

newsletter  
on  
**intellectual**  
**freedom**



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## **ALA Council adopts three revised interpretations to Library Bill of Rights**

*The following is the text of the Intellectual Freedom Committee's report to the ALA Council delivered January 19 at the ALA Midwinter Meeting in Boston by IFC Chair Kenton Oliver.*

The ALA Intellectual Freedom Committee (IFC) is pleased to present this update of its activities. Under Information, this report covers Libraries: An American Value; the ALA Strategic Plan: Ahead to 2010 draft goals and objectives; privacy; and media concentration. Under Projects are updates on Lawyers for Libraries and Banned Books Week. The committee's action items (under Action) include "Resolution on Radio Frequency Identification (RFID) Technology and Privacy Principles," and three revised policies, all Interpretations of the Library Bill of Rights.

### **Information**

#### *Libraries: An American Value*

During the 2004 Annual Conference in Orlando, the ALA Council took the following action: REFERRED, ALA CD#32.1, Resolution to Amend Libraries: An American Value Statement, to the Intellectual Freedom Committee. The proposed additions to ALA Policy 53.8 are in caps: "We value our nation's diversity and strive to reflect that diversity BY RECRUITING LIBRARY WORKERS OF DIVERSE BACKGROUNDS, AND by providing a full spectrum of resources and services to the communities we serve;" to assure the imperative inclusion of library workforce diversity in any and all statements or reports related to the Association's Core Values. (ALA CD#32.1, Council Committee on Diversity Report, Item #1)

As directed by Council, the IFC reviewed Libraries: An American Value and reaffirmed that the policy is a contract between the public and the profession. The committee

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

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Views of contributors to the **Newsletter on Intellectual Freedom** are not necessarily those of the editors, the Intellectual Freedom Committee, or the American Library Association.

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## FTRF report to ALA Council

*The following is the text of the Freedom to Read Foundation's report to the ALA Council delivered January 16 at the ALA Midwinter Meeting in Boston by FTRF President John Berry.*

It is with great sadness that I present this report in the place of our friend and colleague Gordon Conable, who was President of the Freedom to Read Foundation and a member of the ALA Council. Gordon died unexpectedly this past Wednesday, January 12, as he was preparing to attend this meeting. Gordon was an unsurpassed champion of intellectual freedom, a wise and generous mentor to many, and a consummate librarian who was a true leader of our profession. He gave many years of dedicated service to the Freedom to Read Foundation, serving as Treasurer, Vice-President, and seven years as President.

Above all things, Gordon cherished and adored his wife, Irene, and his son, Teddy. He absolutely beamed whenever he spoke of them. Our thoughts and prayers are with them.

The Foundation has established a fund in Gordon's name, which will be used to advance the causes to which Gordon was most devoted and for which he worked most passionately. Irene has asked that any gifts in Gordon's name be directed to this fund.

Building on Gordon's contributions and those of so many others, the work of the Foundation continues. I am pleased to report on the Foundation's activities since the 2004 Annual Conference:

### **The USA PATRIOT Act and library privacy and confidentiality**

The right to read and access information in the library anonymously, without government interference, is a bedrock of intellectual freedom. FTRF remains steadfast in its efforts to defend this right by opposing portions of the USA PATRIOT Act and other laws threatening readers' rights to privacy and confidentiality.

In one key challenge to the USA PATRIOT Act, *John Doe and ACLU v. Ashcroft*, we saw a judgment in favor of the plaintiff, an Internet Service Provider (ISP) who challenged an FBI-issued National Security Letter (NSL) ordering the ISP to turn over certain user records. On September 29, Judge Marrero of the Southern District of New York ruled that the NSL provision in Section 505 of the USA PATRIOT Act, which permits the FBI to compel the production of information without judicial review, is an unconstitutional infringement on the rights assured to all of us by the Bill of Rights. His decision is stayed pending the government's appeal. FTRF will continue to support the plaintiffs as *amicus curiae*, joining the American Library Association (ALA) and the American Booksellers Foundation for Free Expression (ABFFE).

The Foundation, in partnership with the ACLU, challenged the FBI's refusal to respond to a Freedom of

Information Act request concerning the Bureau's use of Section 215 of the USA PATRIOT Act in *ACLU v. Department of Justice*. The District Court in Washington, D.C., ruled in favor of the plaintiffs, and in June 2004, the FBI began to release relevant records and documents. These include a memorandum demonstrating that the FBI invoked its Section 215 authority just a few weeks after Attorney General Ashcroft stated publicly that those powers had never been used; internal FBI memoranda advising FBI agents that the USA PATRIOT Act could be used to obtain information about persons not connected in any way to terrorism, espionage, or criminal activity; and the procedural rules governing the secret Foreign Intelligence Surveillance Court.

We hope for similar success in *Muslim Community Association of Ann Arbor v. Ashcroft*, the facial legal challenge to Section 215 of the USA PATRIOT Act, which amends the business records provision of the Foreign Intelligence Surveillance Act to permit FBI agents to obtain all types of business records, including library records, without a showing of probable cause. The District Court heard oral arguments on the government's motion to dismiss the plaintiffs' complaint in December 2003. We are still awaiting a decision in the case.

FTRF joined with other civil liberties groups in opposing portions of the Intelligence Reform Act of 2004, which would have expanded law enforcement's ability to demand records without government review. While some of the provisions FTRF opposed were eliminated from the legislation, troubling provisions for national standards for driver's licenses were retained and adopted as law.

This year, we anticipate a full debate over Section 215 and other provisions of the USA PATRIOT Act as the 2005 sunset date for Section 215 draws closer. The ALA Intellectual Freedom Committee is urging everyone to sign the Reader Privacy Petition encouraging the amendment of Section 215; it is available online at [www.readerprivacy.com](http://www.readerprivacy.com).

### **Preserving the freedom to read: new litigation**

The Freedom to Read Foundation works to safeguard everyone's freedom to read, view, and listen by participating in lawsuits brought to defend First Amendment rights and the right to freely access information. Since the Foundation last reported to Council, it has joined in the following lawsuits:

*Kaczynski v. United States of America*: The Foundation partnered with the Society of American Archivists (SAA) to file an *amicus curiae* brief urging the Ninth Circuit Court of Appeals to reverse a lower court's decision allowing the government to withhold public access to the original writings of Ted Kaczynski, who pled guilty to the "Unabomber" crimes. The government has refused to release Kaczynski's original journals, which he desires to donate to the University of Michigan. The brief filed by FTRF and the

SAA asserted that the documents in question should be preserved and made accessible to scholars, researchers, and the public, without taking a position on the how this objective is achieved.

*Chiras v. Miller*: FTRF filed an *amicus* brief with ABFFE and the National Coalition Against Censorship in support of author Daniel Chiras and a group of students and parents who are fighting the Texas State Board of Education's decision to reject Chiras' textbook, *Environmental Science: Creating a Sustainable Future*. The board refused to adopt Chiras' text for use in Texas high-school environmental science classes because it believed the textbook was "anti-Christian" and "anti-free enterprise." The plaintiffs have appealed the decision of the District Court, which ruled that the school board could reject textbooks if it disagrees with the author's viewpoint when its viewpoint discrimination is "reasonably related to legitimate pedagogical concerns." The case is pending before the Fifth Circuit Court of Appeals.

FTRF also is monitoring *The Center and Hernandez v. Lingle*, a lawsuit filed by the ACLU on behalf of a library user in Hawaii who was ejected from the library by a security guard for viewing the website [www.gayhawaii.com](http://www.gayhawaii.com). The guard relied upon a state trespass statute that gives public officials broad powers to ban individuals from using public spaces. FTRF is not currently a party to this lawsuit.

### Continuing litigation

The Foundation is involved in several other lawsuits addressing First Amendment rights. I am pleased to report the Foundation's success in the following cases:

*Ashcroft v. American Civil Liberties Union* (formerly *ACLU v. Reno*): On June 29, the U.S. Supreme Court upheld the injunction barring enforcement of the Children's Online Protection Act (COPA), a law that proposes restrictions on Internet content deemed "harmful to minors." The Court concluded that the plaintiffs are likely to prevail on their claim that COPA unconstitutionally burdens free speech, holding that "content-based prohibitions, enforced by severe criminal penalties, have the constant potential to be a repressive force in the lives of a free people." The Court returned the case to the District Court of Eastern Pennsylvania for a trial to determine whether COPA is the least restrictive means of achieving the government's goal of protecting children from seeing sexually explicit materials online.

*Video Software Dealers Association, et al. v. Maleng*: On July 15, Judge Robert Lasnik struck down the Washington State law barring the sale or rental to minors of any video game containing depictions of violence directed against "public enforcement officers," ruling the law was an unconstitutional restriction on speech. FTRF participated as an *amicus curiae* in the lawsuit with other members of the Media Coalition.

*Center for Democracy and Technology v. Pappert* (formerly *Center for Democracy and Technology v. Fisher*): The Center for Democracy and Technology succeeded in their legal challenge to a Pennsylvania statute that allowed a Pennsylvania district attorney or the state's Attorney General to order ISPs—including libraries—to block access to specified Web sites. On September 10, the District Court struck down the law, finding that it had resulted in the blocking of access to more than one million wholly innocent Web sites while having little effect on the approximately 400 child pornography sites targeted by the law.

*New Times, Inc. v. Isaacks*: This defamation lawsuit sought damages from an alternative newspaper in Dallas after it published a satirical article critical of the officials' actions in jailing a 13 year-old boy. On September 6, the Texas Supreme Court issued its opinion in favor of the newspaper. FTRF joined in an *amicus curiae* brief supporting the defendants.

The Foundation is also involved in these actions:

FCC petition for reconsideration: This petition before the Federal Communications Commission (FCC) asks the agency to reconsider and reverse its decision to impose penalties on NBC for airing an allegedly indecent comment made by the singer Bono during the 2003 Golden Globe Awards. FTRF is one of several organizations that joined together to file the petition after the FCC reversed its original order, which had concluded that Bono's comment, taken in context, was not indecent or obscene. The petition also urges the FCC to set aside new rules imposing more stringent punishment on broadcasters for indecency. The petition remains pending before the FCC.

*United States v. Irwin Schiff, et al.*: After the federal government successfully sought a temporary restraining order against Irwin Schiff and his publisher, Freedom Books, forbidding them to publish Schiff's book, *The Federal Mafia: How Government Illegally Imposes and Unlawfully Collects Income Taxes*, the Foundation filed an *amicus* brief opposing the court's use of prior restraint against the book in order to defend the principle that the First Amendment protects even fringe opinions or beliefs. On August 9, the Ninth Circuit handed down a decision affirming the lower court's order, that Schiff's book is deceptive commercial speech and, therefore, not protected by the First Amendment.

*Yahoo!, Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme* is an ongoing case involving criminal charges that have been filed against the CEO of Yahoo! and monetary penalties assessed in French courts against the company for allowing the sale of Internet auction items and the posting of book excerpts on its Web site related to the Nazi regime. Such activities violate French law but are fully protected speech under the American First Amendment. La Ligue Contre Le Racisme et L'Antisemitisme and the French Union of Jewish Students



initiated the legal action against Yahoo! in France and won the initial lawsuit. Subsequently, Yahoo! filed suit in the United States to obtain a ruling on the validity of the French court's order in light of its users' First Amendment rights. After the District Court judge ruled that the First Amendment barred any enforcement of the French court's order in the United States., the two French groups filed an appeal before the Ninth Circuit Court of Appeals. That court reversed the ruling on the grounds that the District Court lacked jurisdiction over the French parties.

FTRF has now joined in an *amicus curiae* brief supporting Yahoo!'s petition for rehearing or rehearing *en banc* before the entire panel of judges serving on the Ninth Circuit Court of Appeals. As detailed in earlier reports, the FTRF board believes that the free expression and intellectual property rights affected by the lawsuit—both at home and abroad—must be rigorously defended.

#### **State harmful to minors laws and internet content laws**

The Freedom to Read Foundation has participated as a plaintiff in several lawsuits challenging state laws that criminalize the distribution or display of materials deemed "harmful to minors." I am pleased to report our success in *Shipley, Inc. v. Long* (formerly *Shipley, Inc. v. Huckabee*), a First Amendment challenge to recent amendments made to the Arkansas "harmful to minors" display statute. On November 16, 2004, U.S. District Court Judge G. Thomas Eisele ruled the display portions of Arkansas' "harmful to minors" law unconstitutional. The state has not yet decided whether it will file an appeal.

On October 5, the District Court granted summary judgment to the government in *Athenaco, Ltd. v. Cox*, a lawsuit challenging a Michigan statute that makes it unlawful for any person to allow minors to examine sexually explicit material that is "harmful to minors." The other First Amendment organizations joining FTRF to bring the suit include ABFFE, the Association of American Publishers, the Comic Book Legal Defense Fund, and several Michigan booksellers. The court based its decision on statements made by the government's attorneys, who claimed that the statute should be narrowly interpreted and would have limited effect on free expression. FTRF and its partners have not filed an appeal.

The Foundation joined with several other plaintiffs to file *ABFFE v. Petro* (formerly *Booksellers, Inc. v. Taft*), a lawsuit challenging Ohio's amendment to its "harmful to juveniles" law that affects both print and Internet content. On September 27, the District Court sustained in part and overruled in part both parties' motions for summary judgment. The parties are now waiting on an expanded opinion explaining the court's judgment.

FTRF and its co-plaintiffs won in *PSINet v. Chapman* when the Fourth Circuit Court of Appeals on June 24

### **Gordon M. Conable**

Gordon Conable, president of the Freedom to Read Foundation since 2001, ALA Council member, and vice president of West Coast operations for Library Systems and Services (LSSI), died suddenly January 12 of a heart attack at his home in Riverside, California. He was 58.

"Gordon was an unsurpassed champion of intellectual freedom, a wise and generous mentor to many, and a consummate librarian who was a true leader of our profession," said John W. Berry, who succeeded Conable as FTRF president at ALA's 2005 Midwinter Meeting. Characterizing Conable as "a giant of this profession," FTRF Executive Director Judith Krug said that she viewed him as a "creative and brilliant librarian" whose ideas were "so important to where librarianship is going."

Earning his MLS from the Columbia University library school in 1976, Conable began his library career that same year at the Fort Vancouver Regional Library and rose to become associate director of the library system in 1978. He served as director of the Monroe County (Michigan) Library System from 1988 to 1998; during his tenure there, he withstood controversy over the library's adding Madonna's *Sex* to the collection.

"It got very ugly and hostile, and there were bomb threats phoned in," Robert Lepsig, who was a board member at the time, said of the episode in the January 18 *Toledo Blade*. The episode earned Conable the 2000 John Phillip Immroth Award.

"At a time when free expression and the right to dissent are so seriously threatened, losing a free speech warrior like Gordon Conable is doubly hard," said Pat Schroeder, President of the Association of American Publishers. "AAP will contribute to the Freedom to Read Foundation in his memory, and others who share his commitment may want to do so as well."

Conable's wife, Irene Conable, who is a school library media specialist, said that he considered librarianship "a place in the world where he could have a professional life that supported his philosophical beliefs." FTRF has established a fund in his honor. □

upheld the permanent injunction forbidding enforcement of Virginia's Internet content law. After the Fourth Circuit rejected the government's petition for rehearing, the government decided not to seek an appeal before the U.S. Supreme Court. The decision upholding free expression rights is now final.

The State of Arizona has decided to appeal the decision of the District Court awarding summary judgment in favor

of FTRF and other plaintiffs in *ACLU v. Goddard* (formerly *ACLU v. Napolitano*), which challenges the constitutionality of the state's "harmful to minors" Internet content law. The case is pending before the Ninth Circuit Court of Appeals.

FTRF continues to monitor *Southeast Booksellers v. McMasters* (formerly *Southeast Booksellers Association v. Condon*), a lawsuit filed by members of the Media Coalition to overturn an amendment to the South Carolina "harmful to minors" law that sweeps in visual matter communicated via the Internet. The District Court has ordered a hearing on the merits of the case.

### **Fundraising and membership development**

The Foundation Board members are intensifying our efforts to increase membership, including encouraging more ALA chapters, state school media associations, and students to join the organization.

Challenges to the freedom to read are growing, and the Foundation needs your support more than ever. To become a member of the Freedom to Read Foundation, please send a check to:

Freedom to Read Foundation  
50 E. Huron Street  
Chicago, IL 60611

You also can use a credit card to join the Foundation. Call (800) 545-2433 ext. 4226 or visit us online at [www.ftrf.org](http://www.ftrf.org) to use our secure online donation form. □

## **Judith Krug to receive honorary doctorate**

The American Library Association (ALA) is pleased to announce that Judith F. Krug will be recognized with the honorary degree of Doctor of Humane Letters from the University of Illinois Urbana-Champaign in May 2005. Krug, director of ALA's Office for Intellectual Freedom since its founding in 1967 and editor of the *Newsletter on Intellectual Freedom*, is a tireless advocate for libraries and intellectual freedom. For almost forty years, Krug has advised countless librarians and trustees in dealing with challenges to library materials. She also helped found the Freedom to Read Foundation, a sister organization to ALA, and has served as its executive director since 1969. She is a noted author and speaker in the area of intellectual freedom.

"Judith is a leading voice for the profession's commitment to intellectual freedom," said ALA Executive Director Keith Michael Fiels. "This honor from the University of Illinois Urbana-Champaign truly recognizes a lifetime contribution to libraries and fighting for the First Amendment.

Everyone at ALA is just delighted now to be able to call her 'Doctor Krug.'"

Krug has been honored previously with the Joseph P. Lippincott Award, the library profession's highest honor; the Robert B. Downs Award for outstanding contribution to the cause of intellectual freedom in libraries; the Intellectual Freedom Award of the Illinois Library Association; and the Freedom to Read Foundation Roll of Honor Award, among others. She received her master's in library science from the University of Chicago.

Krug will receive the honorary degree at commencement exercises on May 15, 2005, in Urbana-Champaign. □

## **Washington library system wins 2004 Downs Award**

The Robert B. Downs Intellectual Freedom Award for 2004 has been given to the Whatcom County Library System, in Bellingham, Washington, in recognition of its efforts to defend intellectual freedom by fighting an FBI subpoena requesting patron records.

When a patron at the Deming Public Library, a rural branch of the Whatcom system, discovered a handwritten note quoting Osama Bin Laden in the margin of the book *Bin Laden: The Man Who Declared War On America*, the patron contacted the FBI, who confiscated the original book and served the library with a grand jury subpoena, demanding names and addresses of everyone who had checked out the book. The library, citing the rights of all people who use the library and using a technicality of the location of the library records, filed a motion to quash the subpoena, which was then withdrawn by the FBI, although they reserved the right to file it again.

"Libraries are a haven where people should be able to seek whatever information they want to pursue without any threat of government intervention," said Director of Whatcom County Library System, Joan Airoidi, who also noted that if the FBI had requested the patron records using a national security letter made possible by the USA Patriot Act, the library would have been violating the Patriot Act's gag order and committing a felony if they'd let anyone know they had been contacted.

Given annually, the Robert B. Downs Intellectual Freedom Award acknowledges individuals or groups who have furthered the cause of intellectual freedom, particularly as it impacts libraries and information centers and the dissemination of ideas. Granted to those who have resisted censorship or efforts to abridge the freedom of individuals to read or view materials of their choice, the award may be in recognition of a particular action or long-term interest in, and dedication to, the cause of intellectual freedom.

The award was established in 1969 by the faculty of the Graduate School of Library and Information Science at the University of Illinois to honor Robert Downs, a champion of intellectual freedom, on his twenty-fifth anniversary as director of the School. □

## banned and challenged books in Texas schools

On September 27, the ACLU of Texas released *Free People Read Freely*, its annual report on banned and challenged books in Texas public schools. This was the ACLU of Texas' eighth consecutive annual report on censorship in Texas public schools. Again this year, the Texas Library Association joined the ACLU in sponsoring the report, which was based on information furnished by Texas' nearly 1260 Independent School districts (ISDs) and charter schools.

According to the report, in 2003–2004, 88 independent school districts (including the Texas Youth Commission) and charter schools banned or faced challenges to 151 different books and one video used in their libraries and/or curricula. This was slightly more than 2002–2003's statistics: 134 challenges reported in 71 school districts.

No book stood out as the "most-challenged." In recent years, J.K. Rowling's popular Harry Potter series has surpassed other books in generating challenges and bans. In the 2001–2002 school year, Harry Potter books were the most often challenged books, with seventy-one challenges reported by twenty-one different districts; in most cases, the challenges were made to "all Harry Potter books." Last year, four ISDs faced challenges to Harry Potter books. Once again, four ISDs faced Potter challenges this year.

However, 2003–2004 did produce a most-banned author: Phyllis Reynolds Naylor, who was also the most frequently banned author of 2002–2003. Naylor writes a series of books about Alice McKinley, a teenager who copes with the problems and complexities of growing up and adolescence. Ector County, Klein, and Conroe ISDs faced "Alice" challenges. Naylor's trilogy about Shiloh, an abused beagle, also produced challenges: *Shiloh* (Round Rock ISD) and *Saving Shiloh* (Carthage ISD) made the list.

Lueders-Avooca ISD faced more challenges than any other ISD, banning eighteen titles from the Lueders Elementary school library. Coming in second place was Houston's Cypress-Fairbanks ISD, with nine challenges. In 2002–2003, the top book-banning ISD was McKinney ISD, which this year faced only one challenge—to *Eloise in Paris*, by Kay Thompson and Hilary Knight. The book was retained. Last year, McKinney faced eleven challenges and banned five books.

In "liberal" Austin, the local ISD reported two challenges: Barbara Park's Junie B. Jones series, which the ISD reported was "altered"; and Iona and Peter Opie's *I Saw Esau: The Schoolchild's Pocket Book*, which was retained. Hays Consolidated ISD, located in the more conservative Austin metropolitan area, faced a challenge to Joanna Cole's *My Puppy Is Born*, due to "photographs on page 6–7." The ISD eventually retained the book.

ISDs faced many challenges to books by and about African Americans, including the classic *I Know Why the Caged Bird Sings* by Maya Angelou. Challenged or banned classics also included *Peter Pan* by J.M. Barrie; *Bless Me, Ultima* by Rudolfo Anaya; *Of Mice and Men* by John Steinbeck; *1984* by George Orwell; *Brave New World* by Aldous Huxley; and *The Ox-Bow Incident* by Walter Van Tilburg Clark.

This year, more books faced challenges due to sexual content than for any other specific. This is the same outcome as in the 2002–2003 school year. Many parents and administrators simply object to sex education of any kind in schools, or oppose references to homosexuality—a common topic in many of this year's challenged books.

As with complaints about books containing references to the supernatural, wizards, etc.—much more numerous in the early years of Harry Potter—complaints about sexual content seem to be based on religious fundamentalism, and are associated with the increased activism of right-wing religious groups. It appears that some religious activists consider that any description of sex, outside the context of abstinence, encourages promiscuity.

Many books contain language that might be offensive to some people, for reasons of profanity or for derogatory or blasphemous content. One interesting complaint this year came from Van Vleck ISD, where a parent challenged Maya Angelou's *I Know Why the Caged Bird Sings* after being "offended by the African-American Southern dialect used in the book." According to the ISD, "the parent was satisfied with teacher's explanation of the author's use of dialect," and the book remained in use at O.H. Herman Middle School without restriction.

Compared to last year, challenges for violence and horror increased slightly. Books challenged or banned typically dealt with issues such as suicide (Eric E. Rofes' *The Kids' Book About Death and Dying*) and murder (the *Final Friends* trilogy by Christopher Pike; Richard Worth and Austin Sarat's *Children, Violence, and Murder*).

Challenges for mysticism and paganism were fewer than in 2002–2003. Some complaints focused on books' discussion of religion. In Round Rock ISD, a parent complained about Phyllis Reynolds Naylor's *Shiloh* because his Jewish son was asked to read the book. The parent "objected to a reference to praying to Jesus," explained an ISD representative, and the student received an alternate assignment. □



## survey finds First Amendment left behind in U.S. high schools

A new national study, the largest of its kind, says America's high schools are leaving the First Amendment behind.

In particular, educators are failing to give high school students an appreciation of the First Amendment's guarantees of free speech and a free press, say researchers from the University of Connecticut, who questioned more than one hundred thousand high school students, nearly eight thousand teachers, and more than five hundred administrators and principals.

The two-year, \$1 million research project, titled "The Future of the First Amendment," was commissioned by the John S. and James L. Knight Foundation.

The survey suggests that First Amendment rights—freedom of speech, of the press, of religion, of assembly and the right to petition the government for a redress of grievances—would be universally known if they were classroom staples.

"High school attitudes about the First Amendment are important because each generation of citizens helps define what freedom means in our society," the report reads.

Among its findings:

- Nearly three-fourths of high school students either do not know how they feel about the First Amendment or admit they take it for granted.
- Seventy-five percent erroneously think flag burning is illegal.
- Half believe the government can censor the Internet.
- More than a third think the First Amendment goes too far in the rights it guarantees.

"These results are not only disturbing; they are dangerous," said Knight Foundation President and CEO Hodding Carter, III. "Ignorance about the basics of this free society is a danger to our nation's future."

In addition, the more students are exposed to the First Amendment and use the news media in the classroom, and the more involved they are in student journalism, the greater their appreciation of First Amendment rights.

Among those students who have taken courses dealing with the media or the First Amendment, for example, 87 percent believe people should be allowed to express unpopular opinions. Among students who have not taken such courses, however, the number fell to 68 percent.

Though student journalists are the savviest among all high school students on the First Amendment, a quarter of U.S. schools do not even offer media programs to students.

"The last 15 years have not been a golden era for student media," said Warren Watson, director of the J-Ideas project at Ball State University in Muncie, Indiana.

"Programs are under siege or dying from neglect. Many students do not get the opportunity to practice our basic freedoms."

Nearly all principals surveyed agreed students should learn about journalism, but said financial constraints block the expansion of media programs.

The Department of Public Policy at the University of Connecticut was commissioned by Knight Foundation to conduct this study of students, faculty and administrators at 544 high schools across the country. Dr. David Yalof and Dr. Kenneth Dautrich of the University of Connecticut conducted the research.

"Civic education is crucial to developing well-informed and responsible citizens," said Dautrich, chair of the university's Department of Public Policy. "By surveying students across the country as to their awareness and appreciation of First Amendment rights, Knight Foundation has provided a timely window into this important and often overlooked aspect of the educational process."

Knight Foundation commissioned a panel of experts to consult and comment on the project. Project advisers included Jack Dvorak of Indiana University; Rosalind Stark of the Student Press Law Center (and formerly of the Radio and Television News Directors Foundation); Diana Mitsuko of the American Society of Newspaper Editors; Warren Watson of J-Ideas; Scott Olson, former dean of Ball State University's College of Communications, Information and Media now at Minnesota State University, Mankato; Gene Policinski, executive director of the Freedom Forum First Amendment Center; and Dr. Kristin Moore, president and senior scholar, Child Trends.

The John S. and James L. Knight Foundation promotes excellence in journalism worldwide and invests in the vitality of twenty-five U.S. communities. □

## ALA begins USA PATRIOT Act study

In early January, ALA initiated a set of surveys to assess the impact of the USA PATRIOT act on America's libraries and library patrons. Working with several teams of academic researchers, ALA seeks to quantify and examine contacts by federal law enforcement agencies in public and academic libraries. The planning phase of this project was made possible by a grant from the Carnegie Corporation of New York. The Knight Foundation is helping to finance these studies, with additional support anticipated from other foundations.

As homeland security tops the 109th Congress's list of priorities and parts of the USA PATRIOT Act are scheduled to sunset in December, 2005, ALA seeks to ensure that library patron privacy is preserved. The results of these surveys will provide much-needed information to inform



the debate about law enforcement's role in libraries and the effect that the law enforcement activity is having on library users. Preliminary results will be made available to members of Congress as they debate the status and necessity of the sunset provisions.

The Web-based surveys, titled Impact and Analysis of Federal Law Enforcement Activity in Academic and Public Libraries, are directed at academic and public library administrators. The survey questions will examine the contacts being made by law enforcement in libraries, how library policies have changed since the passage of the USA PATRIOT Act, and any resulting changes in library patron behavior. The survey instrument has been carefully reviewed by counsel for the ALA to ensure that respondents do not violate the gag order imposed by the USA PATRIOT Act, and the U.S. Department of Justice has acknowledged its interest in the results of the project.

The team of researchers working in tandem with ALA have selected a diverse sample of United States public and academic libraries reflecting geographic, population, and size differences. Administrators of the libraries selected for the study will be notified by mail. Libraries selected for the survey are strongly encouraged to respond. The results of the studies will be presented as a report at the American Library Association's 2005 Annual meeting in Chicago. The results may be used to create an educational resource for practitioners on dealing with federal law enforcement. □

## evolution in retreat in U.S. classrooms

Dr. John Frandsen, a retired zoologist, was at a dinner for teachers in Birmingham, Alabama, when he met a young woman who had just begun work as a biology teacher in a small school district in the state. Their conversation turned to evolution.

"She confided that she simply ignored evolution because she knew she'd get in trouble with the principal if word got about that she was teaching it," he recalled. "She told me other teachers were doing the same thing."

Though the teaching of evolution makes the news when officials propose, as they did in Georgia, that evolution disclaimers be affixed to science textbooks, or that creationism be taught along with evolution in biology classes, stories like the one Dr. Frandsen tells are more common.

In districts around the country, even when evolution is in the curriculum it may not be in the classroom, according to researchers who follow the issue. Teaching guides and textbooks may meet the approval of biologists, but superintendents or principals discourage teachers from discussing it. Or teachers themselves avoid the topic, fearing protests from fundamentalists in their communities.

"The most common remark I've heard from teachers was that the chapter on evolution was assigned as reading but that virtually no discussion in class was taken," said Dr. John R. Christy, a climatologist at the University of Alabama at Huntsville, an evangelical Christian and a member of Alabama's curriculum review board who advocates the teaching of evolution. Teachers are afraid to raise the issue, he said in an e-mail message, and they are afraid to discuss the issue in public.

Dr. Frandsen, former chair of the committee on science and public policy of the Alabama Academy of Science, said in an interview that this fear made it impossible to say precisely how many teachers avoid the topic.

"You're not going to hear about it," he said. "And for political reasons nobody will do a survey among randomly selected public school children and parents to ask just what is being taught in science classes." But he said he believed the practice of avoiding the topic was widespread, particularly in districts where many people adhere to fundamentalist faiths.

"You can imagine how difficult it would be to teach evolution as the standards prescribe in ever so many little towns, not only in Alabama but in the rest of the South, the Midwest—all over," Dr. Frandsen said.

Dr. Eugenie Scott, executive director of the National Center for Science Education, said she heard "all the time" from teachers who did not teach evolution "because it's just too much trouble. Or their principals tell them, 'We just don't have time to teach everything so let's leave out the things that will cause us problems,'" she said.

Sometimes, Dr. Scott said, parents will ask that their children be allowed to "opt out" of any discussion of evolution and principals lean on teachers to agree.

Even where evolution is taught, teachers may be hesitant to give it full weight. Ron Bier, a biology teacher at Oberlin High School in Oberlin, Ohio, said that evolution underlies many of the central ideas of biology and that it is crucial for students to understand it. But he avoids controversy, he said, by teaching it not as "a unit," but by introducing the concept here and there throughout the year. "I put out my little bits and pieces wherever I can," he said.

He noted that his high school, in a college town, has many students whose parents are professors who have no problem with the teaching of evolution. But many other students come from families that may not accept the idea, he said, "and that holds me back to some extent. I don't force things," Bier added. "I don't argue with students about it."

In this, he is typical of many science teachers, according to a report by the Fordham Foundation, which studies educational issues and backs programs like charter schools and vouchers. Some teachers avoid the subject altogether, Dr. Lawrence S. Lerner, a physicist and historian of science,

wrote in the report. Others give it very short shrift or discuss it without using “the E word,” relying instead on what Dr. Lerner characterized as incorrect or misleading phrases, like “change over time.”

Dr. Gerald Wheeler, a physicist who heads the National Science Teachers Association, said many members of his organization “fly under the radar” of fundamentalists by introducing evolution as controversial, which scientifically it is not, or by noting that many people do not accept it, caveats not normally offered for other parts of the science curriculum.

Dr. Wheeler said the science teachers’ organization hears “constantly” from science teachers who want the organization’s backing. “What they are asking for is ‘Can you support me?’” he said, and the help they seek “is more political; it’s not pedagogical.”

There is no credible scientific challenge to the idea that all living things evolved from common ancestors, that evolution on earth has been going on for billions of years and that evolution can be and has been tested and confirmed by the methods of science. But in a 2001 survey, the National Science Foundation found that only 53 percent of Americans agreed with the statement “human beings, as we know them, developed from earlier species of animals.”

And this was good news to the foundation. It was the first time one of its regular surveys showed a majority of Americans had accepted the idea. According to the foundation report, polls consistently show that a plurality of Americans believe that God created humans in their present form about ten thousand years ago, and about two-thirds believe that this belief should be taught along with evolution in public schools.

These findings set the United States apart from all other industrialized nations, said Dr. Jon Miller, director of the Center for Biomedical Communications at Northwestern University, who has studied public attitudes toward science. Americans, he said, have been evenly divided for years on the question of evolution, with about 45 percent accepting it, 45 percent rejecting it and the rest undecided.

In other industrialized countries, Dr. Miller said, 80 percent or more typically accept evolution, most of the others say they are not sure and very few people reject the idea outright.

“In Japan, something like 96 percent accept evolution,” he said. Even in socially conservative, predominantly Catholic countries like Poland, perhaps 75 percent of people surveyed accept evolution, he said. “It has not been a Catholic issue or an Asian issue,” he said.

Indeed, two popes, Pius XII in 1950 and John Paul II in 1996, have endorsed the idea that evolution and religion can coexist. “I have yet to meet a Catholic school teacher who skips evolution,” Dr. Scott said.

Dr. Gerald D. Skoog, a former dean of the College of Education at Texas Tech University and a former president

of the science teachers’ organization, said that in some classrooms, the teaching of evolution was hampered by the beliefs of the teachers themselves, who are creationists or supporters of the teaching of creationism.

“Data from various studies in various states over an extended period of time indicate that about one-third of biology teachers support the teaching of creationism or ‘intelligent design,’” Dr. Skoog said.

Advocates for the teaching of evolution provide teachers or school officials who are challenged on it with information to help them make the case that evolution is completely accepted as a bedrock idea of science. Organizations like the science teachers’ association, the National Academy of Sciences and the American Association for the Advancement of Science provide position papers and other information on the subject. The National Association of Biology Teachers devoted a two-day meeting to the subject last summer, Dr. Skoog said.

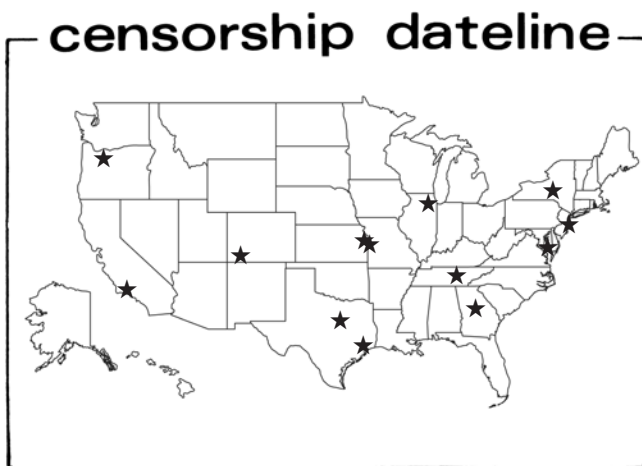
Other advocates of teaching evolution are making the case that a person can believe both in God and the scientific method. “People have been told by some evangelical Christians and by some scientists, that you have to choose.” Dr. Scott said. “That is just wrong.”

While plenty of scientists reject religion—the eminent evolutionary theorist Richard Dawkins famously likens it to a disease—many others do not. In fact, when a researcher from the University of Georgia surveyed scientists’ attitudes toward religion several years ago, he found their positions virtually unchanged from an identical survey in the early years of the twentieth century. About 40 percent of scientists said not just that they believed in God, but in a God who communicates with people and to whom one may pray “in expectation of receiving an answer.”

Luis Lugo, director of the Pew Forum on Religion and Public Life, said he thought the great variety of religious groups in the United States led to competition for congregants. This marketplace environment, he said, contributes to the politicization of issues like evolution among religious groups. He said the teaching of evolution was portrayed not as scientific instruction but as “an assault of the secular elite on the values of God-fearing people.” As a result, he said, politicians don’t want to touch it. “Everybody discovers the wisdom of federalism here very quickly,” he said. “Leave it at the state or the local level.”

But several experts say scientists are feeling increasing pressure to make their case, in part, Dr. Miller said, because scriptural literalists are moving beyond evolution to challenge the teaching of geology and physics on issues like the age of the earth and the origin of the universe.

“They have now decided the Big Bang has to be wrong,” he said. “There are now a lot of people who are insisting that that be called only a theory without evidence and so on, and now the physicists are getting mad about this.” Reported in: *New York Times*, February 1. □



## libraries

### Norwood, Colorado

Norwood Schools Superintendent Bob Conder apologized to students, parents, staff and residents February 4 for pulling about two dozen copies of the book *Bless Me, Ultima*, by Rodolfo Anaya, from a freshman English class. But fifteen to twenty students still staged an all-day sit-in in the school gym, taking turns reading from the book, which has been recommended by first lady Laura Bush and was selected last year for Mesa County's community-read project, to protest Conder's actions.

"We stayed all day to prove the point and say it won't happen again," said freshman Skyler Hollinbech. "It was a violation of our rights."

Conder said none of the students who demonstrated would be punished or counted as absent from class, and he offered to personally pay for repurchasing the books if a new committee to review content approves the book's reinstatement.

Students had planned to start the sit-in at 8 a.m. but the time was pre-empted by Conder, who called a school assembly. Hollinbech said Conder talked to the students and then took questions—"and I'm glad he did, even though tempers flared."

The dust-up over the book, a critically acclaimed novel about coming of age in the Chicano culture, began about two

weeks earlier when two parents, John and Rhonda Oliver, complained about profanity in the book. In response, Conder confiscated all of the copies of the book from the ninth-grade English classroom and gave them to the couple, who "tossed them in the trash," John Oliver said.

"We put them in the trash can and it goes to a landfill," Oliver said. "It was just our way of knowing it would be gone."

In his letter, Conder apologized for pulling the book "without enough information on the content of the book," without reading it himself and without reading the school board's policy regarding controversial issues. That policy, Conder wrote, calls for "consideration . . . of a fair and balanced presentation of each of the major aspects or sides of the issue."

He said he has created a "broad-based" committee to review the policy on teaching about controversial issues, to review current curriculum and to make recommendations. That committee, he said, will be asked to review *Bless Me, Ultima*.

A copy was left in the school library after the others were tossed for students "who choose to read it," Conder said.

Stephanie Adams, a sixteen-year-old sophomore, said she was glad Conder met with them "even though he was dodging our questions. He wrote an apology and we appreciate that. We're going to get *Ultima* back," she said. "If we don't, we'll take it from here."

The book's author, Rodolfo Anaya of the University of New Mexico, said that the freedom of democracy is learned in school systems. "Parents have the right to monitor what their children read; however, they do not have the right to tell others what they can read," he said. "That is un-American, undemocratic and uneducational."

"I have hundreds of letters from students from all over the country who have been moved by this book. I would love to go to Norwood with my box full of letters," Anaya added. The book has been banned before, Anaya said.

President Bush awarded Anaya the National Medal of Arts in 2002. First lady Laura Bush has listed *Bless Me, Ultima* as ninth on a list of twelve books that she highly recommends. Reported in: *Denver Post*, February 3; *Rocky Mountain News*, February 5.

### Richmond, Illinois

Nippersink Public Library board members decided January 11 to keep the controversial DVD *Happiness* on the shelf but limit its access to adults older than eighteen. Trustees voted, four to two, after a discussion where audience members freely offered their opinions.

The film was at the center of a controversy about freedom of speech versus protecting children from obscene materials since a library patron requested its withdrawal in July. *Happiness* contains pedophilia, rape and masturbation themes, but also is critically acclaimed.

Trustee Greg Cryns urged the board to vote on the film's status rather than wait for the library attorney's legal opinion. "I don't want to pay our attorney five hundred dollars to give us his opinion," Cryns said. "Let's just put it to a vote."

Trustee Linda Geng said she conducted a poll of the residents of Orchard Bluff subdivision in Spring Grove. "From the people I spoke to there was nobody who wanted to pay for NC-17 materials with their tax dollars," she said.

Secretary Adam Metz made the motion to keep the film but limit its access. Several board members paused for up to a minute and breathed deeply before casting their vote.

Geng and Trustee Sandra Alldredge voted against the motion. Trustees Cryns, Robert Johnston, Metz, and Vice President Carol Hanson voted for it. President Don McCurry was absent.

"Finally," muttered an audience member after the motion passed.

The board did not discuss how the library will enforce the age restriction, but Metz said the restriction should not apply to interlibrary loan patrons.

"If you send it to another library," he said, "they can do what they want to do." Reported in: *Northwest Herald*, January 12.

### **Arlington, Texas**

Interim City Manager Fred Greene canceled the showing of a movie with sexual overtones January 21 that the Arlington Public Library had planned to show at its independent film festival. *Falling Angels*, based on a novel by a Canadian writer, contains female nudity, sex scenes, adultery, adult language and situations, incest overtones and unwanted pregnancy.

The library had been planning to launch an independent film festival at the George W. Hawkes Central Library with three movies scheduled from January 29 through March. The other two films, *Buddy* and *Witnesses*, were being reviewed.

"The film has been pulled," Arlington Mayor Pro Tem Ron Wright said. "The librarians were given strict content guidelines by Greene, which are based upon the information that if a film cannot be shown to someone under seventeen, then it would not be appropriate for the city libraries of Arlington."

The Canadian film was released in U.S. theaters October 31. It was not rated by the Motion Picture Association of America. However, a recommendation on the back cover of the video says it should not to be shown to people under seventeen.

Adults-only films have never been shown at the Arlington libraries, said Starr Krottinger, public services administrator for the Arlington Public Library System. Reference librarian Linda Seitz said that she previewed half of *Falling Angels* and is aware of the content. The films were aimed at college-age people, she said.

Library patron Carlos Medina, twenty-three, of Arlington said the library wasn't the place for the film. "There are plenty of other places to see that kind of stuff," Medina said. "They don't have to show it at the library."

The film is no longer available for checkout. Reported in: *Fort Worth Star-Telegram*, January 25.

### **Houston, Texas**

On January 6, Houston Mayor Bill White ordered city librarians to keep *How to Make Love Like a Porn Star*, by porn movie star Jenna Jameson, behind the counter. "I mean, I don't think we need books like that in the library," White said.

Somebody perusing the bestseller shelves at one city library spotted the X-rated book on prominent public display and contacted his city council member. "For me, it doesn't matter what my personal opinion is on these types of books. This issue is about how we display it and promote it and how we protect our children from these types of books," said Houston Councilmember Pam Holm.

During a City Council meeting January 7, Holm demanded that the Robinson-Westchase Library branch in her west Houston district remove the book from its best-seller display at the front of the library. The library system is reviewing not just this particular book, but also its policy on how and where books are displayed in city libraries.

"Customers generally expect us to have books that are on the bestseller list. So they come in expecting that we'll have it," said Sandra Fernandez, library spokesperson. In fact, shortly after White's decree every copy of the book was checked out of every city library in Houston. Reported in: KHOU-TV, January 6; *Houston Chronicle*, January 7.

## **schools**

### **Overland Park, Kansas**

The American Civil Liberties Union of Kansas and Western Missouri is joining the fight to oppose the organization determined to get fourteen books stricken from the curriculum in the Blue Valley school district. The Citizens for Literary Standards in Schools (referred to as ClassKC) submitted a petition to the school board in January with five hundred signatures asking for the removal of the books primarily because of vulgar language and sexual explicitness.

The ACLU held a meeting February 7 to get a sense of public opinion regarding the issue and to lay out battle strategies to oppose ClassKC's initiative. The Olathe branch of the National Association for the Advancement of Colored People as well as the Prairie Village-based MAINstream Coalition, which brings with it a host of other organizations, are also joining the fight, it was announced at the meeting.



Chekasha Ramsey, legal coordinator for the ACLU, said the petition submitted to the school board by ClassKC was denied, but that it was only because they did not follow the correct procedures. Dick Kurtenbach, executive director of the ACLU said, "It is certainly not over. It is nice to have a school board that is committed to its policy and is committed to the judgment of its teachers in assigning curriculum materials."

Jason Miller said that in speaking with school board president, John Fuller, he got the impression the school board is intimidated by this issue. "They are a little bit concerned about the impact this could have as far as future elections," Miller said. Three board seats in the Blue Valley school district will be up for grabs in the April 5 general election.

However, Fuller said reproduction of his comments may have been a fabrication, saying, "I did say that there is not one board member who wants to remove the books in question unless there is an educational reason to do so, but if one of those books does not comply with our approved curriculum or our revised policy 4600, I'll support the book's removal since that is the way the system should work. We must let the educators select the books based on our curriculum and policy 4600."

Fuller added it is important for everyone to remember the policy in place, and that books may or may not be removed after being filtered through policy 4600, which requires learning resources to meet certain criteria. The relatively new policy, implemented last September, has not been used to filter all the books currently included in the curriculum, as Fuller noted in the January board meeting.

Norm Ledgin, a Blue Valley parent, said while he has not always been on the side of the school board, public support of the board regarding this issue should be generated.

Caroline McKnight, executive director of the MAINstream Coalition, said, "We feel like there are concerns on both sides of this issue that need to be expressed in a forum outside of the constraints of a school board meeting."

Blue Valley North High School student Matt Novaria voiced his sense of student opposition to ClassKC's efforts. He mentioned the Web site initiated by Blue Valley North student Kerry McGuire, [www.freewebs.com/studentsspeak-out](http://www.freewebs.com/studentsspeak-out). Novaria said students have circulated a petition at school, and individuals can sign a petition via McGuire's Web site.

"I am aware of close to one hundred fifty to two hundred signatures, but that is just within the Blue Valley North community, and I think if we spread the word, then a lot more people would sign it," Novaria said of the petition circulating the school.

Henry E. Lyons, president of the Olathe branch of the NAACP, said, "I would really like to work with the kids who are against this censorship also because they are the ones ultimately who will be reading or not reading the

books." Ledgin agreed, saying, "We should support the student efforts as much as possible."

Stephen Booser said, "I am mostly interested in how to stop (ClassKC). I am not interested in how to talk to them or to explain this stuff to them. I want to find out how to stop them particularly if they become successful in petitioning to get books removed from the curriculum."

"We have never been shy to file lawsuits in cases of censorship," Kurtenbach said. "We wouldn't hesitate for a second if this talk somehow becomes part of the school's policy." Reported in: *Johnson County Sun*, February 13.

### **Blue Springs, Missouri**

Parents who want the Blue Springs school board to remove *The Giver*, by Lois Lowry, from the middle-school reading list are questioning the appropriateness of the entire reading curriculum. Board members will make their final decision in March on whether Blue Springs students will continue to read *The Giver*.

Board members were given the book to read in December. Since then, they said, they have talked with district administrators, students and other parents about the book but have not made up their minds.

"I'm viewed as a pretty conservative guy," member Dale Walkup said. "This is a very diverse board with diverse ideas. I'm sure this whole thing will get pretty well picked apart before it is all said and done."

While they are waiting to hear from the board about the fate of Lowry's book, the parents who brought the challenge are putting together a book list of their own. Going on their list are books that are a part of the curriculum, but which they say are inappropriate for children.

"Books—from elementary up—that if they were made into movies would be rated R," said Eileen Casper, a parent who has spoken against the *The Giver* as a book for middle school children. "Just by having several children in the schools we see what they are reading. They (school officials) call this curriculum critical thinking. It has a repetitive theme of violence and killing, euthanasia and sex."

The Blue Springs book challenge began in the fall of 2003. That's when Casper, parent Cerise Ivey and several other parents asked the district to re-evaluate Lowry's book as suggested reading for eighth-grade students. *The Giver* was written primarily for middle-school-age children, published in 1993. It is included on the American Library Association list of the one hundred most frequently challenged books.

The book is about a twelve-year-old boy, Jonas, who lives in a Utopian society intentionally absent of a past. People there have no memories and make no decisions. Memories are stored in one person, the giver, who eventually passes them on to a receiver. Jonas becomes a receiver. Once he gets the memories he knows that people don't just go away. They are murdered, especially the weak such as

babies who cry too much and old people. That is when Jonas chooses to leave.

The parents called the book “lewd” and “twisted” and pleaded for it to be tossed out of the district.

A communication arts committee responsible for approving reading lists for the middle and high school grades was the first to hear the parents’ challenge. The committee voted to keep the book. Parents appealed to a second committee of communication arts teachers, parents, administrators and students who reconsidered the book with the group’s written objections to it.

The parents who challenged the book said they were excluded from that meeting. The committee recommended that the school board leave *The Giver* on the list. Because they were not allowed in the second meeting, Casper and the other parents who brought the challenge in the first place said they think the district violated open-meeting laws. Casper said the group members have sought advice from an attorney regarding their right to have been present when the committee reviewed objections.

Tom Rodenberg, an attorney for the district, said the district denies excluding the parents from the meeting.

Regardless of the school board’s decision on *The Giver*, Casper said her group would continue to challenge it and other books. She said the Blue Springs parents have received advice from some parents in the Blue Valley School District who developed a Web site listing many books they find unfit for children.

“We might as well examine the whole curriculum,” Casper said. “And we have considered starting our own Web site, too. This is not going to just go away.” Reported in: *Kansas City Star*, February 9.

### Beaverton, Oregon

When Julie Herbison read a vivid description of a “Vegas-style friction dance” in a book her sixteen-year-old son brought home from his tenth-grade American Literature class, she was sure his teacher had not read the book herself. She was right. Lisa Pace, an English teacher at Southridge High School, had not read *Bringing Down the House*, one of five books students were allowed to pick among for a book-group project. Nor was Pace obligated to read the book before assigning it, according to Principal Amy Gordon, because the book was not required reading.

Herbison thinks that’s wrong. “Teachers need to know what they’re assigning,” said Herbison, who filed a formal challenge asking the district to ban the book. “Teachers need to have read the book.”

District officials say they agree; a teacher is expected either to read a book used in the classroom in advance or ask a librarian to evaluate its suitability. But it wasn’t until officials investigated Herbison’s complaint that they learned some teachers and administrators are not familiar with the district’s policies for vetting supplementary mate-

rial. The School Board approves most books used in the classroom, but teachers can independently select “supplementary material” if it is used infrequently. That was the case in Pace’s American literature class, where students choose a book to discuss in a small group.

The policy “has been unevenly distributed and applied—and even known about—throughout the district,” said Sarah Boly, assistant superintendent for school improvement.

The policy is based on a narrow set of guidelines governing the use of PG and PG-13 rated films that has not been updated since 1994. The district has not issued any further guidance on how teachers should select supplementary material, which could include novels, magazine articles or movies.

District administrators are drafting a new set of standards for supplementary material and will present their recommendations to the superintendent and administrators in January, Boly said.

*Bringing Down the House*, by Ben Mezrich, is a loose retelling of the exploits of six students at the Massachusetts Institute of Technology who employ elaborate card-counting techniques to win \$3 million at Las Vegas blackjack tables in two years. It contains profanity and abundant references to prostitution and gambling. It’s also No. 18 on The New York Times’ paperback nonfiction bestseller list.

Herbison’s objections went beyond the book’s content. “We challenge the processes and procedures that led to the adoption of the book as a required assignment,” she and her husband, Dan, wrote in a letter to Gordon, the principal.

Pace did not actually pick *Bringing Down the House* or the other four books. She asked students to interview adults about books they would recommend to young adults, then present one suggested book to the class after reviewing it for “school appropriateness.” After listening to the presentations, the class winnowed the list of presented books down to six.

David Herbison and five other students picked *Bringing Down the House* and took it home. That’s when his mother, bored and nursing a headache, picked it up and read it straight through. “I just keep reading, and I keep thinking, ‘What is this? What have they sent home?’” Herbison recalled. “And it just keeps getting worse.”

The next day she confronted Pace, who acknowledged that she had not read the book, according to Herbison.

Pace and the school’s vice principals initially considered confiscating the books from students and assigning them to other books groups, according to a draft of a note the school later sent to parents. That would have violated district policy, which prohibits responding to complaints about instructional material by dropping the material. Instead, administrators sent a note home with students in mid-October, requesting their parents’ permission to continue reading the book. Pace also called parents to relay more

details about the book's potentially objectionable content, according to Gordon.

All six students reading *Bringing Down the House* received permission to finish the book, except David Herbison, who ended up reading *Dune*, by Frank Herbert. Other teachers at Southridge also ask students to complete similar assignments and generate reading lists, Gordon said. Last year, when Pace asked students to complete this assignment she appears to have sent notes home informing parents of their children's selections before students began reading the books, according to Pace's home page on the district's Web site.

It is unclear why Pace did not notify parents of the book choices in advance this year. Boly, former principal of Southridge, said many high school principals were unaware of policies on supplementary material, partly because so many of them are new to their positions or to the district.

Following Herbison's formal complaint, a committee will review *Bringing Down the House*, and judge the book as "a whole and not on passages taken out of context," according to administrative regulations.

Herbison listed "increased curiosity about gambling and pornography" and "ideas on how to smuggle (things) past security" as possible consequences of reading the book.

And the opinion of the boy whose curiosity about card-counting ignited this debate? Of his teacher, David Herbison said: "She makes class interesting and we learn." Reported in: *Portland Oregonian*, December 16.

### **Cookeville, Tennessee**

A Cookeville High School administrator said Veterans for Peace and a Quaker group can't come back into his school with materials considered "anti-American" and "antimilitary." The groups planned to go before the Putnam County School Board to claim they're being denied privileges afforded to other organizations, including military recruiters.

The war veterans, some who also belong to the Quaker group, were allowed into the school during a September fair for organizations. They set up a table with books about U.S. wars and offered photocopied fliers and pamphlets from both organizations about the war in Iraq and military careers and alternatives.

Quaker and veteran Hector Black said several students stopped by the table asking questions, and a couple of teachers even thanked them for coming. He said there wasn't any indication of a problem until later that evening when he got a phone call from Principal Wayne Shank.

Shank told Black that some of the groups' materials may be proper for adults, but he thought they were inappropriate for the students. "The information was brought to the attention of administrators because of the influence it may have had," said Shank, who restricted future visits by the groups. "I felt from a principal's viewpoint that the students were

being put into a position that they shouldn't," said Shank, who restricted future visits by the groups.

Black said Shank specified some quotes in the literature that he objected to, including one from a 1953 speech by President Eisenhower that said, "Every gun that is made, every warship launched, every rocket fired signifies in the final sense, a theft from those who hunger and are not fed. Those who are cold and are not clothed . . ."

Another quote from an unknown author said, "The army that can defeat terrorism doesn't drive Humvees, or call in airstrikes . . . It undermines military dictatorship and military lobbyists. It subverts sweatshops and special interests."

County School Director Michael Martin said: "Parents found the materials to be anti-American, antimilitary. That didn't come from us. That came from the parents who saw the materials when their kids brought it home."

Shank said in a phone interview from Cookeville that he couldn't recall everything he found offensive. He said he received a complaint call from a parent a day after the event and made an administrative decision to ban their "offensive materials."

Shank said he didn't tell the groups that they couldn't come back into the school. He required that all their materials get advance approval, a rule he said also applies to military recruiters.

The principal also said their literature could only be shown in a classroom setting that would allow an opportunity for a "balanced" presentation. Military recruiters and other groups don't face that restriction, the peace activists said.

Veteran Charlie Osburn said his group doesn't understand why military recruiters and others like the Association of Christian Athletes are allowed into Cookeville High School without the same restrictions. His group aims to inform students, he said. Reported in: Associated Press, February 2.

### **Loudoun County, Virginia**

When two plainclothes Loudoun County sheriff's investigators showed up on her Leesburg doorstep, Pamela Albaugh got nervous. But when they told her why they were there, she got angry: A complaint had been filed alleging that her eleven-year old son had made "anti-American and violent" statements in school.

She was aware of an incident at Belmont Ridge Middle School in which her son, Yishai Asido, was assigned to write a letter to U.S. Marines and responded, according to his teacher, by saying, "I wish all Americans were dead and that American soldiers should die." Yishai and Albaugh deny that the boy wished his countrymen dead.

Albaugh, a U.S. citizen, and her husband, an Israeli citizen who manages a Leesburg moving company, say the investigators' visit and the school's response were a paranoid overreaction in a charged post-9/11 environment. But law enforcement officials said the terrorist attacks and the

Columbine school shootings require them to consider whether children who make threats might pose a danger to their classmates.

Albaugh described her son as a rambunctious student who has long opposed armies of any kind. He refused the Veterans Day assignment and told his teacher that the Marines “might as well die, as much as I care.” Whatever was said, the words had been the source of anguished conferences, phone calls and, ultimately, a day of in-school suspension.

Albaugh thought the whole thing was resolved in school until Investigators Robert LeBlanc and Kelly Poland showed up. What followed, she said, was two hours of polite but intense and personal questioning. They asked how she felt about 9/11 and the military. They asked whether she knows any foreigners who have trouble with American policy. They mentioned a German friend who had been staying with the family and asked whether the friend sympathized with the Taliban. They also inquired whether she might be teaching her children “anti-American values,” she said.

Toward the end of the conversation, Albaugh’s husband, Alon Asido, arrived home. Asido said the pair then spent another hour talking to him, mostly about his life in Israel and his more than four years in an elite combat unit there. Before the investigators left, one deputy said their “concerns had been put to rest,” Albaugh said.

“It was intimidating,” she said. “I told them it’s like a George Orwell novel, that it felt like they were the thought police. If someone would have asked me five years ago if this was something my government would do, I would have said never.”

Loudoun County Sheriff Stephen O. Simpson confirmed that investigators visited the house. “Whenever there is a complaint that a child in a school is using language that is threatening or with violent overtones, we have an obligation to look into it,” he said. “We can’t ignore something like that and have something tragic happen down the road that we could have prevented.”

Simpson declined to comment on details of the complaint or the kinds of questions investigators asked. “If you’re looking at what [the school] said he said, I have to think you’d see where we came up with those questions,” he said.

A schools spokesman declined to comment, other than to release, at Albaugh’s request, a one-page letter from Yishai’s file that explained his suspension.

His parents said the boy’s words were those of a confused adolescent, whose views of the world are still being formed. They believe that authorities were called partly because he has a foreign-sounding name and accented English from years of living abroad. The family lived in India, Europe and Israel before moving to the United States in 2000. The couple have four children, with both U.S. and Israeli citizenship, enrolled in Loudoun schools.

Albaugh said that Yishai is not violent and that the

school could have used the classroom incident as a “teachable moment,” helping him learn to say what he was feeling in a less offensive manner. Instead, Yishai said he has learned that it is not worth challenging authority. “At the end of the day, you lose,” he said, adding: “All of these freedoms and things they’re supposed to uphold, they bash them.”

Georgetown law professor David Cole said Yishai’s statement in class is protected by the Constitution. “There’s no indication from the student making an anti-American statement that violence to the school would follow,” he said. “The FBI and government officials should be investigating real terrorists, not children who criticize the United States.” Reported in: *Washington Post*, December 15.

## student press

### Fullerton, California

When high school journalist Ann Long sent a recent edition of her school’s newspaper to the printer, she hoped her profile of three gay students would generate some discussion in the hallways. But she didn’t expect to be punished for writing the article.

According to Long and her mother, officials at Troy High School in Fullerton told the senior that she must resign or face being fired from her shared post as editor in chief of the *Oracle*.

Assistant Principal Joseph D’Amelia, who Long said delivered the ultimatum, declined to comment, deferring questions to Patricia Howell, deputy superintendent for the Fullerton Joint Union High School District. Howell, who wouldn’t discuss Long by name, said district and school officials did not object to the story’s content. She said Long, eighteen, was being punished for violating the ethical standards of the journalism class and a state education code that prohibits asking students about their sexuality without parental permission.

“We’re not saying there is anything morally wrong with the article,” she said. “Freedom of speech is not at issue. Confidentiality and privacy rights are the issue.”

It is a position that has left Long defiant and legal experts contending that the state law applies to faculty but not students.

“I don’t think I’ve done anything that merits me stepping down,” said Long, who vowed not to surrender her position. “Perhaps I should have called the parents to interview them for the story, but I don’t feel like I should have been obligated to get their permission to write it. These students chose to talk to me.”

At issue was a December 17 article that chronicled the decisions of three students—two eighteen-year-olds and a fifteen-year-old—to reveal their homosexuality and bisexuality to family and friends. All three spoke to Long knowing their names would be used.



According to Long, her journalism teacher, Georgette Cerrutti, worked closely with her on drafts of the article for more than a month, at one point discussing with her the impact it might have on the students' families. Long said Cerrutti never told her she needed to get the parents' approval.

Long said she was summoned to D'Amelia's office, where he and Cerrutti admonished her for not seeking the parents' permission. "He told me I either had to resign and make an example of myself for failing to do my job," Long said of D'Amelia, "or that I would be removed."

In meetings with Long's parents, D'Amelia and Troy Principal Chuck Maruca reaffirmed the school's stance, Long and her mother said.

Howell said journalism students are taught to be cautious when writing stories that address other students' private lives. She said Long had violated the section of the California education code that requires written parental permission before asking students questions about their or their parents' "personal beliefs or practices in sex, family life, morality, and religion," as the code states.

"Anytime a school policy or the education code is violated, there obviously has to be some consequences," Howell said.

Howell declined to comment on whether Cerrutti had told Long of that requirement or whether the teacher had asked to see the parents' written permission.

Experts on the rights of student journalists said the district was wrong to apply that part of the education code to a student. "The school has no right to punish this student," said lawyer Mark Goodman, executive director of the Student Press Law Center in Arlington, Virginia. "A student has the right to talk about their private life, and a student journalist has the right to report on it. Ultimately, there are some things that are not within a school's right to control."

Doug Mirell, a First Amendment lawyer in Los Angeles, said that because minors legally could not waive their right to privacy in discussing matters such as sexual orientation, journalists must get a parent's permission. Mirell said it would be up to a parent, and not a school, to complain about the privacy breach.

Goodman and Michael Hersher, a state Department of Education lawyer, said they had never heard of a school trying to apply that section of the education code to a student journalist. They cited another section of the code that places the responsibility on faculty advisors "to maintain professional standards of English and journalism" in school newspapers. Reported in: *Los Angeles Times*, January 26.

### **Lilburn, Georgia**

Berkmar High School students opened the school newspaper to a blank editorial page after the school's principal ordered the staff to yank two opinion pieces about a new club for straight and gay teens. Gwinnett County school officials said Principal Kendall Johnson told the staff to

remove the editorials because he felt it would disturb students during exam time.

"Mr. Johnson was not going to allow there to be distractions from what they are about teaching and learning," Gwinnett Schools spokeswoman Sloan Roach said. "The point-counterpoint was inflammatory in nature and could be disruptive."

The columns were slated for the December issue of the newspaper, the *Liberty*. The editorials debated whether a student club—the Gay, Lesbian and Straight Society—should meet on school grounds.

*Liberty* editor L'Anita Weiler, eighteen, said, "I had a feeling it was going to be censored."

Weiler and student copy editor Kelly Shaul, seventeen, distributed copies of the editorials to Berkmar students after the paper was published. "We wanted to run a censored stamp on the page. But Mr. Johnson censored our 'censored' stamp, which is pointless," Shaul said.

The newspaper also wrote a news article about the formation of the club, which was edited by school administrators, Weiler said.

In 1988, the U.S. Supreme Court ruled in *Hazelwood School District v. Kuhlmeier* that principals were allowed to censor school publications, but First Amendment advocates argue that students should be able to exercise free speech.

"The point is their prediction of disruption has to be based on reasonable facts," said Mark Goodman, executive director of the Student Press Law Center in Arlington, Virginia. "What the censorship can't be based on is the inclination to silence a particular viewpoint they disagree with or think would be unpopular." Reported in: [firstamendmentcenter.org](http://firstamendmentcenter.org), January 18.

## **college**

### **Clinton, New York**

The president of Hamilton College, citing "credible threats of violence," said February 1 that she was canceling a campus forum whose panelists included a Colorado professor who had disparaged 9/11 victims as "little Eichmanns."

In a written statement, President Joan Hinde Stewart said that the college had done its best "to protect what we hold most dear, the right to speak, think and study freely," but that ensuring safety at the event scheduled for February 3 was "a higher responsibility."

Hamilton, a small liberal arts college in upstate New York, had been inundated with negative telephone calls and e-mail regarding the professor, Ward Churchill of the University of Colorado, who had been invited to participate in a campus discussion on dissent before, Hamilton

officials said, the college learned of an essay he had written about the terror attacks of September 11, 2001.

In that essay, Professor Churchill, whose area of expertise involves American Indian rights, wrote that the thousands killed at the World Trade Center had a role in American sanctions on Iraq that “translated, conveniently out of sight, mind and smelling distance, into the starved and rotting flesh of infants.”

“If there was a better, more effective, or in fact any other way of visiting some penalty befitting their participation upon the little Eichmanns inhabiting the sterile sanctuary of the Twin Towers, I’d really be interested in hearing about it,” wrote Professor Churchill, who also described the 9/11 hijackers as “combat teams.”

In earlier statements, President Hinde had said she found Professor Churchill’s comments “personally repugnant,” but declined to cancel his visit, saying that “we have a real test of freedom of expression here.” But Dr. Hinde said that threats aimed at both the college and members of the panel had forced her to cancel the discussion to protect “our students, faculty, staff and the community in which we live.”

She did not specify how many threats the college had received, but said information about them had been given to local police. Professor Churchill himself has said that he received many death threats and was planning to update and notarize his will.

On February 1, the interim chancellor of the University of Colorado at Boulder accepted Professor Churchill’s resignation as chairman of the ethnic studies department, although he will continue to teach there. The chancellor, Philip DiStefano, said that he had decided that resignation was in “the best interest of the university,” although he acknowledged that traditionally universities “are places where good and bad ideas clash.”

In an interview with a Denver television station, Professor Churchill said his essay, intending to explain foreign animus toward the United States and the motives behind the 9/11 attacks, had been misconstrued. “The overriding question that was being posed at the time was ‘Why did this happen, why did they hate us so much?’ and my premise was when you do this to other people’s families and children, that is going to be a natural response,” he said.

Among those who had protested Professor Churchill’s appearance was Gov. George E. Pataki, who told a dinner banquet that there was “a difference between freedom of speech and inviting a bigoted terrorists supporter.”

This was the second recent imbroglio involving a controversial figure invited to Hamilton College. Late last year, a 1960’s radical, Susan Rosenberg, was hired as a teacher and “activist in residence” but resigned before coming to the college after widespread protest. Rosenberg served sixteen years in prison for possessing explosives before President Bill Clinton pardoned her in 2000. She was also linked by federal prosecutors to the 1981 robbery of a Brink’s armored car in Nyack, N.Y., in which a Brink’s

guard and two police officers were killed. Reported in: *New York Times*, February 1.

## books

### New York, New York

America’s biggest publisher, the New York-based Doubleday, has provoked fierce controversy among families of the victims of the September 11 terror attacks by commissioning an anthology of writing by al-Qa’eda terrorist leaders. The book will contain new translations of polemics by Osama bin Laden and Ayman al-Zawahiri, his al-Qa’eda deputy, including material not previously seen outside the Arab world and which pre-dates the terror campaign.

When news of the deal first broke in the American publishing press, the company said that it had not decided how to use the expected profits from the book. After angry protests that it stood to cash in on the 9/11 attacks, however, Doubleday announced that all the proceeds from the book, which has the working title *Al Qaeda Reader*, would be given to charity.

Suzanne Herz, a spokesman for Doubleday, said there was no question of making payments to anyone connected with al-Qa’eda. Instead the company is paying just over \$100,000 (£53,000) for the rights to a Washington librarian, who is translating and anthologising the two men’s virulently anti-Western tracts and tirades.

The decision to publish the book has provoked mixed reactions from those who lost family members in the 2001 attacks carried out by bin Laden’s followers. “This can only give publicity to their terrible views and glorify what they did,” said Tracy Larkey, a British mother-of-three whose husband, Robin, died in the attack on the Twin Towers. “At least they have decided to give the money to charity. It would have been unacceptable if they hadn’t.”

Jack Lynch, who lost his son Michael, a firefighter, said: “People who promote terrorism are an evil and a cancer in our society. Anything that promotes their agenda shouldn’t be distributed in this country.”

Yet Lee Ielpi, whose son Jonathan, also a firefighter, died in the attack, welcomed the book. “Anything the general public can read to emphasise how severe these terrorists are in their threats to destroy us would be beneficial,” he said. “We are becoming complacent as it is.”

For the publishers, Herz said that the book would be an “important insight into the mind of America’s greatest enemy” and a “compelling historic document that deserves publication”.

The debate over the *Al Qaeda Reader* has drawn comparisons with that over Hitler’s *Mein Kampf*. The book is published in America by Houghton Mifflin and profits are

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## from the bench



### U.S. Supreme Court

The Newspaper Association of America asked the U.S. Supreme Court January 31 to review a federal appeals court's decision to remand regulations on cross-media ownership. Belo, Gannett, and Morris Communications were also listed on the petition.

"The [Federal Communication Commission] rule changes on newspaper-broadcast cross-ownership were based on solid evidence that repealing the outdated rules will greatly serve the public interest in a way that is consistent with the commission's competition, localism, and diversity goals," said John Sturm, president and CEO of the NAA, in a statement. "Whether they did it thirty years ago or not, a total ban on cross-ownership does not make sense in this highly diverse media world of 2005."

Last summer, the appeals court in Philadelphia agreed with the FCC that media ownership rules were archaic. However, the Court struck down the new regulations brought forth by the FCC and told the agency to rework them.

At the request of the White House, the FCC decided not to petition the Supreme Court. The Bush administration decided to abandon the effort by Michael K. Powell, the outgoing chairman of the Federal Communications Commission, to relax the regulations that have prevented the nation's largest media companies from growing bigger and entering new markets. The Justice Department will not ask the United States Supreme Court to consider the decision last year by a federal appeals court in Philadelphia that sharply criticized the attempt to deregulate the rules and ordered the commission to reconsider its action.

Big media companies had urged the administration to get involved in the case. But its decision not to recommend that the Supreme Court take the case sharply reduces the odds that the justices would intervene.

Officials said one reason the administration decided not to seek Supreme Court review is that some lawyers were concerned that the case could prompt the justices to review related First Amendment issues in a way that could undermine efforts by the commission to enforce indecency rules against television and radio broadcasters. Over the last year, the agency has issued a record number and size of fines, and has been pressed by some conservative and other advocacy groups to be more aggressive.

If, as now expected, the appeals court decision withstands legal challenge by some media companies, it would prevent the biggest media conglomerates from expanding. It also would return the rules back to the commission for further consideration. Lawmakers and some officials predicted that whoever succeeds Powell would be unlikely to embark on a course of wholesale deregulation of the media rules in light of the political furor that Powell's plan provoked. But they also said the agency could ultimately reconsider and relax a smaller number of the rules.

In a bitterly partisan vote in 2003, the commission voted three-to-two to approve a package of deregulatory measures drafted by Powell that rolled back decades of ownership restrictions. One of the rules Powell sought to ease restricted a company from owning a newspaper and a television or radio station in the same city. Another rule limited the number of television stations owned by the networks, as well as the number of television stations owned by a single company in the same market.

All told, the relaxation of the rules would have allowed companies in the largest cities to own as many as three television stations, eight radio stations and a cable operator, as well as a newspaper. They also would have allowed the largest television networks to buy more affiliated stations, although Congress rolled back that provision last year.

Powell, who announced in January that he would be stepping down in March, had made the relaxation of the ownership rules a central feature of his agenda of deregulation. He has said the ownership restrictions are outdated because of technological changes, like the advent of the Internet, with its many sources of information, have expanded the universe of news and entertainment outlets available to consumers. He maintained that the increased concentration would not hurt competition.

In some recent statements, he has said he erred politically by not promoting the changes in a smaller, more piecemeal fashion, so as to avoid the political fallout that ensued after presenting the larger package of changes.

The deregulation of the rules had been advanced by most of the television networks and many large media companies, including the News Corporation, the Tribune Company, the Gannett Company and The New York Times Company. It had been opposed by a broad coalition

of Democrats and Republicans in Congress, as well as an unusual coalition of labor, consumer, religious, artistic and civil rights organizations.

Some members of the coalition said they feared that further consolidation would increase the amount of indecent programming by a smaller number of outlets struggling to maintain high ratings and gain market share. Others said further consolidation would stifle creativity and lead to a decline in local news coverage as well as reduce the diversity of voices on the airwaves.

Last summer, the United States Court of Appeals for the Third Circuit in Philadelphia ordered the commission to reconsider the deregulation of the rules. It concluded in *Prometheus Radio Project v. Federal Communications Commission*, a case filed by an organization of small broadcasters, that the agency had failed to adequately justify the new rules and had been “arbitrary and capricious” in the way it sought to relax the old ones. Powell responded by assailing the decision, saying it had “created a clouded and confused state of media law.”

But officials at the Justice Department informed the Federal Communications Commission that they would not intervene and seek to have the decision overturned.

Jonathan S. Adelstein and Michael J. Copps, the commission’s two Democrats who opposed the changes to the rules, applauded the administration’s decision, which they suggested was a sharp rebuke of the agency under Powell.

“This is a recognition of the failure of the commission to adequately justify its rules and is a recognition of its failure to protect the public interest,” Adelstein said. “This is an historic decision for the media democracy movement.”

But Copps cautioned that the fight was not over, and that the next head of the agency should be careful not to make the mistakes that Powell had made. “This is welcome news, but we’ve got to be vigilant and not let anyone try to sneak consolidation through this agency in some piecemeal fashion,” Copps said. Reported in: *Editor and Publisher*, January 31; *New York Times*, January 27.

## Internet

### Montgomery County, Maryland

A Maryland judge has tossed out a lawsuit against an alleged spammer, saying a state law restricting unsolicited e-mail is unconstitutional because it unfairly restricts interstate commerce. Durke Thompson, a trial judge in Montgomery County, ruled that the Maryland law unduly discriminates against out-of-state commerce, a restriction that’s generally prohibited by the U.S. Constitution.

Thompson dismissed a lawsuit that a Maryland business

had brought against a New York firm, First Choice Internet, saying in a ruling December 9 that the company and its president “did not intentionally direct their e-mails” to Maryland residents.

“There’s no way for a person sending e-mail to know where the e-mail is going,” said Andrew Dansicker, a Baltimore lawyer representing First Choice Internet. “Until there is, it’s not fair to be passing statutes that penalize people for sending an e-mail.”

First Choice Internet was sued by a George Washington University law student, Eric Menhart, who formed a Maryland company to file lawsuits against what he believes to be offensive marketing practices. But the judge ruled that Menhart spent most of his time in Washington, D.C., not Maryland, and it would be unfair to require a sender of e-mail to guess where the correspondence would be read. Dansicker predicted that the “reasoning of the court could apply to other states, especially if it’s upheld by the appeals court.”

Judges in California and Washington state have ruled that their respective state’s antispam laws are unconstitutional for the same reason: They arguably violate the U.S. Constitution’s commerce clause, which prohibits states from levying undue burdens on interstate commerce. But in each of those cases, appeals courts eventually upheld the state laws.

In his ruling Thompson said this case was more akin to a string of Internet-related lawsuits in New York, Virginia and Vermont that struck down state laws because they ran afoul of the commerce clause. In the Vermont case, a court struck down a law targeting sexually explicit materials because it found the state has “projected its legislation into other states and directly regulated commerce therein.”

In general, the federal Can-Spam Act pre-empts state laws. But it has an exception for laws dealing with fraudulent and deceptive spam, which is what the Maryland law targets. Reported in; News.com, December 15.

## obscenity

### Northridge, California

A federal judge has dismissed obscenity charges against a California pornography business, finding obscenity statutes unconstitutional in the case. Because people have a right to view such material in the privacy of their own home, there’s a right to market it, U.S. District Court Judge Gary L. Lancaster said January 21 in dismissing the case against Robert Zicari and Janet Romano, both of Northridge, and their company, Extreme Associates.

Lancaster said prosecutors overstepped their bounds while trying to block the material from children and from

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## is it legal?



## libraries

### Montgomery, Alabama

A bill introduced February 1 by Alabama State Rep. Gerald Allen (R-Cottontdale) seeks to prohibit public libraries, schools, and universities from purchasing books or other materials that promote gay culture or feature gay characters. HB30 would make it a Class A misdemeanor to purchase, produce, or promote “printed or electronic materials or activities that sanction, recognize, foster, or promote a lifestyle or actions prohibited by the sodomy and sexual misconduct laws of the state.”

Allen had announced the bill at a press conference last November, two months before the legislative session began, explaining that his intent was to remove from library shelves any novel with a gay protagonist or any college textbook that suggests homosexuality is natural. “I guess we dig a big hole and dump them in and bury them,” he said.

University of Alabama Associate Theater Professor Peder Melhuse said that he doubted the bill would pass, but “if it did go through, I would certainly go out of my way to choose and vote for [productions] that went right in the face of the law.”

The bill contains language asserting that it is not a “prior restraint of the First Amendment protected speech” since it applies only to public institutions “in the use of public funds

and public facilities.” It also makes its provisions severable, meaning that if any part of the law is declared invalid or unconstitutional, other parts would not be affected. Reported in: *American Libraries* online, February 4.

### Washington, D.C.

The American Library Association and the American Association of Law Libraries (AALL) have called for oversight hearings on the Government Printing Office’s proposal—which has not yet been approved by Congress—to eliminate almost all print distribution to depository libraries beginning October 1.

Superintendent of Documents Judith C. Russell announced at the 2005 ALA Midwinter Meeting in Boston that the GPO plans to request funding for the Federal Depository Library program in FY 2006 that would cover little more than the production and distribution of fifty essential titles. Effective October 1, all other documents would be disseminated digitally.

The proposed changes would also include a print-on-demand (POD) allowance in which selected depository libraries would receive five hundred dollars and fifty-three regional depository libraries would get fifteen hundred dollars for materials not on the essential titles list. Costs for additional print titles as well as for administration of the POD program would have to come from depository libraries’ own budgets.

Such a plan “represents a major disruption to the FDLP’s role of ensuring no-fee, permanent access to government information for the American public,” AALL wrote in an action alert. “GPO has not yet established a reliable system ensuring delivery, version control, authenticity, permanent public access, and preservation of government information products they disseminate and make available online. . . .

It is not enough to disseminate and preserve digital documents; users must be assured that the electronic government information that they locate and use is authentic.”

During ALA’s Midwinter Meeting, the Association’s governing Council passed a resolution proposed by the Government Documents Round Table opposing the changes and calling for congressional oversight hearings. Reported in: *American Libraries* online, February 4.

### Richmond, Virginia

Two Virginia lawmakers are pushing bills that would require any public library that receives state funds to install filtering software on its computers. The legislation is necessary to protect children from unwittingly stumbling across pornography while using the Internet at their local libraries, said the House bill’s sponsor, Del. Samuel Nixon, Jr., R-Chesterfield. Nixon said his bill would be identical to one already filed by Sen. Mark Obenshain, R-Harrisonburg.

Nixon introduced his plans for the bill at a January 6 press conference for the Family Foundation, which unveiled its legislative agenda for the upcoming General Assembly session that also backs a state constitutional ban on same-sex civil unions. The bill would simply put Virginia in line with federal law, said Nixon, who filed a similar bill last session that was killed in committee.

A 2000 federal law mandated that public libraries put blocking technology on computers as a condition for receiving federal money. The U.S. Supreme Court in 2003 upheld the use of anti-pornography Internet filters in public libraries.

Opponents of such legislation argue that it amounts to censorship, and relies on imperfect technology that can block legitimate sites on such topics as abortion or gay rights.

Librarians would be able to temporarily disable filters for legitimate research purposes, said the Family Foundation's executive director, Victoria Cobb, who added that 40 percent of the state's libraries already have filters in place.

Last month, Cobb said her office received a call from a parent whose child had been exposed to "obscene material" at a Henrico County library. The librarian denied a request from the child's parent to force a man viewing the material to take it off his screen, Cobb said.

"This is not a novel concept," Cobb said. "This is a very real problem that has a simple and cost-effective solution." The bill does not specify which filters should be used, nor does it define exactly what constitutes "pornography," Nixon said. "These filters are inexpensive, they're easy to use, they're constitutional," Nixon said.

The American Library Association has opposed the federal law for various reasons. "The whole technology approach requires computers to make subjective judgments that they're incapable of," said Carolyn Caywood, branch manager of the Bayside Area Library and the Special Services Library for the Blind in Virginia Beach.

Another problem with blanket filtering is that most companies who produce the filters keep their lists of blocked terms secret, Caywood said. While that is understandable, it is also troublesome, because companies could potentially allow their political, social or religious views to affect what words they consider inappropriate, she said.

Caywood said her library system gives visitors a choice of whether to use computers with or without Internet filters. It also offers young children the option of using a special, kid-friendly system that only allows access to 50 pre-approved sites, such as Disney, Caywood said. Reported in: Associated Press, January 10.

### **Cross Plains, Wisconsin**

Dane County Sheriff's Detective David Mahoney walked into the Rosemary Garfoot Public Library in Cross Plains December 30 and asked to see the library's Internet

sign-in sheet for the day. Assistant Library Director Sue Freedman said no. Freedman said Mahoney was "very understanding" and waited several hours while she called the village attorney for legal advice. When she eventually told Mahoney that she would not turn over the sheet without a warrant, he left.

According to Freedman, Mahoney called her the next day to say he would use an alternative method of getting the information.

But the detective's request highlights a growing tension between the needs of law enforcement and librarians' strong desire to protect patrons' privacy and their ability to access information.

Mahoney was apparently investigating Thomas J. Kobinsky, a Cross Plains man who was indicted by a federal grand jury on four counts of identity theft, two counts of mail fraud and two counts of misusing a Social Security number in relation to a months-long campaign of harassment against a Middleton man.

A majority of states, including Wisconsin, protect patron privacy by requiring a warrant or a court order to access library records. But after passage of the federal USA PATRIOT Act, which relaxed the rules for information gathering, many librarians across the country became outspoken activists against the law and for the right to privacy.

Freedman says patron privacy is a cornerstone of a library's mission. "That's what a library stands for," she says. "The freedom to come into the library and know that your rights as a patron are not being violated in any way by the government."

Louise Robbins, director of the UW-Madison School of Library and Information Studies, says the state law both protects privacy and allows for law enforcement to gather information about suspected criminals. In February 2002, for example, Sun Prairie police obtained a warrant to seize 26 computers from the Sun Prairie Library after computer printouts of child pornography were found in the library's restroom.

The PATRIOT Act, although not invoked in the Kobinsky investigation, is criticized for shifting this delicate balance. "You don't have to have evidence of a specific crime," Robbins said. "Just the idea of someone you want to look at and the orders are issued by a court that is masked in secrecy."

Robbins said the act allows law enforcement agencies to go on "fishing expeditions" for information, and when they do so, there is no public record because of a gag order provision in the PATRIOT Act. So if a librarian turns documents over under the PATRIOT Act, he or she is forbidden from talking about it.

Robbins said libraries are circumventing the PATRIOT Act by changing their record retention policies. After all, law enforcement authorities cannot seize a document that does not exist. "They aren't keeping records or are keeping them

for short periods of time,” Robbins said. “If they use Internet sign-up sheets, they’re shredding them at the end of the day.”

Which is exactly what the Cross Plains library does with its sign-in sheets, although Freedman kept the sheet from December 30 until Mahoney told her he would not be getting a warrant for it.

Freedman says standing up for the privacy rights of patrons is about preserving civil rights. “I think that people have to be able to come into the library and feel free to check out whatever they want to read,” Freedman said, “without feeling that someone has a right to invade that privacy. I think that’s just a basic right for all people.”

“In these uncertain times,” Freedman added, “that’s more important than ever.” Reported in: *Capital Times*, January 21.

## **schools**

### **Cupertino, California**

Stephen Williams is a fifth grade teacher in Silicon Valley and practicing Christian who fell foul of his school principal because he was overeager to emphasize the religious beliefs of the Founding Fathers in his history classes. He wasn’t suspended or fired. The principal at Stevens Creek Elementary School in Cupertino simply became a little alarmed when Williams distributed a handout entitled “What Great Leaders Have Said About The Bible,” which quoted a handful of Republican presidents alongside Jesus himself. She became more alarmed still when he asked his class to read a chunk of St. Luke’s Gospel to help them understand the meaning of Easter. So, at the end of the last school year, she asked him to submit his lesson plans to her in advance to make sure his classes didn’t violate the separation of church and state.

When Williams edited down the Declaration of Independence to include only its references to a higher being, or when he reproduced chunks of George Washington’s prayer journal to the exclusion of the Father of the Nation’s more obviously political reflections, the principal drew the line and told him to take the discussion in a different direction.

There the affair might have ended had it not been for Williams’s friends in a Phoenix-based fundamentalist Christian outfit called the Alliance Defense Fund, who persuaded him that what was going on was a brazen attempt by liberal heathens to airbrush God out of the public arena altogether. The ADF started spreading stories that he was the victim of an out-of-control principal who was as allergic to religious references as vampires are to garlic and rosewater. And they bankrolled a federal lawsuit against the school district, filed in November, in which Williams alleged that his First Amendment and other constitutional rights were violated.

“Declaration of Independence Banned From Classroom” read a hysterical headline on the ADF website on the day the suit was filed. Soon the line was being pounded like a drum all over the right-wing airwaves, and made it, unqualified, into the headline of a Reuters news wire dispatch. Principal Patricia Vidmar, listeners and viewers were told, couldn’t stomach the nation’s original founding document because of its mentions of Nature’s God, the Creator, and Divine Providence.

“What has America become if these words no longer have the meaning for us that they have had for our parents and their parents before them?” declared Sean Hannity on Fox News. “When these words of Thomas Jefferson fall on deaf ears, where are we?”

Hannity returned to the story again and again as though the very fate of the Republic depended on it. He even moved his show to Cupertino for one night and renamed it “Take Back America” to ram home the point. He continued to voice his indignation even after Williams, the star guest on the Cupertino broadcast, admitted to him that the story about the Declaration of Independence being banned wasn’t true.

Clearly, thousands of evangelical Christians agree, because they bombarded Stevens Creek Elementary with e-mails, faxes, and letters. One man told the school: “We hope you burn in hell.” Another, purporting to be a concerned local resident, wrote to the school board urging them to give Principal Vidmar a psychiatric evaluation. Another called a teacher at home at 1:30 in the morning and said: “I know who you are, where you live, and that you work for that godforsaken school.”

Backers of the Alliance Defense Fund include James Dobson, a Bush family confidant and head of Focus on the Family, which believes gay marriage will “destroy the Earth” and has already set about eviscerating the once highly regarded public schools in Colorado Springs, where it is based. They also include Don Wildmon of the American Family Association, who wants to put “In God We Trust” posters in every public school, and James Kennedy of Coral Ridge Ministries, who agrees with John Ashcroft that America’s only King is Jesus. “The time has come,” Kennedy has said, “and it is long overdue, when Christians and conservatives and all men and women who believe in the birthright of freedom must rise up and reclaim America for Jesus Christ.” Reported in: *Los Angeles City Beat*, December 16.

### **Sutter, California**

Angry parents, saying their children’s privacy rights are being violated, have asked the board of the tiny Brittan School District to rescind a requirement that all students wear badges that monitor their whereabouts on campus using radio signals.

Located between the massive silos of Sutter Rice Co. and the Sutter Buttes, this small town has 587 kindergarten through eighth-graders who are the first public school children in the country to be tracked on campus by such a system, which is designed to ease attendance taking and increase campus security.

“This is the only public school monitoring where children go, with kids walking around with little homing beacons,” said Nicole Ozer, an ACLU lawyer aiding several parents who oppose the badges, which students wear around their necks. Although all students have identification badges, only seventh- and eighth-graders are being tracked in a test run, according to school officials and representatives of InCom, a Sutter-based company developing the system.

“There is no danger or I wouldn’t put it on my son,” Florrie Turner, a school district employee helping the company develop the software, told the school board. The student tracking system uses radio frequency identification technology used mainly to monitor inventory and livestock. Ozer said a district in Texas was testing the technology for use on school buses to see that students get on and off.

Several parents in Sutter complained they weren’t given a choice about their child participating in the new system and argued that the badges violated their children’s right to privacy. “Our belief is these children have never done anything to give up some of their civil rights. They’ve never done anything wrong, and they’re being tracked,” said Michelle Tatro who along with her husband, Jeff, wrote a formal complaint to the school board protesting the program.

Tatro said when her thirteen-year-old daughter came home from the first day of school in January, when the students began wearing the tags, she had waved the tag in her fist and said, “Look at this. I’m a grocery item. I’m a piece of meat. I’m an orange.” Their daughter was threatened with disciplinary action if she did not participate in the program, according to a letter sent by the district.

Although the board said nothing in response to parental complaints, several attendees defended the system, saying it would keep kids in school, free up more time for teachers to teach and increase security for pupils and teachers. “It’s baffling why so many people are bothered by the district being able to tell them where their kids are at,” said Tim Crabtree, a high school teacher who said he hoped the technology would come to his classroom.

The Tatros’ complaint and objections by other parents to the tracking system have led the district to relax its rule that all children wear the tags. If parents send a note saying their children don’t want to wear the tag, they don’t have to display it, but they must carry it on their person until the board makes a decision on the program’s future at a special meeting.

The badges contain a photo of pupils, their grade level and their name. On the back is a tube roughly the size of a roll of dimes. Within it is a chip with an antenna attached.

As the chip passes underneath a reader mounted above the classroom door, it transmits a 15-digit number, which then is translated into the student’s name by software contained in a handheld device used by teachers to check attendance. Seven classrooms were equipped with the readers, as were two bathrooms.

The bathroom readers were never turned on, according to school and company officials, and were removed by InCom because of objections by parents.

Developers of the system say parents concerned over privacy violations don’t understand the short range of radio frequency identification devices. “The tags physically can’t be read from a long distance,” said Doug Ahlers, an InCom partner.

Several of the aspects of the program the Tatros didn’t like were not the idea of InCom but of Principal Earnie Graham. InCom said it could have tested its software simply by mounting the chip on a blank piece of paper carried by students. It was Graham—who also wears an ID badge—who wanted the chip attached to a student identification card with names and photos.

Graham said that in retrospect parents should have been consulted about the program rather than simply notifying them about it with a brief blurb in the school newsletter. But a dry run on the badge readers during summer school caused “no outcry,” Graham said. “It wasn’t an issue.” Reported in: *San Francisco Chronicle*, February 10.

### **Ocala, Florida**

Two boys, ages nine and ten, were charged with felonies and taken away from school in handcuffs, accused of making violent drawings of stick figures. The boys were arrested January 20 on charges of making a written threat to kill or harm another person, a second-degree felony. The special education students used pencil and red crayon to draw primitive stick figure scenes on scrap paper that showed a ten-year-old classmate being stabbed and hung, police said.

“The officer found they were drawing these pictures for the sole purpose of intimidating and scaring the victim,” said Ocala Police Sgt. Russ Kern.

The boy depicted in the drawings told his teacher, who took the sketches and contacted the school dean, Marty Clifford. Clifford called police, who arrested the boys after consulting with the State Attorney’s Office. They were also suspended from school.

One drawing showed the two boys standing on either side of the other boy and “holding knives pointed through” his body, according to a police report. The figures were identified by written names or initials. Another drawing showed a stick figure hanging, tears falling from his eyes, with two other stick figures standing below him. Other pieces of scrap paper listed misspelled profanities and the initials of the boy who was allegedly threatened.



Parents of both of the arrested boys said they thought the boys should be punished by the school and families, not the legal system. Reported in: *floridatoday.com*, January 26.

### **Dover, Pennsylvania**

All but one teacher in the Dover Area School District's high school science department signed a letter January 6 requesting that they be allowed to "opt out" of reading the "Intelligent Design Theory" statement meant for students. "We do not believe this is science," said high school science teacher Jen Miller.

The statement was to be read on January 13, the same day evolution was to be discussed in class. It stated:

"The Pennsylvania Academic Standards require students to learn about Darwin's Theory of Evolution and eventually to take a standardized test of which evolution is a part.

"Because Darwin's Theory is a theory, it continues to be tested as new evidence is discovered. The Theory is not a fact. Gaps in the Theory exist for which there is no evidence. A theory is defined as a well-tested explanation that unifies a broad range of observations.

"Intelligent Design is an explanation of the origin of life that differs from Darwin's view. The reference book, *Of Pandas and People*, is available for students who might be interested in gaining an understanding of what Intelligent Design actually involves.

"With respect to any theory, students are encouraged to keep an open mind. The school leaves the discussion of the Origins of Life to individual students and their families. As a Standards-driven district, class instruction focuses upon preparing students to achieve proficiency on Standards-based assessments."

The curriculum language originally approved by the school board said students must be "made aware of gaps/problems in Darwin's theory and other theories of evolution, including but not limited to intelligent design."

In November, the board sought to clarify the rule by saying that teachers would read a statement advising students that Darwin's theory "is not a fact" and that intelligent design "is an explanation of life that differs from Darwin's view."

In December, the debate reached legal proportions when eleven parents sued the district, arguing the curriculum change violates the First Amendment by requiring "teachers to present to their students in biology class information that is inherently religious, not scientific, in nature."

While the teachers did not cite the Constitution, their written request did cite Pennsylvania's Code of Professional Practice and Conduct for Educators. "We believe that reading the ('intelligent design') statement violates our responsibility as educators as set forth in the code," Miller said. "Students are allowed to opt out from hearing the statement. We should be allowed to opt out from reading it."

The one teacher who did not sign the letter does not teach biology.

The request was taken to the administration office by union representatives, including Brad Neal. "We made the request on the advice of the PSEA attorney, (Tom Scott)," Neal said. "But I can't at this time, say more than that."

Two days later, the district, through its attorneys at the Thomas More Law Center in Michigan, released a statement that said administration officials will read the "one minute" passage including intelligent design.

The Thomas More lawyers said Supt. Richard Nilsen announced that the district believes that no Dover faculty has the right to "opt out of any policy or curriculum developed legally and publicly by the Dover Area School District Board of Directors." But, Nilsen said, the teachers' request was granted because of the lawsuit over the inclusion of intelligent design in the science curriculum.

Attorneys for the eleven parents had intended to seek a temporary injunction to keep intelligent design out of the biology classes. However, they were thwarted when school board members denied, in depositions, statements attributed to them last summer by both *The York Dispatch* and the *York Daily Record/York Sunday News*.

An attorney for the parents, Eric Rothschild of Pepper Hamilton, said lawyers were surprised by the denials of what they thought was an "established set of events." Rothschild said the inconsistencies would not have been easily resolved in a short hearing. However, he said, he expects the plaintiffs' attorneys will be successful in the long run when they take the case to court in the spring.

In sworn depositions, school board members denied charges that they were motivated by religion when they revamped the district science curriculum to include the phrase "intelligent design." School board members Bill Buckingham, Sheila Harkins and Alan Bonsell and Supt. Richard Nilsen, under oath, either said they had no memory of making the remarks related to creationism or denied making them.

But some residents and former district officials insist the board members made the statements they later denied making.

"I was a part of the curriculum committee, and I've never had anyone ever talk about looking for a book of creationism and evolution," Harkins said in depositions.

When attorneys asked Buckingham whether he said at a school board meeting that all he wants is a book that offers balance between what he said are the "Christian view of creationism and evolution," Buckingham stated, "Never said it."

But a taped television interview at the time shows Buckingham, the board's chief proponent of intelligent design, talking about teaching creationism in science class.

At issue are discussions that took place at the June 7 and June 14 meetings on whether to approve a teacher-recommended biology book. In deposition hearings January 3, the

parents' attorneys attempted to show the discussions were about whether students in the ninth-grade biology class should be taught creationism in addition to evolution.

In June, Buckingham voiced concerns that the biology book included references to Darwinism. But in their depositions, three school board members said they don't remember any discussion of creationism at board meetings.

One week after the June 14 meeting, Buckingham, in a taped interview with a Fox television reporter regarding the biology textbook, said, "My opinion, it's OK to teach Darwin, but you have to balance it with something else such as creationism." He also said in the interview that he opposed the biology textbook because "the book that was presented to me was laced with Darwinism from beginning to end."

In his deposition, Buckingham said he didn't recall uttering the phrase "laced with Darwinism," although he admitted to having concerns with the mention of evolutionary theorist Charles Darwin in the textbook.

One of the most controversial statements, which was quoted in the lawsuit and by both local newspapers, was reportedly made by Buckingham at the June 14 meeting: "Two thousand years ago, someone died on a cross. Can't someone take a stand for him?"

In depositions, both Harkins and Buckingham said the remark had been made only at a meeting in November 2003 during a debate over the Pledge of Allegiance. "He never said that again," Harkins said.

Christie Rehm, one of the plaintiffs in the case, said she remembers Buckingham making the remark, and said she didn't start coming to board meetings until June 2004—after the controversy over the biology textbook arose. "I genuinely recall what I heard," Rehm said. "In part because I was so appalled by that meeting."

Former board members Jeff and Casey Brown said they recall Buckingham's statement from the June meeting, as well as an ongoing discussion of creationism. The Browns resigned from the school board in October 2004 after the board voted to add the phrase "intelligent design" to the biology curriculum. When asked if the "died on a cross" statement could have been made only in November 2003, Casey Brown said, "Absolutely not."

Her husband said he remembers the specifics because "It kind of made me want to crawl under the table."

Former board member Larry Snook, who left the board in 2003, also recalls Buckingham's remark. He said board members were discussing creationism during the textbook debate.

However, Noel Wenrich, who stepped down from the board in October 2004, said he thinks the remark might have been made in November 2003 by Buckingham's wife, Charlotte. While Wenrich supports teaching the concept of intelligent design, he said he disagrees with the way the board handled it and was one of three board members who voted against the curriculum change October 18.

Warren Eshbach, a retired pastor who has on several occasions appealed to the school board to drop the intelligent design requirement, also said he recalls creationism being discussed at the meeting. He himself used the word when he addressed board members on June 14. He said he remembers asking them, "Are you sure you want to mandate the teaching of creationism?" He said he remembers cautioning them that to do so would violate U.S. Supreme Court decisions forbidding the teaching of creationism in public school science classes.

Proponents of intelligent design—the idea that life is too complex to have evolved solely through natural selection and therefore must have been created by an intelligent designer—say that the concept is not related to the biblical account of creation.

Despite board members' assertions that intelligent design is not about religion, in court depositions, Bonsell, Buckingham and Harkins struggled to define it. "It's a scientific theory because a lot of scientists back it," Buckingham said.

But the board policy has drawn fire from area scientists. On January 5, nearly three dozen University of Pennsylvania professors, as well as the associate dean from the university's physics department, wrote an open letter asking the Dover school board to "alter the misguided policy of teaching intelligent design creationism" and give students "real, dependable scientific knowledge."

Paul Sniegowski, Penn associate professor of biology, said the thirty-two professors and the associate dean sent the letter because any discussion on "intelligent design" reduces the quality of a science education. "A majority of scientists overwhelmingly agree with evolution," Sniegowski said. "We want to see all students learn good science."

Intelligent design suggests that life is too complex to have evolved on its own, and holds that a designer played a role in our existence and development. Dover's administration and school board has said it has no intention of teaching intelligent design in ninth-grade biology, but simply wants to make students aware that the theory exists, and encourage them to think critically about how life was created.

"Just the mentioning of intelligent design says that there is a body of knowledge on the subject that is on par with evolution," Sniegowski said. "But that simply isn't true."

In December, twelve members of York College's biology department wrote a letter saying the inclusion of intelligent design in a science classroom reflected "a genuine lack of knowledge about the data supporting evolution by natural selection."

Michael Weisberg, an associate professor of philosophy at Penn, said there are many examples throughout history where people have claimed beliefs are science without good research to support them. He said true science can be tested but certain things about intelligent design must be left to faith.

Some people can witness a perceived miracle and do nothing to understand its cause, he said, because they are

content to accept what their eyes have seen or what their heart tells them. "But miracles can get a scientist excited," he said. "Scientists want to know why everything happens."

The Penn group finished its letter by saying that a good science education will help students compete for admission to better colleges, earn them better jobs and empower them as people.

"This may encourage kids of faith," Sniegowski said. "But teachers work hard at clarity. And what could be less clear than presenting (intelligent design)? It's time to throw intelligent design out."

The following is the text of the Penn faculty statement: An Open Letter to the Dover Area School Board:

"As scientists, scholars, and teachers, we are compelled to point out that the quality of science education in your schools has been seriously compromised by the decision to mandate the teaching of "intelligent design" along with evolution. Science education should be based on ideas that are well supported by evidence. Intelligent design does not meet this criterion: It is a form of creationism propped up by a biased and selective view of the evidence.

"In contrast, evolution is based on and supported by an immense and diverse array of evidence and is continually being tested and reaffirmed by new discoveries from many scientific fields. The evidence for evolution is so strong that important new areas of biological research are confidently and successfully based on the reality of evolution. For example, evolution is fundamental to genomics and bioinformatics, new fields which hold the promise of great medical discoveries.

"According to the *York Daily Record* (November 23, 2004), you issued a statement claiming that "Darwin's Theory is a theory, it is still being tested as new evidence is discovered. The theory is not a fact. Gaps in the theory exist for which there is no evidence." This is extraordinarily misleading. While one can refer to the general body of modern evolutionary knowledge as "theory," the same is true of all other scientific knowledge, such as the theory of relativity or the theory of continental drift. It is one of the hallmarks of scientific inquiry that all such ideas are open to testing and reinterpretation. That theories are open to testing, however, does not mean that they are wrong. Evolution has been subject to well over a century of continual testing. The result: Its reality is no more in dispute among biologists than, for example, the existence of atoms and molecules is among chemists.

"Our students need to be taught the method and content of real science. We urge you to alter the misguided policy of teaching intelligent design creationism in your high school science curriculum. Instead, empower students with real, dependable scientific knowledge. They need this knowledge to understand the world around them, to compete for admission to colleges and universi-

ties, and to compete for good jobs. They deserve nothing less." Reported in: *York Daily Record*, January 7, 8, 9, 16.

## church and state

### Montgomery, Alabama

A south Alabama judge refused to delay a trial December 13 when an attorney objected to the judge wearing a judicial robe with the Ten Commandments embroidered in gold on the front of the garment. Circuit Judge Ashley McKathan showed up at his Covington County courtroom wearing the robe at the start of a week of jury trials of cases that were being appealed from lower courts—mostly cases like driving under the influence and possession of marijuana.

Attorneys who try cases at the courthouse said they had not seen the judge wearing the robe previously. The commandments were described as being big enough to read on the robe by anyone near the judge, but not like eye-catching slogans on T-shirts.

Attorney Riley Powell said he was defending a client charged with DUI and filed a motion objecting to the judicial robe and asking that the case be continued. He said McKathan denied both motions.

"I am all for the Ten Commandments for me personally and for my family," Powell said. "But I feel this creates a distraction that affects my client."

The case raised comparisons to former Alabama Chief Justice Roy Moore, who was removed from office in 2003 for refusing to remove a Ten Commandments monument from the rotunda of the Alabama Judicial Building in Montgomery. Moore first came to national prominence when he was a circuit judge in Etowah County and hung a Ten Commandments display on the wall of his Gadsden courtroom.

Powell said if he loses the case, he expects the judge's wearing of the Ten Commandments robe to be part of an appeal to the Alabama Court of Criminal Appeals. Reported in: *al.com*, December 14.

### Richmond, Virginia

The Virginia House of Delegates has approved a sweeping amendment that would erase church-state protections from the state constitution and allow officially sanctioned prayer in the public schools.

The bill, HJ 537, proposes an amendment to the state's constitution that would "permit the exercise of religious expression, including prayer and 'religious beliefs, heritage, and traditions' on public property, including public schools. . . ."

The Virginia House passed the proposed amendment by a sixty-nine-to-twenty-seven vote February 8. It has



been submitted to the Senate, which could consider it before the legislative session concludes on February 26. (Constitutional amendments must win House and Senate passage in two sessions before being placed on a state-wide ballot for voters.)

“The Virginia delegates who are pushing this scheme have a shockingly ill-informed understanding of religious freedom,” said the Rev. Barry W. Lynn, executive director of Americans United for Separation of Church and State. “This amendment would open a Pandora’s box of religious liberty problems. It is imperative for the Senate to reject this unwise plan.”

Lynn charged that the amendment’s broad language could be interpreted to allow officially sanctioned worship services at public schools and governmental events, as well as the display of sectarian symbols at courthouses, schools and other public buildings.

Lynn noted that Virginia legislators are tampering with the religious liberty legacy of Thomas Jefferson and James Madison, two revered Virginia founders who pioneered the concept of church-state separation in America. “I do not believe that today’s politicians are likely to improve on the work of Jefferson and Madison,” Lynn continued. “I am certain that the amendment just approved by the Virginia House does not do so. This scheme destroys many of the constitutional protections that Virginians count on.”

The amendment’s sponsor, Del. Charles W. Carrico, Sr., said that the amendment was needed because Christians in the nation are becoming increasingly oppressed. “America was founded on Christian beliefs,” said Carrico. “Christianity is the majority faith in this country and yet because the minority has said, ‘I’m offended,’ we are being told to keep silent.”

“Christianity is not muzzled in this country,” Lynn continued. “The public square is filled with religious and nonreligious voices. And public school children already have the right to voluntarily pray, read religious literature and join religious clubs. All of this goes on without government endorsement or opposition, and that’s how it should be. This measure is not needed, and it is an affront to the religious freedoms this country and the state of Virginia have long celebrated,” Lynn said. “It is imperative that this proposed amendment be defeated.”

The Virginia measure is patterned after a proposed federal constitutional amendment that U.S. Rep. Ernest Istook (R-OK) has spent years trying to shove through Congress. The Istook proposal has not fared well. He has introduced the amendment in several congressional sessions since the late 1990s, but it has always stalled in the House. Reported in: Americans United Press Release, February 9.

## universities

### Boulder, Colorado

Students rallied February 9 in support of another professor under fire at the University of Colorado who claims she was removed from her post because of her political views. Environmental studies professor Adrienne Anderson said she will appeal her removal, which she said was motivated by fallout from her critique of corporate environmental policy.

About a hundred students circulated petitions asking the university to reinstate Anderson during a rally that included a march into Arts and Sciences Dean Todd Gleeson’s office. Gleeson, who oversees Anderson’s department, told the crowd he could not comment on personnel matters and the decision was not his but that of the department’s faculty.

“I’ll make a commitment that we’ll follow policy,” Gleeson said.

Faculty in her department voted January 31 to cancel the untenured professor’s courses after this semester. Anderson, who has been a professor at the school for eleven years, said the move was political. “It’s consistent with efforts over the last ten years by corporations and agencies with less-than-stellar records trying to prevent me from speaking out,” she said.

Anderson is the second professor to come under fire at the university this year. The university is conducting a review that could lead to the dismissal of tenured ethnic studies professor Ward Churchill, whose comparing September 11 victims to Nazis sparked nationwide outrage (see page 000). Reported in: LongmontFYI.com, February 10.

### Washington, D.C.

Responding to a formal complaint from a vocal critic of Michael Moore, the Federal Election Commission is investigating whether colleges violated a ban on corporate donations to political campaigns by allowing the controversial and partisan filmmaker to appear on their campuses during last fall’s presidential-election campaign and by paying him a speaker’s fee.

David T. Hardy, an Arizona lawyer who is a co-author of *Michael Moore Is a Big Fat Stupid White Man* (Regan Books, 2004), filed two complaints with the FEC about Moore’s college tour, specifically naming a dozen institutions, including Pennsylvania State University at University Park, Syracuse University, the University of Cincinnati, and the University of Florida. Officials on those campuses confirmed that they had received a letter from the election commission with a copy of the complaint, and said they are in the process of responding to it.

“The FEC is very justifiable in ensuring that universities and others are not promoting, endorsing, or supporting a particular candidate for an election,” said Pamela J.

*(continued on page 84)*



## success stories



### libraries

#### Gulfport, Mississippi

A library board reversed a ban on comedian Jon Stewart's best-selling satirical book, which it had passed because of its image of Supreme Court justices' faces superimposed on naked bodies. The Jackson-George Regional Library System board of trustees was criticized by local residents and in e-mails from out of state after it banned *America (The Book): A Citizen's Guide to Democracy Inaction* in December. The trustees had said they objected to the image.

But the board voted five-to-two January 10 to lift the ban, and the book was returned to circulation in the system's eight libraries the next day. "We have come under intense scrutiny by the outside community," said David Ables, board chairman. "We don't decide for the community whether to read this book or not, but whether to make it available."

The book was written by Stewart and the writers of "The Daily Show," the Comedy Central fake-news program Stewart hosts. Released in September, it has spent fifteen weeks on *The New York Times* best-seller list and was named Book of the Year by *Publishers Weekly*, the industry trade magazine.

Wal-Mart declined to stock the book because of the image, which includes full frontal nudity. The facing page

has cutouts of the nine justices' robes, with a caption asking readers to "restore their dignity by matching each justice with his or her respective robe."

Board member David Ogborn opposed lifting the ban. "Our libraries are not a trash bin for pornographic materials," he said.

Robert Willits, the library system director, said that the board members acted promptly and fittingly. "There were twelve to fifteen people in the audience and most spoke up in defense of the book," he said. "The board responds to community input and they made that decision." He said majority of the messages criticizing the move came from out of state.

"We got some absolutely nasty e-mails and telephone calls that you would not believe," Willits said. "We were communists and fascists at the same time." Reported in: *South Mississippi Sun-Herald*, January 11.

### schools

#### North Berwick, Maine

*The Catcher in the Rye*, by J.D. Salinger, should remain in the freshman curriculum, but teachers need to provide more information to parents about why books are studied, the committee examining the book's use at Noble High School has ruled.

The eleven-member Educational Materials Review Committee issued its opinion December 17, two days after their only meeting. The opinion was directed to Superintendent Paul Andrade, who said he would present it to the School Administrative District 60 Board of Directors at their January 6 meeting. The district has never banned a book.

"The committee unanimously agreed, after hearing evidence from both parties, that *The Catcher in the Rye* is appropriate for the ninth-grade level based on the themes and essential questions within the curriculum, which was shared by the representatives at the meeting," the committee's opinion read.

The committee, which consisted of administrators, teachers, parents, students, School Board members and the school head librarian, heard from English teachers who said the book helps students examine complex interactions between teenagers and society.

The committee was formed to explore whether the 1951 coming-of-age tale is appropriate for freshmen after two Lebanon parents, Andrea and Mike Minnon, objected to its use based on the language and actions of the main character, sixteen-year-old Holden Caulfield. The Minnons, whose fourteen-year-old son, Spencer, is a freshman at Noble, described the controversial book as trash and Caulfield as a degenerate prep school drop-out who treats women as objects and finds no solutions to the depressive state he finds himself in. The Minnons said part of their

effort to pull the book from the curriculum was to have teachers hold students to higher standards.

Reached at home after the opinion was released, Andrea Minnon said she was not surprised by the committee's decision. "I didn't feel like they were going to go with my decisions," said Minnon, who previously homeschooled Spencer and his younger brother. "They're comfortable with their standards. I'm not comfortable with their standards."

Minnon said the committee's opinion reeks with hypocrisy. "It's socially unacceptable to use all those (curse) words in the work environment, and they claim the schools are their work environment, yet they're promoting a book that has all these swears in it," she said. "I'm disgusted and ashamed that a school that claims it has such high standards and wants to look a certain way is using materials like this."

Earlier Beth O'Connor, who represents Berwick on the School Board, said the book should be pulled so the school does not appear to be contradicting its rules that forbid profanity, vulgarity, smoking and drinking, behavior Caulfield demonstrates throughout the novel as part of exploring the adult world.

Beyond the book's use, the committee examined the communication between teachers and parents, which the Minnons said was lacking. The committee said teachers need to do a better job of providing parents with a rationale about why certain books are used, particularly how material that is chosen fits in with students' curriculum.

"Rather than just providing a list of books to be read throughout the year, we feel it would be important to provide some overview information about each selection so that parents may have a broader understanding of what their children will be reading and why," the committee said.

Minnon said she was happy schools will now try to give parents a "broader understanding of what they're going to be teaching the kids."

One of the committee members, School Board Director Kim Bernard, who represents North Berwick, said the committee considered all points of view and made good recommendations. "I think that everything that came out of it was really important," she said.

The committee also recommended the creation of a "teacher-parent resource binder" that will contain reviews of books and other materials. The binder will also provide parents with an idea of what students are supposed to gain from reading particular books. Assistant Superintendent Sue Austin said the recommendation was not to suggest that the district was not doing enough to inform parents, but that more work can always be done.

In addition, the committee recommended a review of the current Citizen's Challenge to Educational Review form, which Andrea Minnon presented at the December 2

board meeting, to help parents better articulate their specific concerns about challenged materials.

Finally, the committee recommended that a list of alternative books be made available to parents who choose to not have their child read a book, which is allowed through district policy. Students who opt out of reading a book can select an alternative and not engage in classroom discussion on it, said Christian Elkington, the high school principal. He said he hopes to have the recommendations, pending school board approval, in place by next September.

Minnon said her son will not read the book, which ranks high on the list of most banned books by the American Library Association. "He's definitely not reading it," she said. "I don't want my kids learning the trash that they're promoting . . ."

District administrators said they were pleased with the way the district has handled the issue. Elkington said the process "allowed for input to occur" and that the committee reached the right decision. "I appreciate the fact that the committee agreed that the use of the book . . . in the ninth grade was appropriate because we think it is."

Andrade said he appreciated the seriousness with which the committee took their work. He said he expects the School Board to have a "good discussion" about the opinion at their next meeting. Reported in: Foster's Online, December 18.

### **Bozeman, Montana**

A materials review committee for the Bozeman School District voted unanimously January 12 to retain Louise Rennison's *On the Bright Side, I'm Now the Girlfriend of a Sex God: Further Confessions of Georgia Nicolson* in the district's middle-school libraries. The book had been challenged by Pius Ruby, whose twelve-year-old attends the Sacajawea Middle School. Ruby feared that an unstable person seeing a girl reading the book might think from the title that the girl was promiscuous and stalk her.

At the meeting, Ruby argued that the title was "misleading, degrading, and harmful to the minds and possibly the safety" of girls. Sally Bell, a teacher from England, countered that the term "sex god" is British slang for handsome man, and that children are exposed to far more salacious material on television than in the Rennison book.

Before the vote, Bozeman High School librarian MaryAnne Coopersmith suggested that the review committee send a message with its vote that "no way, not in my community, are we going to allow censorship." The American Library Association's Office for Intellectual Freedom listed Rennison on its top-ten list of authors whose works received the most challenges in 2003. Reported in: *American Libraries* online, January 14. □

(IFC report . . . from page 45)

conveyed its decision to the Committee on Diversity at this Midwinter, and both committees are in agreement that the suggested revision to Libraries: An American Value would be unsuitable.

During its discussions, the IFC found a reference in the ALA Policy Manual which addresses the goal of this association to promote the recruitment of a racially and ethnically diverse group of high caliber persons to librarianship (ALA Policy Manual, 1.3.E.8.). In light of this ALA policy, and being appreciative of the Committee on Diversity's concerns, the IFC will address diversity recruitment in other policies, as appropriate.

#### *ALA Strategic Plan: Ahead to 2010*

In accordance with Keith Michael Fiels' request, the IFC reviewed the Ahead to 2010 draft goals. During discussion, the committee expressed disappointment that intellectual freedom, a key action area, was mentioned so infrequently in the draft strategic plan.

#### *Privacy*

Similar in style and purpose to the Libraries & the Internet Tool Kit, the Privacy Tool Kit, which was developed by the IFC Privacy Subcommittee, is a resource to assist librarians in protecting users' privacy and confidentiality. The Tool Kit is available at [www.ala.org/oif/iftoolkits/privacy](http://www.ala.org/oif/iftoolkits/privacy). The IFC Privacy Subcommittee has reviewed Questions and Answers on Privacy and Confidentiality, which complements Privacy: An Interpretation of the Library Bill of Rights, and has added several new topics: RFID in libraries; the use of social security numbers in library records; library workplace privacy; and the use of personally identifiable information for nonadministrative purposes. The Q&A is available at [www.ala.org/ala/oif/statementspols/statementsif/interpretations/questionsanswers.html](http://www.ala.org/ala/oif/statementspols/statementsif/interpretations/questionsanswers.html).

#### *Media Concentration*

The Intellectual Freedom Committee's Subcommittee on the Impact of Media Concentration on Libraries has developed a draft checklist to help libraries counter the impact of media consolidation on the diversity of ideas and localism in their communities. The checklist covers a broad range of topics, such as collection building, cataloging, 21st-century literacy, electronic resources, children's services, and library programming. At this Midwinter Meeting, the subcommittee sought suggestions and ideas for adding to and improving the draft checklist. Over the coming months, the subcommittee will annotate the checklist, add links to relevant resources, and mount it on the OIF Web site ([www.ala.org/oif](http://www.ala.org/oif)).

## **Projects**

### *Lawyers for Libraries*

Lawyers for Libraries, an ongoing OIF project, is creating a network of attorneys involved in, and concerned with, the defense of the freedom to read and the application of constitutional law to library policies, principles, and problems.

Five regional training institutes have been held since 2002 in Boston, Chicago, Dallas, San Francisco, and Washington, D.C. A sixth institute is being planned in Atlanta on May 4 in conjunction with the SOLINET's Annual Membership Meeting. To date, over 150 attorneys, trustees, and librarians have attended these five trainings, and an e-list has been created to allow for ongoing communication.

Topics addressed include the USA PATRIOT Act, Internet filtering, the library as a public forum, meeting room and display area policies, and how to defend against censorship of library materials.

As OIF continues to sponsor institutes, more and more attorneys are learning about the intricacies of First Amendment law as applied to libraries, and the country's library users can be more secure knowing that their rights will continue to be vigorously protected.

For more information about the Lawyers for Libraries project, please contact Jonathan Kelley at [jkelly@ala.org](mailto:jkelly@ala.org) or 1-800-545-2433, ext. 4226.

### *Banned Books Week*

ALA's annual celebration of the freedom to read—Banned Books Week—begins September 24 and continues through October 1, 2005. This year's theme—It's Your Freedom We're Talking About—highlights that intellectual freedom is a personal and common responsibility in a democratic society. More information on the twenty-fourth BBW can be found at [www.ala.org/bbooks](http://www.ala.org/bbooks).

### *Action*

Resolution on Radio Frequency Identification (RFID) Technology and Privacy Principles

For 25 years, the Book Industry Study Group (BISG) has been a key resource for publishing professionals in every facet of the book industry. BISG has led the way in setting industry standards and conducting vital industry research on behalf of publishers, booksellers, libraries, and vendors.

During the past year, the ALA Office of Information Technology Policy (OITP) and OIF have been working with BISG to develop a privacy policy statement on the use of Radio Frequency Identification (RFID).

Both the IFC and the OITP have reviewed this policy, entitled Radio Frequency Identification Privacy Principles, which can be found at [www.bisg.org/docs/BISG\\_Policy\\_002.pdf](http://www.bisg.org/docs/BISG_Policy_002.pdf) and attached here with.

Because these RFID privacy principles compare favorably with ALA's privacy policies, the IFC and OITP now move for adoption: "Resolution on Radio Frequency Identification (RFID) Technology and Privacy Principles."

### ***Intellectual Freedom Manual Seventh Edition***

#### ***Background on Revised Interpretations***

As you know, the IFC anticipates the seventh edition of the *Intellectual Freedom Manual* will be published in time for the 2006 Midwinter Meeting. To meet the publication schedule, the manuscript must be in Publishing Services by April 1, 2005.

At the 2004 Annual Conference, Council adopted eight policies the IFC updated. The IFC informed you at that time that the remaining three would be brought to Council at this Midwinter Meeting. On November 10, 2004, as usual, the proposed drafts of the policies were mailed to the ALA Executive Board, ALA Council, ALA Division Presidents, ALA Council Committee Chairs, ALA Round Table Chairs, and appropriate ALA staff liaisons for their input.

The IFC carefully considered and discussed all comments received both prior to and during this Midwinter Meeting.

One of the comments received was from the ALA Committee on Professional Ethics, which suggested that the IFC develop a Q&A on labels and rating systems. The committee has agreed to undertake this project, and will be seeking input from the profession as it develops this Q&A.

The IFC now submits three revised policies for Council's adoption:

- "Access to Electronic Information Services and Networks"; the IFC moves the adoption of its revisions to this policy;
- "Access to Resources and Services in the School Library Media Program"; the IFC moves the adoption of its revisions to this policy; and
- "Labels and Rating Systems"; the IFC moves the adoption of its revisions to this policy.

In closing, the Intellectual Freedom Committee thanks the Division and Chapter Intellectual Freedom Committees, the Intellectual Freedom Round Table, the various unit liaisons, and the OIF staff for their commitment, assistance, and hard work. We also want to recognize and congratulate Judith F. Krug, director of the office, who will receive an Honorary Doctorate of Humane Letters from the University of Illinois at Urbana-Champaign this May for her tireless commitment to protecting intellectual freedom for all.

### **Access to Electronic Information, Services, and Networks An Interpretation of the *Library Bill of Rights***

#### ***Introduction***

Freedom of expression is an inalienable human right and the foundation for self-government. Freedom of

expression encompasses the freedom of speech and the corollary right to receive information.<sup>1</sup> Libraries and librarians protect and promote these rights by selecting, producing, providing access to, identifying, retrieving, organizing, providing instruction in the use of, and preserving recorded expression regardless of the format or technology.

The American Library Association expresses these basic principles of librarianship in its *Code of Ethics* and in the *Library Bill of Rights* and its Interpretations. These serve to guide librarians and library governing bodies in addressing issues of intellectual freedom that arise when the library provides access to electronic information, services, and networks.

Libraries empower users by providing access to the broadest range of information. Electronic resources, including information available via the Internet, allow libraries to fulfill this responsibility better than ever before.

Issues arising from digital generation, distribution, and retrieval of information need to be approached and regularly reviewed from a context of constitutional principles and ALA policies so that fundamental and traditional tenets of librarianship are not swept away.

Electronic information flows across boundaries and barriers despite attempts by individuals, governments, and private entities to channel or control it. Even so, many people lack access or capability to use electronic information effectively.

In making decisions about how to offer access to electronic information, each library should consider its mission, goals, objectives, cooperative agreements, and the needs of the entire community it serves.

#### ***The Rights of Users***

All library system and network policies, procedures, or regulations relating to electronic information and services should be scrutinized for potential violation of user rights.

User policies should be developed according to the policies and guidelines established by the American Library Association, including Guidelines for the Development and Implementation of Policies, Regulations and Procedures Affecting Access to Library Materials, Services and Facilities.

Users' access should not be restricted or denied for expressing or receiving constitutionally protected speech. If access is restricted or denied for behavioral or other reasons, users should be provided due process, including, but not limited to, formal notice and a means of appeal.

Information retrieved or utilized electronically is constitutionally protected unless determined otherwise by a court of law with appropriate jurisdiction. These rights extend to minors as well as adults (Free Access to Libraries for Minors; Access to Resources and Services in the School Library Media Program; Access for Children and Young Adults to Nonprint Materials).<sup>2</sup>



Libraries should use technology to enhance, not deny, access to information. Users have the right to be free of unreasonable limitations or conditions set by libraries, librarians, system administrators, vendors, network service providers, or others. Contracts, agreements, and licenses entered into by libraries on behalf of their users should not violate this right. Libraries should provide library users the training and assistance necessary to find, evaluate, and use information effectively.

Users have both the right of confidentiality and the right of privacy. The library should uphold these rights by policy, procedure, and practice in accordance with *Privacy: An Interpretation of the Library Bill of Rights*.

### *Equity of Access*

The Internet provides expanding opportunities for everyone to participate in the information society, but too many individuals face serious barriers to access. Libraries play a critical role in bridging information access gaps for these individuals. Libraries also ensure that the public can find content of interest and learn the necessary skills to use information successfully.

Electronic information, services, and networks provided directly or indirectly by the library should be equally, readily and equitably accessible to all library users. American Library Association policies oppose the charging of user fees for the provision of information services by all libraries and information services that receive their major support from public funds (50.3 Free Access to Information; 53.1.14 Economic Barriers to Information Access; 60.1.1 Minority Concerns Policy Objectives; 61.1 Library Services for the Poor Policy Objectives). All libraries should develop policies concerning access to electronic information that are consistent with ALA's policy statements, including *Economic Barriers to Information Access: An Interpretation of the Library Bill of Rights*, *Guidelines for the Development and Implementation of Policies, Regulations and Procedures Affecting Access to Library Materials, Services and Facilities*, and *Resolution on Access to the Use of Libraries and Information by Individuals with Physical or Mental Impairment*.

### *Information Resources and Access*

Providing connections to global information, services, and networks is not the same as selecting and purchasing materials for a library collection. Determining the accuracy or authenticity of electronic information may present special problems. Some information accessed electronically may not meet a library's selection or collection development policy. It is, therefore, left to each user to determine what is appropriate. Parents and legal guardians who are concerned about their children's use of electronic resources should provide guidance to their own children.

Libraries, acting within their mission and objectives, must support access to information on all subjects that serve the needs or interests of each user, regardless of the user's age or the content of the material. In order to preserve the cultural record and to prevent the loss of information, libraries may need to expand their selection or collection development policies to ensure preservation, in appropriate formats, of information obtained electronically. Libraries have an obligation to provide access to government information available in electronic format.

Libraries and librarians should not deny or limit access to electronic information because of its allegedly controversial content or because of the librarian's personal beliefs or fear of confrontation. Furthermore, libraries and librarians should not deny access to electronic information solely on the grounds that it is perceived to lack value.

Publicly funded libraries have a legal obligation to provide access to constitutionally protected information. Federal, state, county, municipal, local, or library governing bodies sometimes require the use of Internet filters or other technological measures that block access to constitutionally protected information, contrary to the *Library Bill of Rights* (ALA Policy Manual, 53.1.17, *Resolution on the Use of Filtering Software in Libraries*). If a library uses a technological measure that blocks access to information, it should be set at the least restrictive level in order to minimize the blocking of constitutionally protected speech. Adults retain the right to access all constitutionally protected information and to ask for the technological measure to be disabled in a timely manner. Minors also retain the right to access constitutionally protected information and, at the minimum, have the right to ask the library or librarian to provide access to erroneously blocked information in a timely manner. Libraries and librarians have an obligation to inform users of these rights and to provide the means to exercise these rights.<sup>3</sup>

Electronic resources provide unprecedented opportunities to expand the scope of information available to users. Libraries and librarians should provide access to information presenting all points of view. The provision of access does not imply sponsorship or endorsement. These principles pertain to electronic resources no less than they do to the more traditional sources of information in libraries (*Diversity in Collection Development*).

### Notes

1. *Martin v. Struthers*, 319 U.S. 141 (1943); *Lamont v. Postmaster General*, 381 U.S. 301 (1965); Susan Nevelow Mart, "The Right to Receive Information" (PDF), 95 *Law Library Journal* 2 (2003).

2. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969); *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853, (1982); *American Amusement Machine Association v. Teri Kendrick*, 244 F.3d 954 (7th Cir. 2001); cert.denied, 534 U.S. 994 (2001)

3. "If some libraries do not have the capacity to unblock specific Web sites or to disable the filter or if it is shown that an adult user's election to view constitutionally protected Internet material is burdened in some other substantial way, that would be the subject for an as-applied challenge, not the facial challenge made in this case." *United States, et al. v. American Library Association* (PDF), 539 U.S. 194 (2003) (Justice Kennedy, concurring).

See Also: Questions and Answers on Access to Electronic Information, Services and Networks: an Interpretation of the *Library Bill of Rights*.

Adopted January 24, 1996; amended January 19, 2005, by the ALA Council.

### **Access to Resources and Services in the School Library Media Program**

#### *An Interpretation of the Library Bill of Rights*

The school library media program plays a unique role in promoting intellectual freedom. It serves as a point of voluntary access to information and ideas and as a learning laboratory for students as they acquire critical thinking and problem-solving skills needed in a pluralistic society. Although the educational level and program of the school necessarily shapes the resources and services of a school library media program, the principles of the *Library Bill of Rights* apply equally to all libraries, including school library media programs.

School library media specialists assume a leadership role in promoting the principles of intellectual freedom within the school by providing resources and services that create and sustain an atmosphere of free inquiry. School library media specialists work closely with teachers to integrate instructional activities in classroom units designed to equip students to locate, evaluate, and use a broad range of ideas effectively. Through resources, programming, and educational processes, students and teachers experience the free and robust debate characteristic of a democratic society.

School library media specialists cooperate with other individuals in building collections of resources appropriate to the needs and to the developmental and maturity levels of students. These collections provide resources that support the mission of the school district and are consistent with its philosophy, goals, and objectives. Resources in school library media collections are an integral component of the curriculum and represent diverse points of view on both current and historical issues. These resources include materials that support the intellectual growth, personal development, individual interests, and recreational needs of students.

While English is, by history and tradition, the customary language of the United States, the languages in use in any given community may vary. Schools serving communities in which other languages are used make efforts to accommodate the needs of students for whom English is a second language. To support these efforts, and to ensure equal

access to resources and services, the school library media program provides resources that reflect the linguistic pluralism of the community.

Members of the school community involved in the collection development process employ educational criteria to select resources unfettered by their personal, political, social, or religious views. Students and educators served by the school library media program have access to resources and services free of constraints resulting from personal, partisan, or doctrinal disapproval. School library media specialists resist efforts by individuals or groups to define what is appropriate for all students or teachers to read, view, hear, or access via electronic means.

Major barriers between students and resources include but are not limited to imposing age or grade level restrictions on the use of resources; limiting the use of interlibrary loan and access to electronic information; charging fees for information in specific formats; requiring permission from parents or teachers; establishing restricted shelves or closed collections; and labeling. Policies, procedures, and rules related to the use of resources and services support free and open access to information.

The school board adopts policies that guarantee students access to a broad range of ideas. These include policies on collection development and procedures for the review of resources about which concerns have been raised. Such policies, developed by persons in the school community, provide for a timely and fair hearing and assure that procedures are applied equitably to all expressions of concern. School library media specialists implement district policies and procedures in the school.

Adopted July 2, 1986; amended January 10, 1990; July 12, 2000; January 19, 2005, by the ALA Council.

### **Labels and Rating Systems**

#### *An Interpretation of the Library Bill of Rights*

Libraries do not advocate the ideas found in their collections or in resources accessible through the library. The presence of books and other resources in a library does not indicate endorsement of their contents by the library. Likewise, the ability for library users to access electronic information using library computers does not indicate endorsement or approval of that information by the library.

#### *Labels*

Labels on library materials may be viewpoint-neutral directional aids that save the time of users, or they may be attempts to prejudice or discourage users or restrict their access to materials. When labeling is an attempt to prejudice attitudes, it is a censor's tool. The American Library Association opposes labeling as a means of predisposing people's attitudes toward library materials.

Prejudicial labels are designed to restrict access, based on a value judgment that the content, language or themes of the material, or the background or views of the creator(s) of the material, render it inappropriate or offensive for all or certain groups of users. The prejudicial label is used to warn, discourage or prohibit users or certain groups of users from accessing the material. Such labels may be used to remove materials from open shelves to restricted locations where access depends on staff intervention.

Viewpoint-neutral directional aids facilitate access by making it easier for users to locate materials. The materials are housed on open shelves and are equally accessible to all users, who may choose to consult or ignore the directional aids at their own discretion.

Directional aids can have the effect of prejudicial labels when their implementation becomes proscriptive rather than descriptive. When directional aids are used to forbid access or to suggest moral or doctrinal endorsement, the effect is the same as prejudicial labeling.

#### *Rating Systems*

A variety of organizations promulgate rating systems as a means of advising either their members or the general public concerning their opinions of the contents and suitability or appropriate age for use of certain books, films, recordings, Web sites, or other materials. The adoption, enforcement, or endorsement of any of these rating systems by the library violates the *Library Bill of Rights*. Adopting such systems into law may be unconstitutional. If such legislation is passed, the library should seek legal advice regarding the law's applicability to library operations.

Publishers, industry groups, and distributors sometimes add ratings to material or include them as part of their packaging. Librarians should not endorse such practices. However, removing or destroying such ratings—if placed there by, or with permission of, the copyright holder—could constitute expurgation (see *Expurgation of Library Materials: An Interpretation of the Library Bill of Rights*).

Some find it easy and even proper, according to their ethics, to establish criteria for judging materials as objectionable. However, injustice and ignorance, rather than justice and enlightenment, result from such practices. The American Library Association opposes any efforts that result in closing any path to knowledge.

Adopted July 13, 1951; amended June 25, 1971; July 1, 1981; June 26, 1990; January 19, 2005, by the ALA Council.

#### *Resolution on Radio Frequency Identification (RFID) Technology and Privacy Principles*

WHEREAS, Radio Frequency Identification (RFID) is a technology that uses various electronic devices, such as microchip tags, tag readers, computer servers, and software, to automate library transactions; and

WHEREAS, the use of RFID technology promises to improve library operations by increasing the efficiency of library transactions, reducing workplace injuries, and improving services to library users; and

WHEREAS, many libraries are adopting or are in the process of adopting RFID technology to automate library circulation, inventory management, and security control; and

WHEREAS, consumers, consumer groups, librarians, and library users have raised concerns about the misuse of RFID technology to collect information on library users' reading habits and other activities without their consent or knowledge; and

WHEREAS, protecting user privacy and confidentiality has long been an integral part of the mission of libraries; and

WHEREAS, the ALA Code of Ethics states, "We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted"; and

WHEREAS, Privacy: An Interpretation of the *Library Bill of Rights* states that "The American Library Association affirms that rights of privacy are necessary for intellectual freedom and are fundamental to the ethics and practice of librarianship," and calls upon librarians "to maintain an environment respectful and protective of the privacy of all users"; and

WHEREAS, the ALA Intellectual Freedom Committee recognizes the importance of developing policies and guidelines for appropriate implementation of RFID technology in light of the profession's commitment to preserving user privacy and its concern for preserving the trust of library users; and

WHEREAS, the ALA Intellectual Freedom Committee and the ALA Office for Information Technology Policy, recognizing the immediate need to draft privacy principles to protect and promote ALA's values, joined with the Book Industry Study Group (BISG) to form a working group dedicated to developing a set of privacy principles to govern the use of RFID technology by all organizations and industries related to the creation, publication, distribution, and retail sale of books and their use in libraries; now, therefore, let it be

RESOLVED, that the American Library Association endorse the "BISG Policy Statement Policy #002: RFID—Radio Frequency Identification Privacy Principles" (Exhibit I) developed by the IFC and the OITP with the BISG and other working groups; and be it further

RESOLVED, that ALA affirm established privacy norms within and across the business, government, educational, and nonprofit spectrum, specifically acknowledging two essential privacy norms:

- Data transferred among trading partners related to customer and/or patron transactions shall be used solely for related business practices and no unauthorized transaction shall be permitted.
- Data related to customer and/or patron transactions shall not compromise standard confidentiality agreements among trading partners or information users; and be it further

RESOLVED, that the ALA adopt the following “RFID Privacy Principles” developed by the IFC and OITP with the BISG RFID working group:

All businesses, organizations, libraries, educational institutions and non-profits that buy, sell, loan, or otherwise make available books and other content to the public utilizing RFID technologies shall:

- 1) Implement and enforce an up-to-date organizational privacy policy that gives notice and full disclosure as to the use, terms of use, and any change in the terms of use for data collected via new technologies and processes, including RFID.
- 2) Ensure that no personal information is recorded on RFID tags which, however, may contain a variety of transactional data.
- 3) Protect data by reasonable security safeguards against interpretation by any unauthorized third party.
- 4) Comply with relevant federal, state, and local laws as well as industry best practices and policies.
- 5) Ensure that the four principles outlined above must be verifiable by an independent audit; and be it further

RESOLVED, that the ALA continue to monitor and to address concerns about the potential misuse of RFID technology to collect information on library users’ reading habits and other activities without their consent or knowledge; and be it further

RESOLVED, that the ALA develop implementation guidelines for the use of RFID technologies in libraries.

Adopted by the ALA Council  
January 19, 2005.

### **Resolution on Privacy and Standardized Driver’s Licenses and Personal Identification Cards**

WHEREAS, the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) requires the Secretary of Transportation, in consultation with the Secretary of Homeland Security, to issue regulations establishing minimum standards for driver’s licenses and personal identification cards issued by a state for use by federal agencies for identification purposes; and

WHEREAS, the federal government will, after a phase-in period, refuse to accept licenses or identification cards for federal identification purposes that do not comply with the standard, thereby making the standardized card a de facto national “identity card”; and

WHEREAS, the Act requires that “standards for common machine-readable identity information be included on each driver’s license or personal identification card, including the defined minimum data elements”; and

WHEREAS, the Act requires that security standards for driver’s licenses and personal identification cards must be implemented in a manner “capable of accommodating and ensuring the security of a digital photograph or other unique identifier” that can easily be maintained in linked databases; and

WHEREAS, machine-readable driver’s licenses and personal identification cards could allow the linking of financial, educational, health, travel, and other personally-identifiable information; and

WHEREAS, the states’ machine readable databases can be mined or linked to create a national database, presenting the opportunity to use the data for purposes for which it was never intended, including profiling of individuals and the government’s surveillance of the public; and

WHEREAS, driver’s licenses are commonly used by the public as a means of identification for obtaining a library card and driver’s license numbers have been entered into the user’s registration record, and could potentially result in the ability to search library use by individuals; and

WHEREAS, the American Library Association’s Library Bill of Rights affirms that libraries are committed to the principles of Americans as a free people and to “free expression and free access to ideas” in an open society; and

WHEREAS, the Code of Ethics of the American Library Association upholds the protection of “each library user’s right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted;” and

WHEREAS, a stated intent of the Intelligence Reform and Terrorism Prevention Act of 2004 is to ensure “an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life” and that the “concerns with respect to privacy and civil liberties are appropriately considered in the implementation of laws, regulations, and executive branch policies related to efforts to protect the Nation against terrorism”; and

WHEREAS, the statute requires that implementation of the regulations “shall include procedures and requirements to protect the privacy and civil and due process rights of individuals who apply for and hold driver’s licenses and personal identification cards”; therefore be it

RESOLVED, that the American Library Association urges the Chief Privacy Officers of the U.S. Departments of Transportation and Homeland Security to work closely with the Privacy and Civil Liberties Oversight Board created by the Intelligence Reform and Terrorism Prevention Act of 2004 to fulfill the law’s stated intention of



ensuring a system of checks and balances to protect the liberties of the American public and our democratic society and to ensure that all implementations of the law respect privacy and civil liberties; and, therefore, be it further

RESOLVED, that the American Library Association convey to the rulemaking committee its concern that the standardization of driver's license and personal identification card information not be used to create a national database or to mine, link, or otherwise obtain access to the "information sought or received and resources consulted, borrowed, acquired or transmitted" by library users.

Adopted by the ALA Council  
January 19, 2005  
Boston, Massachusetts □

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(censorship dateline . . . from page 62)

given to a fund which backs groups that combat Hitler's views.

Stephen Rubin, the president and publisher of the Doubleday Broadway Publishing Group, which is owned by the German company, Bertelsmann, told *The Wall Street Journal*: "We firmly believe we're doing a great service to America by publishing the innermost thoughts of our greatest enemy."

The al-Qa'eda volume will be based largely on two books published in Arabic during the 1990s. *The Battle of the Lion's Den* is a collection of interviews with bin Laden about the terror network's origins, while *Bitter Harvest* is al-Zawahiri's justification of jihad (holy war). The material was discovered in the Library of Congress in Washington by Raymond Ibrahim, who works in its Near East Studies section.

The publisher is confident that the terrorist leaders will be unable to claim remuneration for use of their material, since their writings are in the public domain and have been published in Arab countries which have not signed international copyright treaties. "You're not going to see Osama bin Laden coming out of his cave for a check," said Herz. Reported in: *Daily Telegraph*, January 23.

## **broadcasting**

### **Washington, D.C.**

The nation's new education secretary denounced the Public Broadcasting Service (PBS) January 26 for spend-

ing public money on a cartoon with lesbian characters, saying many parents would not want children exposed to such lifestyles. The not-yet-aired episode of *Postcards From Buster* shows the title character, an animated bunny named Buster, on a trip to Vermont—a state known for recognizing same-sex civil unions. The episode features two lesbian couples, although the focus is on farm life and maple sugaring.

A PBS spokesman said the nonprofit network had decided not to distribute the episode, called "Sugartime!," to its 349 stations. She said the Education Department's objections were not a factor in that decision.

"Ultimately, our decision was based on the fact that we recognize this is a sensitive issue, and we wanted to make sure that parents had an opportunity to introduce this subject to their children in their own time," said Lea Sloan, vice president of media relations at PBS.

However, the Boston public television station that produces the show, WGBH, did make the "Sugartime!" episode available to other stations. WGBH also planned to air the episode on March 23, Sloan said.

PBS gets money for the *Postcards from Buster* series through the federal Ready-To-Learn program, one aimed at helping young children learn through television.

Education Secretary Margaret Spellings said the "Sugartime!" episode did not fulfill the intent Congress had in mind for programming. By law, she said, any funded shows must give top attention to "research-based educational objectives, content and materials."

"Many parents would not want their young children exposed to the lifestyles portrayed in the episode," Spellings wrote in a letter sent to Pat Mitchell, president and chief executive officer of PBS. "Congress' and the Department's purpose in funding this programming certainly was not to introduce this kind of subject matter to children, particularly through the powerful and intimate medium of television." She asked PBS to consider refunding the money it spent on the episode.

With her letter, Spellings has made criticism of the publicly funded program's depiction of the gay lifestyle one of her first acts as secretary. She took on the position just one day after, replacing Rod Paige as President Bush's education chief.

In her letter, Spellings asked that her department's seal or any statement linking the department to the show be removed. She asked PBS to notify its member stations of the nature of show so they could review it before airing it. And she asked for the refund "in the interest of avoiding embroiling the Ready-To-Learn program in a controversy that will only hurt" it. In closing, she warned: "You can be assured that in the future the department will be more clear as to its expectations for any future programming that it funds."

The department has awarded nearly \$99 million to PBS through the program over the last five years in a contract that expires in September, said department spokesman Susan Aspey. That money went to the production of *Postcards from Buster*, and another animated children's show, and to promotion of those shows in local communities, she said. The show about Buster also gets funding from other sources.

In the show, Buster carries a digital video camera and explores regions, activities and people of different backgrounds and religions. On the episode in question, "The fact that there is a family structure that is objectionable to the Department of Education is not at all the focus of the show, nor is it addressed in the show," said Sloan of PBS.

But she also said: "The department's concerns align very closely with PBS' concerns, and for that reason, it was decided that PBS will not be providing the episode." Stations will receive a new episode, she said. Reported in: Associated Press, January 25.

### **Washington, D.C.**

Al-Manar, one of the most popular television networks in the Arabic-speaking world, has been removed from U.S. airwaves after the State Department designated it a supporter of terrorism. State Department officials placed the satellite television network, run by the Lebanese militant group Hezbollah, on its Terrorist Exclusion List December 28 because of what they described as its incitement of terrorist activity. The designation means foreign nationals who work for the network or provide it any support can be barred from the United States, officials said.

"It's not a question of freedom of speech," State Department spokesman Richard A. Boucher said. "It's a question of incitement of violence. We don't see why, here or anywhere else, a terrorist organization should be allowed to spread its hatred and incitement through the television airwaves."

Al-Manar is protesting the designation, saying on its Web site that banning it was an attempt "to terrorize and silence thoughts that are not in line with U.S. and Israeli policies."

The U.S. action had the effect of banning al-Manar in the United States, where its programming had been beamed via GlobeCast, a company that sells access to foreign television programs by satellite. "As of Friday last week, that channel is no longer on the satellite," GlobeCast spokesman Robert Marking said.

Some Arabic-speaking Americans expressed frustration with the State Department's action. Osama Siblani, publisher of the *Arab American News*, a newspaper in Dearborn, Michigan, said al-Manar is popular in this country in part because of its strong support for "resistance against Israeli occupation."

"I disagree with the State Department that it incites violence," he said. "By that standard, they should shut Fox News for inciting violence against Muslims."

Earlier in December, French officials prohibited the network from broadcasting in France, citing what it called al-Manar's anti-Semitic content and appeals to violence. French officials cited al-Manar programs reporting that Jews spread AIDS around the world and that they seek children's blood to bake into Passover matzoh.

A radical Lebanese political party that was formed in 1982 to represent Shiite Muslims, Hezbollah has been designated a terrorist organization by the U.S. government for years. Its military wing, funded by Iran and dedicated to the destruction of Israel, is widely admired in the Arab world for forcing Israel from southern Lebanon in 2000. Hezbollah also funds schools and hospitals in Lebanon.

Al-Manar airs a wide array of programming, including children's shows and soccer games. It heavily covers events involving the Palestinians, and it shows militants setting off explosives and shooting at Israelis and American troops, often to musical accompaniment. "Al-Manar often juxtaposes sacred Islamic text with images of 'martyrdom' to incite its viewers to support and even carry out acts of terror," according to a recent report by the Washington Institute for Near East Policy, a pro-Israel think tank. "Potential bombers are implored to focus their attention on the afterlife and on Judgment Day 'instead of getting preoccupied with our lives on earth.'" Reported in: *Washington Post*, December 29.

## **foreign**

### **Birmingham, England**

In the few days since a drama company in the Midlands canceled the run of a contentious play in the face of violent religious protests, British theater has been grappling with a range of uncomfortable and unusual questions about censorship, freedom and faith. The cancellation, by the Birmingham Repertory Theater, challenged Britain's four hundred thousand Sikhs to contemplate the distinctions within their ranks as values change, separating a conservative old guard of immigrants from a newer generation born and reared in Britain. And the episode posed a near-unanswerable question for liberal-minded British theatergoers: what counts more, their commitment to free speech or their commitment to minority rights? Indeed, what kind of a society permits a mob to silence artistic expression in the first place?

"I think it's one of the blackest days for the arts in this country that I have ever experienced," said Neal Foster, the manager of another theater, the Birmingham Stage Company.

“Violence is not part of the process we are used to. In the short term the thugs have won, and this has never happened before in the artistic community.”

The furor centers on a play by Gurpreet Kaur Bhatti, the British-born daughter of Sikh immigrants. Her latest work, “Behzti” (“Dishonor”), used a Sikh temple as the setting for a harrowing scene in which a young woman is beaten by other women, including her own mother, after being raped by a man who claims to have had a homosexual relationship with her father.

As the play was being performed on December 18, hundreds of Sikh protesters attacked the building, throwing bricks, smashing windows and fighting with police. Citing the threat of further disruptions, the theater canceled the run, which started December 9, but that was only the beginning of a much broader drama.

In the midst of this impassioned debate, Bhatti went into hiding, fearing for her life after death threats. The situation evoked comparisons with the fatwa by Ayatollah Ruhollah Khomeini in 1989 that sent the writer Salman Rushdie into hiding following the publication of his *Satanic Verses*, a novel the Iranian authorities regarded as insulting to Islam.

“This is the Sikhs’ Rushdie affair,” said Gurharpal Singh, a professor of interreligious studies at the University of Birmingham. “There are overtones of religious censorship and the clash between community norms and liberal society.”

The soul-searching has become even more tangled because the staging of “Behzti” intersects with another discussion in Britain over a new law that would make incitement to religious hatred a crime, in effect extending earlier legislation that outlawed incitement to racial hatred.

In some ways it is all the more perplexing that the incident should have taken place in Birmingham, England’s second city, which has managed to achieve an ethnic balance with a large minority of people from an Asian background, most of them Muslims. Not only is Bhatti, the playwright, a Sikh, but so were several members of the cast.

The play’s setting infuriated Sikh protesters, who argued that acts like rape and brutality could never happen in the sanctity of a temple. Sikh leaders labeled the drama an insult to their faith, which has some sixteen million adherents. The religion, founded in the fifteenth century, is rooted in the Punjab region of India and has spread in a million-strong diaspora to Britain, Canada, the United States and other countries.

The play itself, with themes like arranged marriage and the clash of tradition with modernity, drew mixed reviews. It was advertised as a black comedy, but the *Birmingham Evening Mail* said that “what begins as a sharp and black look at a modern family dilemma sinks beneath its own weight.” By contrast, the *Birmingham Post* called

the play—Bhatti’s second after a 2001 work, “Behsharam” (“Shameless”)—gripping and essential.”

Whatever the faults and merits, though, they were lost in a debate that made headlines in British newspapers and on radio and television shows, and raised profound concerns about the consequences of, as some saw it, caving in to violence.

In the future, “theaters will not want to take the risk” of staging provocative works, said Foster of the Birmingham Stage Company. “It doesn’t just affect theater. What about controversial books, art galleries, paintings?”

But many Sikh representatives argue that the issues have been misunderstood. Harmander Singh, a spokesman for the advocacy group Sikhs in England, said concerns about the setting of the play had gone unheeded for days before the violent protests. Sikh representatives had suggested that the play would be far less offensive if the setting were changed from a temple to a community center, a proposal the theater rejected.

“Rape and other things happen everywhere,” Singh said in a telephone interview. “We know that is a reality.”

The fact that Bhatti’s play took place in a temple was at the center of Sikh objections. “It’s nothing to do with the contents; it’s the context,” he said. “We are not against freedom of speech, but there’s no right to offend.”

Like other immigrants from the Indian subcontinent, Sikhs began arriving in Britain in the 1950’s and 60’s and are widely depicted as having prospered. In recent years, Sikh leaders have steered clear of the political activism associated with campaigns in the 1960’s for the right to wear a turban and in the 1980’s in support of Sikh separatism. And other Sikhs have registered far less hostile views about the play.

“Most Sikhs don’t wear a turban,” Nirpal Singh Dhaliwal, a thirty-year-old Sikh writer whose father immigrated to London in 1959, said. “They are very laid-back about their religion. There’s a perception that if you are not white, you take your religion a lot more seriously than anyone else. That’s not true.”

Professor Singh at the University of Birmingham also spoke of a lack of dialogue between older Sikh leaders and younger generations. “Sikhs who have been born here take the idea of freedom of expression quite seriously,” he said.

Indeed, Bhatti, thirty-five, said in a foreword to her play that “sometimes I feel imprisoned by the mythology of the Sikh diaspora, with its stress on Sikh success, affluence, hard work and aspiration.” Bhatti has not appeared in public since the cancellation of her play and has declined requests for interviews. But in the foreword she wrote: “I believe that drama should be provocative and relevant. I wrote ‘Behzti’ because I passionately oppose injustice and hypocrisy.” Reported in: *New York Times*, December 25. □

(from the bench . . . from page 64)

adults who didn't want to see such material inadvertently. The judge also found that the state cannot ban material simply because it finds it objectionable, based on the U.S. Supreme Court's June 2003 ruling that struck down a state ban on gay sex. The Supreme Court's ruled that the ban was an unconstitutional violation of privacy.

"I think it's a significant victory for freedom and the exercise of our own personal liberties," said H. Louis Sirkin, attorney for the couple and their company. "I know the adult industry is very excited" by the decision, he said.

Sirkin, a Cincinnati lawyer, also had disputed that the materials were obscene, noting that they involve consenting adults.

In a written statement, U.S. Attorney Mary Beth Buchanan said prosecutors were "very disappointed" and were reviewing the case and examining options, including a possible appeal.

"As we set forth in the pleadings we filed in the case, we continue to believe that the federal obscenity statutes are valid and constitutional, including as applied in this case," she said.

When she announced the indictment in August 2003, Buchanan said the lack of enforcement of obscenity laws during the mid- to late-1990s "led to a proliferation of obscenity throughout the United States." Buchanan has maintained that the case was not about banning all sexually explicit materials, just reining in obscenity. Extreme Associates' productions depict rape and murder, she said.

Prosecutors charged the couple and their company with distributing three videos to Pittsburgh through the mail and six images over the Internet. Investigators didn't just happen upon the videos; they had to join and order them, Sirkin said.

A grand jury was later shown the video and Internet images and found them to be obscene. Pornographers must adhere to the community standards of where products are made and anywhere they might be seen, prosecutors had said.

Free speech advocates contended prosecutors were trying to find a conservative jury in hopes of securing a conviction, which Buchanan denied. Reported in: *San Jose Mercury-News*, January 22. □

(is it legal? . . . from page 72)

Bernard, vice president and general counsel at the University of Florida. "But there is a difference between supporting a particular viewpoint and exposing members of the univer-

sity community to that viewpoint. I don't think Michael Moore was an inappropriate speaker."

At issue is Moore's appearance last fall on college campuses, where he repeatedly denounced President Bush, the subject of his latest film, *Fahrenheit 9/11*, and advocated for the election of the Democratic nominee, Sen. John Kerry. In his complaint, Hardy quoted from Moore's speeches, including one at Wayne State University where he said, "We're visiting all twenty battleground states, and our goal is to remove George W. Bush from the White House."

Given that Moore received a speaking fee on each campus—the average was \$30,000, according to the complaint—Hardy has charged that the universities essentially made a "corporate contribution" to Kerry, which is banned under federal election law. Even if the colleges, as non-profit organizations, cannot be considered corporations under election law, Hardy said, the expenditures should at least be subject to the federal reporting requirements for campaign donors.

"The problem here is with the content, not the person," Hardy said. "Colleges can pay to bring in a speaker anytime, no matter how partisan. As I read the law, they can't hire someone to promote the election of a specific candidate in a federal election, and that's what Michael Moore did."

But college officials said they invite partisan speakers all the time. New York's Gov. George E. Pataki, a Republican, and the liberal actress Sarah Jessica Parker made appearances on the same campuses that Moore visited. Yet this is the first time that any of the officials can recall getting hit with an FEC complaint.

Florida's Bernard said she plans to tell the commission that the university had no intent to influence the election by inviting Moore and that it has a history of political balance in the speakers it sponsors. "We believe that it is our mission to expose our students to the widest range of viewpoints," she said.

This is not the first controversy surrounding Moore's twenty-state Slacker Uprising Tour. Two public colleges, George Mason University and California State University at San Marcos, canceled planned speeches by the filmmaker. Utah Valley State College allowed his speech to proceed, despite harsh local criticism, and the institution says it has since lost some two hundred thousand dollars in expected donations.

While some college administrators privately describe the FEC complaint as frivolous, they worry that it could have a chilling effect on future visits by politically charged speakers, especially in election years. Indeed, colleges may need to be more careful in 2008, warned Sheldon E. Steinbach, vice president and general counsel at the American Council on Education.

"The times have changed," he said. "The utilization of speakers who are grossly partisan in the weeks before a



national election in a university community that has gone to great lengths to mobilize students to register and vote can easily become a subject of inquiry.”

FEC officials said they would not comment on a pending case. Once the agency receives responses from the colleges, staff members there will recommend whether the matter should go before the six members of the commission, who would decide whether it was a violation of election law and what fines, if any, should be assessed. Reported in: *Chronicle of Higher Education* online, December 16.

## war on terror

### San Diego, California

Six members of the Navy Seals and two of their wives sued The Associated Press and one of its reporters December 28 for distributing photos of the Seals that apparently show them treating Iraqi prisoners harshly. One wife had put the photos on what she believed was a password-protected Web site, a lawyer for the group said. The suit, filed in Superior Court in San Diego, charges the AP with invasion of privacy and intentional infliction of emotional distress. It does not name the plaintiffs.

An Associated Press article on December 3 about the photos said they had date stamps suggesting they were taken in May 2003—months before the photographs taken at Abu Ghraib prison in Iraq that led to investigations of abuse of detainees. In one photo published by the AP, a gun is pointed at the head of a man who appears to be a prisoner; another shows a man in white boxer shorts, with what looks like blood dripping down his chest, his head in a black hood. In another, a grinning man in uniform is apparently sitting on a prisoner. The faces of most of the prisoners are obscured, but those of their captors are not.

James W. Huston, the lead lawyer for the plaintiffs, said that since the photographs were published, the men’s lives had been put in danger and their wives had received threatening calls. Huston said the photos had appeared in Arab news media and on anti-American billboards in Cuba.

The lawsuit demands that the AP obscure the faces of the Seals members if the photos are published again. Even if the AP agreed to shield the faces, Huston said, he would still pursue damages.

Huston said he did not know how the AP’s reporter got the photographs. “Obviously they were not as safe as she believed them to be,” he said of the Navy wife, adding that she was not available for comment. The wife had put the photographs on the Web site as a kind of backup storage, her lawyer said, “and planned to go back and organize them or delete them later.”

The AP reporter, Seth Hettena, discovered the photos on a Web site called Smugmug.com while researching another

news story on alleged brutality by members of the Seals, according to an AP article on the suit. The site lets members display photos in password-protected or public galleries.

Hettena said he could not comment on the suit or the photos. Dave Tomlin, a lawyer representing the AP and Hettena, said, “We believe that the use of the photographs and the manner they were obtained were entirely lawful and proper.”

When Hettena first showed the photos to the Navy, it began its own investigation. The Navy found that some of the photographs were not exactly what they seemed. For example, the gun pointing at a prisoner had a light on the end of it and was apparently being used to illuminate a prisoner’s face, said Cmdr. Jeff Bender, a spokesman for the Naval Special Warfare Command in Coronado, California. Other photographs were not as easily explained, Commander Bender said.

“The picture with the guy grinning ear to ear,” he said, referring to a shot of a Seals member posing between two hooded prisoners. “These kind of pictures are supposed to be taken strictly for administration and intelligence purposes.”

A follow-up investigation is about halfway done, Commander Bender said. Jeffrey D. Neuburger, a lawyer specializing in technology and communications issues, said that “the photos are clearly newsworthy, and as a result, the First Amendment would protect their use” by the AP. Reported in: *New York Times*, December 29.

### Washington, D.C.

The Justice Department has broadened its definition of torture, significantly retreating from an August 2002 memorandum that defined torture extremely narrowly and said President Bush could ignore domestic and international prohibitions against torture in the name of national security.

The new definition was in a memorandum posted on the department’s Web site December 30 with no public announcement. It came one week before the Senate Judiciary Committee was set to question Alberto R. Gonzales, the White House counsel and nominee for attorney general, about his role in formulating legal policies that critics have said led to abuses at Abu Ghraib prison in Iraq and at Guantánamo Bay, Cuba.

The new memorandum largely dismisses the August 2002 definition, especially the part that asserted that mistreatment rose to the level of torture only if it produced severe pain equivalent to that associated with organ failure or death.

“Torture is abhorrent both to American law and values and to international norms,” said the new memorandum written by Daniel Levin, the acting assistant attorney general in charge of the Office of Legal Counsel, which had produced the earlier definition.

A memorandum in January 2002 to President Bush that Gonzales signed sided with the Justice Department in asserting that the Geneva Conventions did not bind the United States in its treatment of detainees captured in the fighting in Afghanistan. The August 2002 Justice Department memorandum and a later memorandum from an administration legal task force with similar conclusions were widely denounced in Congress and by human rights groups as cornerstones in the approach to detainees that led to abuses at Abu Ghraib and at the detention center in Guantánamo.

Michael Ratner, the president of the Center for Constitutional Rights, which sued the administration over its interrogation policies, said the redefinition “makes it clear that the earlier one was not just some intellectual theorizing by some lawyers about what was possible. It means it must have been implemented in some way,” Ratner said. “It puts the burden on the administration to say what practices were actually put in place under those auspices.”

The International Committee of the Red Cross has said in private messages to the United States government that American personnel have engaged in torture of detainees, both in Iraq and at Guantánamo.

The 2002 memorandum was signed by Jay S. Bybee, who was then the head of the legal counsel office in the Justice Department. Now a federal appeals court judge in Nevada, Bybee has declined to comment on the issue.

The bulk of the memorandum is devoted to the Convention Against Torture and legislation enacted by Congress that gives it the force of law. “We conclude that torture as defined in and proscribed by” the statute and treaty, covers only extreme acts and severe pain,” it says. It also says: “When the pain is physical, it must be of an intensity akin to that which accompanies serious physical injury such as death or organ failure. Severe mental pain requires suffering not just at the moment of infliction but it also requires lasting psychological harm.”

In revising that view, the current memorandum parses the language and the treaty differently, saying, for example, that torture could include “severe physical suffering” as well as “severe physical pain.” The Bybee memorandum tried to limit torture to severe physical pain. But the new memorandum also noted that physical suffering was difficult to define.

One distinction is that the new memorandum rejects the earlier assertion that torture may be said to occur only if the interrogator meant to cause the harm that resulted.

David Scheffer, a senior State Department human rights official in the Clinton administration who teaches law at George Washington University, said that while the Justice Department’s change was commendable, it might still provide too flexible a definition of torture, leaving too many judgments in the hands of interrogators.

The new memorandum dealt with the issue of the earlier opinion’s granting the president the power to authorize torture by saying that the Justice Department did not have to consider that matter any longer as “such authority would be inconsistent with the president’s unequivocal directive that United States personnel not engage in torture.” Reported in: *New York Times*, January 1.

### **Washington, D.C.**

The Bush Administration is planning for possible lifetime detention of suspected terrorists, including hundreds whom the government does not have enough evidence to charge in courts. Citing intelligence, defense and diplomatic officials, the *Washington Post* reported that the Pentagon and the CIA had asked the White House to decide on a more permanent approach for those it would not set free or turn over to courts at home or abroad.

The Defense Department, which holds 500 prisoners at its base in Guantanamo Bay, Cuba, plans to ask the US Congress for \$32.1 million to build a 200-bed jail to hold detainees who are unlikely to go through a military tribunal for lack of evidence, officials told the newspaper. The new prison, dubbed Camp 6, would allow inmates more comfort and freedom than they have now, and would be designed for prisoners the Government believes have no more intelligence to share.

“It would be modelled on a U.S. prison and would allow socialising among inmates,” the paper said. “Since the global war on terror is a long-term effort, it makes sense for us to be looking at solutions for long-term problems,” Pentagon spokesman Bryan Whitman said. “This has been evolutionary, but we are at a point in time where we have to say, ‘How do you deal with them (suspects) in the long term?’”

The outcome of a review under way would also affect those expected to be captured in the course of future counter-terrorism operations. One proposal would transfer large numbers of Afghan, Saudi and Yemeni detainees from the Guantanamo Bay detention center into new US-built jails in their home countries, it said. The prisons would be operated by those countries, but the State Department, where this idea originated, would ask them to abide by recognised human rights standards and would monitor compliance, a senior administration official was quoted as saying. Reported in: *Victoria (Australia) Herald-Sun*, January 3.

## **publishing**

### **Washington, D.C.**

The Treasury Department, under fire for regulations that restricted the publication of works from countries

under American economic sanctions, issued broad new rules December 15 that will allow United States publishers to work with authors from those countries as long as they are not government representatives.

The new rules followed the filing of lawsuits against the department by publishers and an Iranian winner of the Nobel Peace Prize. The suits argued that the Treasury regulations violated the First Amendment and overstepped the laws intended to restrict economic trade with countries under sanctions.

The countries affected by the regulations currently include Cuba, Iran and the Sudan.

Stuart Levey, under secretary for the Office of Terrorism and Financial Intelligence at the Treasury Department, said in a statement that the old regulations were “interpreted by some as discouraging the publication of dissident speech from within these oppressive regimes.”

“That is the opposite of what we want,” Levey said. “This new policy will ensure those dissident voices and others will be heard without undermining our sanctions policy.”

Under the new rules, which are effective immediately, the range of permitted activities include “all transactions necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals and newspapers” in paper or electronic format, including the commissioning of new works, advance payments, augmenting of already published work with photographs or artwork, editing and publicity.

The rules prohibit publishers from working with government representatives from countries under sanctions, although publishers can work with academic and research institutions and their employees in those countries.

But some activities remain restricted, including the development, production and marketing of software, general marketing activities unrelated to a written publication and the operation of a publishing house or sales outlet in the designated countries.

Lawyers representing the individuals and organizations that sued the Treasury Department said they were pleased with the new rules. “This looks very good for the publishing industry,” said Edward J. Davis, a lawyer who in September filed a federal lawsuit on behalf of the American Association of University Presses, the professional and scholarly division of the Association of American Publishers, PEN—the American Center and Arcade Publishing, Inc.

“I think it’s going to give a good deal of comfort to everyone involved with the publication of books, journals, newspapers and online material,” Davis said.

Philip A. Lacovara, who filed suit on behalf of Shirin Ebadi, an Iranian human rights advocate and recipient of the 2003 Nobel Peace Prize, and the Strothman Agency, a

literary agency that sought to commission her memoir, said the new rules “seem to unblock the kind of publication we had sought the right to pursue.”

But both he and Davis said it was unclear as yet whether all of the concerns in their lawsuits had been fully addressed and that it was too early to say whether the lawsuits would be withdrawn. Davis noted that the regulations allow publishing activities by granting a “general license” for them. The publishing companies contend in their lawsuits that the First Amendment and recent laws make publishing exempt from regulation, thereby requiring no license.

Molly Millerwise, a spokeswoman for the Treasury Department, said the new regulations were not issued in response to the lawsuits. Rather, she said, the new rules are “more of a clarification” that the department had been considering “since we were first asked how the regulations apply to publishing activities.”

In late 2003 and early this year, the Treasury’s Office of Foreign Assets Control issued several advisory letters saying that publishers could face legal consequences for almost any editing of manuscripts from the affected countries. Essentially, only camera-ready copies of publications could be published in the United States.

But in April, the Treasury Department revised its ruling, saying that normal style and copy editing procedures were allowed, as was peer review of articles for scholarly publications. Reported in; *New York Times*, December 16.

### Los Angeles, California

Pearson Education, the publishing company that owns the copyright to the Dick and Jane reading primers, has filed a lawsuit against a division of Time Warner in Federal District Court in Los Angeles claiming that the book *Yiddish With Dick and Jane* violates Pearson’s copyrights and trademarks for the familiar characters.

The brisk-selling book examines adultery, drug use and other *tsuris* that afflict Dick and Jane as adults. When it was published in September by Little, Brown & Company, part of the Time Warner Book Group, Pearson was *farmisht* and did not take any action. After an Internet video promotion of the book began attracting hundreds of thousands of viewers and the book’s sales topped 100,000, however, Pearson decided that the fun was over.

The book, by Ellis Weiner and Barbara Davilman, with illustrations by Gabi Payn, states on the front and back covers, spine and copyright page that it is a parody. But the lawsuit says the book “is not a parody, but is an unprotected imitation” because it does not use the copyrighted characters “for the purpose of social criticism.”

Pearson says in its lawsuit that it has licensed the characters before, as in the 1977 film *Fun With Dick and*

*Jane*, with Jane Fonda and George Segal. A remake, with Jim Carrey and Téa Leoni, is set to be released this summer.

The suit also names as a plaintiff Elizabeth Dubelman, who was hired by Little, Brown to create the promotional video. It has been shown on the publisher's Web site and her own, Vidlit.com

In a statement, Little, Brown said the book was "entitled to the full protection of the First Amendment and related laws permitting expression of social commentary."

"This suit aims at the heart of creative expression," the company said, "a position no publisher should take."

George H. Pike, director of the Barco Law Library and an assistant professor of law at the University of Pittsburgh, said that if the lawsuit went to trial, the outcome might turn on whether the book is judged to be commenting on the original Dick and Jane characters and books, in which case it would be considered parody. If the characters were simply being used to make a funny book, he said, that would not be fair use.

Weiner and Davilman said in an interview that they did not understand why Pearson sued. Before publication, they said, Pearson asked for, and received, a prominent disclaimer on the book saying it "has not been prepared, approved or authorized by the creators or producers of the 'Dick and Jane' reading primers for children."

Davilman said she believed that the lawsuit was "a good old shakedown for money." Reported in: *New York Times*, January 15.

## **broadcasting**

### **Washington, D.C.**

The Federal Communications Commission said January 14 that it would investigate whether Armstrong Williams broke the law by failing to disclose a \$240,000 payment in exchange for promoting the Bush administration's central education bill on his syndicated television show. Michael K. Powell, the agency's chairman, ordered the investigation as FCC commissioners reported thousands of complaints about Williams, and as two Democratic senators called for a broader investigation into accusations that the administration was using illegal propaganda to advance its agenda.

The two senators, Byron L. Dorgan of North Dakota and Ron Wyden of Oregon, joined a growing group of Democrats in asking the Government Accountability Office to investigate the deal between the Department of Education and Williams, a conservative commentator who was given the contract with the administration in the fall of 2003.

Jonathan Adelstein, one of the agency's Democratic commissioners, said the agency had received 12,000 complaints. "We've got to get to the bottom of this," said Adelstein, who

demanded an FCC investigation, a call joined by another Democratic commissioner, Michael J. Copps.

President Bush publicly agreed, saying in an interview with *USA Today* that he expected officials to draw a bright line between journalism and propaganda. "The cabinet needs to take a good look and make sure this kind of thing doesn't happen again," Bush said in the interview.

Williams maintained that he had done nothing wrong. He said he had taken payments in two installments from the Education Department for \$107,000 and \$133,000 in exchange for producing and broadcasting segments featuring Education Secretary Rod Paige about the No Child Left Behind act, which were run as paid advertisements. Any on-air push he had given to the bill, Williams said, was voluntary, stemming from his conservative outlook. He also denied breaking any journalistic code of ethics. "I'm not a journalist; I'm a pundit," he said.

Powell, in a brief statement announcing the investigations, said they were aimed at "potential violations of the 'payola' and sponsorship identification provisions of the Communications Act."

Agency officials said the offense could cost Williams and, potentially, the local broadcasters who ran his show up to \$11,000 in fines. Under agency regulations, individual broadcasters are required to disclose any payments from outside entities in exchange for promoting items on-air; local stations are also expected to disclose those payments if they are aware of them.

Separately, the agency announced it would look into accusations involving WKSE-FM in Buffalo, a subsidiary of the Entercom Communications Corporation, where a programmer was fired for breaking rules accepting gifts.

On January 13, Paige instructed the Education Department to conduct an internal inquiry to see whether it did anything improper by arranging a more than \$1 million contract with the Ketchum public relations firm, which in turn reached an agreement with Williams. Reported in: *New York Times*, January 15.

## **Internet**

### **Portland, Maine**

Maine Supreme Court justices heard arguments January 11 in a case that will determine if the sender of an unflattering e-mail who purported to be someone else will have to reveal his or her identity.

The case before the Maine Supreme Judicial Court stems from a December 24, 2003, e-mail that was sent to Ronald Fitch and five other residents of Great Diamond Island in Casco Bay. The e-mail was created using a Hotmail account in Fitch's name and contained a cartoon lampooning Fitch, his wife and their dead St. Bernard.



A lawyer for the sender of the e-mail told justices that the Internet service provider, a cable company, can't be forced under federal law to disclose subscriber names except in criminal cases. An attorney for a public interest group that joined the case said the e-mail is a form of anonymous free speech and protected under the First Amendment.

But Tom Connolly, who represents Fitch, told justices that the sender of the e-mail stole his client's identity. "This is not anonymous speech. Anonymous is non-attributed. Fraud, though, is falsely attributed," he said.

When the e-mail was sent, Great Diamond Island residents were engaged in an ongoing battle over use of golf carts on the island, which is part of Portland and two miles by ferry from the city's waterfront. The e-mail falsely claimed to be from Ronald Fitch and read, "One and all, Thank you for all the continued good work, Ron." The cartoon that was attached showed unflattering cartoon images of Fitch and his wife standing under a sign that read, "Welcome to Paradise." It's thought that Fitch was being ridiculed in the e-mail because some islanders didn't like the influence he was exerting in the golf cart dispute, which has since been resolved.

Using the e-mail header information, Fitch traced the e-mail to a Time Warner Cable account and sued the sender,

who is identified in the suit as "John or Jane Doe." Fitch is seeking compensation for violation of privacy, misappropriation of identity, fraud, putting Fitch in a false light and infliction of emotional distress. Doe has fought to remain anonymous, arguing that releasing his or her identity would be a breach of the right to privacy and anonymity.

Last May, Superior Court Justice Thomas Warren sided with Fitch and ordered Time Warner to reveal the identity of the person who established the account used to send the e-mail. The decision was then appealed.

At the hearing, justices were quick to ask what interest was being served by allowing someone to send out hurtful e-mails while "masquerading" as somebody else. "What's the public interest in protecting an identity thief?" Justice Donald Alexander asked more than once.

George Marcus, who represents Doe, told justices that 1984 federal cable law protects his client from being identified. Paul Levy of the Public Citizen's Litigation Group, a Washington-based public interest law firm, argued that the case is about anonymous free speech, not identity theft or fraud. A set of standards, he said, needs to be set before anonymous e-mail senders should be forced to reveal their identities.

Levy's group, along with the American Civil Liberties Union, the Maine Civil Liberties Union and the Electronic

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Frontier Foundation, filed briefs as friends of the court. Levy said numerous anonymous speech cases involving the Internet have shown up in courtrooms in recent years, and that courts have to be extremely careful in their decisions because of the power of the Internet.

“The reason why Internet cases are so scary . . . is that the technology exists to identify anybody,” Levy said.

Justice Howard Dana said he didn’t understand why the e-mail sender was spending so much money and going to such great lengths to shield his identity. “What is the problem?” he asked. Reported in: *MaineToday.com*, January 11.

## recordings

### Frederick, Maryland

A couple who bought an Evanescence compact disc and DVD at a Frederick Wal-Mart filed a class action suit in Maryland December 9 because the CD did not have a parental advisory label about explicit language. Melanie and Trevin Skeens are asking for either the CD to be removed from shelves or a warning label put on it, said Jon D. Pels, their attorney. They also are asking for up to \$74,500 for each class member, people who bought the CD

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in Maryland, according to the lawsuit and Pels.

The lawsuit was filed against Wal-Mart Stores, Inc., of Bentonville, Arkansas; Wind-Up Records LLC of Wilmington, Delaware; BMG Entertainment of Lanham, Maryland; and BMG Distribution of Lanham, Maryland, according to court records.

Wal-Mart Stores corporate spokesman Gus Whitcomb said Wal-Mart would investigate the allegations in the lawsuit and respond to the lawsuit in a timely manner. Wal-Mart officials had no immediate plans to pull the CDs from the stores’ shelves, Whitcomb said.

The lawsuit states Wal-Mart “holds itself out as stocking music that does not contain explicit language” and alleges the discount chain knew about the song’s explicit lyrics because they were dubbed out of a free sample on Wal-Mart’s Web site.

“Wal-Mart is reportedly a conduit of explicit-free albums, but they clearly, clearly dropped the ball on this one,” Pels said.

Whitcomb said Wal-Mart does not stock music with parental guidance stickers. The placement of the stickers is done by the music industry, he said. “While Wal-Mart sets high standards, it would not be possible to eliminate every image, word or topic that an individual might find objectionable,” Whitcomb said.

As for the dubbing on the Web site sample, Whitcomb said Walmart.com is a separate division of Wal-Mart.

The Skeens bought Evanescence’s “Anywhere But Home” CD as a birthday gift for their thirteen-year-old daughter around November 20 at the Wal-Mart in Frederick, the lawsuit states. They played the CD in their vehicle, with their daughter and seven-year-old son present, the lawsuit states. Upon hearing the lyrics of the song “Thoughtless,” the couple returned to Wal-Mart, but the store was closed. The couple used a cell phone to call the store manager, who told them he couldn’t do anything about the complaint and they had to take the matter to the corporate level, the lawsuit alleges.

Despite “putting Wal-Mart management on notice of the explicit language,” the CD remained on Wal-Mart shelves in Maryland and throughout the nation, the lawsuit alleges. Reported in: *Hagerstown Herald-Mail*, December 10.

## video games

### Springfield, Illinois

Decrying violence in fast-selling video games, Gov. Rod Blagojevich wants Illinois to make it illegal for anyone younger than eighteen to buy violent or sexually explicit games. Among the targets would be the Grand Theft Auto series, Halo 2 and Mortal Kombat.

Blagojevich criticized the \$7 billion video game industry for failing to find better ways to keep “adult material out of the hands of minors” and cited evidence that many production companies in the intensely competitive business marketed violent games to boys younger than 17.

“This is all about protecting our children until they are old enough to protect themselves,” said Blagojevich in a written statement. “There’s a reason why we don’t let kids smoke or drink alcohol or drive a car until they reach a certain age and level of maturity.”

Blagojevich said the legislation would define “violent” games as those in which characters physically hurt one another. “Sexually explicit” games would be those featuring nudity that “predominantly appeals to the prurient interest of the player.”

The video game industry counters that it sets its own standards and informs buyers—overwhelmingly parents and other adults—about the content of the games. Efforts by St. Louis County and Indianapolis to regulate various kinds of video games have been rejected as unconstitutional by federal appeals courts.

“We think, as an industry, we can regulate ourselves,” said Gail Markels, general counsel of the Entertainment Software Association, who asserted that the industry is “voluntarily making great strides.”

About ten years ago, the industry developed a rating system similar to the kind used for movies. E stands for everyone at least six years old. T stands for teen, and means thirteen and older; games in that category sometimes contain violence and “suggestive” themes. M is for mature, defined as 17 and older, and may include “more intense violence” and “mature sexual themes.” Many of the most popular and most criticized games—reports suggest the two often go hand in hand—fall into that category.

Iowa State University professor Douglas Gentile said 92 percent of children ages two to seventeen play video games. His group, the National Institute on Media and the Family, recently sent children ages seven to fourteen into stores in four states, including Maryland, to buy M-rated games. They were successful one in three times. Boys were more successful than girls, walking out with a game 50 percent of the time.

Harvard professor Kim Thompson studies video game content, paying a student to play—“If anybody asks me,” she joked, “I’m not hiring.” She records an hour of the game, codes it for content and compares the results with industry ratings and descriptions.

In a random sample of eighteen T-rated games, Thompson said, all contained violence by the researchers’ definition, suggesting that Blagojevich faces a challenge in defining what Illinois would prohibit. Researchers also found that content, especially sexual content, was not always labeled.

Turning to some of the most visible M-rated games, Thompson described “genres of games that are . . . pretty much based on learning to kill.” Some in the field call them “murder simulators.” Reported in; *Washington Post*, December 16.

### **Jefferson City, Missouri**

Gov. Matt Blunt banned video games from the state’s prisons January 24, a month after a newspaper reported some of Missouri’s most violent inmates were allowed to play games simulating murders, carjackings and the killings of police officers. Blunt, a Republican who took office two weeks earlier, called video games “a luxury that inmates should not be allowed to enjoy.”

“Our penitentiaries are punitive institutions where those who have committed crimes against society are sent to pay for their actions. They are not meant to be arcades,” Blunt said in a statement.

The ban applies to all video games—violent or not. Blunt said state tax dollars—as well as employees’ time—should not be spent determining which video games are violent.

The Corrections Department already had removed thirty-five violent video games from the maximum-security Jefferson City Correctional Center as the *Kansas City Star* prepared to publish a story about the games in early December. The games, which were paid for with profits from the prison canteen, included titles such as “Hitman: Contracts,” in which players use everything from meat hooks to silencer-equipped pistols to carry out contract killings.

In prison, inmates should “pick up skills and abilities that will allow them to go back out into society and be productive citizens,” Blunt said. “Playing video games doesn’t have anything to do with either of those objectives.” It’s unclear how many states allow video games in prison. Reported in: Associated Press, January 24.

## **access to information**

### **Washington, D.C.**

The Department of Homeland Security will no longer require employees to sign a nondisclosure agreement that prohibited them from sharing some information with the public, it said January 14. The agreement, which went into effect in May, barred department employees from giving the public “sensitive but unclassified” information. It also allowed government officials to “conduct inspections at any time or place” to ensure that the agreement was obeyed.

Civil liberties groups and two unions for thousands of federal workers contended that the policy was an unconstitutional restriction of privacy and free speech.

Under the agreement, any information that could compromise the privacy of individuals or “adversely affect the national interest or the conduct of federal programs” was considered sensitive. Those who violated the department’s policy could be disciplined with administrative, criminal and civil penalties.

In place of the nondisclosure agreement, the department said it would adopt procedures to ensure that employees have the proper education and training for handling sensitive information.

A department spokeswoman, Valerie Smith, said the shift was “the evolution in our policy of protecting information and sharing it effectively.” The unions that opposed the nondisclosure agreements, the National Treasury Employees Union and the American Federation of Government Employees, together represent about thirty-five thousand Homeland Security employees, including a large number of customs and border workers.

The unions applauded the department’s decision to change its policy, but said its amended plan for safeguarding sensitive information covered “a broad and vaguely defined universe of information.” Further, the unions said, what they describe as the department’s rigid approach in managing employees may “undermine national security and the public interest by suppressing whistle-blowing and discouraging dissent.”

In November, the department released the results of an audit of the Federal Air Marshal Service and the Transportation Security Administration related to accusations from employees who said that they were punished for speaking to reporters in 2002 and 2003. The audit, conducted by the department’s Office of the Inspector General, found that several air marshals said their supervisors threatened them with prosecution if they were found to have released sensitive information to the public.

As a result of investigations by the air marshal service and the security agency about the disclosure of sensitive information, the audit said one air marshal was terminated, one was suspended for being a second-time offender, two resigned before investigations were complete, and one was placed on administrative leave.

The inspector general’s office determined that the investigations by the air marshals and the security agency were “consistent with current guidelines and regulations.”

Scott Amey, general counsel of the Project on Government Oversight, a nonprofit watchdog group, called the nondisclosure agreement a “secrecy oath” that affords a government bureaucracy a means for hiding corruption, waste, fraud and abuse from Congress and the public.

Amey, who called on lawmakers to intervene on such matters, said he feared that employees will continue to be

threatened with discipline even though they no longer have to sign the pledge. Reported in: *New York Times*, January 18.

## privacy

### Washington, D.C.

The American Civil Liberties Union (ACLU) is using sophisticated technology to collect a wide variety of information about its members and donors in a fund-raising effort that has ignited a bitter debate over its leaders’ commitment to privacy rights. Some board members say the extensive data collection makes a mockery of the organization’s frequent criticism of banks, corporations and government agencies for their practice of accumulating data on people for marketing and other purposes.

Daniel S. Lowman, vice president for analytical services at Grenzbech Glier & Associates, the data firm hired by the ACLU, said the software the organization is using, Prospect Explorer, combs a broad range of publicly available data to compile a file with information like an individual’s wealth, holdings in public corporations, other assets and philanthropic interests.

The issue has attracted the attention of the New York attorney general, who is looking into whether the group violated its promises to protect the privacy of its donors and members.

“It is part of the ACLU’s mandate, part of its mission, to protect consumer privacy,” said Wendy Kaminer, a writer and ACLU board member. “It goes against ACLU values to engage in data-mining on people without informing them. It’s not illegal, but it is a violation of our values. It is hypocrisy.”

The organization has been shaken by infighting since May, when the board learned that Anthony D. Romero, its executive director, had registered the ACLU for a federal charity drive that required it to certify that it would not knowingly employ people whose names were on government terrorism watch lists. A day after *The New York Times* disclosed its participation in late July, the organization withdrew from the charity drive and has since filed a lawsuit with other charities to contest the watch list requirement.

The group’s new data collection practices were implemented without the board’s approval or knowledge, and were in violation of the ACLU’s privacy policy at the time, said Michael Meyers, vice president of the organization and a frequent and strident internal critic. Meyers said he learned about the new research by accident November 7 in a meeting of the committee that is organizing the group’s Biennial Conference in July.

He objected to the practices, and the next day, the privacy policy on the group’s Web site was changed. “They



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took out all the language that would show that they were violating their own policy,” he said. “In doing so, they sanctified their procedure while still keeping it secret.”

Attorney General Eliot Spitzer of New York appears to be asking the same questions. In a December 3 letter, Spitzer’s office informed the ACLU that it was conducting an inquiry into whether the group had violated its promises to protect the privacy of donors and members.

Emily Whitfield, a spokeswoman for the ACLU, said the organization was confident that its efforts to protect donors’ and members’ privacy would withstand any scrutiny. “The ACLU certainly feels that data privacy is an extremely important issue, and we will of course work closely with the state attorney general’s office to answer any and all questions they may have,” she said.

Robert B. Remar, a member of the board and its smaller executive committee, said he did not think data collection practices had changed markedly. He recalled that the budget included more money to cultivate donors but said he did not know what specifically was being done. Remar said he did not know that the organization was using an outside company to collect data or that collection had expanded from major donors to those who contribute as little as twenty dollars. “Honestly, I don’t know the details of how they do it because that’s not something a board member would be involved in,” he said.

The process is no different than using Google for research, he said, emphasizing that Grenzebach has a contractual obligation to keep information private.

The information dispute is just the latest to engulf Romero. When the organization pulled out of the federal charity drive, it rejected about five hundred thousand dollars in expected donations. Romero said that when he signed the enrollment certification, he did not think the ACLU would have to run potential employees’ names through the watch lists to meet requirements.

The board’s executive committee subsequently learned that Romero had advised the Ford Foundation, his former employer, to follow the nation’s main antiterrorism law, known as the PATRIOT Act, in composing language for its grant agreements, helping to ensure that none of its money inadvertently underwrites terrorism or other unacceptable activities. The ACLU, which has vigorously contended that the act threatens civil liberties, had accepted sixty-eight thousand dollars from Ford under the new terms by then.

The board voted in October to return the money and reject further grants from Ford and the Rockefeller Foundation, which uses similar language in its grant agreements.

In 2003, Romero waited several months to inform the board that he had signed an agreement with Spitzer to settle a complaint related to the security of the ACLU’s Web site. The settlement, signed in December 2002, required the agreement to be distributed to the board within thirty days, and Romero did not hand it out until June 2003. He told

board members that he had not carefully read the agreement and that he did not believe it required him to distribute it, according to a chronology compiled by Kaminer.

Many nonprofit organizations collect information about their donors to help their fund-raising, using technology to figure out giving patterns, net worth and other details that assist with more targeted pitches. Because of its commitment to privacy rights, however, the ACLU has avoided the most modern techniques, according to minutes of its executive committee from three years ago. “What we did then wasn’t very sophisticated because of our stance on privacy rights,” said Ira Glasser, Romero’s predecessor.

Glasser, who resigned in 2001, said the group had collected basic data on major donors and conducted a ZIP code analysis of its membership for an endowment campaign while he was there. He said it had done research on Lexis/Nexis and may have looked at SEC filings.

Meyers said he learned on November 7 that the ACLU’s data collection practices went far beyond previous efforts. “If I give the ACLU twenty dollars, I have not given them permission to investigate my partners, who I’m married to, what they do, what my real estate holdings are, what my wealth is, and who else I give my money to,” he said.

On November 8, the privacy statement on the ACLU Web site was replaced with an “Online Privacy Policy.” Until that time, the group had pledged to gather personal information only with the permission of members and donors. It also said it would not sell or transfer information to a third party or use it for marketing. Those explicit guarantees were eliminated from the Web site after Meyers raised his concerns about the new data-mining program at the November 7 meeting.

After learning of Spitzer’s inquiry, the executive committee of the board took up the data-mining issue on December 14. Board members are allowed to listen in on any executive committee meeting, and Meyers asked the panel to participate in its conference call. The first item on the agenda was whether he could be on the line. The executive committee voted 9 to 1 to bar him and had a staff member inform him that the meeting was of the board of the ACLU Foundation, not the group’s executive committee, and thus he was excluded.

Remar, who has been a board member for 18 years, said board members had been asked to leave executive committee meetings during personnel discussions, but Meyers said it was a first. Remar said the data collection efforts were a function of the foundation, and thus the executive committee had met as the foundation board.

But Romero convened a meeting of the executive committee, and Spitzer’s letter was addressed to the ACLU, with no mention of the foundation. Meyers said his exclusion raised a profound issue for other board members. “Their rationale for excluding me implicitly means that they can’t share anything with the board, but the board as a whole

has fiduciary responsibilities,” he said. “How can board members do their duty if information is withheld from them?” Reported in: *New York Times*, December 18. □

## **Censored 2005: The Top 25 Censored Media Stories of 2003–2004**

*The following are the top 25 censored media stories of 2003–04 as selected by Project Censored. Project Censored is a media research group out of Sonoma State University which tracks the news published in independent journals and newsletters. From these, Project Censored compiles an annual list of 25 news stories of social significance that have been overlooked, under-reported or self-censored by the country’s major national news media. For full details on the stories go to [www.projectcensored.org](http://www.projectcensored.org).*

1. Wealth Inequality in 21st Century Threatens Economy and Democracy.
2. Ashcroft vs. the Human Rights Law that Holds Corporations Accountable.
3. Bush Administration Censors Science
4. High Levels of Uranium Found in Troops and Civilians
5. The Wholesale Giveaway of Our Natural Resources
6. The Sale of Electoral Politics
7. Conservative Organization Drives Judicial Appointments
8. Cheney’s Energy Task Force and The Energy Policy
9. Widow Brings RICO Case Against U.S. government for 9/11
10. New Nuke Plants. Taxpayers Support, Industry Profits
11. The Media Can Legally Lie
12. The Destabilization of Haiti
13. Schwarzenegger Met with Enron’s Ken Lay Years Before the California Recall
14. New Bill Threatens Intellectual Freedom in Area Studies
15. U.S. Develops Lethal New Viruses
16. Law Enforcement Agencies Spy on Innocent Citizens
17. U.S. Government Represses Labor Unions in Iraq in Quest for Business Privatization
18. Media and Government Ignore Dwindling Oil Supplies
19. Global Food Cartel Fast Becoming the World’s Supermarket
20. Extreme Weather Prompts New Warning from UN
21. Forcing a World Market for GMOs
22. Censoring Iraq
23. Brazil Holds Back in FTAA Talks, But Provides Little Comfort for the Poor of South America
24. Reinstating the Draft

## 25. Wal-Mart Brings Inequality and Low Prices to the World

Between seven hundred and one thousand stories are submitted to Project Censored each year from journalists, scholars, librarians, and concerned citizens around the world. With the help of more than two hundred Sonoma State University faculty, students, and community members, Project Censored reviews the story submissions for coverage, content, reliability of sources and national significance. The university community selects twenty-five stories to submit to the Project Censored panel of judges who then rank them in order of importance. Current or previous national judges include: Noam Chomsky, Susan Faludi, George Gerbner, Sut Jhally, Frances Moore Lappe, Norman Solomon, Michael Parenti, Herbert I. Schiller, Barbara Seaman, Erna Smith, Mike Wallace and Howard Zinn. All twenty-five stories are featured in the yearbook, *Censored: The News That Didn’t Make the News*.

Project Censored is a national research effort launched in 1976 by Dr. Carl Jensen, professor emeritus of Communications Studies at Sonoma State University. Upon Jensen’s retirement in 1996, leadership of the project was passed to associate professor of sociology and media research specialist, Dr. Peter Phillips. □

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