands of messages on the Internet alleging sexual affairs between executives and suggesting that Varian management was running the company into the ground. They also used profanity to refer to company officials, called them "insane" and "dwarflike," and posted the locations of Varian executives' children.

The justices, however, ruled narrowly. They took no position whether the speech at issue was protected or whether the two former workers would prevail on their First Amendment claims on appeal. Although the ruling was solely procedural, supporters said it sends a clear message that defamation cases must not be brought if they are frivolous.

"This is a major victory for free speech," said Jeremy Rosen, who represented the two workers.

Varian spokesman Spencer Sias said the company stands by the jury's decision that the two "defamed and harassed our employees" by posting more than 13,000 messages. But he said he did not know whether the company will continue the suit. "We are reviewing our options," he said.

In a dissenting opinion, Chief Justice Ronald M. George said that while there was procedural error in the case, the jury's 2000 verdict should stand. The majority's ruling, he said, amounts to "the wasting of considerable time, effort and resources." Reported in: *USA Today*, March 4.

Toronto, Canada

More than fifty of the world's largest media organizations have banded together to try to overturn an Ontario court ruling they say threatens free speech and development of the Internet. "This is a case of free expression," Brian McLeod Rogers, a Toronto lawyer representing the media coalition, told the Ontario Court of Appeal March 8.

The fifty-two-member coalition includes CNN, *The New York Times*, *Time* magazine, *The Times* of London, Google and Yahoo!, as well as Canadian media such as *The Globe and Mail*, CanWest Publications, Inc., CTV and CBC.

The case involves Cheickh Bangoura, a former senior official with the United Nations in Africa who now lives in Oakville, Ontario. The UN fired Bangoura in 1997 after two articles in *The Washington Post* accused him of sexual harassment and financial improprieties. A UN tribunal later found the allegations baseless and said he should be compensated and reinstated.

Bangoura, a Canadian citizen, sued the *Post* for libel and argued that because the newspaper posted the story on its website, his reputation had been damaged in Ontario. The newspaper moved to have the case dismissed and argued that if it were allowed to proceed in Ontario, any news organization could be sued anywhere over material posted on its website.

In a decision issued last year, Justice Romain Pitt of the Ontario Superior Court said the case could go ahead in Ontario. "Those who publish via the Internet are aware of the global reach of their publications, and must consider the legal consequences in the jurisdiction of the subjects of their articles," he wrote.

The *Post* appealed the decision, and in a hearing before the Court of Appeal March 8, it was joined by the media coalition in arguing that Judge Pitt's ruling went too far. The ruling "will discourage and inhibit a free flow of information," Paul Schabas, a Toronto lawyer representing the *Post*, told the court. "It will have a chilling effect on speech."

He added that the *Post* had seven subscribers in Ontario when the article appeared and only one person paid to access the story through the newspaper's online archive service. He also said Bangoura didn't move to Ontario until 2000, long after the story appeared.

In a filing to the court, the media coalition said its intervention in the case "speaks of the deep concern with the judgment under appeal and its implications for all those who value freedom of expression. The extraordinary nature of the ruling presents real dangers to the continued development of the Internet and global communications."

Kikélola Roach, a Toronto lawyer representing Bangoura, said the ruling should stand because the case presents some unique circumstances. Roach said the *Post*

continues to offer a short summary of the stories on its website that contain defamatory information about Bangoura. "The damage is ongoing," she told the court. She added that Bangoura sued in Ontario because he is trying to re-establish a career there and the availability of the article online hurts those efforts. "The place where he is trying to vindicate his reputation is important," she told the court.

Bangoura said he is confident the ruling will be upheld. "I have total confidence in our system of justice," he said, surrounded by a small group of friends and family.

Bangoura, forty-six, grew up in Guinea and studied in Germany, where he earned a law degree and a PhD in international law. He spent a decade working at the UN, first in Austria and later in West Africa where he directed a regional drug-control program. He said he is not intimidated by the collection of giant media organizations lined up against him. "Those articles affect my future," he said sternly, adding that he has had trouble finding work in his field since being dismissed by the UN.

He said he is frustrated at suggestions he should not be allowed to sue the *Post* in Ontario. "I live here. I am working here. My family is here, I have two children born here. This is my home." Reported in: *Toronto Globe and Mail*, March 9.

broadcasting

Washington, D.C.

A federal appeals court March 15 gave consumer advocates a chance to bolster their legal challenge of a rule designed to limit the copying of digital television programs. A three-judge panel of the U.S. Court of Appeals for the D.C. Circuit gave opponents two weeks to further explain a key legal point in the cas—how they would be harmed by the new Federal Communications Commission's "broadcast flag" rule.

Two of the three judges said further explanation was needed to prove that opponents such as the American Library Association had legal standing to challenge the rule in court.

The FCC rule aims to limit people from sending copies of digital television programs over the Internet. The FCC has said copyright protections are needed to help speed the adoption of digital television.

Under the FCC rule, programmers can attach a code, or flag, to digital broadcasts that would, in most cases, bar consumers from sending unauthorized copies over the Web. The rule requires manufacturers of television sets that receive digital over-the-air broadcast signals to produce sets that can read the digital code by July 1 of this year.

Some consumer groups say the rule could raise prices to consumers and sets a bad precedent by allowing broadcasters to dictate how computers and other devices should be built.

During arguments in the case the judges sided with critics of the new rule, who argue that regulators had overstepped their authority. They expressed doubts about whether the FCC had specific authority to dictate how electronic devices must be made. But at the hearing they also questioned critics' legal standing, noting that parties have standing only when they can show that an agency ruling will cause them a unique, "particularized" harm.

One of the three judges, David Sentelle, dissented from the decision. In a separate opinion, he said the case should be dismissed because of the standing problem. Reported in: MSNBC.com, March 15.

child pornography

Knoxville, Tennessee

A state appeals court March 30 affirmed a Knox County judge's ruling that part of a state child pornography law is unconstitutional. The decision, based on two Knox County cases, is the first appellate ruling on the constitutionality of Tennessee's sexual exploitation of a minor law as it applies to child porn distributed on the Internet.

The appeal came after Knox County Criminal Court Judge Richard Baumgartner ruled last year that prosecutors must hand over to defense attorneys evidence in a case, called discovery, upon which possession of child pornography charges are based. Baumgartner also held that a section of the law letting jurors "infer" someone shown in pornographic material was a minor, based on its packaging, text, title, or visual representations, was unconstitutional.

Court of Criminal Appeals Judge Alan E. Glen agreed, writing that that flawed section of the law "comes too close to permitting a conviction based on the material in which an actual minor is not involved."

Kevin Allen, a Knox County district attorney general who prosecutes child sex offenses, appealed Baumgartner's ruling. Defense attorneys James A. H. Bell, Gregory P. Isaacs, and Richard L. Gaines argued the entire law was flawed, while the state argued the law was constitutional.

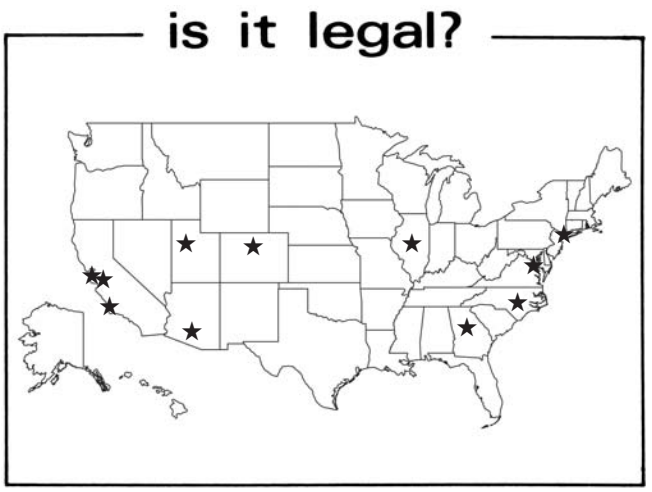
"It's a tremendous victory for our fundamental freedoms in the context of cyberspace," Isaacs said. "But now it's time for the legislature to craft a good law to prosecute bad people as opposed to a vague law that can ensnare the innocent."

Allen said the appeals court opinion puts no extra burden on prosecutors. "I would have liked to see the discovery issue go our way, but we are going to deal with it," he said.

The defense attorneys argued the law is so broad that someone who inadvertently stored child pornography on a computer hard drive through unwanted e-mail, a "pop-up" advertisement or a computer virus could be charged. In addition to successfully attacking the section allowing jurors to "infer" that someone portrayed in pornography was a minor, they argued Allen could not refuse to turn over the material over which their clients were charged.

Allen countered that under the law, giving copies of such material to the defense could constitute illegal distribution

(continued on page 140)



libraries

San Luis Obispo, California

A new county law aims to keep readers from reeking. Libraries in San Luis Obispo County have had their own rules banning offensive body odor since 1994, but the policy became law after the Board of Supervisors in February adopted an ordinance that lets authorities kick out malodorous guests. Visitors to fourteen libraries and a bookmobile also could be asked to leave for fighting, eating, drinking, sleeping, playing games, and printing or viewing illegal materials on library computers.

"The point is to make the library a comfortable, safe place for everyone to use," said Moe McGee, assistant director of the San Luis Obispo City-County Library.

A strict code of conduct, officials argue, is needed to ensure one patron's right to use a public library doesn't infringe on the rights of another. Yet the law can raise tough questions for librarians, said Irene Macias, Santa Barbara's library services manager.

"What is bad odor?" Macias asked. "A woman who wears a strong perfume? A person who had a garlicky meal?" Reported in: sanluisobispo.com, March 7.

Springfield, Illinois

Almost a year after a suburban Chicago library refused to share patron information in a criminal investigation without a court order, the Illinois General Assembly is considering whether to amend privacy statutes so that libraries would have to open patron records to the immediate scrutiny of law enforcement under certain circumstances.

HB 1582 states that libraries must release identifying registration and circulation information at a police officer's request if the officer has probable cause to believe someone is in imminent danger of physical harm.

Rep. Joe Dunn (R-Naperville), the bill's sponsor, said that his interest in the issue stems from a May 2004 incident in which city library staff abided by existing confidentiality laws and refused to release the name of a man who had been using an online workstation until police returned with a court order. Three teens had reported that they had seen the man masturbating in public while viewing sexually explicit digitized images.

"The library community feels very strongly about the confidentiality of library records," Naperville Public Libraries Deputy Director Mark West explained. As of March 10, the Illinois Library Association was maintaining a "neutral" stance on the legislation, which had cleared the Judiciary Committee of the state house. Reported in: *American Libraries* Online, March 18.

schools

New York, New York

A group seeking to constrain military recruiters at schools has settled a lawsuit against New York City claiming that the Police Department was illegally barring it from giving out information on public sidewalks in front of schools, an activity protected by the First Amendment.

Under the settlement, reached in U.S. District Court in Manhattan, and dated March 16, the New York Civil Liberties Union, which represented the group, the Ya-Ya Network, and lawyers for the city agreed that the department would instruct police officers that a state law against loitering near schools and colleges "does not apply to First Amendment activity."

The lawyer who brought the suit, Christopher Dunn, said the department had made a practice of prohibiting First Amendment activity near schools, a charge that Paul J. Browne, the department's deputy commissioner for public information, strongly denied.

"It's not our practice to inhibit First Amendment rights," Browne said. "We've spent a great deal of time facilitating it in New York, and to try to accommodate some of these shifting and sometimes conflicting demands."

Dunn had argued that prohibiting people from handing out leaflets on a public sidewalk near a school was unconstitutional. He said the case had broad implications for protest groups in the city, many of which had been prevented from reaching students.

"It was an enormous amount of territory that was off limits," he said.

There are about 1,300 public schools in New York City alone. The First Amendment exception to the loitering law also applies to public sidewalks near private schools and universities.

In the suit, filed in 2003, the Ya-Ya Network said its members had been chased off the public areas in front of several schools by school officials and, in one case, a police officer, while trying to distribute information about students' rights to withhold personal data that schools give to military recruiters. The suit also cited the arrests of two students who were handing out AIDS literature near a high school in Flatbush, Brooklyn.

"What we'd been hearing from students was, 'Oh no, we're not allowed to talk to people outside of schools,'" said Amy Wagner, executive director of the Ya-Ya Network, "that they'd set up a red zone and we've been told we were not allowed."

The summonses against the two students were dismissed, Dunn said, and the civil liberties group began months of discussions with the city about the policy. In October 2003, the agency filed suit.

The Police Department issued a one-page directive to all precincts on March 21 instructing police officers not to enforce the loitering law against First Amendment activity, including "the holding of signs, placards and leaflets, chanting and singing."

However, Browne said, the department reserved the right to take action if protesters were blocking entrances to schools or intimidating students and teachers.

The city lawyer on the case, Dara Weiss, said the settlement "clarified that people can participate in legitimate expressive activities near school grounds provided that they are not engaging in any unlawful activity. Schools are meant to be hotbeds of discussion of current issues and issues that impact young people," she said. "If the public sidewalks are not a public venue, then what is?" Reported in: *New York Times*, March 30.

Fayetteville, North Carolina

A fifth-grader's family is suing the Cumberland County school system because her teacher used a Christian text that preached creationism and encouraged children to proselytize for Jesus. The suit, filed March 18 in U.S. District Court in Raleigh, says a teacher at Sunnyside Elementary School in Fayetteville assigned students readings that included the lesson "Scents Make Sense."

"God's word tells us about a kind of odor only Christians have. . . ." the lesson read. "Christians carry forth the fragrance of Christ wherever they go by the way they live; that is, they remind people of Him. Could someone find Christ by the scent trail you are leaving behind you?"

The school system acknowledged in an agreement that the allegations were true and pledged not to use those lessons or other religious materials. Once a judge signs that agreement, the school system could face federal criminal penalties for violating it.

"We made a mistake," Cumberland Schools Superintendent Bill Harrison said. "The only thing we can do is make amends and move on."

In November or December, Ashlee Nicole Smith, a school spelling bee champion and president of the Sunnyside Beta Club, showed the scent lesson and one other to her parents, Troy and Mary Jane Smith of Fayetteville. The other lesson said, "God has a niche for each creature He has created, down to the tiniest microscopic being. He also has a niche for each person He has created."

The suit says that when the parents complained to principal Deborah Anderson, she asked, "What's the problem? Don't you and your family go to church?"

Anderson also told the parents she didn't understand their objections, because Ashlee earned perfect scores on the assignments. Anderson then promised that it wouldn't happen again.

In February, it did. Ashlee came home with a worksheet on which she was marked wrong for answering that "chance" was the reason many animals are colored to match their surroundings. The teacher indicated that the right answer was "God's master design," the suit says.

Harrison said Cumberland schools have a policy, mandated by federal law, that bars teachers from endorsing any religion. He said that Kristie Griffiths, the teacher, is a visiting faculty member from Australia and did not understand U.S. standards. She bought the text from Christian publisher A Beka Book with her own money, he said.

Harrison said the principal did not take the incident seriously enough and failed to make sure the teacher stopped using the text. He said Anderson sent a memo to all staff asking them to use only board-approved materials but didn't communicate directly with Griffiths.

Harrison said he found out about the problem in February, when the Smiths' lawyer sent him a letter, and he made sure that the text is no longer being used. The teacher and the principal are still at Sunnyside, and Harrison wouldn't comment on what discipline they might face.

Jon Sasser, the Raleigh lawyer who represents the Smith family, said the parents filed suit because they wanted to make sure this doesn't happen again. He said the Smiths believe strongly in the separation of church in state.

"Ashlee's a fifth-grader, and she realized this was wrong," Sasser said. "This is light years beyond an invocation at a graduation or a moment of silence at a football game. When you're proselytizing fifth-graders, it's way over the top." Reported in: *Raleigh News and Observer*, March 19.

colleges and universities

Santa Rosa, California

Members of the College Republicans group at Santa Rosa Junior College had had enough. They were fed up, they said, with talking among themselves about various

professors who, by expressing unvarnished liberal views as fact, made the students feel uncomfortable expressing their opposing views in class.

"What are you supposed to think when your teacher stands in front of the class and talks about "what idiots all the people are who voted in the current administration?" says Molly McPherson, a second-year politics major and president of the Republican club. "That kind of thing doesn't lead to the exploration of ideas, and it doesn't make you think that your views are welcome or would be worth an A grade."

So when one of the students came across language in California's Education Code prohibiting instructors from teaching communism "with the intent to indoctrinate or to inculcate" students with that doctrine, the students got an idea.

"Why inculcate us with any political ideology? Do I pay them to teach me what to think?" McPherson says. "I don't think so. I want them to teach me how to think and the facts to think with. They can teach whatever they want, but I as student have a right to hear both sides of an issue."

To try to make their point, the students put the language from the education code on a flyer and affixed a red star to the top, signing it from "Anonymous Students." They taped the flyers to the office doors of about ten professors about whom McPherson says students had complained about imposing their political views in the classroom.

The fallout was swift and powerful. The professors who received the flyers objected that they were being personally attacked and threatened by the reference to the McCarthy-era remnant of the state code, which aimed to prevent the teaching of Communism aimed at "undermining patriotism for, and the belief in, the government of the United States and of this state."

At a news conference McPherson and another member of the College Republicans showed up to acknowledge having posted the flyers. Santa Rosa administrators circulated an e-mail that defended academic freedom but also said professors were responsible for "acknowledging the existence of, and showing respect for, opposing opinions" and "making clear what is personal opinion and what is considered general knowledge." McPherson and other students responsible for the postings faced a barrage of criticism at a raucous meeting of the college's Academic Senate.

In an interview, McPherson acknowledged that her use of the red stars and the "anonymous" nature of the document were "over the top," and that she underestimated the extent to which the faculty members, many of whom were "in the McCarthy generation," would be "afraid that they would come under criticism for their views."

Rather than implying a threat, she says, "the goal was to promote a discussion. We weren't trying to say they were communists. We were trying to get them to think about what this code says about" the climate in their classrooms.

But professors were not quick to forgive the students' use of McCarthy-era imagery. "Unnamed students and unspecified complaints—what does this sound like to you?" says Marco Giordano, an English professor who was not on the receiving end of a red star. "This was an attack and an innuendo and a slander on them, not the opening of a discussion. If you want to open a dialogue, you go to the professor's office, or the department chairman or the dean. Not one of these professors has a student complaint standing against them."

Giordano says that when he teaches, he provides facts and inferences of the facts in the classroom, and keeps his political opinions to himself. But academic freedom gives his colleagues the right to do that if they want, he says.

"It isn't a question of just balancing ideas in the classroom," he says. Academic freedom applies institution-wide. Consider the books in our library. We should have one by the monarchist and one by the Communist, but the monarchist doesn't have to give equal time to the Communist, and vice versa. I don't believe students should feel intimidated out of expressing their political opinions, but neither should professors."

It also seems clear, though, that the discussion will move beyond the campus. McPherson said she planned to try to build student support for legislation introduced in the California legislature—modeled on David Horowitz's Student Bill of Rights—that would mandate, among other things, that colleges ensure their faculty members present all viewpoints in their courses. Reported in: insidehighered.com, March 7.

CIA

Washington, D.C.

The Bush administration's secret program to transfer suspected terrorists to foreign countries for interrogation had been carried out by the Central Intelligence Agency under broad authority that has allowed it to act without case-by-case approval from the White House or the State or Justice Departments, according to current and former government officials.

The unusually expansive authority for the CIA to operate independently was provided by the White House under a still-classified directive signed by President Bush within days of the September 11, 2001, attacks at the World Trade Center and the Pentagon, the officials said.

The process, known as rendition, has been central in the government's efforts to disrupt terrorism, but has been bitterly criticized by human rights groups on grounds that the practice had violated the Bush administration's public pledge to provide safeguards against torture.

In providing a detailed description of the program, a senior United States official said it had been aimed only at those suspected of knowing about terrorist operations, and emphasized that the CIA had gone to great lengths to ensure

that they were detained under humane conditions and not tortured.

The official would not discuss any legal directive under which the agency operated, but said that the "CIA has existing authorities to lawfully conduct these operations."

Several former detainees have described being subjected to coercive interrogation techniques and brutal treatment during months spent in detention under the program in Egypt and other countries. The official would not discuss specific cases, but did not dispute that there had been instances in which prisoners were mistreated. The official said none had died.

The official said the CIA's inspector general was reviewing the rendition program as one of at least a half-dozen inquiries within the agency of possible misconduct involving the detention, interrogation and rendition of suspected terrorists.

In public, the Bush administration has refused to confirm that the rendition program exists, saying only in response to questions about it that the United States did not hand over people to face torture. The official refused to say how many prisoners had been transferred as part of the program. But former government officials say that since the September 11 attacks, the CIA has flown 100 to 150 suspected terrorists from one foreign country to another, including to Egypt, Syria, Saudi Arabia, Jordan, and Pakistan.

Each of those countries has been identified by the State Department as habitually using torture in its prisons. But the official said guidelines enforced within the CIA require that no transfer takes place before the receiving country provides assurances the prisoner will be treated humanely, and United States personnel are assigned to monitor compliance.

"We get assurances, we check on those assurances, and we double-check on these assurances to make sure people are being handled properly in respect to human rights," the official said. The official said compliance had been "very high" but added, "Nothing is 100 percent unless we're sitting there staring at them 24 hours a day."

It has long been known the CIA held a small group of high-ranking leaders of Al Qaeda in secret sites overseas, and the United States military continues to detain hundreds of suspected terrorists at Guantánamo Bay, Cuba, and in Afghanistan. The rendition program was intended to augment those operations, according to former government officials, by allowing the United States to gain intelligence from the interrogations of the prisoners, most of whom were sent to their countries of birth or citizenship.

Before September 11, the CIA had been authorized by presidential directives to carry out renditions, but under much more restrictive rules. In most instances in the past, the transfers of individual prisoners required review and approval by interagency groups led by the White House, and were usually authorized to bring prisoners to the United States or to other countries to face criminal charges.

As part of its broad new latitude, current and former government officials say, the CIA has been authorized to transfer prisoners to other countries solely for the purpose of detention and interrogation.

The covert transfers by the CIA have faced sharp criticism, in part because of the accounts provided by former prisoners who say they were beaten, shackled, humiliated, subjected to electric shocks, and otherwise mistreated during their long detention in foreign prisons before being released without being charged. Those accounts include cases like the following:

- Maher Arar, a Syrian-born Canadian, who was detained at Kennedy Airport two weeks after the September 11 attacks and transported to Syria, where he said he was subjected to beatings. A year later he was released without being charged with any crime.
- Khaled el-Masri, a Lebanese-born German who was pulled from a bus on the Serbia-Macedonia border in December 2003 and flown to Afghanistan, where he said he was beaten and drugged. He was released five months later without being charged with a crime.
- Mamdouh Habib, an Egyptian-born Australian who was arrested in Pakistan several weeks after the 2001 attacks. He was moved to Egypt, Afghanistan, and finally Guantánamo. During his detention, Habib said he was beaten, humiliated, and subjected to electric shocks. He was released after forty months without being charged.

In the most explicit statement of the administration's policies, Alberto R. Gonzales, then the White House counsel, said in written Congressional testimony in January that "the policy of the United States is not to transfer individuals to countries where we believe they likely will be tortured, whether those individuals are being transferred from inside or outside the United States." Gonzales said then that he was "not aware of anyone in the executive branch authorizing any transfer of a detainee in violation of that policy."

Administration officials have said that approach is consistent with American obligations under the Convention Against Torture, the international agreement that bars signatories from engaging in extreme interrogation techniques. But in interviews, a half-dozen current and former government officials said they believed that, in practice, the administration's approach may have involved turning a blind eye to torture. One former senior government official who was assured that no one was being mistreated said that accumulation of abuse accounts was disturbing. "I really wonder what they were doing, and I am no longer sure what I believe," said the official, who was briefed periodically about the rendition program.

In Congressional testimony, the director of central intelligence, Porter J. Goss, acknowledged that the United States had only a limited capacity to enforce promises that detainees would be treated humanely. "We have a responsi-

bility of trying to ensure that they are properly treated, and we try and do the best we can to guarantee that," Goss said of the prisoners that the United States had transferred to the custody of other countries. "But of course once they're out of our control, there's only so much we can do. But we do have an accountability program for those situations."

The practice of transporting a prisoner from one country to another, without formal extradition proceedings, has been used by the government for years. George J. Tenet, the former director of central intelligence, has testified that there were seventy cases before the September 11 attacks, authorized by the White House. About twenty of those cases involved people brought to the United States to stand trial under informal arrangements with the country in which the suspects were captured.

Since September 11, however, it has been used much more widely and has had more expansive guidelines, because of the broad authorizations that the White House has granted to the CIA under legal opinions and a series of amendments to Presidential Decision Directives that remain classified. The officials said that most of the people subject to rendition were regarded by counterterrorism experts as less significant than people held under direct American control, including the estimated three dozen high ranking operatives of Al Qaeda who are confined at secret sites around the world.

The Pentagon also has transferred some prisoners to foreign custody, handing over 62 prisoners to Pakistan, Morocco, Saudi Arabia and Kuwait, among other countries, from the American prison in Guantánamo Bay, in actions that it has publicly acknowledged. In some of those cases, a senior Defense Department official said, the transfers were for the purpose of prosecution and trials, but others were intended solely for the purpose of detention. Those four countries, as well Egypt, Jordan, and Syria, were among those identified in a State Department human rights report released last week as practicing torture in their prisons. Reported in: *New York Times*, March 6.

political expression

Denver, Colorado

Three Denver residents charged March 29 that they were forcibly removed from one of President Bush's town meetings on Social Security because they displayed a bumper sticker on their car condemning the administration's Middle East policies.

The three, all self-described progressives who oppose Bush's Social Security plan, said an unidentified official at an event in Denver forced them to leave before the president started to speak, even though they had done nothing disruptive, said their attorney, Dan Recht.

Initially, the three believed Secret Service agents had grabbed them and ushered them out of the auditorium, Recht said. But he said that Lon Garner, the Secret Service agent in charge of the Denver office, told them the service investigated the matter and found it was a "Republican staffer" who removed them because they had a "No More Blood for Oil" bumper sticker on their car.

Scott McClellan, Bush's press secretary, said it was a volunteer who asked them to leave "out of concern they might try to disrupt the event." He said the White House welcomes a variety of voices into events but discourages people from coming to heckle the president or disrupt town hall forums. "If someone is coming to try to disrupt it, then obviously that person would be asked to leave," he said. "There is plenty of opportunity outside of the event to express their views."

This was not the first time people have complained about heavy-handed monitoring of who can attend—and speak at—Bush's events promoting his Social Security plan. A newspaper in Fargo, North Dakota, reported that when Bush came to the city on February 3, more than forty residents were barred from attending the event.

The president has held Social Security rallies in more than a dozen states this year. The crowds are closely monitored for possible disruptions, and protesters are quickly escorted away.

Protesters often stand out because the crowds are packed with Bush supporters, who have been invited by a local GOP House member or organization. Those onstage at most of the town hall meetings are carefully screened people from the area who agree with the president's Social Security proposal. The participants typically rehearse what they will say with members of the president's advance team and rarely, if ever, say anything critical about his plan for private accounts.

In this case, Alex Young, 25; Karen Bauer, 38; and Leslie Weise, 39, said they were forced out even though they said nothing and did not sport T-shirts or signs criticizing the president or his policies. Young told the Associated Press that the three wore T-shirts under their business attire that read "Stop the Lies" and had discussed exposing them during Bush's visit, but decided not to. Recht, who is representing the three pro bono, said his clients consider themselves progressives.

The three were invited to the event by Rep. Bob Beauprez (R-CO). Jordan Stoick, spokesman for Beauprez, said the congressman's office distributed the tickets at the behest of the White House to constituents, including many Democrats. He said Beauprez is "definitely" concerned about the charges but is declining to comment on whether he believes them to be true. "He strongly supports free speech," Stoick said.

As described by Recht, a man in a blue suit told the three they had to leave and "in a physical, forcible way" escorted them out, refusing to explain why. A Secret Service official said local law enforcement is in charge of policing civil disobedience at such events, although the

Bush advance team is often seen asking disruptive people to leave.

"They believe their constitutional rights were violated, as do I, and that's the stuff lawsuits are made of," Recht said. "When you are punished by not being allowed to listen to your president speak because of speech you have on your bumper sticker, that is a classic First Amendment issue." Recht said he has not decided whether to file a lawsuit. Reported in: *Washington Post*, March 30.

broadcasting

Washington, D.C.

Mike Godwin, the legal director for Public Knowledge, a digital-rights advocacy group in Washington, is a fan of Showtime's new drama series *Huff*. So when he missed the season finale, he decided to download it to his personal computer. It took about seven hours to download all 500 megabytes of the hour-long episode over his high-speed Internet connection, using the latest file-sharing software designed to handle large digital files.

To Godwin, the time-consuming download (and the file's poor quality) indicated that the rampant piracy of digitized broadcast programs—a threat Hollywood has long warned against—was hardly imminent. But to the Federal Communications Commission and the Motion Picture Association of America, cases like this one suggest a future of widespread illegal file-sharing that must be stopped before it begins.

The debate was presented in oral arguments before the United States Court of Appeals for the District of Columbia Circuit February 22 in a lawsuit brought by Public Knowledge and others against the FCC, challenging a new regulation that is intended to prevent such bleeding of television content onto the Internet.

"This is about whether the FCC is going to become the Federal Computer Commission and the Federal Copyright Commission," said Gigi B. Sohn, the co-founder and president of Public Knowledge. "The FCC does not have the power to tell technology manufacturers how to build their machines."

All sides agree that the new rule would do just that in attempting to limit unauthorized sharing of digital broadcast content over the Internet. The rule would require that, as of July 1, all new consumer electronics equipment capable of receiving over-the-air digital signals—from digital televisions to computers equipped with TV tuner cards—must include technology that will recognize a "broadcast flag."

That flag is simply a marker of sorts, a packet of bits embedded in a digital television broadcast stream that essentially carries the message "this stream is to be protected." In addition to recognizing that message, new equipment must include technology that will prevent the content from being distributed to other devices unless they, too, are flag-compliant.

To the entertainment industry, the rule is a necessary precondition to its participation in the nationwide move toward digital broadcasting that Congress and the FCC have been promoting for nearly ten years—a transition that would, among other benefits, free up valuable tracts of the electromagnetic spectrum now being used to deliver bulkier analog signals.

The MPAA has argued that without the broadcast flag rule, content creators would have no incentive to provide digital content over the airwaves, because people could simply pluck video streams out of the air and redistribute them to millions of viewers over the Internet.

"It's very simple," said Fritz Attaway, a vice president and Washington general counsel for the MPAA. "Without the broadcast flag, high-value content would migrate to where it could be protected."

In practical terms, such "protected" places would be cable and satellite systems where digital content can be more easily scrambled, encrypted, or otherwise controlled, leaving broadcast networks at a distinct disadvantage in the new digital marketplace. But the MPAA's position has also been understood by some to be simpler and starker: if you don't make it safe for us to provide high-value digital content over the public airwaves, we won't.

The transition to all-digital broadcasting is supposed to be completed by the end of 2006, after which the unused parts of the spectrum are to be reclaimed by the federal government. Those frequencies could then be used for, say, public safety communications, or, perhaps more important, auctioned off for use by emerging wireless and other technologies.

The Congressional Budget Office estimates that such auctions could generate $15 billion in revenue for the government over the next ten years. Other estimates put the value much higher.

But if content creators refuse to provide digital programming because of piracy concerns, consumer demand for digital television will be low, which means a slower transition to all-digital broadcasts. And that, in turn, would mean no revenue for the government from spectrum auctions. Less than 5 percent of all households now have televisions that allow them to view digital broadcasts, according to the Consumer Electronics Association.

"The FCC has a unique role in seeing this transition through," said Rick Chessen, chair of the commission's digital transition task force, "and one of the key elements of the transition is making sure that high-quality digital content is available. If that content isn't there or if it migrates somewhere else, then the transition, and ultimately the broadcasting system itself, is hurt."

The only other viable option to the broadcast flag—encrypting digital broadcasts entirely—would have been a much more heavy-handed approach, Chessen said, because

consumers have already purchased millions of digital televisions that would be unable to receive the encrypted signals. Under the broadcast flag system, noncompliant devices could simply ignore the flag and function normally.

Chessen also noted that the agency had encouraged competition by not mandating any particular technology to make new consumer devices flag-compliant. So far, thirteen methods for doing so have been developed by nine companies—including big players like Sony, Philips, and RealNetworks—and submitted to the FCC, which has approved them all.

And using the Internet to redistribute legitimately copied content is not wholly ruled out, Chessen said, as long as there is some mechanism in the devices to prevent "mass and indiscriminate" sharing.

Consumer electronics manufacturers have, for the most part, kept a fairly low profile in the debate, wanting neither to be burdened with cumbersome design specifications nor to upset the powerful content industry, which is the chief proponent of the flag. "We have a strong history of defending fair use and innovation," said Jeffrey Joseph, the vice president for communications at the Consumer Electronics Association. "But you also have to have content to make these boxes worth a dime."

But staunch opponents of the broadcast flag rule—which include groups like the American Library Association, the Consumers Union and the Electronic Frontier Foundation—see it as an unprecedented regulatory sledgehammer.

In only a few limited circumstances has the FCC issued design regulations for the manufacture of consumer electronics—and in those cases, only after a statutory mandate from Congress. The V-chip is one example; closed-captioning capabilities in TV sets is another.

But the broadcast-flag rule was not created by a Congressional directive, and opponents argue that is at least partly because the kind of piracy it is meant to prevent is not a big problem.

"There is no evidence on the record that piracy of digital broadcast content is a problem now or is going to be a problem in the near future," said Sohn of Public Knowledge. "We don't want agencies making rules based on nothing. And there's also no evidence that the broadcast flag will do what it wants it to do."

Indeed, it is a fairly simple matter—and will probably remain so even if the rule survives—for even mildly dedicated pirates to capture and convert signals back and forth from digital to analog, effectively defeating the flag.

Another problem, said Sohn, is that the broadcast flag would prohibit redistribution of public domain works and stop certain kinds of distribution of content that is allowed under the fair-use provisions of copyright law. "Let's say you want to do a video blog, or want to comment on a TV show with a ten-second clip and share it," she said. "You won't be able to do that."

Other opponents of the rule say there will be no way of knowing what sorts of new technologies might have emerged without the regulation, because every device involved—televisions, video recorders, portable devices on which video programming can be displayed—will be forever shaped by the design specifications laid out by the broadcast-flag rule.

"Everything would have to be built to this single standard," said Susan Crawford, a professor of Internet law at the Cardozo School of Law in New York. "It's like being bitten in the neck by a vampire. As soon as you buy one compliant device, you'll have to continue buying new devices to keep them working together."

Whether or not the court will be sympathetic to any of these arguments is an open question, but Sohn and Godwin of Public Knowledge say they are confident that their arguments will be persuasive—particularly because the FCC issued the rule without prior action from Congress.

"This is basically the Roach Motel approach to intellectual property protection," Godwin said. "Content can check in, but it can't check out." Reported in: *New York Times*, February 21.

cable television

Washington, D.C.

Cable television shows packed with sex and profanity, such as HBO's *Deadwood*, FX's *Nip/Tuck*, and Comedy Central's *South Park*, would be subject to the same indecency regulations that govern over-the-air broadcasts if the chair of the Senate Commerce Committee has his way. Currently, the Federal Communications Commission has the authority to fine only over-the-air radio and television broadcasters for violating its indecency regulations, which forbid airing sexual or excretory material between 6 A.M. and 10 P.M., when children are most likely watching.

But Sen. Ted Stevens (R-AK) told a group of broadcasters March 1 that he wants to extend that authority to cover the hundreds of cable and satellite television and radio channels that operate outside of the government's control. In addition to basic cable channels such as ESPN, Discovery and MTV, that would include premium channels such as HBO and Showtime and the two satellite radio services, XM and Sirius.

"We put restrictions on the over-the-air signals," Stevens said after his address to the National Association of Broadcasters, according to news reports confirmed by his staff. "I think we can put restrictions on cable itself. At least I intend to do my best to push that."

Last year, as the Senate considered a bill raising indecency fines for broadcast, Sen. John Breaux (D-LA)—who has retired—proposed an amendment that would have extended the indecency rules to cable. Stevens voted

against the amendment and it failed, twelve to eleven. However, Stevens opposed Breaux's amendment because he thought it was being used as a way to kill the bill raising the fines, Senate staffers said.

The government has resisted policing cable in the past, citing First Amendment hurdles to governing content that consumers pay for rather than receive free. But Stevens said he thought the Supreme Court, which ruled that cable systems must carry local television station signals, would also require cable to hew to broadcast decency standards.

The cable industry, wary of regulation, said its self-policing is sufficient. "Cable technology already provides families the tools to block unwanted channels from entering the home, and leading cable companies will provide this technology at no additional charge to customers who don't have the means to block unwanted programming," Brian Dietz, vice president of communications for the National Cable &Telecommunications Association, said in a written statement.

In the House, Rep. Joe Barton (R-TX), chair of the House Energy and Commerce Committee, said he supported equal treatment of cable networks and would talk to Stevens about possible legislation.

There are bills in both houses of Congress that would substantially increase the amount the FCC could fine over-the-air broadcasters for indecency, increasing the maximum $32,500 penalty to as much as $500,000 in the House version of the bill, passed in February. That bill also includes a provision that would force broadcasters to face license-revocation hearings after a third indecency violation, which Stevens supports.

Cable channels have been snatching viewers from the broadcast networks in recent years, partially because they can program nudity and profanity and other potentially objectionable material that networks, such as ABC and Fox, would be fined for showing. Broadcasters have argued that the decency regulations create an uneven playing field, with producers and directors preferring to take their edgier and often more-popular material to cable.

Howard Stern, for instance, announced that he will move to Sirius Satellite Radio when his contract with Infinity Broadcasting expires in January, saying he had been chased from the airwaves by the government's indecency crackdown. Reported in: *Washington Post*, March 2.

Internet

Phoenix, Arizona

An Arizona university student is believed to be the first person in the country to be convicted of a crime under state laws for illegally downloading music and movies from the Internet, prosecutors and activists say. University of Arizona student Parvin Dhaliwal pleaded guilty to possession of counterfeit marks, or unauthorized copies of intellectual property. Under an agreement with prosecutors, Dhaliwal was sentenced in February to a three-month deferred jail sentence, three years of probation, two hundred hours of community service and a $5,400 fine. The judge in the case also ordered him to take a copyright class at the University of Arizona, which he attends, and to avoid file-sharing computer programs.

"Generally copyright is exclusively a federal matter," said Jason Schultz, an attorney with the Electronic Frontier Foundation, a technology civil liberties group. "Up until this point, you just haven't seen states involved at all."

Federal investigators referred the case to the Maricopa County Attorney's Office for prosecution because Dhaliwal was a minor when he committed the crime, said Krystal Garza, a spokeswoman for the office. "His age was a big factor," she said. "If it went into federal court, it's a minimum of three months in jail up front."

Although Dhaliwal wasn't charged until he was eighteen, he was seventeen when he committed the crime. Prosecutors charged him as an adult but kept it in state court to allow for a deferred sentence. Garza also said Dhaliwal had no prior criminal record. The charge is a low-level felony but may be dropped to a misdemeanor once he completes probation, she said.

The FBI found illegal copies of music and movies on Dhaliwal's computer, including films that, at the time of the theft, were available only in theaters. They included *Eternal Sunshine of the Spotless Mind, Matrix Revolutions, The Cat In The Hat,* and *Mona Lisa Smile.*

A federal task force that monitors the Internet caught on to the student and got a warrant, Garza said, adding that Dhaliwal was copying and selling the pirated material. Reported in: *Washington Post*, March 7.

San Jose, California

A state judge in California heard arguments March 4 in a lawsuit brought by Apple Computer to force three Web site publishers to reveal the names of confidential sources who disclosed to them Apple's plans for future products. The outcome of the lawsuit, which was filed in December, could have far-reaching ramifications for the ability of bloggers to maintain the confidentiality of unnamed sources, which news gatherers often depend on for information.

Judge James Kleinberg of the Santa Clara County Superior Court in San Jose, told the lawyers in the case that he was leaning toward permitting Apple to issue subpoenas to the three publishers, Powerpage.org, Apple Insider and Think Secret. In the case, Apple wants to force the sites to turn over documents related to an unreleased Apple product called Asteroid and certain other Apple technology under development.

(continued on page 141)

libraries

Fayetteville, Arkansas

An appointed committee has ruled against a parent's complaint that a sex education book should be banned from the Fayetteville Public Schools' library system. Instead, *It's Perfectly Normal*, by Robie Harris, a sex education book designed for pre-teens and young adolescents, will be allowed to stay on the shelves in the schools' parent libraries. The book is currently available only through the parent library at Holt Middle School. It used to be in the general circulation at McNair Middle School, but that library's copy was lost.

Parent Laurie Taylor, who filed the complaint, spoke out against the book at a school board meeting February 24. She argued it was sexually explicit and shouldn't be available in a school library. She also complained about two other books—*It's So Amazing*, also by Harris, and *The Teenage Guy's Survival Guide*, by Jeremy Daldry—being available in school libraries.

Following Taylor's presentation at the meeting, board president Steve Percival said the school has a "process" to address some complaints and he suggested it be allowed to run its course. The process for addressing library book complaints involves forming a "materials evaluation committee" to review the book and make a recommendation. In the case of *It's Perfectly Normal*, the committee ruled the book could remain as part of the parent library section for middle school and elementary students. No decision has been reached on the formal complaints against the other two books.

Superintendent Bobby New said he can only recall three previous instances of someone filing a complaint in his nine years as superintendent.

Some members of the committee recommended that the book should only be available in the parent libraries at middle schools and elementary schools. The recommendation did say the book could be housed in general circulation in the junior high libraries, but they do not currently have copies of it. As an exception to the middle schools, the committee said the book could be checked out by students if an educator believed it would be in the student's interest and if a counselor or administrator backed the recommendation.

"The materials selection committee represents the right of the parent to guide, direct and/or restrict their student's reading choices; however, this is not a right that translates to making a choice for the students of other parents. Therefore, the book should not be withdrawn from access for all students," the committee concluded. Reported in: *Northwest Arkansas Times*, March 10.

Fargo, North Dakota

The Fargo, North Dakota, school board has voted to keep the novel *Mick Harte Was Here* in the Centennial Elementary School library. The 1996 novel by Barbara Park depicts the grieving process of a thirteen-year-old girl after her younger brother dies in a bicycle accident. Board members said the book meets community standards in its depiction of how a child might react to the death of a close family member. Superintendent David Flowers had stated earlier that the novel was appropriate for grades 4 and above, and committees at the school and district levels agreed.

"They followed the correct procedures, but the decision-making was horrible," said Mark Herschlip, who challenged the title with his wife Pam. The Herschlips, who have a foruth-grade daughter, claimed the book contains inappropriate themes and language. They have asked legislators to direct the state Department of Public Instruction to develop standards for school library materials and curriculum. Reported in: *American Libraries* Online, March 25.

Houston, Texas

The Jenna Jameson autobiography *How to Make Love Like a Porn Star: A Cautionary Tale* is no longer kept behind the counter at Houston Public Library, as had been ordered in mid-January by Mayor Bill White. "This is a great victory for the First Amendment and people's right to read," said Randall Kallinen, president of the American Civil Liberties Union's local chapter, which had threatened to sue the city for sequestering the book.

A library review committee, which was formed after White made his unilateral decision, recommended February

1 that the Jameson title be shelved in the fine arts and recreation section along with other celebrity biographies. However, staff did not have to physically move *How to Make Love Like a Porn Star* since it has been in constant circulation for months and as of mid-February had a waiting list of forty-one patrons.

Mayoral spokesperson Frank Michel said White had intended his action as a temporary one, pending library review. But city council member Pat Holm, whose outcry over the book being prominently featured in the library's bestseller display started the controversy, said that she was "in the dark" about why the committee was formed but gratified to know the library would scrutinize books more closely before displaying them prominently. Reported in: *American Libraries* Online, February 18.

Provo, Utah

A complaint from a Provo City Library patron has prompted officials to begin offering the free *Salt Lake City Weekly* as of March 4, some three months after another user's objection to the alternative newspaper's sometimes-explicit content and cover stories caused the library to stop making stacks of the *City Weekly* available for distribution in the lobby.

Director Gene Nelson began revisiting the December decision with trustees and city Chief Administrative Officer Wayne Parker in late February, after patron Andrew Thompson voiced his dismay that the library no longer carried the *City Weekly*. "It is not the role of a public library, anywhere in the United States, to censor what people are allowed to read," Thompson asserted.

Noting that patrons would never confuse the *City Weekly* with the *Deseret Morning News*, Nelson said, "I do feel very strongly that the main focus and purpose of a public library is to make sure that voices are heard - both majority voices and minority voices."

The solution devised by Nelson, Parker, and the trustees was for the library to retain only one copy of every newspaper, including the alternative weekly, and to shelve them all together on the second floor. A satisfied Thompson said he was "only sorry this had to become an issue in the first place." But patron Dee Palmer said, "This never was a First Amendment issue," but rather "about standing for decency and against obscenity." Reported in: *American Libraries* online, March 11.

colleges and universities

Pineville, Louisiana

Louisiana College's Board of Trustees rescinded on March 15 a controversial textbook-review policy that required instructors to submit course materials to the college's administration for approval. The move was a response to the college's being placed on probation by the Southern Association of Colleges and Schools, which accredits the institution. The trustees also formed a committee—to be made up of board members, administrators, and professors—to look into issues of academic freedom.

In recent years, the small Baptist college has had more than its share of uproars. In January, a new president was selected by the board despite strong objections from faculty members who contended that he was not qualified for the position. The president, Joe Aguillard, said that the recent steps taken by the board have been "very positive" and that the college is on the right track. "There is a proactive effort to do whatever is necessary to be removed from probation," he said.

The textbook-review policy had been put in place to ensure that materials used in courses were in line with Baptist doctrines. Aguillard said that the problem was not the policy, itself, but that it had been adopted without faculty members' involvement. He said a committee would look at developing a new policy that is "acceptable and very workable for everyone."

The textbook policy and influence over board decisions by the Louisiana Baptist Convention, which owns the college, were among the reasons the institution was put on probation. Reported in: *Chronicle of Higher Education* online, March 17.

Las Vegas, Nevada

The University of Nevada at Las Vegas's president announced February 18 that a student's discrimination complaint against an economics professor was unwarranted because it violated the professor's academic freedom. The decision by the president, Carol C. Harter, in favor of the professor, Hans-Herman Hoppe, reversed a committee's recommendation that he serve a one-week unpaid suspension and receive a letter of reprimand.

"I believe professors are entitled the freedom to teach theories and to espouse opinions that are out of the mainstream or are controversial," Harter said. "Whether anyone in the university agrees or disagrees with Professor Hoppe's theories or his opinions is not ultimately relevant."

The UNLV controversy began in March 2004, when Michael Knight, a senior who has since graduated, complained to administrators that Hoppe had made homophobic statements during a lecture in his "Money and Banking" course. To illustrate the concept of "time preferences," Hoppe cited homosexuals as one group whose members prefer to spend their money immediately instead of saving it for the future. Hoppe mentioned elderly people and young children as two other groups also prone to such behavior.

In his lecture, both Hoppe and Knight agree, the professor said homosexuals tend to spend more readily because they are not thinking about starting a family and so do not feel they must save money to raise children or buy homes. According to Knight, Hoppe preceded his remarks by say-

ing, "I've been known to not be so politically correct." Still, Knight said, other students were laughing and, as a gay man, he felt uncomfortable.

"I took his statement to mean that homosexuals do not have any family values," said Knight. "As a gay male, I was offended, I felt he was stereotyping in general. . . . Not all homosexuals are that way."

Knight filed a complaint with university administrators, which led to the committee's decision against the professor. In a nondisciplinary "letter of instruction," dated February 9, the university's provost advised 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."

In response, Hoppe, who has been represented by the Nevada chapter of the American Civil Liberties Union in the dispute, demanded that the letter be removed from his personnel file. He also requested a public apology from UNLV and a paid one-year sabbatical, saying the controversy had been damaging to his health.

Harter's statement did not include an apology or any indication that Hoppe would get paid leave, but she did say that the letter had been removed from his file and that the university considered the matter to be closed. Hilarie Grey, a spokeswoman for the university, reiterated Harter's statement, and declined to comment on how the university planned to handle Hoppe's additional requests.

In a brief e-mail message, Hoppe said the situation was "not resolved." Another faculty member agreed that the issue was far from over. According to William M. Epstein, a professor of social work, Hoppe's experience is representative of larger problems at the university.

"What happened is a symptom of a poor administration here and a very weak faculty," said Epstein. "Many people who are accomplished at UNLV have retired or left the place largely because they didn't like the tenor of the management and the lack of respect for scholarship."

The dispute struck at a time of increased scrutiny of controversial comments by academics. The University of Colorado System is investigating a professor on its Boulder campus who compared September 11 victims to Nazis. And the president of Harvard University, also an economist, stirred up a firestorm with comments on why there are not more women in science and mathematics.

For his part, Knight said he was "shocked and disappointed" by the university's decision but did not plan to pursue the matter further. "There's a difference between academic freedom and academic responsibility," said Knight, who now lives in Seattle and works for a travel company. "I think UNLV made this decision because of political pressure, and they didn't want any more drama from the whole issue." Reported in: *Chronicle of Higher Education* online, February 21.

broadcasting

Los Angeles, California

Nip/Tuck won't be getting in trouble with the FCC. The agency dismissed numerous complaints March 4 over the racy black comedy about plastic surgeons and their patients. A variety of complainants asked the FCC to fine cable network FX on grounds that the show is indecent and/or obscene. The show is a frequent target of criticism from the Parents Television Council, although none of the complaints this time were generated by the group, according to a spokeswoman.

The gist of the FCC complaints focused on characters engaging in simulated sexual intercourse, including oral and anal sex. Some also demanded FCC sanction for graphic depictions of liposuction, rhinoplasty, and other plastic surgery procedures.

The FCC said it has no authority to find *Nip/Tuck* indecent because longstanding court rulings give cable networks greater First Amendment protections than broadcasters. The FCC also ruled that the scenes in question don't meet the Supreme Court test for determining whether content is obscene.

The court's three-pronged test is a high bar, holding that for the material to be considered obscene, an average person, applying contemporary community standards, would find the material taken as a whole appeals to "prurient interest." The material also must depict sex acts in a patently offensive way and, taken in its entirety, must lack serious literary, artistic, political or scientific merit.

The FCC said that none of the acts described in the complaints are the type of hard core pornography the Supreme Court had in mind. Further, the FCC said there's no reason to argue that *Nip/Tuck* appeals to prurient interests or lacks serious social value. Reported in: *Broadcasting and Cable*, March 4. □

(in review . . . from page 106)

United States (an unrelated article) with no referral to the entries on *Lawrence* v. *Texas*, *Bowers* v. *Hardwick*, etc. These are serious issues that should be addressed in future editions, as they hamper the usefulness of the encyclopedia.

Despite these structural flaws, *The Encyclopedia of Civil Liberties in America* is a valuable resource, gathering together topics that were previously scattered among separate reference works on human rights, democracy, and law. This title is recommended for all libraries, especially those that already own *The Encyclopedia of Civil Rights in America.—Reviewed by Martin Garnar, Reference Librarian and Associate Professor of Library Science, Regis University, Denver, Colorado* □

(news or government propoganda? . . . from page 104)

tools" for influencing public opinion. And a review of the department's segments reveals a body of work in sync with the political objectives set forth by the White House communications team after 9/11.

In June 2003, for example, the unit produced a segment that depicted American efforts to distribute food and water to the people of southern Iraq. "After living for decades in fear, they are now receiving assistance—and building trust—with their coalition liberators," the unidentified narrator concluded.

Several segments focused on the liberation of Afghan women, which a White House memo from January 2003 singled out as a "prime example" of how "White House-led efforts could facilitate strategic, proactive communications in the war on terror."

Tracking precisely how a "good news" report on Afghanistan could have migrated to Memphis from the State Department is far from easy. The State Department typically distributes its segments via satellite to international news organizations like Reuters and Associated Press Television News, which in turn distribute them to the major United States networks, which then transmit them to local affiliates.

"Once these products leave our hands, we have no control," Robert A. Tappan, the State Department's deputy assistant secretary for public affairs, said in an interview. The department, he said, never intended its segments to be shown unedited and without attribution by local news programs. "We do our utmost to identify them as State Departmentproduced products."

Representatives for the networks insist that government-produced reports are clearly labeled when they are distributed to affiliates. Yet with segments bouncing from satellite to satellite, passing from one news organization to another, it is easy to see the potential for confusion. Indeed, Associated Press Television News acknowledged that they might have distributed at least one segment about Afghanistan to the major United States networks without identifying it as the product of the State Department. A spokesman said it could have "slipped through our net because of a sourcing error."

Kenneth W. Jobe, vice president for news at WHBQ in Memphis, said he could not explain how his station came to broadcast the State Department's segment on Afghan women. "It's the same piece, there's no mistaking it," he said in an interview, insisting that it would not happen again.

Jobe, who was not with WHBQ in 2002, said the station's script for the segment has no notes explaining its origin. But Tish Clark Dunning said it was her impression at the time that the Afghan segment was her station's version of one done first by network correspondents at either Fox News or CNN. It is not unusual, she said, for a local station to take network reports and then give them a hometown look.

"I didn't actually go to Afghanistan," she said. "I took that story and reworked it. I had to do some research on my own. I remember looking on the Internet and finding out how it all started as far as women covering their faces and everything."

At the State Department, Tappan said the broadcasting office is moving away from producing narrated feature segments. Instead, the department is increasingly supplying only the ingredients for reports—sound bites and raw video. Since the shift, he said, even more State Department material is making its way into news broadcasts.

The Defense Department is also working hard to produce and distribute its own news segments for television audiences in the United States.

The Pentagon Channel, available only inside the Defense Department last year, is now being offered to every cable and satellite operator in the United States. Army public affairs specialists, equipped with portable satellite transmitters, are roaming war zones in Afghanistan and Iraq, beaming news reports, raw video and interviews to TV stations in the United States. All a local news director has to do is log on to a milit-ary-financed Web site, www.dvidshub.net, browse a menu of segments and request a free satellite feed.

Then there is the Army and Air Force Hometown News Service, a unit of forty reporters and producers set up to send local stations news segments highlighting the accomplishments of military members. "We're the 'good news' people," said Larry W. Gilliam, the unit's deputy director.

Each year, the unit films thousands of soldiers sending holiday greetings to their hometowns. Increasingly, the unit also produces news reports that reach large audiences. The fifty stories it filed last year were broadcast 236 times in all, reaching 41 million households in the United States.

The news service makes it easy for local stations to run its segments unedited. Reporters, for example, are never identified by their military titles. "We know if we put a rank on there they're not going to put it on their air," Gilliam said.

Each account is also specially tailored for local broadcast. A segment sent to a station in Topeka, Kansas, would include an interview with a service member from there. If the same report is sent to Oklahoma City, the soldier is switched out for one from Oklahoma City. "We try to make the individual soldier a star in their hometown," Gilliam said, adding that segments were distributed only to towns and cities selected by the service members interviewed.

Few stations acknowledge the military's role in the segments. "Just tune in and you'll see a minute-and-a-half news piece and it looks just like they went out and did the story," Gilliam said. The unit, though, makes no attempt to advance any particular political or policy agenda, he said. "We don't editorialize at all."

Yet sometimes the "good news" approach carries political meaning, intended or not. Such was the case after the Abu Ghraib prison scandal surfaced last spring. Although

White House officials depicted the abuse of Iraqi detainees as the work of a few rogue soldiers, the case raised serious questions about the training of military police officers.

A short while later, Gilliam's unit distributed a news segment, sent to thirty-four stations, that examined the training of prison guards at Fort Leonard Wood in Missouri, where some of the military police officers implicated at Abu Ghraib had been trained.

"One of the most important lessons they learn is to treat prisoners strictly but fairly," the reporter said in the segment, which depicted a regimen emphasizing respect for detainees. A trainer told the reporter that military police officers were taught to "treat others as they would want to be treated." The account made no mention of Abu Ghraib or how the scandal had prompted changes in training at Fort Leonard Wood.

According to Gilliam, the report was unrelated to any effort by the Defense Department to rebut suggestions of a broad command failure. "Are you saying that the Pentagon called down and said, 'We need some good publicity?"' he asked. "No, not at all."

President Bush defended his administration's practice of providing television stations with video news releases that resemble actual news reports, saying that the practice was legal and that it was up to broadcasters to make clear that any of the releases they used on the air were produced by the government.

Responding to a question during his March 16 news conference in the White House briefing room, Bush said he expected cabinet agencies to abide by the Justice Depart--ment memorandum that concluded video news releases were legal as long as they were factual and not intended to advocate the administration's positions.

"This has been a longstanding practice of the federal government to use these types of videos," Bush said. "The Agricultural Department, as I understand it, has been using these videos for a long period of time. The Defense Department, other departments have been doing so. It's important that they be based on the guidelines set out by the Justice Department."

Bush said it would be "helpful if local stations then disclosed to their viewers" that any portions of the releases they used were produced by the government, but he added that, "evidently, in some cases, that's not the case."

Pressed on why the government does not require that broadcasters identity the material as being government-produced, Bush said that "there's a procedure that we're going to follow," and that if there is a "deep concern" about the releases appearing on the air as if they were journalistic reports, then local stations "ought to tell their viewers what they're watching."

The administration's use of the video news releases paid for by taxpayers has drawn criticism from some Democrats in Congress, and Democrats are also raising questions about the way in which television stations use them. In a letter sent March 14 to Michael K. Powell, the departing chair of the Federal Communications Commission, Senator Daniel K. Inouye of Hawaii, the senior Democrat on the Senate Commerce Committee, asked the commission to investigate whether stations were misleading their viewers.

"Until now, attention has largely focused on whether certain VNR's created by the federal government violated the restriction on using appropriated funds for publicity or propaganda," Inouye said in the letter. "However, equally as serious is growing evidence that certain broadcasters are editing government-created VNR's to make it appear as if such information is the result of independent news gathering." Reported in; *New York Times*, March 13, 17. □

(censorship dateline . . . from page 118)

Aquarium. When the movie ended, a little girl stood in the audience to challenge Low on the film's suggestion that Earth might have formed billions of years ago in the explosion of a star. "I thought God created the Earth," she said.

He replied, "Maybe that's how God did it." Reported in: *New York Times*, March 19.

broadcasting

New York, New York

More than two hundred historians and social scientists have signed a petition asking C-Span's *Book TV* program not to show a lecture by David Irving, a Holocaust denier, that the cable station says it scheduled to balance a planned broadcast of a lecture by Deborah E. Lipstadt, a professor of modern Jewish and Holocaust studies at Emory University.

Lipstadt spoke to the Hillel organization at Harvard University and the C-Span program had planned to tape the lecture for broadcast in conjunction with the release of her new book, *History on Trial: My Day in Court with David Irving*. The book chronicles a libel lawsuit that was brought by Irving against Lipstadt in Britain after the publication there of an earlier book of hers, *Denying the Holocaust: The Growing Assault on Truth and Memory*. A judge dismissed the lawsuit in 2000, exonerating Lipstadt of having damaged Irving's reputation and criticizing him as a deliberate falsifier of historical evidence.

C-Span decided to broadcast a lecture by Irving as well, to give "balance" to the programming, a *Book TV* official told a columnist for *The Washington Post*. Lipstadt subsequently rescinded permission for C-Span to broadcast her lecture.

In the petition, which takes the form of a letter to Connie Doebele, executive producer of *Book TV,* the scholars express strong opposition to the broadcast of Irving's lecture. They also respond to Doebele's assertion that balance is at issue.

In the letter, the group equates the need to balance Lipstadt's lecture with one by Irving to countering a black-

history program with the views of someone who denies that African American people were subjected to slavery in the United States.

It was not clear whether C-Span would proceed with broadcasting Mr. Irving's lecture in the wake of Ms. Lipstadt's withdrawal. Reported in: *Chronicle of Higher Education* online, March 18.

foreign

Moscow, Russia

In a criminal case testing the accepted boundaries of artistic expression in Russia, a court convicted a museum director and a curator March 28 for inciting religious hatred when they organized an exhibition of paintings and sculptures that, to many, ridiculed the Russian Orthodox Church. The court, however, rejected the prosecutor's appeal to sentence them to prison and instead fined them the equivalent of $3,600 each, ruling that the exhibition was "openly insulting and blasphemous."

The case against the exhibition, entitled "Caution! Religion," has deeply divided Russia's religious and artistic communities ever since it opened briefly in January 2003, provoking alternate charges of censorship and animosity to religious believers. The verdict satisfied neither side entirely.

Yuri V. Samodurov, director of the museum, which is named after the Soviet dissident and human-rights advocate Andrei D. Sakharov, said he was relieved by the punishment, though not by the court's ruling. He said he had gone to court with his prescription medicines, assuming that he would immediately be imprisoned.

Still, he said, the court's verdict asserted the state's power to dictate the limits of artistic expression. "In essence," he said in a telephone interview, "the court declared a certain kind of art unacceptable."

Aleksandr V. Chuyev, a member of the lower house of the Russian parliament who played a role in pressing prosecutors to bring criminal charges against the museum, agreed that the verdict would set a precedent, but one he considered healthy. Chuyev said the case had established the legal foundation for prosecution of other exhibitions, as well as of pornography, films and other works that offend the faithful. He cited a recent exhibition by an artist collective called Russia 2, which addressed similar themes at the First Moscow Biennale of Contemporary Art last month and also prompted calls for criminal prosecution from Orthodox Church leaders.

"The people and the authorities now understand that religion and the feelings of believers should not be touched on," Chuyev said in a telephone interview. "They should understand that their rights end where the other person's begin."

The exhibition had been open only four days before six men from an Orthodox church in Moscow ransacked the museum, damaging or destroying many of forty-five works on display. Criminal charges against four of the men were dropped, while two others were acquitted last year in a trial that led to the new charges against Samodurov; the museum's curator, Lyudmila V. Vasilovskaya, who was also convicted and fined; and one of the artists, Anna Mikhalchuk.

Mikhalchuk, who exhibits under the name Alchuk, was acquitted. She said the verdict effectively erased the separation of church and state in Russia. "I am afraid the formulation of the court's ruling will be used as a precedent for the authorities," she said. "It practically crosses out Russia on the list of secular nations."

The works addressed spiritual and political aspects of the Orthodox Church, whose influence over politics, if not society generally, has grown since the Soviet Union collapsed. One sculpture depicted a church made of vodka bottles, a biting allusion to the tax exemption the church received in the 1990's to sell alcohol. A poster by Aleksandr Kosolapov, a Russian-born American artist whose work often satirizes state symbols, depicted Jesus on a Coca-Cola advertisement. "This is my blood," it said in English.

The court refused a request by prosecutors to destroy the artworks, ordering that they be returned to the artists who created them.

The Rev. Aleksandr Shargunov, a priest from the church St. Nikolai in Pyzhi, whose parishioners attacked the exhibition, derided the fines as lenient. He described the exhibition as a deliberate and hostile provocation and called for more stringent laws against desecration of icons and other sacred symbols.

"The prophecies say that once God is insulted, expect trouble," he said. "And this is what happened." Reported in: *New York Times*, March 28. □

(from the bench . . . from page 126)

of the material. He offered to let defense attorneys review it under the supervision of members of a child pornography task force.

Appeals judges Glenn, Jerry L. Smith and J. C. McLin ruled the law does not prevent Allen from turning over the material to the defense attorneys. Glenn also noted that "accepting (the defense) position regarding the statutes in question would render them nearly impossible to enforce."

He wrote that under the defense position, the state would either have to find the child and prove he or she was a minor or call in experts to "dispel any possibility, however remote," that the images in question contain a "youthful-looking" adult or were digitally altered.

The judges declined to place that burden on prosecutors. They wrote that a case, for example, involving an obvious video of a young child "may not require any proof beyond the alleged pornographic material itself." Reported in: *Knoxville News-Sentinel*, March 31. □

(most frequently challenged books . . . from page 97)

- *The Chocolate War* for sexual content, offensive language, religious viewpoint, being unsuited to age group and violence
- *Fallen Angels*, by Walter Dean Myers, for racism, offensive language and violence
- *Arming America: The Origins of a National Gun Culture*, by Michael A. Bellesiles, for inaccuracy and political viewpoint
- *Captain Underpants* series by Dav Pilkey, for offensive language and modeling bad behavior
- *The Perks of Being a Wallflower*, by Stephen Chbosky, for homosexuality, sexual content and offensive language
- *What My Mother Doesn't Know*, by Sonya Sones, for homosexuality, sexual content and offensive language
- *In the Night Kitchen*, by Maurice Sendak, for nudity and offensive language
- *King and King*, by Linda de Haan and Stern Nijland, for homosexuality
- *I Know Why the Caged Bird Sings*, by Maya Angelou, for racism, homosexuality, sexual content, offensive language and unsuited to age group
- *Of Mice and Men*, by John Steinbeck, for racism, offensive language and violence

Off the list this year, but on the list for several years past, are the Alice series of books by Phyllis Reynolds Naylor; *Go Ask Alice*, by Anonymous; *It's Perfectly Normal*, by Robie Harris; and *The Adventures of Huckleberry Finn*, by Mark Twain. □

(is it legal . . . from page 134)

The Electronic Frontier Foundation, a civil liberties group that filed a motion to block the subpoenas, argued in court that online publishers have the same legal protections as traditional journalists, who are shielded under state law from being forced to divulge the names of confidential sources. "If this ruling goes in favor of Apple, it will have a chilling effect on the use of confidential sources," said Kurt Opsahl, a staff lawyer with the foundation, which is based in San Francisco. Once the judge rules, the defendants will have five days to decide whether to appeal. After that period, Apple can issue the subpoenas.

In a separate case, the publisher of Think Secret, a Web site for Macintosh enthusiasts, asked that Judge Jamie Jacobs-May, also of Santa Clara County Superior Court, dismiss a lawsuit Apple had brought against him. In that case, filed in January, Apple accused Nick DePlume, the operator of Think Secret, of trying to induce Apple employees to divulge the company's trade secrets. In December, Think Secret published a description of a low-cost Macintosh computer under development, confidential information that was apparently acquired from people close to Apple. The company is seeking unspecified damages for the disclosure.

DePlume, whose real name is Nicholas Ciarelli and who is a student at Harvard University, asserts that Apple is using its financial power to intimidate small journalists.

Apple declined to comment on the developments in the two cases, saying it does not discuss pending litigation. At the time it filed the lawsuits, Apple issued a statement defending its right to protect its trade secrets.

Though separate cases, the two lawsuits deal with similar issues. "The Think Secret case takes things a step further, because it is not just accusing unnamed sources of divulging trade secrets, but also accusing the Web sites that print it," Opsahl said.

DePlume's lawyer, Terry Gross of the San Francisco firm of Gross & Belsky, said the issue was whether writers published on small Web sites and in blogs should be afforded the same protections given to professional journalists with major news operations. Had such an article about Apple appeared in a major newspaper, he said, "it would have been called good journalism; Apple never would have considered filing a lawsuit."

Furthermore, Gross said, the material DePlume published did not involve trade secrets but was information that had already been made public, and DePlume did not break any laws when he obtained the information. Reported in: *New York Times*, March 5.

Salt Lake City, Utah

On Monday, March 21, the Governor of Utah signed into law House Bill 260, passed by the Utah legislature early in March in the face of strong criticism of the bill as unconstitutional. Among numerous provisions in the new law is a requirement that Internet service providers in Utah block access to lawful Web sites that the Utah Attorney General deems to be "harmful to minors." This would essentially try to turn citizens' ISPs into traffic cops regulating Internet content. The technical architecture of the Internet, however, was not designed to create such bottlenecks, and this type of approach would cause substantial problems for Internet traffic.

This aspect of the Utah law is similar to a Pennsylvania law that was ruled unconstitutional in 2004 because it interfered with lawful Internet speech and blocked access to legitimate content far outside of the state of Pennsylvania.

The Utah law is intended to protect children from content that is "harmful to minors," but a wide range of studies and court cases have concluded that the most effective way to protect kids online is with the voluntary use of filtering software, not with criminal statutes. Reported in; CDT Briefing, March 22.

video games

Fayette, Alabama

A lawsuit filed February 15 claims Devon Moore was encouraged to allegedly kill three Fayette police officers after playing the video game "Grand Theft Auto." Attorneys for two Fayette families have filed a fifty-seven-page, $600 million lawsuit against Wal-Mart, Sony, Game Stop video game stores and Take 2 Interactive. The lawsuit alleges that a video game created and distributed by these companies trained and motivated eighteen-year-old Devon Moore to allegedly kill three Fayette police officers in 2003.

At a recent hearing leading up to his murder trial, the teenager was quoted as saying "Life is like a video game, you have to die sometime." With that statement in mind, lawyers from central Alabama, other states and those representing two families of the slain Fayette officers have filed a lawsuit against the game makers and sellers. Attorneys said they had the full support of the entire Fayette Police community, the mayor and the chief of Police.

"Chief Paul said 'this lawsuit is on behalf of every law enforcement officer in the state of Alabama," said Jack Thompson, an attorney for the victims' families.

Attorneys representing Devon Moore said the teen had purchased copies of "Grand Theft Auto" on multiple occasions from a Wal-Mart in Jasper, Alabama, in the months leading up to the Fayette shooting. Attorneys called the makers and sellers of that video game "evil doers." Reported in: MSNBC.com, February 15.

obscenity

Washington, D.C.

In a case representing a major test of the Bush administration's campaign against pornography, the Justice Department said February 16 that it would appeal a recent decision by a federal judge that declared federal obscenity laws unconstitutional. The Justice Department said that if the judge's interpretation of federal law was upheld, it would undermine not only anti-obscenity prohibitions, but also laws against prostitution, bigamy, bestiality and others "based on shared views of public morality."

In a ruling last month in Pittsburgh, Judge Gary L. Lancaster of U.S. District Court threw out a ten-count criminal indictment that charged a California video distributor, Extreme Associates, and the husband-and-wife team that owns it with violating federal obscenity laws. The company boasts of the particularly graphic content of its movies, with scenes of simulated gang rapes and other attacks on women, and its Web site declares, "See why the U.S. government is after us!"

While all sides agreed that the movies could be considered legally obscene, Judge Lancaster found that federal laws banning obscenity were unconstitutional as applied broadly to pornography distributors like Extreme Associates. The anti-obscenity laws "burden an individual's fundamental right to possess, read, observe and think about what he chooses in the privacy of his own home by completely banning the distribution of obscene materials," the judge wrote in a forty-five-page opinion.

The closely watched decision was a boon to the multi-billion-dollar pornography industry, which has been fighting efforts by the Bush administration to crack down on what the government considers obscene material, particularly on the Internet.

Attorney General Alberto R. Gonzales and his predecessor, John Ashcroft, declared the prosecution of pornography and child exploitation cases to be a high priority, and the Justice Department committed more lawyers and money to the issue in securing 38 convictions since 2001 in obscenity cases, officials said.

Gonzales, in announcing that the Justice Department would appeal Judge Lancaster's ruling to the United States Court of Appeals for the Third Circuit, in Philadelphia, said the department "places a premium on the First Amendment right to free speech, but certain activities do not fall within those protections, such as selling or distributing obscene materials."

Louis Sirkin, a Cincinnati lawyer representing the pornography distributor, said he believed the judge's opinion would be upheld. "You can't legislate morality," Sirkin said. "You have to let people make their own personal decisions, and that's the important principle at stake in this case."

At issue are five hard-core pornographic movies that were sold and distributed by Extreme Associates, including several that were bought through the company's Web site by an undercover postal inspector in Pittsburgh. Federal and local law enforcement agents executed a search warrant and seized material from the company's Southern California office in 2003. The company as well as its owners, Robert Zicari and his wife, Janet Romano, who also goes by the name Lizzie Borden, were charged with violating federal obscenity laws.

Justice Department officials acknowledged that federal courts have given people the protection to view obscene material in their own homes, but they said that protection does not extend to selling and distributing obscene material.

Judge Lancaster disagreed. In his opinion throwing out the criminal charges, he relied on a 2003 Supreme Court decision, *Lawrence* v. *Texas*, that struck down a Texas homosexual sodomy law. In that case, the Supreme Court held that "liberty protects the person from unwarranted government intrusions into a dwelling or other private places."

Judge Lancaster interpreted that ruling to mean that "public morality is not a legitimate state interest sufficient to justify infringing on adult, private, consensual, sexual conduct even if that conduct is deemed offensive to the general public's sense of morality."

The judge said he was not convinced by the government's insistence on keeping pornography away from children or

unwitting adults, because Extreme Associates required its customers to give their names and credit card information, join a club, and pay a fee before downloading or buying videos.

A senior Justice Department official, who spoke on the condition of anonymity because the case is still pending, acknowledged that if Judge Lancaster's opinion was upheld on appeal, it would "temporarily curtail" the Justice Department's ability to prosecute a range of obscenity cases, at least in the Third Circuit.

But the official said the Justice Department was confident that settled case law clearly established the government's power to regulate obscenity. In reviewing Judge Lancaster's ruling, the official said, "We believe the court is wrong." Reported in: *New York Times*, February 17.

libel

London, England

California Governor Arnold Schwarzenegger has failed to block a libel action brought by a British television presenter who claims she was sexually assaulted by the former film star. Schwarzenegger had challenged a ruling by a senior High Court official giving Anna Richardson permission to serve proceedings on him out of the jurisdiction. The March 23 decision by Justice Eady, cleared the way for a libel trial in London sometime this year.

Richardson alleges she was libelled by Schwarzenegger and two campaign workers in an October 2003 article in the *Los Angeles Times*, which also appeared on the Internet. She says it meant she "deliberately and dishonestly fabricated" the allegations that Schwarzenegger touched her breast when she interviewed him at London's Dorchester Hotel in December 2000.

The judge said that fifty-seven-year-old Schwarzenegger was "not peripheral" to the case. "He and the claimant are the persons best able to testify to what happened in the Dorchester Hotel in December 2000," the judge said.

The judge had also already ruled that the English courts are the appropriate forum for the action as Richardson is a British citizen, lives and works there, and has an established reputation in that country. The alleged events took place in London and English law is applicable to the publication in that country. Reported in: news.telegraph.com, March 23. □

intellectual freedom bibliography

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