newsletter on intellectual freedom

IFC ALA

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ALA renews call for privacy protection

The following is the text of a press release issued by the American Library Association November 10 following the announcement of Attorney General John Ashcroft's resignation.

As President Bush prepares for a second term and is making new appointments to his cabinet, the American Library Association (ALA) is calling for the President to nominate and Congress to confirm an Attorney General who can successfully balance national security with respect for civil liberties.

"The departure of John Ashcroft from the position of Attorney General provides a fresh opportunity to review the provisions of the USA PATRIOT Act, improve public accountability on how these new powers are being used and begin a real dialogue about how to balance national security and privacy rights in America's libraries," said ALA President Carol Brey-Casiano. "This law was passed at breakneck speed in the wake of an American tragedy. Now is the time to make necessary corrections."

The ALA has been a leading voice seeking to amend Section 215 of the USA PATRIOT Act. Among the many changes in U.S. law and practice enabled by the act is the federal government's ability to override the traditional protections of library reading records that exist in every state. These laws provide a clear framework for responding to national security concerns while safeguarding against random searches, fishing expeditions or invasions of privacy.

"The right to read freely in our nation's libraries is grounded in the belief that people must be able to access information and ideas without fear of reprisal," Brey-Casiano said. "When librarians fight against provisions of the PATRIOT Act, we're fighting for the public."

In September, the ALA and other members of the book community presented to Congress petitions with more than 180,000 signatures gathered in the Campaign for Reader Privacy. Efforts to amend Section 215 have drawn bipartisan support in Congress and in hundreds of cities and counties nationwide. For more information on the PATRIOT Act and libraries, visit ww.ala.org/espy and www.ala.org/oif/ifissues/usapatriotact. ☐

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in this issue

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anti-evolution teachings gain in U.S. schools

The way they used to teach the origin of the species to high school students in Dover, Pennsylvania, said local school board member Angie Yingling disapprovingly, was that "we come from chimpanzees and apes."

Not anymore. The school board has ordered that biology teachers at Dover Area High School make students "aware of gaps/problems" in the theory of evolution. Their ninth-grade curriculum now must include the theory of "intelligent design," which posits that life is so complex and elaborate that some greater wisdom has to be behind it.

The decision, passed in October by a 6-to-3 vote, made the 3,600-student school district about twenty miles south of Harrisburg the first in the United States to mandate the teaching of "intelligent design" in public schools, putting it on the front line of the growing national debate over the role of religion in public life. The new curriculum, which prompted two school board members to resign, is expected to take effect in January.

The idea of intelligent design was initiated by a small group of scientists to explain what they believe to be gaps in Charles Darwin's theory of evolution through natural selection, which they say is "not adequate to explain all natural phenomena. " On an intelligent-design Web site (www.intelligentdesignnetwork.org), the theory is described as "a scientific disagreement with the claim of evolutionary theory that natural phenomena are not designed."

Critics such as Eugenie Scott, director of the Oakland, California-based National Center for Science Education, say the Dover school board's decision is part of a growing trend. Religious conservatives, critics charge, have been waging a war against Darwin in classrooms since the Scopes "Monkey Trial" of 1925. Tennessee schoolteacher John Scopes was convicted of illegally teaching evolution, but his conviction later was thrown out on a technicality by the Tennessee Supreme Court.

"There's a constant impetus by conservative evangelical Christians to bring religion back into the public schools," said Witold Walczak, legal director of the Pennsylvania branch of the American Civil Liberties Union. "The end goal is to get rid of evolution. They view it as a threat to their religion."

The intelligent-design theory makes no reference to the Bible, and its proponents do not say who or what the greater force is behind the design. But Yingling, 46, who graduated from Dover High School in 1976, and other supporters of the new curriculum in religiously conservative rural Pennsylvania say they know exactly who the intelligent designer is.

"There's only one creator, and it has to be God," said Rebecca Cashman, 16, a sophomore at Dover High. She frowned when asked to recollect what she learned about evolution at school last year. "Evolution—is that the Darwin theory?" Cashman shook her head. "I don't know just what he was thinking!"

Patricia Nason at the Institute for Creation Research, the world leader in creation science, said her organization and other activist groups are encouraging people who share conservative religious beliefs to seek positions on local school boards.

"The movement is to get the truth out," Nason said. "We Christians have as much right to be involved in politics as evolutionists. We've been asleep for two generations, and it's time for us to come back."

Emboldened by their contribution to President Bush's re-election, conservative religious activists are using intelligent design as a new strategy of attacking evolution without mentioning God, Scott said. "There is a new energy as a result of the last election, and I anticipate an even busier couple of years coming on," Scott said.

She called intelligent design "creationism lite" masquerading as science. The U.S. Supreme Court in 1987 banned the teaching of creationism—which holds that God created the world about 6,000 years ago—in public schools on the grounds of separation of church and state.

(continued on page 27)

national polls on evolution and creation

In your opinion, is Darwin's theory supported by evidence?

Supported by evidence, 35%
Not supported, 35%
Don't know enough to say, 29%

Which best describes your views of the origin of life?

Man developed with God guiding, 38%
Man developed with no help from God, 13%
God created man in present form, 45%

Source: Gallup Poll, conducted Nov. 7–10. The poll surveyed 1,016 adults; the margin of error is plus or minus 3 percentage points.

Percentage favoring the teaching of creationism instead of evolution: Overall, 37%, Kerry voters, 24%, Bush voters, 45%, Self-described evangelical Christians, 60%. Source: CBS News poll, conducted Nov. 18–21. The poll surveyed 795 registered voters nationwide; the margin of error is plus or minus 3 percentage points. □

Candace Morgan honored by Washington ACLU

Candace Morgan's library career was recognized in October with the highest honor from the American Civil Liberties Union of Washington. Morgan received the group's William O. Douglas Award for outstanding and sustained support of civil liberties. Morgan retired in May as associate director of the Fort Vancouver Regional Library District. She has served as Chair of the ALA Intellectual Freedom Committee and as President of the board of the Freedom to Read Foundation.

Douglas, who spent much of his life in Yakima, was the longest-serving U.S. Supreme Court justice. He died in 1980 after more than thirty-six years on the Supreme Court. "To receive an award named after William O. Douglas is indeed an honor," said Morgan. "He was a great civil libertarian and he was an environmentalist and hiker, and so am I. My husband and I have backpacked in the area named after him."

The award cited Morgan's contributions to the cause of intellectual freedom and free speech.

ALA's 2002 lawsuit over federally mandated Internet filtering brought Morgan to the national scene, but she looks back thirty years in identifying a career turning point, back to Richard Nixon.

"I was head of reference for the Illinois state library in the 1970s, and the Nixon administration told us to pull documents out and send them back," Morgan said. "It was nothing pivotal; we couldn't figure out why they wanted them. They just said we had to return them. As a believer in open government, I got incensed. That got me started," said Morgan, who focused on constitutional law while earning a degree in political science.

The documents went back, by the way. But "we started making photo copies," Morgan said. "They didn't say we couldn't."

Morgan is still addressing issues of the information age, but now the Portland, Oregon resident is doing it as a college instructor. She teaches information ethics at Portland State University and teaches a distance-learning program offered by Emporia (Kan.) State University.

One of her resources is William O. Douglas.

"I've been bringing up his name lately because of his court decisions regarding rights to privacy," she said. Reported in: *The Columbian,* October 24. □

annual privacy report details global erosion of freedom

In November, Privacy International and the Electronic Privacy Information Center (EPIC) published this year's edition of their Annual Global Privacy Study. The 800 page report covers the state of privacy in sixty countries, and concludes that threats to personal privacy have reached a level dangerous to fundamental human rights.

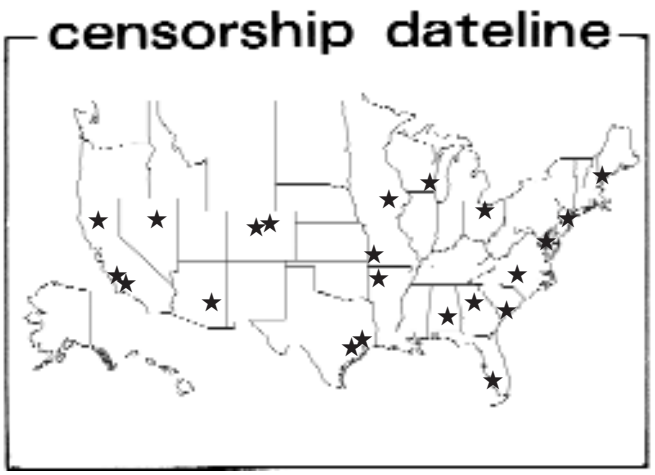
Crime and public order laws have limited freedom of assembly, privacy, freedom of movement, the right of silence, and freedom of speech, and governments "have continued to use terrorism as the pretext for an increase of surveillance, even when surveillance is unwarranted."

ID schemes, the weakening of data protection and the intensification of data sharing and collection are also spreading, and made more possible by growing cooperation between government entities and the private sector. The report identifies these major trends:

- New identification measures and new traveler prescreening and profiling systems
- New anti-terrorism laws and governmental measures provide for increased search capabilities and sharing of information among law enforcement authorities
- Increased video surveillance
- DNA and health information databases
- Censorship measures
- Radio frequency identification technologies
- New electronic voting technologies
- Mismanagement of personal data and major data leaks

According to Privacy International director Simon Davies, "Governments are systematically removing the right to privacy. Surveillance of every type is being instituted throughout society without any thought about the need for safeguards. The spectre of terrorism has at last become the device that any government can deploy to entrench the powers they always sought."

The report consists of assessments of specific countries, which handily allows readers to check on the activities of their local governments, plus an overview of the state of play by category, which makes it possible to figure out who might be leading the charge in a given area, and to identify patterns. To access the entire report go to www.privacyinternational.org/article.shtml?cmd[347]=x-347-82611. □



libraries

Montgomery, Alabama

An Alabama lawmaker who sought to ban gay marriages now wants to ban novels with gay characters from public libraries, including university libraries. A bill by Rep. Gerald Allen (R-Cottondale) would prohibit the use of public funds for "the purchase of textbooks or library materials that recognize or promote homosexuality as an acceptable lifestyle." Allen said he filed the bill to protect children from the "homosexual agenda."

"Our culture, how we know it today, is under attack from every angle," Allen said in a press conference November 30. He said that if his bill passes, novels with gay protagonists and college textbooks that suggest homosexuality is natural would have to be removed from library shelves and destroyed. "I guess we dig a big hole and dump them in and bury them," he said.

In a statement released December 2, American Library Association (ALA) President Carol Brey-Casiano said: "It is alarming and discouraging that Alabama state Representative Gerald Allen is proposing to ban books about lesbian and gay people from public libraries, schools and universities. Not only is the bill unworkable, it is discriminatory and unconstitutional.

"Libraries are for everyone—of all backgrounds and viewpoints—and provide a broad spectrum of materials from which to choose. This is what makes libraries the most democratic of institutions in this country.

"Every year, the American Library Association learns of hundreds of attempts to remove books from our public libraries and schools. Most of these books stay available because teachers, librarians and community members stand up for literature and the freedom to choose what to read and view. We trust that Alabama legislators will stand up to this latest attempt to censor our library collections."

Allen prefiled his bill in advance of the 2005 legislative session, which begins February 1. If the bill became law, public school textbooks could not present homosexuality as a genetic trait and public libraries couldn't offer books with gay or bisexual characters.

When asked about Tennessee Williams' southern classic "Cat On A Hot Tin Roof," Allen said the play probably couldn't be performed by university theater groups.

Allen said no state funds should be used to pay for materials that foster homosexuality. He said that would include nonfiction books that suggest homosexuality is acceptable and fiction novels with gay characters. While that would ban books like *Heather has Two Mommies*, it could also include classic and popular novels with gay characters such as *The Color Purple, The Picture of Dorian Gray*, and *Brideshead Revisited.*

The bill also would ban materials that recognize or promote a lifestyle or actions prohibited by the sodomy and sexual misconduct laws of Alabama. Allen said that meant books with heterosexual couples committing those acts likely would be banned, too. His bill also would prohibit a teacher from handing out materials or bringing in a classroom speaker who suggested homosexuality was OK, he said.

Allen has sponsored legislation to make a gay marriage ban part of the Alabama Constitution, but it was not approved by the Legislature.

Ken Baker, a board member of Equality Alabama, a gay rights organization, said Allen was "attempting to become the George Wallace of homosexuality."

Aside from the moral debates, the bill could be problematic for library collections, said Jaunita Owes, director of the Montgomery City-County Library, which is a few blocks from the Alabama Capitol. "Half the books in the library could end up being banned. It's all based on how one interprets the material," Owes said. Reported in: *Birmingham News*, December 1.

Mesa, Arizona

The objections of a Mesa mother to the presence of *Deal with It! A Whole New Approach to Your Body, Brain, and Life As a Gurl* in the Desert Ridge High School library collection led to three high schools in the Gilbert Unified School District withdrawing the title. The late September removal occurred just as Deborah Myers's concerns about *Deal with It!* were appearing in the media.

"There's a part on how to give oral sex. Is it factual and truthful?

Probably. Is it something that kids need to know? No," Myers said. Her sixteen-year-old daughter Pamela said that other students would often gather around the book and laugh: "When I finally did see it, I was so disgusted. It's hilarious, but it's so wrong. Somebody's little sister might find it."

Gilbert High School librarian Tally Satterthwaite said that a few male students argued after she withdrew the title. "Wouldn't you rather have us read about sexuality in a book?" She responded, "Do you need a book on the best position for giving a girl an orgasm?" The boys replied, "Oh."

"I had a good reason for choosing the book and a good reason for removing it," Satterthwaite said. She explained that *Deal with It!* was among the titles recommended by the ALA Young Adult Library Services Association on its 2001 "Quick Picks for Reluctant Young Adult Readers" and that the book review she subsequently consulted did not mention its explicit description of sexual techniques.

Did I make some horrible mistake by ordering filth? No," Satterthwaite asserted, adding, "I just got a book that was inappropriate for my user base." Reported in: *Arizona Republic,* October 1; *American Libraries* online, October 8.

Silverthorne, Colorado

The heat of the presidential election helped spark a book controversy at the Silverthorne North Branch Library when a couple complained a new book display bashed President Bush. The books were taken off display but remained in the regular shelving system.

The story began the week before Labor Day, when part-time Silverthorne residents Dick and Mary Clark made one of their frequent visits to the library and took umbrage with a selection of volumes in the new book section, near the checkout counter. At issue, according to the Clarks, were seven books they characterized as anti-George W. Bush administration books: *The Lies of George W. Bush, Worse than Watergate: The Secret Presidency of George W. Bush, Bush's War for Re-Election, Hoodwinked: The Documents That Reveal How Bush Sold Us a War, President of Good and Evil, The Bush Dyslexion: Observations on a National Disaster,* and *Cruel and Unusual: Bush/Cheney's New World Order.*

In a letter to Summit County Library director Joyce Dierauer and in a subsequent interview, the Clarks claimed that the library should have displayed an equal number of books with a favorable view of the present administration. "My wife and I hereby formally suggest that the library system, a tax-supported organization, remain neutral and not push one political bias to the exclusion of alternative views, especially in an election year," the Clarks wrote in their September 7 letter.

"That branch has a tendency toward leaning liberal," Dick Clark said, referring to a previous incident when the couple claimed a requested book by conservative author Sean Hannity was not forthcoming. "There was not a single conservative or pro-administration book there," Clark added, referring to the September selection in the new-book shelf.

Vanessa Woodford, the head librarian in Silverthorne, said the branch does not promote any particular political agenda or ideology, but strives to uphold its role as the caretaker of information and knowledge. "In the broader range of what's happening in the country, I'm concerned about this type of subtle intimidation," Woodford said. "It's scary to have a person say they're going to go to your boss if you don't do what they say," said Woodford, who with thirty-five years in the library system is one of the county's most long-term employees.

After a short discussion with the Clarks, Woodford asked if the couple wanted to censor the books and suggested they write a letter to formalize their complaint. The Clarks said they do not support any form of censorship; they are not asking that the books be removed from the library, only that the selection is balanced. They understand that the library can't do a day-to-day count to make sure that all political viewpoints are equally represented on the shelves by equal numbers of books, but said that such a prominently featured "display" should be neutral.

For her part, Woodford said the books were not part of a political display, but were part of the library's new book section—an attempt to provide easy access to top-selling and frequently requested books. "We try to satisfy the demand," Woodford said, explaining that the selection of books was shaped by best-seller lists, reader requests and staff input.

Dierauer subsequently met with the couple and visited the Silverthorne branch and agreed that, at the time of her visit, the selection was "extremely biased."

"Our role is to stay neutral and provide information," Dierauer said, adding that the library in Frisco, for example, features a voter information display geared toward getting people registered. Both Dierauer and Woodford said it was the first time they could remember any sort of questions or challenges arising over a selection of books or a display, with one exception, when patrons asked that an adult-themed book on tape be marked as such. Reported in: *Summit Daily News,* September 27.

Elyria, Ohio

An Elyria man filed suit October 18 to stop the Elyria Public Library's West River branch from screening the controversial Michael Moore film *Fahrenheit 9/11* in late October. Plaintiff James Pengov wrote in his request for an injunction that such a venue "in a key state during a close race can only be construed, by reasonably prudent people, as a clear stand against President Bush by the public library."

Echoing Pengov's sentiments, Lorain County Republican Party Chairman Robert Rousseau said that library officials "have to understand that what they do could have repercussions," particularly because the facility serves as a polling place on Election Day. "The library goes back to the voters to keep themselves in business," Rousseau emphasized.

When Pengov first made his concerns known a week earlier, library officials reacted by adding screenings of *Farenhype 9/11*, a documentary that calls into question some of the facts in Moore's film. But on October 15, the library postponed showing both movies pending its securing the public-performance rights for *Farenhype 9/11*. "If we can get it all done, we will show both before the election, back to back, because of the number of patrons requesting them," EPL spokesperson Debbie Pillivant explained. Reported in: *American Libraries* online, October 22.

Deer Park, Texas

A mother was outraged by the racy reading material her eleven-year-old daughter checked out from the school library. Cindi Lovell couldn't believe what she saw when her daughter showed her a page of the book, *What My Mother Doesn't Know,* the girl checked out from the library at Bonnette Junior High School.

"I just don't think that, you know, it's something that should be in the schools," Lovell explained.

The book is written from the perspective of a fictional fourteen-year-old girl who's trying to figure out the difference between love and lust. It includes foul language and references to masturbation. Lovell said, "I think, no. Not for a young girl, not for anybody . . . Certainly not anybody my daughter's age—eleven."

Lovell said she will file the paperwork to have this book banned.

The book at the center of the controversy has received several honors. In addition to being selected as "Best Book for Young Adults" by the American Library Association in 2002, *What My Mother Doesn't Know* was named "Young Adults Choice" by the International Reading Association in 2003. It was also included on the Texas Lone Star State Reading List. Reported in: KTRK News, November 1.

schools

Santa Barbara, California

Always Running, a popular book about life in a street gang by reformed Los Angeles gangbanger and heroin user Luis Rodriguez, was pulled from Santa Barbara schools in mid-November after a parent complained about graphic passages depicting violence and sex. Parent Anne Aziz-Cutner wrote the Santa Barbara Unified School District after learning the book was required reading for her Dos Pueblos High School tenth-grader.

"The book . . . contains detailed descriptions of oral sexual acts and fornication . . . and the rape of twelve- to fourteen-year-old girls," she wrote. "What exactly are you teaching our children?"

In 1999, *Always Running* was among the American Library Association's list of ten most-censored books in the United States. School districts in Fremont, Santa Rosa and San Jose, California, as well as districts in Illinois and Texas, have also banned the book.

"The reason why kids like the book is they don't see their lives in any of the other books presented to them," Rodriguez said. "They're looking for literature that has some meaning in their lives, and when they don't have that, they usually don't want to read."

"We've pulled the book districtwide," said Santa Barbara's interim Superintendent Brian Sarvis. "It's not an appropriate book to assign to students, and the teacher agrees." Reported in: FirstAmendmentCenter.org, November 12.

Boulder, Colorado

Bob Dylan's "Masters of War" is a hard-hitting, anti-war song produced more than twenty years before any current Boulder High School student was born. More than forty years after its release, the song was resurrected at Boulder High with huge and confusing repercussions that prompted Secret Service agents to pay the campus a visit.

Some students and parents apparently let the Secret Service and talk-radio stations know they were unhappy with the plan of a trio of students to do a poetry reading of the song, accompanied by background music, according to Ron Cabrera, the school's principal. Rumors were rampant that during an audition and rehearsal for the talent show, the students changed Dylan's powerful last verse at the end of the song to say that they hoped President Bush was going to die.

Secret Service agents interviewed Cabrera to determine what all the uproar was about and whether any threats were being made against the president's life. "They were following up and doing their due diligence," Cabrera said of the agents' visit. "They had been receiving calls from the community and, in the course of the talk show, felt like they had heard (the students) inciting physical harm to the president."

Cabrera said he talked to the students and teachers who have been working with them, and he was told the group, which calls itself the Coalition of the Willing, made no reference to Bush. "I don't know why it surfaced," Cabrera said of the complaints. "I think they're surprised by all the allegations." Cabrera said he also showed the agents the lyrics of the entire song. The agents appeared to have left satisfied that no bona-fide threat was being directed at the president, he said.

The principal said the students' performance of the song at the talent show upholds their right to express themselves, and he did not think it was inappropriate in a campus setting. Cabrera acknowledged that the group did consider at one time naming itself the "Tali-banned." A teacher persuaded the teens to drop the title because it was offensive, he said. Reported in: *Rocky Mountain News*, November 12.

Solon, Iowa

Middle school teacher Sue Protheroe has come under fire by a group of parents demanding she cease using stories in her classroom that feature gay, lesbian or transgender characters.

As part of her fairy tale curriculum, students in Protheroe's eighth-grade language arts class read "Am I Blue?" a short, fictional story by Bruce Coville that explores a boy's confusion with his sexual identity and the gay fairy godfather who helps him overcome homophobia at school. Another short story, "In the time I Get," by Chris Crutcher, is about a man who befriends a young man dying of AIDS. Both works are intended to promote tolerance, Protheroe said.

Seven people with children in the district filed complaints, one of whom has a child in Protheroe's class. Criticisms for "Am I Blue" are that it has no instructional value for her class, it is about controversial areas that should be discussed within families, and it is not appropriate for middle school-aged students. In addition, parents argue the story promotes intolerance through use of slanderous and racist terms, perpetuates gay stereotypes and promotes homosexuality.

Other parents also pointed out that while they have little control over what messages their children are exposed to in the mainstream media, they should have a say in the classroom.

"My most significant concern is why, for material that is controversial, was there no notification sent out to the parents," said Doug Singkofer, a Solon parent who found out about the material while at a flag football game where he overheard his daughter discussing it with a friend. "The material directly contradicts and undermines the beliefs and teachings of our faith," Singkofer and his wife, Lynne, wrote in a reconsideration form. "It introduces a very adult and mature subject to an inappropriately young audience. It is likely to introduce sexual confusion to a group of children who are just becoming sexually aware."

The material has been used on and off for the last five years in Protheroe's class as an example of a modern fairy tale. Students have the option of being excused from reading the stories but never before has a group asked that it be removed entirely, Protheroe said. She said she is not promoting the gay, lesbian or transgender lifestyle but trying to teach respect and tolerance for all people.

Protheroe said the material, graded for those twelve and older, is age appropriate because she sees intolerance as a problem for gays, lesbians, and transgendered youth. According to a national school climate survey by the Gay, Lesbian, and Straight Education Network, about 84 percent of youth report being verbally harassed because of their sexual orientation, she said.

"I'm trying to teach tolerance and respect for all people," Protheroe said of her goal with the roughly ninety-five students taking her class. "And I can't do that and ignore a whole group of people. Furthermore, I wouldn't present a curriculum that ignored women or African-Americans or Hispanics. How can I possibly teach my students to embrace diversity if I systematically exclude an entire group from my literature?"

Superintendent Brad Manard said in the six years he has been with Solon, and the seventeen years he has been a schools superintendent, he has never seen material formally challenged. "We have a policy to review challenged materials," Manard said, "so we're allowing that policy to work itself through and have a committee we believe will represent the community well and make the appropriate decision." Reported in: *Iowa City Press-Citizen*, October 23.

North Berwick, Maine

Plans for freshmen at Noble High School to read J. D. Salinger's *The Catcher in the Rye* in January may be in jeopardy following a December 2 School Administrative District 60 Board of Directors meeting.

Andrea B. Minnon, a Lebanon parent whose fourteen-year-old son, Spencer, is a freshman at the high school, demanded the book be pulled from the curriculum because of its content. She submitted a Citizen's Challenge of Educational Media form to the board outlining her concerns with the book's place in public schools.

Minnon explained she never read the book but scanned through it and researched it using SparkNotes. Minnon took issue with some of the lewd language of the book, which was published in 1951 and is narrated by the main character, Holden Caulfield. It is a coming-of-age tale depicting adolescent alienation after Caulfield is expelled from prep school and spends the next couple days trying to understand the adult world, eventually ending up in a psychiatrist's office.

"As far as the content goes, I personally don't think this is a classic," Minnon told the board, repeating some of the swear words in the book she found by "just quickly viewing it."

District Superintendent Paul Andrade said it was Minnon's right to request the book be pulled from the curriculum. He told her the district has a process for dealing with these requests and that the educational review committee will examine whether the novel is appropriate before the book is studied.

When Minnon told Andrade students were set to read the book in January, he responded, "They won't until we work our way through the process . . . I'll tell you that."

Minnon, her voice cracking with emotion, focused her efforts on two pages of the book, pages 91 and 92 in her edi-

tion, that detailed the main character's time spent with a prostitute. She said Caulfield is depicted as a depressed, drop-out student who smokes, drinks, uses foul language, and is a "pervert." "There is underlying perversion, using girls for pleasure," Minnon said, waving a copy of the book in the air. She said it was not appropriate in a co-ed environment.

Minnon said the book is below the level of work and standards for students in ninth grade. "This is a book that is below ninth grade standards," Minnon said. "We are not expecting enough."

"Parents are not informed that these types of books, especially these types of books, are being studied in the class," she said. "There are a lot of parents that do not know what the content of the book is . . "

Minnon also questioned whether the board is aware of what books teachers are assigning students. "Do you know the vice principal (of the school, Tom Ledue) did not read this book?" she asked. Reported in: Foster's Online, December 3.

Webb City, Missouri

The American Civil Liberties Union (ACLU) filed suit November 23 against a Missouri high school that twice admonished a gay student for wearing T-shirts bearing gay pride messages. The suit charges that the school violated the youth's constitutional right to free expression.

The student, Brad Mathewson, a sixteen-year-old junior, was sent to the principal's office at Webb City High School on October 20 for wearing a T-shirt that he said came from the Gay-Straight Alliance at a school he previously attended, in Fayetteville, Arkansas. The shirt bore a pink triangle and the words "Make a Difference!"

Mathewson, the ACLU said, was told to turn the shirt inside out or go home and change. Instead he traded shirts with a friend, who wore the gay pride shirt the rest of the day without incident. A week later, Mathewson was again admonished for wearing a gay pride T-shirt, this one featuring a rainbow and the inscription "I'm gay and I'm proud." Told once more to turn the shirt instead out or leave, he chose to go home and was eventually ordered not to return to school wearing clothing supporting gay rights.

Mathewson began attending the school, outside Joplin, in September. "The school lets other students wear antigay T-shirts, and I understand that they have a right to do that," he said. "I just want the same right. I think tolerating each other's differences is a key part in teaching students how to become good citizens."

Since the confrontations involving Mathewson, school officials have asked students to remove antigay stickers and T-shirts, local news accounts said.

Mathewson and his mother, Marion, held a news conference announcing the lawsuit. In a telephone interview, Ms. Mathewson said: "All he wants is to wear his T-shirts. He's a typical teenager, so he's angry that they're trying to tell him what he can and can't do. We had a meeting at the school to talk about it, but we didn't get anywhere with them. They talked, I listened, and I got more and more mad. At the end, I just took him home with me."

Dick Kurtenbach, executive director of the ACLU of Kansas and Western Missouri, wrote to the school on October 28, citing a 1969 ruling by the Supreme Court that students have a constitutional right to free speech except where school officials can demonstrate that it would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school."

Such an exception does not apply in Mathewson's case, the letter said, since he had previously worn the Gay-Straight Alliance T-shirt to school several times without causing any disruption. The ACLU said the school had not responded to the letter. Its lawsuit, filed in federal court in Kansas City, seeks an injunction that would bar the school from censoring Mathewson's speech. Reported in: *New York Times*, November 24.

Elko, Nevada

Courtney Welch, the father of a twelve-year-old girl enrolled in seventh-grade honors English at Elko Junior High School, asked Elko County school trustees November 30 to remove the book *I Am The Cheese*, by Robert Cormier, from the reading list and not allow a cassette tape of the book to be played in class.

"I have a responsibility to my daughter to protect her from things that I feel are morally not correct for her at this time and age-inappropriate," he told the board.

Welch did not elaborate on the basis of his objection to the book during his request to the board. After the meeting, he said his opposition was because of "the sexual content within it."

"(Based on) the teachings that I have taught her to this point, it made her uncomfortable enough to bring the book to me and, after reviewing it, I agree," he said. "(The) sexual content and it alludes to other things I disagree with."

Elko Junior High School teacher Marti DeLance, who teaches the seventh-grade honors English course, said the book is a valuable teaching tool that gets students involved and is the basis for class discussion. "I always thought this book was perfect for teaching bright, well-motivated students," she said.

"I think some things taken out of context completely skews people's opinion of the book," she told the board. "These few little incidents that are being found objectionable are not the main thing." She said the first time she read it just "floored me because it was so good."

DeLance said that the students, if asked, would not remember the parts that are being objected to but rather the "whole meaning of the book and what they got out of the book."

Joe de Braga, the district's director of curriculum, instruction and technology, said state law spells out the next step in

the wake of such a request regarding instructional material. "It is not really a board matter at this time," he said. "It goes to a committee."

School board members voted unanimously to form a committee to review the content of the book. "We don't have much of a choice," said board president John Smales.

De Braga said state statutes were "fairly specific" regarding the membership of the committee and required that it include a parent, a teacher, a librarian, a school administrator, and a pupil, but other interested parties could be included.

Welch told the school board it was too late to keep his seventh-grade daughter from being exposed to the content of the book. "The damage is done to my daughter now," he said. "My daughter has been exposed to this reading material, now we are picking up the pieces behind her." Welch said he was concerned for his three other children who have not reached junior high school age yet.

Janice King, who said she was a longtime resident whose children had attended Elko schools, told the board she was there to support the teachers who make the decision on appropriate and "challenging" reading materials. "After reading in last night's paper that a parent wanted a book banned from certain classrooms, I became quite distressed at the thought of a school district where parents get to make the decisions regarding the curriculum," she said. "Let us trust our teachers."

She said there will always be someone who will find something to object to about the contents of a book. "If the school board or the administration begins banning some of the books that some groups find objectionable we create an atmosphere where teachers have their hands helplessly tied and teaching becomes secondary to placating small but vocal groups," King said.

"Education should be first and foremost in the opening of minds and the teaching of critical thinking," she said. "This cannot occur if we try to place our children into a bubble where we allow no thought-provoking reading." Reported in: *Elko Daily Free Press*, December 1.

Spring, Texas

Outside the Spring Church of Christ, a large roadside sign says a lot about the prevailing sensibility in this cordial town. It reads: "Support New Testament Morality." This is the home and powerbase of Terri Leo, a state Board of Education member representing 2.5 million people in East Texas.

At the urging of Leo and several other members—who describe themselves as Christian conservatives—the board in November approved new health textbooks for high school and middle school students after publishers said they would tweak references to marriage and sexuality. One agreed to define marriage as a "lifelong union between a husband and a wife." Another deleted words that were attacked by conservatives as "stealth" references to gay relationships; "partners," for example, was changed to "husbands and wives." A passage explaining that adolescence brings the onset of "attraction to others" became "attraction to the opposite sex."

Leo said she pushed for the changes to combat the influence of "liberal New York publishers" who, by "censoring" the definition of marriage, were legitimizing same-sex unions. Some education advocates criticized the board's decision.

"This was never about defining marriage," said Samantha Smoot, president of the Texas Freedom Network, an Austin-based nonprofit that opposes what it calls religious "extremism." "It was an effort to get anti-gay propaganda in the books."

Gilbert Sewall, director of the New York-based American Textbook Council—an independent organization that reviews textbooks—also criticized the Texas-approved books' promotion of abstinence-only sex education. Such programs are "naive and confused," said Sewall, who described himself as an "educational conservative."

Research, much of it conducted by the federal government, has raised a host of questions about the effectiveness of abstinence programs in preventing disease and pregnancy. Teenage girls who are taught in the programs do wait longer before having sex, many experts believe, but are less likely to use protection when they do—causing them to contract sexually transmitted diseases at the same rates as those who have sex earlier.

"I have very little use for this religion-driven curriculum," Sewall said. "This confuses sex and moral education."

Texas is the second-largest buyer of textbooks in the nation, after California. Books purchased in the state wind up in classrooms across the nation, because publishers are loath to create new editions for smaller states. As a result, five social conservatives on the fifteen-member Texas board, frequently joined by five more moderate Republicans, have enormous clout—and often control the content used to teach millions of children.

Publishers have no choice but to heed many of the group's wishes, said Don McLeroy, a dentist, Sunday school teacher and Texas Board of Education member. "They've got to sell books," he said. "It's business."

Conservatives' efforts over the years to edit textbooks are legendary in Texas. In a nod to those who believe God created the Earth 6,000 years ago, a sentence saying the ice age took place "millions of years ago" was changed to "in the distant past." Descriptions of environmentalism have been attacked as antithetical to free-enterprise ideals; a passage describing the cruelty of slavery was derided as "overkill."

The pace of such efforts to alter curriculum is expected to increase because Christian conservatives are "emboldened" by the Republican gains on election day, Leo said. The board's stance on the health texts, some observers said, speaks to a critical factor in the GOP's recent success: a recognition by evangelical conservatives that all politics is local.

The political ascendance of Christian conservatives in the 1980s and 1990s was fueled by their coordinated effort to win seats on school boards, city councils and other local bodies. A leader of the Christian Coalition said at the time that he would be willing to train an evangelical to run for dogcatcher. Conservative forces began targeting the Texas Board of Education in the 1990s. Some, including Leo, ran for election unopposed.

Success at the local level has been used as a springboard to national power, said Robert Simonds, president of California-based Citizens for Excellence in Education; the group, which helped train the first wave of Christian conservative candidates, recently has lobbied for the withdrawal of Christians from the "secularist" public school system.

"It's like an athlete," Simonds said. "If you want to be a top-level baseball or football player, first you have to learn to run. So we ran. "The secular world has jumped on it, but only after seeing so much success in Christian education and the like."

But Evan Wolfson, director of Freedom to Marry—a New York group that seeks marriage rights for gays and lesbians—said that the conservatives' drive to control local and state political boards might not look smart in the long run if their agendas were seen as mean-spirited.

"It does not help our kids to use them as pawns for divisive social agendas," he said. "It might be astute in the short term, but not in any meaningful sense for our kids or our country." Reported in: *Los Angeles Times*, November 22.

Waukesha, Wisconsin

Prompted by a parent's allegations that the books contain sexually explicit and inappropriate material, an Arrowhead High School committee has begun reconsidering a list of books students may choose to read in a high school literature class. An elective class available to juniors and seniors, the Modern Literature class focuses on books written since 1970 by authors with diverse backgrounds.

One of the novels in question, *The Perks of Being a Wallflower*, by Stephen Chbosky, is a story told through letters written by fifteen-year-old Charlie to an unnamed, non-gender-specific person and includes situations of date rape, drug use, abuse, homosexuality and abortion. "What I would like to do is raise awareness. Is this what we want our kids reading?" said Karen Krueger, a parent who is protesting the book. "I'm hoping to encourage people from the community to make their voices known to the School District," she said.

Krueger also has concerns about content in some of the other books from the Modern Literature class, including *The Joy Luck Club*, by Amy Tan, *Krik! Krak!*, by Edwidge Dandicat and *Like Water for Chocolate*, by Laura Esquivel.

According to Arrowhead Superintendent David Lodes, students have the option of reading alternative books to the stated curriculum.

Krueger first read *Perks* in spring 2004 when her son was reading it in the literature class. After reading it, Krueger and her husband went to the school administration. Based on the Kruegers' initial complaints, a group of teachers and an AHS library media specialist reviewed the book Like the group that chose *Perks* for initial inclusion in the school curriculum, the group that evaluated the book after the Kruegers voiced their concerns decided to keep it in the curriculum.

Krueger said she thought that since such a group chose the books in the first place, a similar group should not have reviewed the book. "It's like giving the matches back to the people that started the fire," she said. Finding that the book was still in the curriculum in fall, the Kruegers lodged a formal complaint with the district, resulting, by procedure, in the formation of the Reconsideration Committee.

"I'm not saying that because I'm offended, everyone will be offended," Krueger said. "I think parents—everybody—are going to have a little different opinion." Krueger would like those opinions to be expressed to the School District, and for community opinions to be considered in book selections.

"I just don't expect oral sex to be discussed in class," Krueger said. She wondered if masturbation, a topic included in some of the Modern Literature books, was discussed in health class.

Krueger also questioned the legality of giving students under age eighteen graphic material to read and felt that some of the books might violate rules in the Arrowhead handbook, such as the sexual harassment policy.

"When you're a parent, there's a level of trust when you send your kids to school," Krueger said. "I don't expect things to be given to them at school that I wouldn't give them at home. I think it's abusing the basis of trust that parents have."

Krueger said that although students were given permission slips that would allow parents to exempt their children from reading books the parents found questionable, that parents were not truly informed. The slips, she said, were not brought home by the students. Reported in: *Lake Country Reporter*, November 8.

student press

Indianapolis, Indiana

A Franklin Central High School journalism teacher was suspended after he allowed his students to publish a sensitive story. Students called it censorship and threatened a walkout in support of the teacher. The school claimed "insubordination."

"It is a big story but I think the kids need to know what's going on," said Mitchell Willsey, a sophomore.

The big story Willsey was glad to see in the Franklin Central *Pilot Flashes* concerned a fellow classmate's arrest on murder charges. The story was written by a student editor and approved by teacher-advisor Chad Tuley. After the

paper was distributed to students November 12, Tuley said the principal destroyed all remaining copies, then suspended him with pay.

"They're saying that it was insubordination," said Tuley, noting that his letter of suspension charges that he published the article when the principal told him not to. Tuley claims he was never told that. "The e-mail only advised me to research it a bit and then there were no follow up conversations," he said.

"The administration saw it as a very sensitive issue that probably shouldn't have been reported in the school newspaper," said Scott Miley, Franklin Township spokesman.

Tuley doesn't believe he was insubordinate. He does believe the administration attempted to violate the First Amendment rights of the student journalists. Tuley says he has been teaching about freedom of speech. "I think this is a real-life example," he said.

Dennis Cripe agrees. As executive director of the Indiana High School Press Association, he said his association would go to bat for the suspended teacher. "I think if I were a faculty member, I'd worry about whether my area might be next if I'm deemed to be inappropriate in something that I've been teaching. Where does this kind of thing stop?" said Cripe.

On November 17, the school notified Tuley he could return on November 22 to meet with the school administration and perhaps return to his classroom. Tuley wants an apology and guarantee this will not become part of his permanent record. He has hired a lawyer. Reported in: WISH-TV, November 18.

colleges and universities

Naples, Florida

Florida Gulf Coast University hosted a partisan speech before the November election after all. Less than a week after postponing an invitation to author Terry Tempest Williams because of her criticisms of President Bush's environmental policies, the school rented out Alico Arena to the Republican National Committee to use as a rally for Vice President Dick Cheney. University spokeswoman Susan Evans said the two events were different in circumstance and, therefore, different in the actions the school took.

"This is an event where a group rented out space on campus," she said. "It happens all the time here. The other event was using state money to bring in a speaker." Evans also noted that students aren't required to attend the vice president's event, but that all freshmen would have been required to attend Williams' convocation.

Williams later accepted an invitation from several campus organizations to come and speak, and did so on October 24. Reported in: *Naples Daily News*, October 12.

New York, New York

A U.S. congressman has demanded that Columbia University fire a nontenured professor of Arab politics who has been an outspoken critic of Israel. The congressman, Anthony D. Weiner (D-NY), said that Joseph A. Massad had crossed a line "between vigorous debate and discussion, and hate."

Fellow academics came to the professor's defense and have circulated a petition calling on Lee C. Bollinger, Columbia's president, to "issue a categorical statement in defense of Professor Massad and against this campaign of defamation."

The dispute came at a time when the discipline of Middle East studies has come under fire from critics who have denounced the programs as anti-American and anti-Israel. At Columbia, the controversy came to a head in October after editorials in the New York *Sun* and *Daily News* reported that in a yet-to-be released documentary, Columbia students complain of anti-Israel sentiment among faculty members. Professor Massad is reportedly mentioned in the film.

"Massad is alleged to have likened Israel to Nazi Germany, said that Israel doesn't have the right to exist as a Jewish state, and asked an Israeli student, 'How many Palestinians have you killed?' and then refused to allow the student to ask questions," Representative Weiner said in a statement in which he accused the professor of using his classroom to espouse anti-Semitic views.

In a letter to Bollinger the congressman wrote: "Recent events continue to suggest a disturbing trend in which Columbia's administration has not been sensitive to issues of race. By publicly rebuking anti-Semitic events on campus and terminating Professor Massad, Columbia would make a brave statement in support of tolerance and academic freedom."

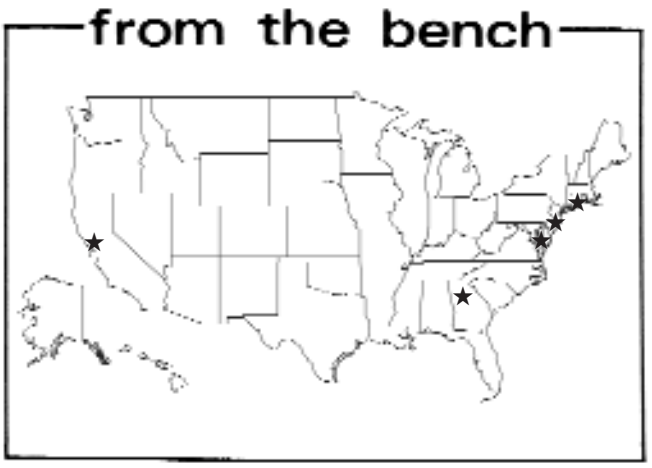
"There's nothing wrong with having a debate about the Middle East or a debate about politics in general," Weiner said. "But when you deal with students in the way this professor did, and make comments that this professor did, it's clear that's beyond debate. It has become harmful."

The lawmaker, who represents Brooklyn and Queens, said he was not aware of whether Massad had denied making the remarks. "So far the professor's defenders have just argued as a college professor you have the right to say any outrageous, hateful thing you want, and I disagree with that," he said.

"The university does not condone anti-Semitic behavior and expression of any kind," said Susan M. Brown, a spokeswoman for Columbia. "We take very seriously any concerns raised by a congressman and respond to them."

The allegations prompted Bollinger to release a statement on the university's policy on academic integrity and

(continued on page 28)



U.S. Supreme Court

The U.S. Supreme Court ruled December 6 that a policeman can be fired for violating regulations after he offered for sale on the Internet videos of himself removing a uniform and masturbating. The justices overturned a ruling by a U.S. appeals court that reinstated the officer's lawsuit claiming he had been wrongly dismissed by the San Diego Police Department because the First Amendment's free-speech rights protected his off-duty actions.

Saying the police department had demonstrated that his activities compromised its interests, the justices said the California-based appeals court had been wrong in ruling it must justify the decision to fire the officer, identified in court documents only as "John Roe."

"We have little difficulty in concluding that the city was not barred from terminating Roe," the justices said in a brief, unsigned opinion filed by the entire court. The court took the unusual step of issuing the ruling without hearing arguments.

The officer made a video of himself stripping off a police uniform and masturbating. He sold the video on the adults-only section of the online auction site eBay, Inc. His user name was "Codestud3@aol.com." The uniform was not the specific one worn by the San Diego police, but it was a police uniform. Besides the videos, Roe also offered for sale police equipment, including the city's official uniform, and various items, such as men's underwear.

A supervisor discovered Roe's activities. An investigation revealed his conduct violated department policy, including conduct unbecoming an officer. He was fired. The Supreme Court ruled the department had demonstrated that Roe's activities compromised legitimate and substantial interests.

"Roe took deliberate steps to link his videos and other wares to his police work, all in a way injurious to his employer," it said. The high court said that under its past precedents Roe's activities were not covered by the free-speech protections. "Roe's activities did nothing to inform the public about any aspect of the (department's) functioning or operation," it said. "The speech in question was detrimental to the mission and functions of the employer." Reported in: Reuters, December 6.

The U.S. Supreme Court declined October 12 to reconsider an appeals-court ruling that stopped record companies from using a "fast track" legal process to force Internet providers to identify suspected music pirates, including those on college campuses. The decision ended the recording industry's hope of returning to the fast-track subpoenas, which were established by the Digital Millennium Copyright Act. The companies used the subpoenas to demand that Internet providers name batches of file-sharing suspects whom the companies knew only by their network addresses.

Last December, in a challenge filed by Verizon Communications Inc., the U.S. Court of Appeals for the District of Columbia Circuit ruled that the practice was illegal. In a unanimous decision, a three-judge panel held that fast-track subpoenas could not be sent to any Internet provider that had acted as "a mere conduit" for copyright violations.

After that ruling, record companies adopted a costlier and more time-consuming method for identifying suspected song swappers, filing lawsuits individually against "John Doe" defendants instead of sending out subpoenas in bulk. Unlike the fast-track subpoenas, the John Doe subpoenas must be approved by judges, instead of clerks of court, before they are sent to Internet providers.

Since it adopted the more cumbersome process, the Recording Industry Association of America filed lawsuits against more than 3,000 individuals, at least 180 of them at colleges. But lawyers for the industry group appealed the D.C. circuit court's decision to the Supreme Court.

The Supreme Court's decision not to reconsider the case was no great surprise, according to Jonathan L. Zittrain, a law professor who is co-director of Harvard University's Berkman Center for Internet & Society. "There's a lot of activity going on in the legislative arena, and a process of percolation taking place in the courts, so I would have expected the [Supreme Court] to take a pass," he said. Reported in: Chronicle of Higher Education online, October 13.

The Bush administration urged the Supreme Court December 9 to allow Ten Commandments displays on government property, adding a federal view on a major church-state case that justices will deal with early this year. The

government has weighed in before in religion cases at the high court, including one last year that challenged the words "under God" in the classroom recitation of the Pledge of Allegiance.

The government supported a California school district in that case. Now, it is backing two Kentucky counties that had framed copies of the Ten Commandments in their courthouses. The American Civil Liberties Union sued McCreary and Pulaski counties, claiming the displays were an unconstitutional promotion of religion. The group won.

Justices will hear arguments, probably in February, in the counties' appeal and in a second case involving a Texas homeless man who wants a six-foot granite monument removed from the state Capitol grounds.

The administration's top Supreme Court lawyer, Paul Clement, told justices in a December 8 filing that Ten Commandments displays are common around the nation and in the court's own building, the Capitol and national monuments.

"Reproductions and representations of the Ten Commandments have been commonly employed across the country to symbolize both the rule of law itself, as well as the role of religion in the development of American law," Clement wrote. Clement said the displays are important in educating people "about the nation's history and celebrating its heritage."

The Supreme Court banned the posting of Ten Commandments in public schools in 1980. Clement argued that courthouses are different from schools and often have "historic symbols of law."

Douglas Kmiec, a Pepperdine University law professor and former legal counsel to President Reagan and the first President Bush, said that the government had been expected to file arguments in the case. "It would have been politically untenable and legally timid if the government's chief court litigator had not done so," he said. The case is McCreary County v. ACLU. Reported in: Associated Press, December 9.

protest

Atlanta, Georgia

Fear of a terrorist attack is not sufficient reason for authorities to search people at a protest, a federal appeals court has ruled, saying September 11 "cannot be the day liberty perished."

A three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit ruled unanimously October 15 that protesters may not be required to pass through metal detectors when they gather for a rally against a U.S. training academy for Latin American soldiers. Authorities began using the metal detectors at the annual School of the Americas protest after the 2001 terrorist attacks, but the Eleventh Circuit found that practice to violate the First and Fourth Amendments.

"We cannot simply suspend or restrict civil liberties until the War on Terror is over, because the War on Terror is unlikely ever to be truly over," Judge Gerald Tjoflat wrote for the panel in *Bourgeois* v. *Peters*. "Sept. 11, 2001, already a day of immeasurable tragedy, cannot be the day liberty perished in this country."

City officials in Columbus, Georgia, contended the searches are needed because of the elevated risk of terrorism, but the Eleventh Circuit threw out that argument, saying it would "eviscerate the Fourth Amendment."

"In the absence of some reason to believe that international terrorists would target or infiltrate this protest, there is no basis for using September 11 as an excuse for searching the protesters," the panel said. "This case presents an especially malignant unconstitutional condition because citizens are being required to surrender a constitutional right—freedom from unreasonable searches and seizures—not merely to receive a discretionary benefit but to exercise two other fundamental rights—freedom of speech and assembly."

About 15,000 demonstrators attend the annual vigil, demanding the closing of a school they allege teaches Latin American soldiers to violate the human rights of poor people in their home countries. The facility at Fort Benning was once known as the School of the Americas, but reopened in January 2001 as the Western Hemisphere Institute for Security Cooperation.

Columbus Mayor Bob Poydasheff said the city would abide by the order but called it "unreasonable." "I can't go into the 11th Circuit Court of Appeals without being scanned and having my briefcase searched," Poydasheff said. "They have every right to do that, to make sure they're protected. And I have every right to make sure my police are protected, and the citizens and the other protesters are protected."

The Rev. Roy Bourgeois, a priest who founded the protest group called SOA Watch, praised the ruling for safeguarding essential rights. "I felt that they were using 9/11 as an excuse, along with the PATRIOT Act, to interfere with our First Amendment rights," he said. "They are using this to get around what the Constitution is really rooted in."

The metal detectors caused long lines and congestion outside the protest area, he said, comparing it to routing 10,000 people through a single security gate at an airport. "It was not just an inconvenience, it was a nightmare. We couldn't get to the place of assembly in an orderly fashion," he said.

The Eleventh Circuit outlined five ways in which Columbus' search policy violated the First Amendment: "First, it is a burden on free speech and association imposed through the exercise of a government official's unbridled discretion; restrictions on First Amendment rights may not be left to an executive agent's uncabined judgment. Second, the searches were a form of prior restraint on speech and assembly; to participate in the protest, individuals had to receive the prior permission of officers manning the checkpoints. Third, the search policy

was implemented based on the content of the protestors' speech. Fourth, even assuming the searches were implemented exclusively for content-neutral reasons, they were impermissible because they did not constitute reasonable time, place, and manner limitations, which are the only permissible content-neutral burdens that may be placed upon free speech and association. Finally, even putting aside First Amendment analysis, the search policy constitutes an 'unconstitutional condition;' protestors were required to surrender their Fourth Amendment rights . . . in order to exercise their First Amendment rights."

Michael Greenberger, law professor and director of the University of Maryland's Center for Health and Homeland Security, said the ruling could have broader implications if it is used to challenge aspects of the PATRIOT Act. It was surprising, he said, coming from the conservative-leaning Eleventh Circuit, based in Atlanta, but the opinion was "very well reasoned" and reflected "conventional application of constitutional principles."

First Amendment lawyer Floyd Abrams said that although there are steps the government can take to protect people from terrorism, "that doesn't mean we just dispense with the Bill of Rights as a consequence of 9/11. We don't yet live in a society in which everyone must always go through metal detectors everywhere we go," Abrams added. Reported in: FirstAmendmentCenter.org, October 18.

press freedom

Washington, D.C.

Hearing arguments on whether two journalists should be jailed for refusing to name their confidential sources to a grand jury, a three-judge panel of the federal appeals court in Washington seemed on December 8 to reject their main argument, which is based on the First Amendment. Only one judge, David S. Tatel, appeared to leave the door open for the possibility that journalists called before grand juries might have some legal protection, although not under the First Amendment. But the proposed protection that Judge Tatel sketched out in a series of questions might not be of any help to the journalists in the current case, Matthew Cooper of *Time* magazine and Judith Miller of the *New York Times*.

Both Judge Tatel and Judge David B. Sentelle gave strong indications that a 1972 Supreme Court decision, *Branzburg* v. *Hayes*, definitively and negatively answered the question of whether the First Amendment provides reporters with any protection when they are called before a grand jury and questioned about their confidential sources.

"How is this case any different than *Branzburg*?" Judge Sentelle asked Floyd Abrams, the lawyer representing the reporters. When Abrams did not provide an answer satisfactory to the judge, he asked again. And again.

"I take it you do not have a material difference between this case and *Branzburg*," Judge Sentelle finally said, "or you would have given me an answer on the first, third, fourth or fifth opportunities you had."

Judge Tatel seemed to agree that the Supreme Court case had answered the main question in the appeal. "We're bound by *Branzburg*," he said. The third judge, Karen L. Henderson, said little, but her few questions were skeptical of Abrams's position.

Judge Henderson was appointed by the first President George Bush, Judge Sentelle by President Ronald Reagan and Judge Tatel by President Bill Clinton.

Jim Fleissner, the lawyer arguing for the special counsel in the case, Patrick J. Fitzgerald, began his presentation by answering Judge Sentelle's question. "The answer is that there is no material difference between this situation and *Branzburg*," Fleissner said.

The reporters were held in contempt of court in October by Judge Thomas F. Hogan, the chief judge of the U.S. District Court in Washington. Judge Hogan ordered them jailed until a grand jury investigating the disclosure of the identity of a covert CIA officer, Valerie Plame, completed its work or for eighteen months, whichever was shorter. He suspended the sentences during the appeal.

The appeals court did not indicate when it would rule. Lawyers involved in the case said they expected a decision soon. If the reporters lose, they may ask the full court, known as the United States Court of Appeals for the District of Columbia Circuit, or the Supreme Court to hear the case. The reporters would most likely remain free until all appeals were concluded.

Judge Tatel was the only judge who seemed prepared to consider a separate basis for protecting the journalists. The reporters had relied on a 1996 Supreme Court case that recognized legal protection for confidences that patients tell their psychotherapists. Similarly, their lawyers argued that the fact that 49 states and the District of Columbia offered journalists some protection meant that federal courts should recognize a similar protection. The argument, based on federal common law, avoids *Branzburg* and the First Amendment.

Judge Tatel was impatient with Abrams's contention that this second sort of protection should be absolute. Instead, he suggested that the protection should turn on a balancing of the importance of the information in the grand jury's investigation, its availability from people other than journalists and perhaps the importance of the case itself against the societal interest in the information confidential sources provide.

Such balancing may or may not help the reporters in the case. The people who disclosed Plame's identity to them probably committed a crime, and the reporters may well be the only ones who can provide evidence to establish that.

But precisely where the investigation now stands is unknown, as grand jury proceedings are secret. Indeed, the reporters and Abrams have not seen much of the evidence

submitted to the appeals court justifying the need for their testimony.

Robert Novak, the syndicated columnist, was the first to disclose Plame's identity publicly, in a column published on July 14, 2003. He had been told, he wrote, by "two senior administration officials" seeking to cast doubt on an opinion column by Plame's husband, Joseph C. Wilson IV, a former diplomat.

Cooper and two colleagues published an article about the Plame matter three days after Novak, citing "some government officials." Miller has not written on the subject, though she has conducted some interviews concerning it.

Judge Sentelle appeared skeptical that protection for journalists was warranted or practical, whether under the First Amendment or the common law. "You're asking us to create not only a new common law privilege but also a privilege greater than any other privilege known to the law," he said. "You just shut down leak investigations if we give you this privilege."

Fleissner's part of the argument was a dialogue with Judge Tatel about the wisdom and potential scope of a common law privilege. But there was little reason to think the other two judges were interested in providing Miller, Cooper or reporters generally with legal protection in the grand jury setting.

After the argument, the two reporters offered their assessments. "I found it stimulating and interesting," Miller said. "I was encouraged by many of the questions." Cooper said, "These judges, like journalists, are paid to ask tough questions, and they did."

Cooper said the legal process had been unsettling. "I'm hoping the federal government is not going to put me into a position where I have to tell my six-year-old son that I'm going away," he said. Reported in: *New York Times*, December 9.

Providence, Rhode Island

A local television reporter was convicted of criminal contempt November 18 for refusing to identify the person who leaked him an FBI videotape in 2001 related to an investigation of government corruption in Providence. Jim Taricani, a longtime investigative reporter for WJAR, an NBC affiliate, faced the possibility of up to six months in jail when sentenced.

Taricani would be one of only a handful of journalists to go to jail for refusing to identify a source. He is also one of several reporters currently facing court action over their refusal to reveal confidential sources, but he is the only one to go on trial on criminal contempt charges.

"When I became a reporter thirty years ago, I never imagined that I would be put on trial and face the prospect of going to jail simply for doing my job," Taricani said outside the courthouse after Judge Ernest C. Torres, chief judge of the U.S. District Court in Providence, pronounced him guilty.

Taricani, a gray-haired fifty-five-year-old who has won several awards, including four Emmys, added: "I wish all my sources could be on the record, but when people are afraid, a promise of confidentiality may be the only way to get the information to the public, and in some cases, to protect the well-being of the source. I made a promise to my source, which I intend to keep."

Taricani, who had two heart attacks eighteen years ago and who received a heart transplant in 1996, said his major concern about going to jail was his health. The judge said that while he was aware that Taricani "requires special care," he was also aware that Taricani "has continued to live a very active life" and had "traveled abroad recently." Judge Torres said there were prison hospitals that had "successfully managed the needs of heart transplant patients."

Taricani was convicted in connection with a long-running federal investigation called Operation Plunderdome, which resulted in the conviction of at least nine city officials, including Mayor Vincent A. Cianci, Jr., who was sentenced to sixty-four months for racketeering conspiracy. Cianci's top aide, Frank E. Corrente, also was convicted on corruption charges, in part for taking a $1,000 bribe from a businessman who was acting as an informant for the Federal Bureau of Investigation and was secretly videotaping his transaction with Corrente.

Someone gave Taricani a copy of that videotape, and in February 2001, his station broadcast it, prompting Judge Torres to appoint a special prosecutor to investigate who had leaked the tape. After the prosecutor interviewed fourteen people, all of whom denied being the source, Judge Torres last March found Taricani in civil contempt. When that finding was upheld by an appeals court, Taricani was fined $1,000 for each day he continued to refuse to name his source.

When Taricani would not relent, after he had paid $85,000—for which he was reimbursed by his employer—Judge Torres changed the civil contempt case into a criminal contempt case.

"The evidence," Judge Torres said "is clear and overwhelming and undisputed." He added, "The evidence proves beyond a reasonable doubt that he is guilty of criminal contempt."

Taricani's lawyers had argued that he was protected by the First Amendment, and said broadcasting the tape had not affected the defendants' ability to have a fair trial, since its existence had been made public in an indictment months earlier.

Lucy Dalglish, executive director of The Reporter's Committee for Freedom of the Press, said Taricani's case was unusual because he faced the jail time not to force him to reveal his source, but as punishment for refusing to do so. Dalglish said his case—along with those involving a Central Intelligence Agency officer, Valerie Plame, and a government nuclear physicist, Wen Ho Lee—suggest that there is "an atmosphere where the government is keeping a

lot more secrets, the courts are keeping a lot more secrets, and you've got whistleblowers and other people who are within the government seeing something going on who say 'You know, I really feel this information should get out."'

Taricani, who is well known in Rhode Island, where he is on the boards of the Providence Public Library, a food bank and an organ donor association, was asked how it felt to sit at the defense table in the same courtroom where he had once covered the cases of Corrente and others. "It's not a nice seat to sit in," Taricani said. But, he added, when asked about his decision, "I have no regrets whatsoever." Reported in: *New York Times*, November 19.

universities

Philadelphia, Pennsylvania

Colleges that bar or restrict military recruiting on their campuses cannot be penalized with the loss of federal funds, a three-judge panel of the federal appeals court in Philadelphia ruled in early December. In the 2-to-1 decision, the U.S. Court of Appeals for the Third Circuit said colleges had a First Amendment right to exclude recruiters whose hiring policies discriminate against gay men and lesbians.

The decision halted enforcement of a decade-old law, known as the Solomon Amendment, that allows the government to withhold federal money from colleges that do not provide full access to military recruiters. Previously, some law schools had limited military recruiters' access to their campuses because the Defense Department's "don't ask, don't tell" policy violated the schools' own antidiscrimination policies.

Warrington S. Parker, III, a lawyer for a coalition of law schools and others challenging the Solomon Amendment, said the decision meant that colleges could again "follow their nondiscrimination policies." Indeed, the day after the ruling, Harvard Law School announced that it would once again ban military recruiters from its campus.

"This return to our prior policy will allow [the Office of Career Services] to enforce the law school's policy of nondiscrimination without exception, including to the military services," Elena Kagan, the law school's dean, said in a statement.

But critics of the court decision said it would hamper the Defense Department's ability to recruit talented lawyers to provide legal services and set military policy. Charles Fried, a law professor at Harvard, said the case amounted to "a nasty example of very arrogant people thinking they can have it both ways."

"It's almost adolescent," said Fried, who served as U.S. solicitor general under President Ronald Reagan. The colleges are saying "'No, daddy, we won't tell you where we're taking the car, but we want the keys anyway,'" he added.

Among the plaintiffs that brought the lawsuit, *FAIR, et. al* v. *Rumsfeld, et. al*, was the Forum for Academic and Institutional Rights, whose twenty-five constituents include the law schools of New York University and George Washington University, and the law faculties of Georgetown University and Stanford University. Several other members of the forum have refused to be publicly identified, out of fear of retaliation. Other plaintiffs included the Society of American Law Teachers, the Coalition for Equality, the Rutgers Gay and Lesbian Caucus, and several individual students and professors. Friend-of-the-court briefs on behalf of the plaintiffs were filed by the Association of American Law Schools, the American Association of University Professors, and a group of Harvard Law School professors.

Daniel Mach, a lawyer who represented the law-school association, said colleges' nondiscrimination policies send an "important message of diversity and tolerance" that is key to the law schools' missions.

Opponents of the decision said law students were mature enough to make a distinction between a law school's policy and that of an outside employer.

"This case treats law students as though they can't think for themselves," said Howard J. Bashman, a lawyer who represented law students at the University of California at Los Angeles, the Washburn University School of Law, and the College of William and Mary School of Law, who filed a friend-of-the-court brief on behalf of the Justice Department, which represented the defendants. "They are smart enough to understand that law schools do not endorse every employer's business practices."

The Justice Department may now ask the full Court of Appeals for the Third Circuit or the Supreme Court to consider the case. Either way, the department can request a stay of the decision to prevent colleges from barring recruiters while the case is being heard.

The appeals court's opinion, written by Judge Thomas L. Ambro, found that the Solomon Amendment violated colleges' freedoms of speech and expression by compelling them to "propagate, accommodate, and subsidize the military's message." The ruling cited a Supreme Court decision allowing the Boy Scouts of America to exclude a gay assistant scoutmaster because it believed that "homosexual conduct is inconsistent with the Scout Oath."

"The Solomon Amendment requires law schools to express a message that is incompatible with their educational objectives, and no compelling governmental interest has been shown to deny this ruling," Judge Ambro wrote. Judge Walter K. Stapleton joined in the opinion.

In a dissent, Judge Ruggero John Aldisert argued that the law did not infringe on free speech but governed conduct, "while only incidentally affecting speech." He also argued that national-security interests outweighed free-speech considerations in the case.

The ruling reversed a 2003 opinion by a federal judge who said the plaintiffs were unlikely to prevail at trial. It

represents the first time that an appeals court has struck down a pro-military statute on First Amendment grounds.

Kent Greenfield, a law professor at Boston College and the founder of FAIR, said the decision could "end up being a landmark case vindicating the rights of educational institutions to decide their own educational philosophy." Several other lawsuits challenging the Solomon Amendment have been filed by individual students and professors, but those have centered on the Justice Department's interpretation of the law rather than its constitutionality, and are not likely to advance anytime soon, Greenfield said.

The Justice Department said in a statement that it continued to believe that "Congress may deny federal funds to universities which discriminate and may act to protect the men and women of our armed forces in their ability to recruit Americans who wish to join them in serving our country." The agency said it was reviewing its appeal options. Legal experts expect the case to advance to the Supreme Court.

As a result, the American Council on Education, the umbrella group for higher education, was expected to release a recommendation to college presidents last week urging them to wait to make any changes in their policies.

The Solomon Amendment, named for its sponsor, Gerald B. H. Solomon, then a Republican Congressman from New York, was passed by Congress in 1994. The law allowed the government to withhold Defense Department funds from institutions if they denied military recruiters access to students, including recruiters for the Reserve Officer Training Corps and the Judge Advocate General's Corps, which handles legal affairs for the military and members of the armed services. Three years later, Congress expanded the law's penalty to include funds administered by the Departments of Transportation, Labor, Health and Human Services, and Education.

For several years, many law schools complied with the law by providing minimal access to military recruiters. Harvard and Yale Universities, for example, allowed the military to recruit on their campuses but did not schedule interviews through their career-service offices. At the University of Pennsylvania, the main career office, rather than the law school, was in charge of scheduling interviews.

But in late 2001 the military did an about-face. In letters from the Defense Department to administrators at several universities, including Yale, the agency charged that their recruiters had been "inappropriately limited in their ability to recruit" law students and ordered the colleges to provide the military with access "equal in quality and scope" to that given other employers, or else risk losing federal funds. In October, Congress codified the policy, expanding the penalty to include funds from several other federal agencies.

Faced with that threat, most universities backed down. At Yale, professors have estimated that the university as a whole could lose more than $300-million annually in federal funds if it defied the federal government. At Penn, the sum at risk could top $500-million.

"There are some people that say we should go down in flaming glory on principle, but I have never proposed that," said Chai R. Feldblum, a law professor at Georgetown and an expert on anti-Solomon litigation. "The heavy hand needs to be listened to. We can't afford to lose all these millions of dollars." Reported in: *Chronicle of Higher Education*, December 10.

copyright

San Francisco, California

A federal judge has ruled against legal scholars and archivists who challenged current copyright law in hopes of making it easier to archive old literature and films on the Internet, where they would be available free to the public.

The case, *Kahle* v. *Ashcroft*, pitted two archive groups—the Internet Archive, a nonprofit digital library, and the Prelinger Archives, which preserves films—against the U.S. Justice Department. The archivists argued that four copyright laws are collectively keeping people from gaining access to "orphan" works: out-of-print books, old films, and academic articles that have little or no commercial value.

The laws that the archivists fault are the Copyright Act of 1976, the Berne Convention Implementation Act of 1988, the Copyright Renewal Act of 1992, and the Sonny Bono Copyright Term Extension Act of 1998. A central part of the archivists' argument is that laws granting copyright protection to all works, even those for which the creators have not sought protection, have radically altered the "traditional contours of copyright."

The suit alleged that by creating ever-longer terms for copyright control while at the same time eliminating requirements that copyright holders register and provide public notice of their claims, Congress fundamentally altered the copyright system. As originally conceived, copyright control would only last for limited times (fourteen years under the first U.S. copyright law), and many creative works would enter the public domain immediately, because their creators were not interested in commercially exploiting them.

Other works would become public property after their initial copyright term expired, because they were no longer commercially viable, so the owner had little incentive to renew. Under this "conditional" regime, according to the complaint in *Kahle* v. *Ashcroft*, "for most of our history, the renewal rate for copyrighted works averaged between 8 percent and 15 percent. At its highest, in 1990, the rate was 22 percent."

Starting with the 1976 copyright law revision, though, and continuing through the Sonny Bono Copyright Term Extension Act in 1998, the term of copyright control was dramatically extended, until it is now life of the author plus sev-

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libraries

Orlando, Florida

As of November 1, the Orange County Library System began enforcing a policy to prohibit adults from lingering in children's areas at its fourteen branches unless they are there with a child. Orange County library officials said adults can check out items from the children's sections, but they cannot loiter in the area or stay in the section to read books.

"It isn't denying any access to those materials," Marilyn Hoffman, community relations manager, said from Orlando. "It just seems to make a lot of sense. I'd rather be talking about this policy to you than to be talking about an incident."

Hoffman said the rule applies to the downtown Orlando library's teen section called "Club Central," designed for youths ages 13 to 18. No specific incident spurred the policy change, and Hoffman called the rule a pre-emptive move, making it among the first in the nation. One library branch in California and one in Nevada have similar policies, Hoffman said.

Caroline Ward called Orange County's move on the "extreme edge" of library policies throughout the country. Ward is the past president of the American Library Association's children's division. "The fact that the Orange County library is going to be stricter is just one way of handling it," she said, "and I don't think this will set the tone in how libraries set rules." Reported in: *St. Petersburg Times*, November 24.

schools

Charles County, Maryland

To Margaret Young, vice chair of the Charles County Board of Education, the required reading lists in her Southern Maryland school system are teeming with "profanity and pornography, fornication and adultery." Take, for example, *Dust Tracks on a Road*, an autobiography by acclaimed American author Zora Neale Hurston. Young said the book contained "disgusting" scenes of "inappropriate" sexual conduct.

"I think parents would be appalled if they really read the books their kids were reading that were so filled with profanity and pornography," she said. "I rely on the school system to provide good wholesome reading for my children."

So when the Board of Education compiled a list of goals and suggestions for improving the school system, Young said she supported the recommendation that calls for "removing anything [from reading lists] that provides a neutral or positive view of immorality or foul language." But this proposal, and others that recommend distributing Bibles in schools, removing science books "biased towards evolution" and teaching sexual education classes focused exclusively on abstinence, has upset those who fear some board members are attempting to impose personal religious and moral beliefs on the public schools.

"They're basically trying to skew the curriculum, to teach their own conservative Christian values," said Meg MacDonald, a representative from the Charles County Education Association.

Board members said the list of more than one hundred goals and suggestions, compiled without names attached, was simply a brainstorming exercise to generate ideas and encourage discussion. None of the proposals has been approved or even considered for a vote. But some see the document, distributed in September, as evidence of a growing conservatism on the board.

One of the more controversial proposals was to invite Gideons International to hand out Bibles to students. The document recommended being "very specific about where, when and how the Bibles are to be offered" but did not provide any of those details.

"What they're proposing is clearly unconstitutional. It is a violation of separation of church and state under the First Amendment," said Stacey Mink, a spokesman for the American Civil Liberties Union of Maryland. "This is something the ACLU is very concerned about."

The issue of Bible distribution has been litigated repeatedly. A 1993 U.S. Circuit Court case found it unconstitutional for Gideons to give Bibles to fifth-grade students in Indiana.

In other states, schools have been allowed to designate a spot on their property where religious materials can be left and students can voluntarily browse them. In general, courts have taken a stronger stand against any religious material going to younger, more impressionable students, said Kevin McDowell, a general counsel with the Indiana Department of Education, who has studied the issue.

"The courts are pretty consistent," McDowell said. "Schools cannot look like they're promoting religion."

Mark Crawford, a Charles County school board member, said he wants to discuss the topic more before making a decision, but he said he believes Bibles could be beneficial for instilling morals and character. "I think some people have been scared of the idea of separation of church and state to the point they . . . have become overly cautious," he said.

Crawford is part of the majority on the board that supports introducing the theory of creationism into the science curriculum. They argue that students need exposure to all theories about the origin of life so they can make educated decisions.

"I believe that if we are teaching evolution, we should have a section on creationism as well, and any other theory," board Chairman Kathy Levanduski said. "Let's motivate our kids to be creative thinkers."

John Krehbiel, a tenth-grade biology teacher at Westlake High School in Waldorf, said the recommendation to teach creationism in science is absurd. "Supernatural beliefs simply don't belong in a science class," he said. "We deal with the scientific evidence available. If they bring this in to a science curriculum and want to talk about evidence, I'll rip it to shreds."

The list of moral and religious goals, which the board said it would begin discussing October 12, left some teachers "absolutely flabbergasted," said Leslie Schroeck, a guidance counselor at La Plata High School. "Basically these people are telling you how you should be and, if you're not, you're a bad person," said Schroeck, who has two young daughters, one at Berry Elementary School in Waldorf. "If this is what they're going to do, I'll pull my kids out of school and teach them myself." Reported in: *Washington Post*, October 10.

Dover, Pennsylvania

In the boldest strike against the teaching of evolution in more than a decade, the school board of this one-stoplight farming town has tilted its textbooks against virtually the entire scientific establishment. By mandating that ninth-grade biology teachers include "intelligent design" in their instruction, board members set a precedent. Never before has a school district decided to offer intelligent design, which suggests that only the action of a higher intelligence can explain the complexities of evolution. Moreover, say observers, it is a sign of what's to come.

"We're seeing a growing number of these cases," says Eugenie Scott, director of the National Center for Science Education in Oakland, California, a group that seeks to protect evolution education. "Certainly, with the greater confidence given to the religious right in the last election, we see no end in sight."

Near Atlanta, in suburban Cobb County, the local school board demanded that teachers put stickers inside the front cover of middle and high school science books. They read, in part: "Evolution is a theory, not a fact." In rural Wisconsin, the Grantsburg school board voted last month to allow teachers to discuss various theories of creation in their classrooms, opening the door to intelligent design.

Together with the decision by the Dover school board, the flare-ups point to an emerging trend—an escalating battle against the teaching of evolution which has been building slowly for nearly two decades.

Since the United States Supreme Court in 1987 outlawed the teaching of creationism in public schools on the grounds of separation of church and state, anti-evolution activists have all but dropped divine creation and instead focused solely on discrediting Darwin.

That they are finding traction—especially in places like Dover—is not surprising. Traditionally agrarian, traditionally Republican, this is a town of small brick and clapboard houses, framed by autumnal arrangements of pumpkins and hay bales, and set amid rolling hills. It is a slice of the Midwest in the mid-Atlantic—the image of wheat-waving countryside perched on the edge of York's suburban sprawl.

And now a text known around here simply as the "panda book" has made Dover the local stage for a national drama. The book's full name is *Of Pandas and People*, and it is the newest addition to the Dover science curriculum. It is not mandatory reading, says district superintendent Richard Nilsen, adding: "The teachers have a [different] biology book, and when they get to the origins of life, they state that if anyone wants to look at another book, they give them the 'panda' book."

Those who take it will learn about intelligent design. Intelligent design steers clear of the claims made by creationists: that the world is roughly 6,000 years old and that life was created in its present form by God. Intelligent design accepts an ancient Earth and even embraces evolution.

But where most scientists see a series of fits and starts—evolutionary trials and failures—eventually leading to life as we know it, proponents of intelligent design see the guiding hand of some greater wisdom. For example, natural selection is not enough to explain the "eerie perfection" of the genetic code, says John Calvert of the Intelligent Design Network, an advocacy group in Shawnee Mission, Kansas. Something so flawlessly "designed" could not be the product of random actions, he says.

Proponents of intelligent design make no claim to knowing the source of this order. No scientist "can use science to get to what that intelligence is," says John West of the Discovery Institute in Seattle, which backs intelligent-design research.

But for much of middle America, it's easy enough to fill in the blank. "The book's going to be a good resource for children and parents who try to believe in God and be religious," says John Workman, whose daughter is a sophomore at Dover High. "God should always be in the country, and in the schools."

Even here, intelligent design has rankled school board members. At one tumultuous meeting, a supporter of the change reportedly asked an opposing member whether she was "born again." After the plan passed, two board members resigned. In Cobb County, meanwhile, several parents have sued to make the district remove the "evolution is a theory" stickers.

For their part, scientists don't feel that they can budge. Evolution is a theory only in the scientific sense of the word —like the theory of a sun-centered solar system, they say. The fact is, in contrast to the uncertainty about evolution among average Americans, scientists are nearly unanimous in their acceptance of it. To them, teaching anything else in classrooms as "science" is an adulteration of the word.

Moved in large part by cases like those in Pennsylvania and Georgia, *National Geographic* recently ran a cover story headlined: "Was Darwin Wrong?" The first page of the article answered: "No." "Science has to be based on facts," said William Allen, editor of the magazine. "When you are talking about creationism and intelligent design, there is no scientific basis." Like many others, he agrees that a discussion of different creation theories could be suitable for social studies or comparative religion—just not science class.

And to Dover parent Holly Martz, that sounds about right. Intelligent design, she says, is "intertwined with religion," and says if it is taught, the variety of religions should be taught. " If they present all the views, that's fine." Reported in; *Christian Science Monitor*, November 23.

publishing

Washington, D.C.

In the summer of 1956, Russian poet Boris Pasternak—a favorite of the recently deceased Joseph Stalin—delivered his epic *Doctor Zhivago* manuscript to a Soviet publishing house, hoping for a warm reception and a fast track to readers who had shared Russia's torturous half-century of revolution and war, oppression and terror. Instead, Pasternak received one of the all-time classic rejection letters: A 10,000-word missive that stopped just short of accusing him of treason. It was left to foreign publishers to give his smuggled manuscript life, offering the West a peek into the soul of the Cold War enemy, winning Pasternak the 1958 Nobel Prize in literature and providing Hollywood with an epic film.

These days, Pasternak might not have fared so well.

In an apparent reversal of decades of U.S. practice, recent federal Office of Foreign Assets Control regulations bar American companies from publishing works by dissident writers in countries under sanction unless they first obtain U.S. government approval. The restriction, condemned by critics as a violation of the First Amendment, means that books and other works banned by some totalitarian regimes cannot be published freely in the United States.

"It strikes me as very odd," said Douglas Kmiec, a constitutional law professor at Pepperdine University and former constitutional legal counsel to former presidents Reagan and Bush. "I think the government has an uphill struggle to justify this constitutionally."

Several groups, led by the PEN American Center and including Arcade Publishing, have filed suit in U.S. District Court in New York seeking to overturn the regulations, which cover writers in Iran, Sudan, Cuba, North Korea and, until recently, Iraq.

Violations carry severe reprisals—publishing houses can be fined $1 million and individual violators face up to ten years in prison and a $250,000 fine.

"Historically, the United States has served as a megaphone for dissidents from other countries," said Ed Davis of New York, a lawyer leading the PEN legal challenge. "Now we're not able to hear from dissidents."

The regulations already have led publishers to scrap plans for volumes on Cuban architecture and birds, and publishers complain that the rules threaten the intellectual breadth and independence of academic journals.

Shirin Ebadi, the 2003 Nobel Peace Prize winner, has joined the lawsuit, arguing that the rules preclude American publishers from helping craft her memoirs of surviving Iran's Islamic revolution and her efforts to defend human rights in Iranian courts.

In a further wrinkle, even if publishers obtain a license for a book—something they are loathe to do—they believe the regulations bar them from advertising it, forcing readers to find the dissident works on their own.

"It's absolutely against the First Amendment," fumed Arcade editor Richard Seaver, who hopes to publish an anthology of Iranian short stories. "We're not going to ask permission (to publish). That reeks of censorship."

Officials from the U.S. Treasury Department, which oversees OFAC, declined comment on the lawsuit, but spokeswoman Molly Millerwise described the sanctions as "a very important part of our overall national security."

"These are countries that pose serious threats to the United States, to our economy and security, and our well-being around the globe," Millerwise said, adding that publishers can still bring dissident writers to American readers as long as they first apply for a license. "The licensing is a very important part of the sanctions policy because it allows people to engage with these countries," Millerwise said. "Anyone is free to apply to OFAC for a license."

Critics say they shouldn't have to. "We have a long tradition of not accepting prior restraint," said Wendy

Strothman of Boston, who hopes to serve as Ebadi's literary agent should the regulations be struck down. "The notion of getting a license seems to me to be completely counter to the spirit of the First Amendment. . . . It's really, for me, mostly about the notion of freedom of expression."

The literature that might be lost to American readers is impossible to measure, but in recent months the best-seller lists have been dominated by Azar Nafisi's *Reading Lolita in Tehran*, a memoir she wrote in exile. And Marjane Satrapi's graphic novel, *Persepolis: The Story of a Childhood*, written and published after her family left Iran for France, has found an international audience.

Tom Miller, author of *Trading with the Enemy: A Yankee Travels through Castro's Cuba*, said the regulations not only "nullify the First Amendment" but would dampen the hopes of censored Cuban writers. "It would be all the more depressing," said Miller, who travels to Cuba several times a year under U.S. licenses for journalistic, academic or cultural purposes. "There are two places Cubans get published outside of Cuba—Spain and the States. To cut that short list in half is devastating. In the United States, it means less artistic and literary infusion from overseas."

Curt Goering, deputy executive director for Amnesty International, a human-rights monitoring group, criticized the regulations as "a violation of some fundamental human rights." Goering said international covenants recognize the right of people to receive and distribute information regardless of political boundaries. "It's yet another example of the hypocrisy of this administration on human rights," Goering said, adding that while the United States defends its role in Iraq as a defense of liberty at home, it is "blocking" publication of dissident voices.

Kmiec, who is not part of the legal challenge, said the First Amendment—and subsequent court rulings—generally preclude the government from restricting publications before they are made. "It does allow for limitations where there are clear and present dangers and compelling foreign policy or other interests that can be tangibly and authentically demonstrated," Kmiec said. "But short of that special application and very rare circumstance, government censorship is properly off-limits. These efforts to restrain in advance are almost sure to fail."

The dispute centers on a Treasury Department 2004 interpretation of regulations rooted in the 1917 Trading With the Enemy Act, which allows the president to bar transactions with people or businesses in nations during times of war or national emergency. A 1988 amendment by Rep. Howard Berman (D-CA) relaxed the act to effectively give publishers an exemption while maintaining restrictions on general trade.

In April, OFAC regulators amended an earlier interpretation to advise academic publishers that they can make minor changes to works already published in sanctioned countries and reissue them. But the regulators said editors cannot provide broader services considered basic to publishing, such as commissioning works, making "substantive" changes to texts, or adding illustrations.

U.S. publishers are allowed to reissue, for example, Cuban communist propaganda or officially approved books but not original works by writers whom the Cuban government has stifled.

In a letter to Treasury officials this past spring, Berman described the regulations as "patently absurd" and said they form a "narrow and misguided interpretation of the law."

"It is in our national interest to support the dissemination of American ideas and values, especially in nations with oppressive regimes," Berman said. "At the same time, [the Berman amendment] is intended to ensure the right of American citizens to have access to a wide range of information and satisfy their curiosity about the world around them." Reported in; *Seattle Times*, December 8.

church and state

Washington, D.C.

The Bush Administration has decided it will stand by its approval of a book claiming the Grand Canyon was created by Noah's flood rather than by geologic forces, according to internal documents released October 13 by Public Employees for Environmental Responsibility (PEER). Despite telling members of Congress and the public that the legality and appropriateness of the National Park Service offering a creationist book for sale at Grand Canyon museums and bookstores was "under review at the national level by several offices," no such review took place, according to materials obtained by PEER under the Freedom of Information Act. Instead, the real agency position was expressed by NPS spokesperson Elaine Sevy as quoted in the Baptist Press News: "Now that the book has become quite popular, we don't want to remove it."

In August 2003, Grand Canyon National Park Superintendent Joe Alston attempted to block the sale of *Grand Canyon: A Different View*, by Tom Vail, a book explaining how the park's central feature developed on a biblical rather than an evolutionary time scale. NPS Headquarters, however, intervened and overruled Alston. To quiet the resulting furor, NPS Chief of Communications David Barna told reporters that there would be a high-level policy review, distributing talking points stating: "We hope to have a final decision in February [2004]." In fact, the promised review never occurred.

In late February, Barna crafted a draft letter to concerned members of Congress stating: "We hope to have a final decision on the book in March 2004." That draft was rewritten in June and finally sent out to Congressional representatives with no completion date for the review at all.

NPS Headquarters did not respond to a January 25 memo from its own top geologists charging that sale of the book

violated agency policies and undercut its scientific education programs. The Park Service also ignored a December 16, 2003, letter of protest signed by the presidents of seven scientific societies.

"Promoting creationism in our national parks is just as wrong as promoting it in our public schools," stated PEER Executive Director Jeff Ruch. "If the Bush Administration is using public resources for pandering to Christian fundamentalists, it should at least have the decency to tell the truth about it."

The creationist book is not the only religious controversy at Grand Canyon National Park. One week prior to the approved sale of *Grand Canyon: A Different View*, NPS Deputy Director Donald Murphy ordered that bronze plaques bearing Psalm verses be returned and reinstalled at canyon overlooks. Superintendent Alston had removed the bronze plaques on legal advice from Interior Department solicitors. Murphy also wrote a letter of apology to the plaques' sponsors, the Evangelical Sisterhood of Mary. PEER has collected other instances of what it calls the Bush Administration's "Faith-based Parks" agenda. Reported in: PEER Press Release, October 13.

broadcasting

Los Angeles, California

Fox Broadcasting is appealing a record-setting $1.18 million fine for airing racy fare on a show called *Married by America*, saying the government's indecency rules for broadcast television are unconstitutional because they don't apply to cable and satellite television. Fox said the show was not indecent, and arguing that over-the-air broadcasters are now treated as "second-class citizens" by a Federal Communications Commission that unfairly holds them, but not their rivals, to decency standards.

If the FCC upholds the fine, Fox could take the case to court, creating the first test case against federal indecency standards in a quarter of a century, media lawyers said. The indecency rules are based on a 1978 Supreme Court ruling—well before the widespread use of cable and satellite radio and television, the Internet and technologies that allow parents to block objectionable material. Even some within the FCC have said that the rules are ripe for legal challenge.

"First and foremost, the commission's indecency regulations no longer can withstand constitutional scrutiny," Fox's filing to the FCC reads. "Given the tremendous technological changes that have transformed the modern media environment, the commission simply cannot justify an intrusive, content-specific regulation of broadcasters."

Executives at News Corp, which owns Fox, declined to comment, saying they wanted the filing to speak for itself. Executives at the other networks also declined to comment; both CBS and NBC have high-profile indecency appeals before the FCC. CBS is appealing a proposed $550,000 fine spurred by Janet Jackson's Super Bowl halftime show in February (see page 24) and NBC is appealing an indecency ruling caused by singer Bono's use of obscenity during a 2003 awards show.

"This is a potential test case in the way that Bono and the Super Bowl are all potential test cases," said Kurt A. Wimmer, a media lawyer for Covington & Burling who is representing some Fox affiliate stations fined for *Married by America.*

On April 7, 2003, 169 Fox-owned and affiliate stations broadcast an episode of the show, since canceled, that featured whipped-cream-covered strippers at a bachelor party and digitally obscured nudity. In October, the FCC found that the show's contents violated the agency's indecency standards, which prohibit broadcast of sexual or excretory matter that is "patently offensive" between 6 A.M. and 10 P.M., when children are most likely to be watching. The agency fined each of the 169 stations $7,000, Fox's first indecency fine.

The FCC's rules cover over-the-air television and radio broadcasts but not programming that is transmitted via cable or satellite networks, based on the notion that the broadcasts depend on the public airwaves while customers chose to subscribe to cable or satellite services. The same is true of radio: pay satellite radio networks XM and Sirius are exempt from federal decency standards that their free, over-the-air AM and FM rivals must obey.

If Congress attempted to extend broadcast indecency standards to cable and satellite, lawmakers would face several First Amendment obstacles, media lawyers say. If, on the other hand, Congress attempted to roll back decency standards on broadcast, they likely would face significant political pressure from parents groups and socially conservative organizations.

Broadcast television has been losing audience share to cable and satellite networks steadily since their inception, and cable now commands the larger aggregate prime-time audience. Viewers make little distinction between channels 4 and 40 on their remote controls, and few probably realize that the FCC has authority over only the broadcast channels they watch—typically, three to ten channels on a 200-channel menu.

"Indeed, the massive expansion of cable and satellite video programming, together with the advent of the Internet, renders obsolete the second-class treatment of broadcasters under the First Amendment," the Fox filing reads. "These technological and marketplace changes make clear that regulation of indecency, which the commission itself recognizes is constitutionally protected speech, cannot possibly survive strict scrutiny review."

The FCC's power to fine broadcasters for indecency was upheld by a 1978 Supreme Court case, *FCC* v. *Pacifica Foundation*, which concerned a George Carlin comedy routine filled with obscenities that was broadcast in the afternoon on New York's Pacifica radio station.

"I think Pacifica is pretty wobbly," Wimmer said. Some of Fox's affiliates are arguing that they were not responsible for the broadcast because they did not see it ahead of time. In the Janet Jackson case, the FCC fined only CBS's twenty owned stations, not the more than two hundred affiliates, judging that the affiliates had no way of knowing what would happen during the halftime show.

Andrew Jay Schwartzman, president of the Media Access Project, an advocacy group that has challenged the FCC on a number of issues, said Fox's appeal of the "Married By America" fine is "certainly setting up a challenge to the FCC's Pacifica case."

"This is clearly heading for a series of confrontations," he said. Reported in: *Washington Post*, December 3.

Los Angeles, California

VIACOM and the Walt Disney Company said October 21 that they had reached an agreement with the Federal Communications Commission to pay a total of $1.5 million to settle accusations that they violated limits on the use of advertising during children's programming. Viacom, the parent of the Nickelodeon cable channel, will pay $1 million and the ABC Family channel, owned by Disney, will pay $500,000, according to the FCC. A spokesman for the commission said it was the largest fine the agency had ever levied involving commercial advertising and children's programs.

Under FCC rules, only ten-and-a-half minutes of commercials can be shown during each hour of programming intended for children on weekends and twelve minutes an hour during the week. In addition, there is a ban on commercials for products related to a specific program. Michael K. Powell, the chair of the FCC, said in a statement that the agency would vigorously enforce limits on advertising on children's programming.

A spokesman for Nickelodeon, Daniel Martinson, said that after a random audit the channel was asked to review the number of its commercials from November 2003 to August 2004. He said Viacom had counted some one-minute commercials as a single ad instead of two, as the FCC requires. As a result, he said, programs contained more ads than were allowed.

As part of the settlement, Nickelodeon agreed to give up 1,021 30-second spots in the future, he said. In addition, Nickelodeon had 145 instances of commercials for products associated with programs. The ABC Family channel violated the FCC ban on commercials for products on particular shows. "We have a two-hour kids block in the morning," said an ABC spokeswoman, Nicole Nichols. "You cannot put an ad for a product generated by the show, such as a Beyblade game on a Beyblade show." ABC Family was cited for thirty-one incidents.

Nichols said in a statement that a computer system failed to identify the children's programs as restricted from certain commercials and that the ads were placed unintentionally. She said the system had been revamped to prevent errors in the future.

Andrew J. Schwartzman, president of the Media Access Project, said the announcement was "hardly a surprise because broadcasters and cable companies are all pushing the envelope. They know there has been a relatively low risk of FCC enforcement," he said. "While these fines may seem substantial, they are not a lot more than the cost of doing business, and it is much less important than the fact that the FCC appears to be ignoring other more important issues such as misclassifying entertainment programming like *The Flintstones* as educational programming."

Martinson, the Nickelodeon spokesman, countered that over ten months, the audit showed the company was under the FCC commercial limits 85 percent of the time and cumulatively under the total allotment by 12 percent. "These were honest mistakes," he said. Reported in: *New York Times*, October 22.

Washington, D.C.

Media giant Viacom, Inc., has agreed to pay a record $3.5 million to erase a number of proposed radio indecency fines leveled by the Federal Communications Commission, including one against the "Opie & Anthony Show" and another against shock jock Howard Stern. The agreement covers indecency violations committed at sixteen of Viacom's Infinity Broadcasting radio stations. It also would erase all pending listener complaints. The company is fighting a separate $550,000 fine against CBS television stations that the FCC proposed for Janet Jackson's breast-baring Super Bowl halftime show performance (see page 25).

"We have now resolved all outstanding matters before the FCC related to indecency except for the Super Bowl," Viacom said in a statement. "While we deeply regret the incident involving Janet Jackson, we believe that a government fine for an unintentional broadcast is unfair and unwarranted and we are challenging that decision."

The biggest fine covered in the settlement was spurred by an August 2002 broadcast of the "Opie & Anthony Show" in which the hosts, since fired and now employed by XM Satellite Radio, aired what the FCC described as a "couple engaged in actual or simulated sexual activity inside [New York's] St. Patrick's Cathedral while the program hosts . . . discussed that activity on the air."

The settlement also included a $27,500 fine proposed against Infinity's WKRK in Detroit for a July 2001 Stern show involving discussions of oral sex. Stern is employed by Infinity, although he recently signed a $500 million deal with Sirius Satellite Radio Inc. to take his show there when his Infinity contract expires in January 2006.

Complaints to the FCC, Congress and broadcasters have skyrocketed over the past two years, as viewers have become increasingly vocal about what they view as a rise in racy and vulgar content on radio and television. Some advo-

cacy groups, such as the Parents Television Council, have mounted campaigns against shows they find offensive.

Federal regulations say that broadcasters who rely on public airwaves cannot air content involving sexual or excretory functions between 6 a.m. and 10 p.m., when children are most likely to be watching. No such regulations cover content on pay cable or satellite television and radio. Bills in each house of Congress would allow the FCC to raise its maximum indecency fine from $32,500 to as much as $500,000 per incident.

In October, the FCC proposed fining 169 Fox television stations a total of $1.2 million for an April 2003 episode of "Married by America" that featured whipped-cream-covered strippers and digitally obscured nudity.

In its statement, Viacom said it would try to "safeguard live broadcasts, such as cut-aways, and video and audio delays," that would prevent indecent material from airing.

The FCC settlement with Viacom follows a $1.7 million June deal with Clear Channel Communications and a $300,000 August agreement with Emmis Communications to settle indecency fines and complaints against each company's radio stations.

The FCC also denied indecency complaints against three television programs, all since canceled, saying that even though the material met some of the agency's indecency criteria, it was presented in a context that was not patently offensive and, therefore, not indecent. Dismissed were complaints against three October 2003 episodes of NBC's *Coupling* that included dialogue laced with sexual innuendo, a June 2003 episode of Fox's *Keen Eddie* that involved trafficking of horse semen on the black market, and two October 2002 episodes of the WB's *Off Centre*, which featured discussion of male genitalia and a stopped-up toilet. Both of the latter complaints were filed by the Parents Television Council.

"The FCC has attempted to hide this decision behind the holiday weekend. We are not going to allow that to happen," said L. Brent Bozell, III, president of the Parents Television Council.

FCC commissioners Kevin J. Martin, a Republican, and Michael J. Copps, a Democrat, disagreed with their three colleagues and said the "Off Centre" episodes should have been found indecent.

"In the past, if similar references, in similar contexts, have been made on radio shows, the Commission has fined the radio station," Martin wrote in a statement. "I believe the Commission should apply the same standard to television and radio broadcasts." Reported in: *Washington Post*, November 24.

New York, New York

Viacom isn't taking an indecency fine lying down and says neither the network nor its owned and operated stations should be penalized for Janet Jackson baring her breast during the 2004 Super Bowl halftime show. If the $550,000 fine stands, Viacom believes, it means the "end of live broadcasting as we know it."

In a 94-page response to the FCC for a $550,000 fine levied against Viacom-owned CBS and its twenty owned and operated stations for apparent indecency violations, Viacom says the costume reveal "was as much a shock to Viacom as to everyone else," prompting its CBS network to issue an immediate apology. Based on its own investigation of personnel, documents and videotapes regarding the halftime show Viacom "determined that no one at Viacom, CBS or MTV knew in advance the surprise finale of the Janet Jackson/Justin Timberlake performance."

Although CBS implemented a five-second delay for the live broadcast, the breast exposure shot reached air for 9/16th of a second, Viacom said. "The Super Bowl NAL appears to assume what the facts did not show—that someone at Viacom knew, or reasonably should have anticipated, that Janet Jackson and Justin Timberlake would deviate from halftime show plans that had been in the works since the previous year. Lacking any evidence to support the initial speculations about network complicity, the commission instead reached the illogical conclusion that the halftime show was designed to 'pander to, titillate and shock the viewing audience despite the facts that Viacom (1) did not plan the sole part of the performance the FCC says made it indecent—the "costume reveal; (2) did not know about it in advance; (3) did not sanction it (and would not have done so had it known); and (4) took steps to prevent anything at odds with broadcast standards," states Viacom.

Nothing in the record supports the commission conclusion that Viacom knew in advance the finale would be sexually suggestive, argues Viacom, which also says the agency is distorting the record when it characterizes Viacom's promotion of the show with a so-called "shocking" finale.

"The commission's decision in this case to propose a $550,000 forfeiture on CBS and its O&O stations for an unplanned, fleeting exposure of a woman's breast is anything but a 'restrained' or 'cautious' approach to enforcement. If it stands, the NAL will lead to the end of live broadcasting as we know it by placing broadcasters on notice they risk massive liability and perhaps license revocation if they fail to adopt technical measures to avoid the possibility of a spontaneous transgression," warns Viacom. Reported in: TV Technology.com, November 12.

access to information

Chicago, Illinois

The American Library Association (ALA) has joined a coalition of library, archives, and journalists' groups in filing an *amici curiae* brief with the U.S. Court of Appeals for the District of Columbia Circuit. The *amici* support public

access to information about the makeup of the National Energy Policy Development Group (NEPDG), convened by Vice President Cheney in 2001.

The *amici* believe the case is vital to preserving public access to government information under the Federal Advisory Committee Act (FACA) and share the conviction that broad access to government records protects values essential to representative democracy and promotes public participation in public policy.

The case was brought by the Sierra Club and Judicial Watch and heard at the United States Supreme Court in April 2004. The Supreme Court, recognizing the importance of the issue and the conflicting principles of separation of powers and public accountability, sent the case back to the U.S. Court of Appeals for the District of Columbia Circuit for adjudication.

The *amici* argue that the District Court should accept the Supreme Court's invitation to develop an innovative procedure for accommodating the competing interests asserted in this case. The *amici* recommend following the familiar model of the "Vaughn Index" used in Freedom of Information Act cases by the government to identify basic information without compromising confidentiality. That kind of information, in a "Cheney Log," should provide a sufficient basis to evaluate whether non-government persons participated in meetings of the NEPDG or its subgroups. If they did, participation would trigger FACA disclosure requirements that protect against the improper influence of special interests on government decision-making.

The brief states that, "when important constitutional principles are on a collision course, as in this case, courts should be wary of any winner-take-all resolution. The judicial goal in this case should be accommodation of the competing principles, not the exaltation of one and the obliteration of the other. Requiring the Cheney Log, based on the successful example of the Vaughn Index, promises such an effective accommodation." Reported in: managing-information.com, December 1.

homeland security

Guantanamo Bay, Cuba

U.S. military panels reviewing the detention of foreigners as enemy combatants are allowed to use evidence gained by torture in deciding whether to keep them imprisoned at Guantanamo Bay, Cuba, the government conceded in court December 2. The acknowledgment by Principal Deputy Associate Attorney General Brian Boyle came during a U.S. District Court hearing on lawsuits brought by some of the 550 foreigners imprisoned at the U.S. naval base in Cuba.

U.S. District Court Judge Richard J. Leon asked if a detention would be illegal if it were based solely on evidence gathered by torture, because "torture is illegal. We all know that." Boyle replied that if the military's combatant status review tribunals (or CSRTs) "determine that evidence of questionable provenance were reliable, nothing in the due process clause (of the Constitution) prohibits them from relying on it."

The International Committee of the Red Cross said November 30 it has given the Bush administration a confidential report critical of U.S. treatment of Guantanamo detainees. The *New York Times* reported the Red Cross described the coercion used at Guantanamo as "tantamount to torture." Reported in: *Springfield News-Leader*, December 3.

Washington, D.C.

Last month, Helen Chenoweth-Hage attempted to board a United Airlines flight from Boise to Reno when she was pulled aside by airline personnel for additional screening, including a pat-down search for weapons or unauthorized materials. Chenoweth-Hage, an ultra-conservative former Congresswoman (R-ID), requested a copy of the regulation that authorized such pat-downs. "She said she wanted to see the regulation that required the additional procedure for secondary screening and she was told that she couldn't see it," local TSA security director Julian Gonzales said. "She refused to go through additional screening [without seeing the regulation], and she was not allowed to fly," he said. "It's pretty simple."

Chenoweth-Hage wasn't seeking disclosure of the internal criteria used for screening passengers, only the legal authorization for passenger pat-downs. Why couldn't they at least let her see that? "Because we don't have to," Gonzales replied. "That is called 'sensitive security information.' She's not allowed to see it, nor is anyone else," he said.

Thus, in a qualitatively new development in U.S. governance, Americans can now be obligated to comply with legally-binding regulations that are unknown to them, and that indeed they are forbidden to know.

A new report from the Congressional Research Service describes with welcome clarity how, by altering a few words in the Homeland Security Act, Congress "significantly broadened" the government's authority to generate "sensitive security information," including an entire system of "security directives" that are beyond public scrutiny, like the one former Rep. Chenoweth-Hage sought to examine.

Much of the CRS discussion revolves around the case of software designer and philanthropist John Gilmore, who was prevented from boarding an airline flight when he refused to present a photo ID. "I will not show government-issued identity papers to travel in my own country," Gilmore said. Gilmore's insistence on his right to preserve anonymity while traveling on commercial aircraft is naturally debatable—but the government will not debate it. Instead, citing

(continued on page 37)

library

Fargo, North Dakota

School Superintendent David Flowers has agreed with earlier committee findings that the book *Mick Harte was Here* should remain in libraries for upper elementary children. The parents who challenged the book—Pamela Sund Herschlip and Mark Herschlip— said they will appeal the decision to the School Board. "Once again, the school has failed to protect our children from offensive material that doesn't need to be there," Mark Herschlip said.

The couple, who have a fourth-grade daughter, say the book includes profanity and religious slurs and is not appropriate for young children.

Flowers said the book by Barbara Parks has the "power to teach, inspire or enrich the reader's understanding of human issues." He said school librarians will honor parents' wishes regarding any restrictions they want to place on their child's library selections.

Mick Harte Was Here details the grieving process of a thirteen-year-old girl after her twelve-year-old brother dies in a bicycle accident. In 1997, the book won an award given annually by the North Dakota Library Association. The book has been challenged in five different school districts since 1998. In two of the cases, both involving Texas schools, the book was removed from the shelves for "offensive language." Reported in: In-forum.com, December 9.

(anti-evolution teachings . . . from page 3)

John West of the Discovery Institute in Seattle, the main sponsor and promoter of intelligent design, defended the theory he says addresses "evolution follies." "Mainstream criticism should be raised in classrooms," West said.

The Dover school district's challenge to the primacy of evolution is not isolated. In Cobb County, Georgia, parents sued a local school board for mandating that biology textbooks prominently display disclaimers stating that evolution is "not a fact." A federal court was expected to rule soon.

In Grantsburg, Wisconsin, a school board revised its science curriculum to teach "various scientific models of theories of origin." In Charles County, Maryland, the school board is considering a proposal to eliminate textbooks "biased toward evolution" from classrooms. Similar proposals were considered last year in Missouri, Mississippi and Oklahoma.

"There is nothing random about this," said Barry Lynn, executive director of the Americans United for Separation of Church and State. "You might say it's a planned evolution of an attack on the science of evolution."

The drive to bring more religion and what have been labeled "moral values" into the classroom goes beyond challenges to Darwin's theory, Scott said. The Charles County school board also proposed to censor school reading lists of "immorality" or "foul language" and to allow the distribution of Bibles in schools. In Texas, the nation's second-biggest school textbook market, the State Board of Education approved health textbooks that defined abstinence as the only form of contraception and changed the description of marriage between "two people" to "a lifelong union between a husband and a wife."

"The religious right has a list of topics that it wants action on," Scott said. "Things like abortion, abstinence, gays are higher up in the food chain of their concern, but evolution is part of the package."

This drive has found fertile ground in parts of Pennsylvania, where billboards reading, "Many books inform but only the Bible transforms" line the road, and family restaurants offer free booklets titled "What the Bible says about moral purity" and "The Bible is God's word" at the door.

"These brochures give you an idea where some people in this community are coming from," said Jeff Brown, 54, who, along with his wife Carol, 57, resigned from the school board after they voted against changing the biology curriculum.

Yingling, who voted in favor, said she believes God created the world in six days and doesn't believe in evolution "at all." Another board member who supported the measure, William Buckingham, refused to say what he believes but has identified himself as a born-again Christian.

But religious beliefs or motivations should be beside the point, said Richard Thompson, an attorney who represents

the board members. Thompson is the president of the Thomas More Law Center in Ann Arbor, Michigan, a pro-bono firm whose Web site promises "the sword and shield for the people of faith." The decision was "supportive of academic freedom more than anything else, " Thompson said.

While not talking about his own religious convictions, Thompson added, "When you look at cell structure and you see the intricacy of the cell, you can come to the conclusion that it doesn't happen by natural selection, there has to be intelligent design." Thompson said he is ready to represent the board in the Supreme Court if it comes to that. Some parents and teachers in Dover already have asked the Pennsylvania ACLU to sue the board on their behalf. Walczak said the organization's legal team is studying the case before deciding whether to go to court.

Brown, the former school board member, says he is not arguing with other people's religious beliefs. "Don't get me wrong: I don't have a problem with having these booklets where people can pick them up. But I do have a problem with people shoving this down the throats of our children on taxpayers' dollars," Brown said. "I happen to believe both in God and evolution," he said, and his wife nodded: "Hear, hear."

The Browns appear to be in the minority. Although public schools have been teaching evolution for decades, a national Gallup poll in November 2004 showed that only 35 percent of those asked believed confidently that Darwin's theory was "supported by the evidence." More than one-third of those polled by CBS News later in November said creationism should be taught instead of evolution. Reported in: *San Francisco Chronicle*, November 30. □

(censorship dateline . . . from page 12)

freedom of expression, saying that Columbia is committed to upholding both. "At the same time, we believe that the principle of academic freedom is not unlimited," he said. "It does not, for example, extend to protecting behavior in the classroom that threatens or intimidates students for expressing their viewpoints or that uses the classroom as a means of political indoctrination."

Bollinger said he asked Alan Brinkley, the university's provost, and Nicholas Dirks, vice president of arts and sciences, to work with Columbia's deans and department chairs to review the grievance processes in place for professors and students so that those "who feel they have experienced classroom threats or intimidation have a place where their complaints will be addressed."

More than 700 people, mainly faculty members from all over the world, signed a petition that Neville Hoad, an assistant professor of English at the University of Texas at Austin, circulated to support Massad. The two attended graduate school at Columbia together in the 1990s.

"Professor Massad has never been notified that any student in any of his classes has ever lodged a formal complaint about his teaching with the Columbia administration," Hoad wrote. What is happening to his colleague, he added, "strikes at the heart of academic freedom and university self-governance, and therefore it is crucial that the academic community at large respond."

Rashid Khalidi, director of Columbia's Middle East Institute, signed the petition. "Unsubstantiated accusations are being used for a witch hunt," he said. "You can't try somebody in the court of public opinion." He said it was an academic matter that the university should deal with. "I would be very unhappy if students did feel they couldn't bring issues they have around these kinds of matters to a university forum," he said, "but I do worry about faculty being intimidated."

Ms. Brown said she didn't know whether Columbia officials had received the petition, but said that the university was "very appreciative of people taking the time to let us know their concerns. We do take them seriously." Reported in: *Chronicle of Higher Education* online, October 27.

government publications

Redding, California

You're allowed to know that Shasta Dam sits on the Sacramento River twelve miles northwest of Redding, that it's 1,077.5 feet high and consists of 6.27 million cubic yards of concrete. The federal Bureau of Reclamation thinks it's all right to divulge that the structure is a curved gravity type dam built between 1938 and 1945 and modified in 1995 and 1996. That information is readily available on the bureau's Web site. But there is plenty the agency doesn't want you to know about Shasta Dam and others, and that quest for secrecy and security led one of its agents to a used-book store in Redding in November to collect two 61-year-old technical books on the dam that the bureau wants out of public view.

"They'll probably be taken and brought back and put in some secure spot, either here in the regional office or in our security office in Denver," bureau spokesman Jeff McCracken said from his Sacramento office. McCracken emphasized that the books—a pair of volumes that contain maps, diagrams and other technical information about the dam—were not seized and that the agent offered to pay for them. "We didn't confiscate anything," McCracken said. "We offered to purchase them, and the (manager) said, 'Go ahead and take them.'"

But civil libertarians, on edge over what they see as overzealous government intrusion into basic American rights,

say the incident is disturbing. "I think we have to worry when a government official decides on their own that they're going to start buying up all the books that they think are dangerous and removing them basically on their own say-so," said Chris Finan, president of the American Booksellers Foundation for Free Expression. "The looseness of that standard is a little unnerving."

The Shasta Dam episode began after a load of donated items came into the Second Time Around Thrift Store in Redding. The shop raises money for North Valley Catholic Services, said Jon Austin, a fifty-nine-year-old volunteer who donates time at the store. Among the items were the two volumes on the dam, which Austin and McCracken said probably were owned by a worker involved in its construction.

"They had a lot of original photographs, personnel lists, information, from how much concrete was used to how many fish were displaced," Austin said. "We had sold some things that were not dissimilar to them before, and there was nothing that said 'sensitive' or 'secret' on them."

So Austin posted a sales notice for the books on eBay, listing a starting price of $19.95. After a few days, with bids on the books topping $29, a woman walked into the store and showed the manager a badge, Austin said. The woman was the bureau's regional security agent, a law enforcement position created for the agency after the September 11, 2001, attacks. She offered to pay for the books, McCracken said, but the manager decided to give them to her after hearing that the bureau had security concerns.

"There was no court order; there was no anything," Austin said. "It was just her saying they wanted them." Austin said he and another volunteer were saying, "Don't give them to her without a court order." But the manager said she handed the materials over voluntarily; she did not want to impede national security.

McCracken said there had been no terrorist threats against the dam and that the agency learned of the books after a member of the public spotted the auction on eBay and called the bureau. "We do not have a security team monitoring the Internet," McCracken said. "We're just trying to be vigilant about the kinds of documents out there, and we don't offer this kind of information to the public since September 11."

Instead, the agency has removed some information about dams from its Web site; it also was involved in a previous effort to obtain a document offered on eBay that contained sensitive information, he said.

In that case, the document turned out to be government property.

But the notion that books, especially ones that have been in print for decades, should be hustled away from public view concerns some. The fact that the agent offered to purchase the books makes this incident less serious than if she had demanded them, said Neal Coonerty, owner of Bookshop Santa Cruz and former president of the American Booksellers Association.

"I think as far as anybody coming in and buying the books, (that) is fine," he said. "I think we have a lot of instances of overreaction by public officials to this stuff. We read about different plans being confiscated when in fact they're available on the Internet. I suspect if you went into lots of libraries you could find the information that was in those books."

In fact, Austin said he believes such information is available at libraries, and McCracken concedes that may be true. "There's obviously lots of stuff out there in public libraries that can be accessed," the bureau spokesman said. "We don't know if it is. If you want to go out and try to find it, go ahead."

But what would happen if the bookstore manager had refused to give up the books, or if a member of the public tipped the bureau to the fact that the same books it took from Redding were in a public library down the street?

"I don't know; we haven't had that issue," McCracken said. "We certainly aren't going to go out there and try to tromp around and identify things. "We're just trying to be a little more vigilant about what new documents may come available."

But Finan, whose New York-based booksellers group fights censorship, said such vigilance may go too far without some sort of oversight by a court. "We understand that they're trying to do the right thing," Finan said. "But what if there are no guidelines? What about books about airports? What about other books that could potentially be useful to a terrorist? National security also consists of protecting our civil rights and First Amendment rights, and we just can't have the government willy-nilly removing books that it thinks are dangerous." Reported in: *Sacramento Bee*, November 21.

Washington, D.C.

The Education Department last summer destroyed more than 300,000 copies of a booklet designed for parents to help their children learn history after the office of Vice President Dick Cheney's wife complained that it mentioned the National Standards for History, which she has long opposed.

In June, during a routine update, the Education Department began distributing a new edition of a ten-year-old how-to guide called *Helping Your Child Learn History*. Aimed at parents of children from preschool through fifth grade, the seventy-three-page booklet presented an assortment of advice, including taking children to museums and visiting historical sites. The booklet included several brief references to the National Standards for History, which were developed at UCLA in the mid-1990s with federal support.

Created by scholars and educators to help school officials design better history courses, they are voluntary benchmarks, not mandatory requirements. At the time, Lynne Cheney, the wife of now-Vice President Cheney, led a vociferous campaign complaining that the standards were not positive enough about America's achievements and paid too little attention to figures such as Gen. Robert E. Lee,

Paul Revere and Thomas Edison. At one point in the initial controversy, Cheney denounced the standards as "politicized history."

In response to the criticism, the UCLA standards were heavily revised, most critics were mollified and the controversy faded—but not for Cheney and her staff.

Helping Your Child Learn History is not unique. The Education Department produces a series of similar booklets on topics such as science, geography, reading and math. The booklets are designed to encourage parents to get involved in their children's education. Often, they contain passing references to the kinds of curriculum standards that scholars and educators have developed in recent years to improve school courses. More than 9 million copies of such booklets have been distributed.

Seldom have the booklets sparked controversy. That changed this summer. As the wife of the vice president, Cheney has no executive position in the federal government. But when her office spotted the references to the National Standards for History in the new edition of the history booklet, her staff communicated its displeasure to the Education Department. Subsequently, the department decided it was necessary to kill the new edition and reprint it with references to the standards removed. Though about 61,000 copies of *Helping Your Child Learn History* had been distributed, the remaining 300,000-plus copies were destroyed. Asked about the decision, one department official said they had been "recycled."

A new version of the booklet, the basis for the version that is being printed, is on the Education Department's website. It has been edited to remove references to the standards. For example, a clause in the foreword was removed that suggested President Bush supported instruction based on teaching standards that had been developed for various academic subjects.

Also missing from the department's Internet version is a suggestion that parents ask whether their children's curriculum incorporates the National Standards for History. An Internet address for the standards in a list of more than a dozen websites for parents was also removed, as well as a footnote elsewhere in the text that shows where to find more information about the history standards.

When initially approached about the booklets, the department issued a statement saying it had taken the unusual action because of "mistakes, including typos and incomplete information." Later, Susan Aspey, the department's press secretary, admitted that typographical errors were not the reason. Asked about the role of Cheney's office, Aspey responded: "The decision was ours to stop distribution and reprint. Both offices were on parallel tracks and obviously neither of us were pleased that the final document was not the accurate reflection of policy that was approved originally."

A representative for Cheney said her office did not order the destruction of the booklets. "Unequivocally, [neither] Mrs. Cheney nor her staff insisted on having the history publication recalled," said spokeswoman Maria Miller. "And that's just the bottom line."

Individuals with knowledge of the events said complaints from Cheney's office had indeed moved the Education Department to act. The individuals spoke to the *Los Angeles Times* on condition of anonymity.

Retired UCLA professor Gary Nash, co-chair of the effort to develop the National Standards for History, said he found the decision to destroy the booklets after Cheney's office complained "extremely troubling."

"That's a pretty god-awful example of spending the taxpayers' money and also a pretty god-awful example of interference—intellectual interference," Nash said. "If that's not Big Brother or Big Sister, I don't know what is."

According to Michelle M. Herczog, a consultant in history and social sciences for the Los Angeles County Office of Education, the standards have become a resource for many states in developing curriculum guidelines. They are also used to develop textbooks.

"Why the U.S. Department of Education would take that out of a federal document for parents is just beyond me," said Herczog, who was not involved in the development of the standards.

The answer is that, from their inception, the American history uidelines have been caught in an ideological feud. Cheney led the charge on the original UCLA draft. In a widely read opinion piece published in 1994, she complained that "We are a better people han the National Standards indicate, and our children deserve to know it."

The standards contained references to the Ku Klux Klan and to Sen. Joseph McCarthy, the anti-Communist demagogue of the 1950s, she said. And she noted that Harriet Tubman, the escaped slave who helped run the Underground Railroad, was mentioned six times. But Revere, Lee, the Wright brothers and other prominent figures went unmentioned, she said.

Recently, when the department decided to update *Helping Your Child Learn History*, Cheney's office became involved because of her long-standing interest in American history. Cheney is prominently quoted in the booklet as a "noted author and wife of the vice president." Two books on history that she wrote for children are mentioned in the booklet. The acknowledgments also credit her office for helping with the guide, which cost $110,360 to print, Aspey said.

The history booklet was first published in 1993. Having made education reform a centerpiece of its domestic agenda, the current administration decided to update the series. As the Education Department prepared the new edition, Cheney's office reviewed drafts and provided materials but the second lady was not personally involved, an aide said.

The references to the National History Standards were added at the Education Department after Cheney's office signed off on an initial draft that did not mention them.

Aspey said it was apparently done for consistency, because such standards were referred to in the department's other guidebooks for parents.

Aspey said mention of the standards implied official approval. "We don't endorse National Standards for History, and the document that was printed is not an accurate reflection of the policy of the government right now," she said.

New York University educator Diane Ravitch, who launched the *Helping Your Child Learn* series of publications as a former high-ranking Education Department official, said it was a mistake to suggest that the history standards were a template for the country. Nonetheless, Ravitch said, "I would have had a hard time recalling [the booklet], because I think the recall makes a big issue of something nobody would have paid attention to otherwise." Reported in: *Los Angeles Times*, October 8.

books

Bentonville, Arkansas

Wal-Mart cancelled an order for a best-selling book by Jon Stewart and the writers of The Daily Show after executives learned it contains a photo of nine naked, aged bodies, each with the superimposed head of a U.S. Supreme Court justice. *America (The Book)*, a mock school text that lampoons the U.S. government in much the same way the Comedy Central show spoofs the news, includes cutouts of the justices's robes and a caption asking readers to "restore their dignity by matching each justice with his or her respective robe."

Executives for the Bentonville-based retail giant deemed the book inappropriate for its shelves. "We were not aware of the image that was in the book (when Wal-Mart ordered it) and we felt the majority of our customers would not be comfortable with it," said Wal-Mart Stores, Inc., spokeswoman Karen Burk. "We offer what we think our customers want to buy. That just makes good business sense."

Jamie Raab, a publisher for Warner Books, which produced *America*, said the naked justice joke fits perfectly with the book's theme. "It's not gratuitous and it's very much in tune with the rest of the book," Raab said. "It's funny, yet to the point. When you undress the Supreme Court justices, they're just men and women and you have to judge them on who they are and what they do. It makes you look and think and laugh."

Raab said she doesn't fault Wal-Mart for its decision but added she didn't see the point in banning something that isn't intentionally sexually explicit.

Wal-Mart has a well-known policy of refusing to carry magazines with racy covers or CDs with explicit lyrics. The chain is offering the book on its website. Burk said the store's online customers are a "different audience" and the company wanted to give an option to people looking to buy the book from Wal-Mart. Reported in: Associated Press, October 21.

Washington, D.C.

Shirin Ebadi, the Iranian human rights activist who was awarded the Nobel Peace Prize in 2003, filed suit against the U.S. Treasury Department in federal court in New York because regulations of the Treasury Department's Office of Foreign Assets Control (OFAC) prohibit the publication of a book she wants to write about her life and her work for readers in the United States. Ebadi and The Strothman Agency, LLC, a literary agency that wants to work with her, filed the suit which will be joined to a legal challenge mounted by publishers and authors.

Ebadi's predicament provides a perfect illustration of the harm the OFAC regulations cause. Ebadi has been imprisoned for her human rights work in Iran. She could not publish the book she wants to write in Iran, but the OFAC regulations also prevent anyone from publishing it in the United States. As long as the regulations stand, the book will not come into being.

The regulations were first challenged in a lawsuit filed on September 27, 2004, by the Association of American Publishers Professional and Scholarly Publishing division (AAP/PSP), the Association of American University Presses (AAUP), PEN American Center (PEN), and Arcade Publishing. The publishing and authors' groups point to Ebadi as exactly the kind of author whose work should be published in the United States.

"Do we really want to deprive an Iranian human rights activist of the opportunity to communicate with the American public?" asked Marc H. Brodsky, Chairman of AAP/PSP and Executive Director of the American Institute of Physics. "These regulations are counter-productive and should simply be scrapped." Brodsky also responded to recent statements OFAC has made in defense of the regulations, in response to the September 27 suit: "According to OFAC, publishers who have concerns should just come to them for a license, but publishers should not have to ask their government for permission to use their constitutional right of free speech."

The regulations stem from U.S. trade sanctions imposed on particular countries. Congress has declared that trade embargoes may not be applied to "information and informational materials," but OFAC has defied that prohibition and maintained regulations that prohibit the publication of many books and articles by authors in Iran, Cuba and Sudan. The regulations are being challenged as violations of the specific instructions of Congress, as well as the First Amendment.

The OFAC regulations specifically forbid the publication of works by authors in Iran, Cuba, North Korea, and Sudan unless the works in question have been completed before any American is involved. Americans may not co-author

books or articles with authors in the embargoed countries and may not enter into "transactions" involving any works that are not yet fully completed—even though authors, publishers and agents generally must work with one another well before a new work is fully created—and Americans may not provide "substantive or artistic alterations or enhancements" or promote or market either new or previously existing works from the affected countries, unless they obtain a specific license from OFAC. Violators are subject to prison sentences of up to ten years or fines of up to $1,000,000 per violation.

Both Ebadi and the groups that initiated the challenge agree that Ebadi is only the most prominent example of a valuable voice that has been silenced. "There are untold numbers of less prominent authors whose stories have no chance of reaching us. The embargoes are cutting Americans off from scholars, dissidents, scientists and others in regions that are of enormous public concern," said Peter Givler, Executive Director of AAUP. He cited books on history, music and archaeology that university presses have been unable to publish, and even an article that had to be withdrawn from the scholarly journal *Mathematical Geology*.

"Ebadi's inability to publish her memoirs provides another example of the chilling effect the regulations are having on publishing in America," he said.

In her court filing, Ebadi decried the "enforced silence" the OFAC regulations impose, calling it "a critical missed opportunity both for Americans to learn more about my country and its people from a variety of Iranian voices and for a better understanding to be achieved between our two countries." Reported in: Business Wire, October 27.

broadcasting

Los Angeles, California

A thirty-second commercial warning gay men about the dangers of syphilis has been refused by television stations in Los Angeles. Three of the stations are owned by the same networks that refused to run an ad by the United Church of Christ showing a gay couple (see page 33).

Syphilis has become an increasing concern for health agencies in major cities where the number of cases, especially among gay men, is on the rise. In the past three years, the number of cases in Los Angeles County has grown from 93 to 364, and is an indication of unprotected sex. That has led to fears that the HIV/AIDS rate also will climb.

The commercial was produced by the AIDS Healthcare Foundation and paid for by the Los Angeles County public health agency. It features "Phil the Sore," a lumpy, red cartoon character with an earring who follows two men going home together. As the men later part, one of them, dressed in a bathrobe and underwear, says, "Let's do it again sometime." Phil then calls in his whole family, whose members carry boxes labeled "brain damage," "rash" and "blindness"—all potential results of syphilis.

Five local television stations—affiliates for NBC, Fox, CBS, UPN and the WB—all refused, although two later said they would consider showing the spot between 11:30 P.M. and 5 A.M., an offer that health officials said was not satisfactory because so few people would see it.

"It's distressing to hear that some important public health messages are not being aired," county public health director Dr. Jonathan Fielding said. As for the ad, Fielding said, "I don't find it objectionable."

"Would I show it to a four- to five-year-old? No. But do I think it's appropriate for an adult audience? Yes, I do," Fielding said.

KCBS-TV spokesperson Mike Nelson said he was troubled that the ad took such a lighthearted tone about a serious disease. "We found it to be inappropriate for a broadcast audience," Nelson said.

KNBC-TV spokeswoman Erin Dittman said her station rejected a request to run the spot during prime-time's *Will & Grace*, but said the station might be willing to run sometime after midnight. Reported in: 365gay.com, December 2.

Atlanta, Georgia

More than twenty ABC television affiliates did not participate in the network's Veterans Day broadcast of the movie *Saving Private Ryan*, saying its violence and language could draw sanctions from the Federal Communications Commission. The Steven Spielberg film, which includes profanity and a violent depiction of the D-Day invasion, ran uncut on ABC with relatively little controversy in 2001 and 2002.

In a statement on the Web site of WSB-TV in Atlanta, its vice president and general manager, Greg Stone, said broadcasters could not get any clarification from the FCC on whether the film violated its standards.

An FCC spokeswoman said the agency responded to complaints but did not monitor television broadcasts. The agency received a complaint after the 2001 broadcast of *Saving Private Ryan*, but it was rejected, she said.

The FCC has taken an aggressive stand against obscenity and profanity since Janet Jackson's breast was bared during this year's Super Bowl halftime show.

ABC said in a statement that it was proud to show the film again. Reported in: New York Times, November 11.

New York, New York

The CBS and NBC television networks refused to run television commercials for the United Church of Christ calling the ads "too controversial". The thirty-second commercial is aimed at attracting gays and others who feel alienated by other denominations. It features two muscle-bound "bouncers" standing guard outside a picturesque church and selecting which persons are permitted to attend

Sunday services. Written text interrupts the scene, announcing, "Jesus didn't turn people away. Neither do we." A narrator then proclaims the United Church of Christ's commitment that: "No matter who you are, or where you are on life's journey, you are welcome here."

UCC said that on November 30 CBS and NBC told the Church that the ads, which say "like Jesus—the United Church of Christ (UCC) seeks to welcome all people, regardless of ability, age, race, economic circumstance or sexual orientation," imply the acceptance of gay and lesbian couples and therefore violate network standards.

"Because this commercial touches on the exclusion of gay couples and other minority groups by other individuals and organizations," read an explanation from CBS, "and the fact the Executive Branch has recently proposed a Constitutional Amendment to define marriage as a union between a man and a woman, this spot is unacceptable for broadcast on the [CBS and UPN] networks." A rejection by NBC similarly declared the spot "too controversial."

"It's ironic that after a political season awash in commercials based on fear and deception by both parties seen on all the major networks, an ad with a message of welcome and inclusion would be deemed too controversial," said the Rev. John H. Thomas, the UCC's general minister and president.

The ad was accepted and will air on a number of networks, including ABC Family, AMC, BET, Discovery, Fox, Hallmark, History, Nick@Nite, TBS, TNT, Travel, and TV Land, among others.

"We find it disturbing that the networks in question seem to have no problem exploiting gay persons through mindless comedies or titillating dramas, but when it comes to a church's loving welcome of committed gay couples, that's where they draw the line," says the Rev. Robert Chase, director of the UCC's communication ministry.

CBS and NBC's refusal to air the ad "recalls the censorship of the 1950s and 1960s, when television station WLBT in Jackson, Mississippi, refused to show people of color on TV," said Ron Buford, coordinator for the United Church of Christ identity campaign. Buford, of African-American heritage, said, "In the 1960s, the issue was the mixing of the races. Today, the issue appears to be sexual orientation. In both cases, it's about exclusion."

The UCC has a long reputation for welcoming gays and lesbians. Although its individual churches are mostly autonomous, many offer blessing services for same-sex couples. In 1972 it became the first mainstream denomination to ordain an openly gay man. Reported in: 365Gay.com Newsletter, December 1.

Chapel Hill, North Carolina

The refusal by a North Carolina affiliate of National Public Radio (NPR) to run an underwriting announcement by a local group that carries out family-planning activities abroad has raised fears that the leadership of federal regulatory agencies may try to enforce a new kind of right-wing political correctness. Coming in the wake of the cut-off of funds to HIV/AIDS prevention organizations that discuss men who have sex with men and the investigation by the Internal Revenue Service (IRS) of the National Association for the Advanced of Colored People (NAACP), the action by the Chapel Hill-based WUNC radio station was cited as evidence of a growing chilling effect on free expression.

A statement released November 18 by twenty-two national feminist, health and population organizations decrying WUNCs refusal to run an underwriting statement that identified the sponsor, IPAS, as a non-profit group that protects women's reproductive rights, charged that the decision threatens the very concept of free speech.

"We are both outraged and saddened by WUNCs decision to cave in to the implicit threats of the Bush administration and are hopeful that they will recognize that a free press has a duty to defend the right of free speech," declared the letter, which was signed by Population Connection, the International Planned Parenthood Federation (IPPF), and the Women's Edge Coalition, among others.

IPAS, which provided family-planning and reproductive-health training, research, advocacy, and supplies in some forty countries on five continents, began underwriting programming at the rate of about $1,700 a month at WUNC last February. In return, the radio station, which is based at the University of North Carolina campus, ran occasional on-air acknowledgments of support.

The original announcement read: "IPAS, a Chapel Hill-based nonprofit that protects women's reproductive health and rights at home and abroad. More information available at www.ipas.org." In October, however, the station informed the organization that the word rights would no longer be permitted.

After several weeks of negotiation over the wording, IPAS announced that it would was ending its underwriting arrangement. "We highly value WUNC listeners and want to inform them about our work," said president Elizabeth Maguire, but there is no alternative language. "Promoting reproductive rights is half IPAS mission, and WUNC's position denies IPAS the right to describe itself accurately and completely."

WUNC general manager Joan Siefert Rose defended the decision, describing it as a precautionary measure designed to protect the station from possible action by the Federal Communications Commission (FCC). As a noncommercial broadcaster, she said, "we are not allowed to broadcast donor acknowledgments that include language with political meaning. My first responsibility is to be a good steward of our FCC license."

While Rose conceded that the FCC has never defined reproductive rights as falling within the proscribed category for advertisers or underwriters, she stressed that the FCC can still punish stations retroactively if it determines that the words should not have been aired.

Reproductive rights has indeed become politically controversial under the Bush administration, which has repeatedly tried, usually without success, to have the phrase deleted from communiques and declarations at international conferences. Administration officials have described the phrase as implicitly asserting a woman's right to have an abortion, a notion with which it and its Christian Right constituency strongly disagree.

Efforts to undermine the concept reproductive rights have also included the last-minute withdrawal of funding for a major international health conference in Washington because one of the featured speakers had publicly attacked the priority given by the administration to its abstinence-only agenda and the imposition of the so-called Global Gag Rule. The gag rule forbids foreign non-governmental agencies that receive U.S. foreign aid from engaging in any abortion-related activities—including even providing information about abortion to their medical clients or lobbying their own governments to ease anti-abortion laws—even if they use their own money for those purposes.

IPAS, which refused to tell its overseas partners to stop abortion-related activities, forfeited some $2 million in funding as a result of the gag rule.

In its negotiations with WUNC, the group argued that reproductive rights encompass much more than abortion. It also includes the right to information about reproductive health, infertility treatments, and contraception, according to Maguire, who described the phrase as a mainstream concept based on the U.S. Constitution, Supreme Court decisions, U.S. laws, and multiple international agreements signed by the United States.

In addition to the gag rule and its efforts at international forums to delete reproductive rights from the agenda, the administration has also ordered audits against organizations that oppose the administration's abstinence-only agenda. Reported in: OneWorld.net, November 23.

Charleston, South Carolina

A legislator wants to cut South Carolina Educational Television's budget after it aired a documentary on gays in the South. "I thought it was just social, leftist propaganda that they had no business airing," said state Rep. John Graham Altman (R-Charleston). "They were actively promoting homosexuality as an OK thing to do."

SCETV president Maurice Bresnahan said his agency wasn't promoting an agenda by showing *We Are Your Neighbors* as part of its twice-monthly Southern Lens series of stories about life in the South. "An analogy would be a librarian buying books for the bookshelf. *We Are Your Neighbors* was just one twenty-six-minute show out of 8,700 hours of programming. We are just presenting a point of view. This is just one book on a shelf of thousands of books," Bresnahan said.

Sunhead Projects, which produced the documentary, said they intended to promote acceptance through understanding. The Southern Lens series has featured documentaries on Moon Pies and Holocaust survivors in South Carolina. Another documentary, *Sentencing the Victim*, focused on the hardships victims endure during criminal trials. The movie, which featured a Charleston woman, is credited with spurring legislators to address shortcomings in the legal process to ease victims' burden. All of the documentaries are independently financed and cost the state nothing.

Altman sees the *Neighbors* documentary as an effort to promote a "militant homosexual agenda." He said if SCETV can afford to produce such programs to influence the Legislature, then it can afford to have its budget cut. The agency runs on a budget of $12.7 million, down from $20.3 million four years ago. "As soon as the session starts," he said, "I'm going after them."

During his re-election bid last year, Altman sent out fund-raising letters pointing out his Democratic opponent, Charlie Smith, was openly gay. Altman also is pushing legislation to strengthen the state's ban on same-sex marriages. Reported in: The State, November 29.

foreign

Beijing, China

Officials of China's Communist Party have banned the discussion of the role of intellectuals in the nation following a call by a newsweekly for them to take bold stands on public issues. Reporters at several Chinese publications confirmed that the Communist Party's publicity department, which is responsible for monitoring the news media, issued a ban in November prohibiting reports on the role of "public intellectuals," or scholars and other intellectuals who are involved in public issues.

The term "public intellectual" entered the Chinese vocabulary last year via Europe, but was not widely used until September, when the *Southern People's Weekly*, a new magazine, published a list of fifty such intellectuals. The list, which included leading scholars, artists, editors, and writers who have been outspoken, spread quickly around China via the Internet and soon became a hot topic of online discussion. The government responded by banning the debate on the Internet and in the news media.

One Chinese intellectual who appeared on the list and who spoke on condition of anonymity said the magazine article had frightened the Communist Party leadership, which he said felt threatened by the possibility that independent public intellectuals would play a greater role in the country's development.

In explaining its motive for publishing the list, the Southern People's Weekly said that the market economy had pushed a majority of intellectuals to the sidelines of society and that China desperately needed intellectuals to take stands. The weekly magazine said that China had as

many professors and experts "as there are hairs on a cow," but that those intellectuals who were brave enough to stand up for truth, "if they have not already vanished, have become the rarest of rarities."

The magazine heaped praise on the writer Susan Sontag, whom it called "the conscience of America" for her criticism of the American government and news media for "fanning the flames of anti-Islam" following September 11, 2001.

The first open attack against the concept of public intellectuals in China came in the pages of the *Liberation Daily* on November 15, in harsh language reminiscent of the Cultural Revolution, the decade-long period in the 1960s and '70s when intellectuals were disdained, abused, sent to labor camps, and even executed. The newspaper said: "The value of an intellectual lies in serving society and the masses. Chinese history has proven that only when intellectuals walk together with the Communist Party, become a part of the working class, and one with the masses can they fully manifest their own talents, and have a lofty position in history and society." Ten days later, the *People's Daily*, the party's official mouthpiece, reprinted the article.

The move by the publicity department followed a series of recent government restrictions on freewheeling discussions of political, social, and economic issues by scholars and reporters. In September the government shut down *Strategy and Management*, a popular monthly that served as a vehicle for scholarly debate, after it published an article critical of North Korea.

That same month, the government also closed Yita Hutu, an Internet bulletin board at Peking University that was popular among students and professors. Reported in: *Chronicle of Higher Education* online, November 30.

Tehran, Iran

Iran has continued its crackdown on journalists, with two arrests and has moved against pro-democracy Web sites, blocking hundreds of sites in recent months and making several arrests. Mahboubeh Abbas-Gholizadeh, the editor of the magazine *Farzaneh* and an advocate of expanded rights for women, was arrested November 1 after she returned from London, where she had attended the European Social Forum. Fereshteh Ghazi, a journalist for the daily newspaper *Etemad*, who also writes about women's issues, was arrested four days earlier after she was summoned to court to answer questions, said her husband, Ahmad Begloo.Ghazi wrote a letter in support of a woman who had been sentenced to death for killing a senior security official whom the woman accused of trying to rape her.

As part of its crackdown, the government has blocked hundreds of political sites and Web logs. Three major pro-democracy Web sites that support President Mohammad Khatami were blocked in August. A university in Orumieh in northwestern Iran shut down its Internet lab, contending that students had repeatedly browsed on indecent Web sites. The crackdown suggests that hard-liners are determined to curtail freedom in cyberspace. Many rights advocates had turned to the Internet after the judiciary shut down more than one hundred prodemocracy newspapers and journals in recent years.

The number of Internet users in Iran has soared in the last four years, to 4.8 million from 250,000. As many as 100,000 Web logs operate, and some of them are political.

The move to block Web sites has the support of a senior cleric, Ayatollah Makarem Shirazi, who declared in September in the hard-line daily newspaper *Kayhan* that Web sites should be blocked if they "insult sacred concepts of Islam, the Prophet and Imams," or "publish harmful and deviated beliefs to promote atheism or promote sinister books."

When the most recent wave of arrests began in September, authorities arrested the father of one Web technician, Sina Motallebi, who has taken refuge in the Netherlands. Motallebi had his own Web log and helped run one of the political Web sites. The father, Saeed Motallebi, was held for eleven days and then released.

"It seems that they do not want to deal with political figures who are behind the Internet sites and are willing to pay a price for what they are doing," said Alireza Alavitabar, a political scientist who is involved in the Emooz Web site. "Instead they want to deprive the Web sites of their staff and the capability to run them," he said.

Hanif Mazroui, the son of a former member of Parliament, Rajabali Mazroui, was arrested two months ago. He was a computer technician who worked for the daily *Vaghayeh Etefaghieh*, which was shut down. He has had no job since then. Omid Memarian, who was arrested October 10, was a journalist and a well-known figure among private aid groups. He had his own Web log in both Persian and English.

Memarian tried to attend a conference on Iranian civil society in New York before his arrest. He had obtained a visa, but in Frankfurt, American authorities refused to allow him to board his flight, saying that he was on a "no-fly" list, Human Rights Watch reported. He was arrested a few days after his return to Tehran.

"They want to find out how the Web sites are run, intimidate these young people and put an end to this medium," said Rajabali Mazroui, Hanif Mazroui's father.

The judiciary is drafting a law that will define cybercrimes. The chief of the judiciary, Ayatollah Mahmoud Shahroudi, has said the law will define the punishment for "anyone who disseminates information aimed at disturbing the public mind through computer systems."

It is not clear where the arrested journalists and technicians are being held. People who have spoken to their families have not said what the charges against them are. However, the judiciary spokesman, Jamal Karimirad, said that they would be tried on charges of "acting against national security, disturbing the public mind and insulting sanctities." Reported in: *New York Times*, November 8. □

(from the bench . . . from page 18)

enty years, or ninety-five years for corporations. And because registration and public notice are no longer required, thousands of copyright "orphans" are essentially invisible: they have not been registered; their owners cannot be found; yet they cannot be disseminated because they are not in the public domain.

But Judge Maxine M. Chesney, of the U.S. District Court for the Northern District of California, disagreed with that claim and dismissed the case November 19 without hearing arguments on it. In an opinion based in part on the U.S. Supreme Court's 2003 decision in *Eldred* v. *Ashcroft*, Judge Chesney wrote that laws that abolished the requirement that works be registered to receive copyright protection do not "alter the scope of copyright protection, but merely determine the procedures necessary to obtain or maintain such protection."

In rejecting a First Amendment challenge to the Sonny Bono Act last year in *Eldred*, the Supreme Court said that "when . . . Congress has not altered the traditional contours of copyright protection, further First Amendment scrutiny is unnecessary." The *Kahle* lawsuit argued that the shift from a conditional to an unconditional system did alter the "traditional contours of copyright protection," and, therefore, the courts must scrutinize the current copyright regime much more carefully Lawrence Lessig, a prominent expert on law and technology, handled the challenge for the archivists, along with two other legal scholars. All three are affiliated with Stanford Law School's Center for Internet and Society.

Jennifer S. Granick, executive director of the center, said that the judge got it wrong. "If you have a law that says you don't have to apply for copyright protection," said Granick, "that clearly is about scope." The plaintiffs plan to appeal the ruling. Reported in: *Chronicle of Higher Education* online, November 30; Free Expression Policy Project press release, November 30.

Now, Internet providers—including colleges—in the court's jurisdiction must provide John Doe defendants with details of the charges against them before breaking their anonymity. The notices should tell defendants how to challenge subpoenas for their names and offer lists of defense lawyers.

The court's mandate is the first of its kind, according to Wendy Seltzer, a lawyer with the Electronic Frontier Foundation, which filed a supporting brief in the case. Seltzer said the organization would file similar briefs in a number of other jurisdictions.

"I think the courts, as they're seeing more of these John Doe suits, are becoming more concerned that the people dragged into this don't really have a good way of knowing what their rights are," she said.

The ruling is unlikely to spur college technology officials to change how they respond to record-industry subpoenas. "Notifying students is pretty much something we either already do or that we want to do," said Georgia K. Harper, manager of intellectual property for the University of Texas System's general-counsel office. "The decision probably confirms that we have the right to do what we're doing."

It is doubtful that the order will affect the recording industry's policy of aggressively suing suspected song swappers. On October 28, the industry fired off another batch of lawsuits against 750 people it accuses of music piracy. Twenty-five campus-network users, at thirteen colleges and universities, were named in the suits. The colleges are Bloomsburg University of Pennsylvania; Indiana State, Iowa State, Ohio Northern, and Ohio State Universities; the Universities of Minnesota at Duluth, of Southern Mississippi, and of Wisconsin at Oshkosh; Grinnell and Hamilton Colleges; Michigan Technological University; and the State Universities of New York at Albany and at Morrisville. Reported in: *Chronicle of Higher Education* online, October 29. □

Internet

Philadelphia, Pennsylvania

A federal judge in Pennsylvania has ruled that Internet-service providers must notify network users—and inform them of their legal rights—before turning their names over to record-company officials accusing them of illegal song swapping.

Throughout the year, the recording industry has obtained the names of people it suspects of large-scale song trading by filing batches of "John Doe" lawsuits that ask Internet providers to identify users known only by their Internet addresses. The order, issued in October by Judge Cynthia M. Rufe of the U.S. District Court in Philadelphia, does not invalidate that practice but might slow it down.

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the statute on "sensitive security information," the Bush Administration says the case cannot be argued in open court. Reported in: *Secrecy News*, November 14.

Washington, D.C.

The Department of Homeland Security is requiring thousands of employees and contractors to sign nondisclosure agreements that prohibit them from sharing sensitive but unclassified information with the public. The department was rebuffed, however, when it also tried to require congressional aides to sign the secrecy pledges as a condition for gaining access to certain materials, majority and

minority spokesmen for the House Select Committee on Homeland Security said November 15.

The policy is "clearly illegal," according to an analysis by two major federal employees unions. The National Treasury Employees Union (NTEU) and the American Federation of Government Employees (AFGE), which together represent more than 60,000 DHS employees, asked the Department to immediately rescind the non-disclosure agreement and the related directive that requires it.

"Our members fully appreciate the need to safeguard classified and other highly sensitive information against unauthorized disclosure, as do we," wrote NTEU President Colleen Kelley and AFGE President John Gage in a November 23 letter to DHS Secretary Tom Ridge.

"The Directive and Non-Disclosure Agreement, however, go well beyond this legitimate purpose. They cover a virtually unlimited universe of information that is relevant to important matters of public concern and whose disclosure would have no adverse impact upon the national security."

"The possibilities for abuse inherent in a regime that authorizes unlimited searches and provides supervisors unbridled discretion to censor employee speech by simply stamping documents 'for official use only' are obvious," wrote NTEU and AFGE general counsels Gregory O'Duden and Mark Roth in a detailed analysis of the policy. Furthermore, "the Directive and Agreement violate both the First and Fourth Amendments. Therefore, we urge you to immediately withdraw the Directive and stop the further dissemination of the Agreement."

DHS official Valerie Smith said in an interview that all 180,000 employees and contractors are being required to sign the three-page forms as part of working for the agency, a policy formalized in May. State and local security officials are asked to sign the statement for classified information only. Smith said the agreements do not exempt underlying information from disclosure under the Freedom of Information Act. Signers are given the form "simply to inform and educate them about the sensitivity of that information and the need to protect it. . . . It does not do anything to further obscure or shroud that information," she said.

But congressional critics and government watchdog organizations such as the Federation of American Scientists called the policy a potentially precedent-setting expansion of official secrecy whose provisions are overly broad and unworkable, if not unconstitutional.

Ken Johnson, staffer for House Homeland Security Committee Chair Christopher Cox (R-CA), said GOP aides have been approached by DHS officials as a group and individually. One junior aide contacted directly signed the agreement, but his supervisors and Cox repudiated it as soon as they found out.

"We have steadfastly refused to sign any nondisclosure agreements. From our perspective it would be inappropriate, and at the very least unnecessary," Johnson said. "This is unclassified material and Congress has a right to it without signing away our lives." Democratic staff also refused to sign nondisclosure agreements, minority committee spokeswoman Moira Whelan said. "They're forgetting who's overseeing who," another panel official said.

Steven Aftergood, editor of the federation's newsletter, which reported the policy, said the DHS is sweeping whole categories of government information under restrictions previously used only for classified data. Such categories include "official use only" and "law enforcement sensitive."

"Its likely consequence will be to chill even the most mundane interactions between department employees and reporters or the general public," said Aftergood, who obtained a copy of the form under the Freedom of Information Act. "Employees will naturally fear that even the most trivial conversation could mean a violation of this draconian agreement, and so the result will be a new wall between the government and the public."

The form defines as "sensitive" any information that could "adversely affect the national interest or the conduct of federal programs" or violate a person's privacy, a much lower barrier than damaging national security. Violators risk administrative, disciplinary, criminal and civil penalties. One provision provides that signers consent to government inspections "at any time or place" to ensure compliance.

Scott Armstrong, representing U.S. newspapers and journalist groups, said the agreement imposes no limit on how long information can be restricted, and allows data to be declared sensitive or official "at the whim of any bureaucrat." Armstrong expressed concern that pending legislation to overhaul the intelligence agencies would give a new national intelligence director authority to remake the clearance classification system along the lines of the DHS plans.

Senate aides said the goal is to shift authority for classifying information to the new director, not to broaden that authority. "We have taken seriously the 9/11 Commission's concern that current security requirements nurture overclassification and excessive compartmentalization of information among agencies," Senate Governmental Affairs Committee Chair Susan Collins (R-ME) said. "We want to allow as much transparency and information sharing as possible without threatening the need to protect information and sources that is required of intelligence missions." Reported in: *Washington Post*, November 16; *Secrecy News*, November 29.

Washington, D.C.

The Census Bureau's decision to give to the Department of Homeland Security data that identified populations of Arab-Americans was the modern-day equivalent of its pinpointing Japanese-American communities when internment camps were opened during World War II, members of an advisory board told the agency's top officials November 9.

"This for the Arab-American community is 1942," said

Barry Steinhardt, a civil liberties lawyer and member of the panel, the Decennial Census Advisory Committee. "Thousands of Arab-Americans have been rounded up and deported."

The criticism came at a daylong special meeting held at the Census Bureau's headquarters to discuss the disclosure this summer that on two occasions after the attacks of September 11, 2001, the agency provided comprehensive reports to Homeland Security listing Arab-American populations by city and ZIP code.

The data, from the 2000 census, had already been made public on the agency's Internet site and did not include any individual names or addresses, information the agency is prohibited from disclosing. Further, Homeland Security officials have said the data were requested simply to help them decide at which airports they needed to post Arabic language signs, not for law enforcement purposes.

But the Census Bureau director acknowledged at the meeting that by tabulating and handing over the data to the Department of Homeland Security, even if doing so broke no laws, the agency had undermined public trust, potentially discouraging Arab-Americans or other minority groups from filling out future census forms.

"It affected the perception of the Census Bureau," said the director, Charles Louis Kincannon. "And that is a very important problem for us."

But Kincannon rejected comparisons to what occurred during World War II, when the bureau gave maps and statistics to the Army identifying where Japanese-Americans lived. "This is not 1942," he said. "That kind of internment is not going on."

The meeting largely drew leaders of a variety of ethnic and racial groups, some of them members of the committee, and the criticism there was voiced by many other than Arab-Americans. Representatives of Asians, Hispanics, blacks, American Indians and Native Alaskans each objected to the agency's action.

"Once you lose the trust of the public, it is hard to get it back," said Karen Narasaki, a member of the committee who said her parents and grandparents were sent to internment camps during World War II.

Concern also was raised about a new effort by the Census Bureau to prepare annual estimates of illegal immigrants as part of an overall population count. Those estimates, a recent report by the Government Accountability Office said, may permit approximate counts by geographic area of the number of illegal-immigrant children of school age, data that members of the committee said might ultimately be used against migrant families.

But Kincannon said that if the Census Bureau wanted to report population sizes accurately, it needed to try to count fast-growing immigrant and illegal-immigrant populations. "It is in our interest and the public's interest to have a good estimate," he said.

Since the disclosure over the summer that the data were given to the Homeland Security Department, the Census Bureau has already changed the way it handles requests from law enforcement agencies for special tabulations of census data or extractions of data already tabulated. Before any such information is now released, a senior administrator must approve the request. Requests that involve some "sensitive" populations—children, noncitizens, prisoners, the poor, the terminally ill and certain "small minority groups"—also require that high-level approval even if the data are not being shared with a law enforcement agency.

But several members of the advisory board said the new rule was too ambiguous, particularly when it came to determining which minorities were considered "sensitive." One solution suggested by committee members would be to release to the public any special tabulations prepared for law enforcement agencies, so that there would be less suspicion about what kind of data the Census Bureau might be sharing. Others urged the creation of a kind of ombudsman—a "privacy officer" who would routinely review these kinds of data requests.

Kincannon said he expected to issue a more permanent and comprehensive revision of rules in this area in 2005, to try to rebuild public confidence. "To conduct the census," he said, "we depend on the trust of the respondents." Reported in: *New York Times*, November 10.

Washington, D.C.

The intelligence agency overhaul given final approval on December 8 by the Senate also reorganizes the way the states grant driver's licenses, a change that civil liberties advocates and some security experts say could have far-reaching consequences.

Issuing driver's licenses has always been mostly a state function, but the new law requires the federal Department of Homeland Security to issue regulations on what documentation a state must require before it can grant a license. It also requires that the licenses be "machine readable," which will probably be accomplished through a magnetic stripe or a bar code or both.

The printed format of the piece of plastic will still be under state control. But to a person equipped with a reader, that will make little difference, because Washington will set the minimum national requirements for the machine-readable data. The federal government will gain control through airport checkpoints and other places where federal agencies demand identification. After a phase-in period, the government will refuse to accept licenses that do not comply with the standard. The same rules will apply to photo identification issued by states to nondrivers.

"We're really looking at a national ID system," said James C. Plummer, Jr., a policy analyst at Consumer Alert. "Basically, each state might have the name of the state written in a different font on the front, but there will be a mag-

netic stripe on the back containing virtually identical information." The new law requires digital photographs, meaning that the photos will be easily maintained in linked databases, he added.

Some motor vehicle administrators say national standards are needed. Until July 1, for example, Vermont issued licenses with no photographs. Now, new licenses in Vermont have photos, but people with old ones can still renew them without photos.

At the American Civil Liberties Union (ACLU), Greg Nojeim, associate director of the Washington legislative office, said, "Licenses that purport to meet the federal standard will become the gold standard." But Nojeim and others say they may not be nearly as secure as some people assume, because the "source documents," including birth certificates and Social Security numbers, are so easily faked. "It's a garbage-in, garbage-out situation," he said.

"The same people who manufacture fake driver's licenses today will be manufacturing fake national driver's licenses tomorrow," Nojeim said, although the price will increase, he predicted.

Some security advocates also complained that the requirements on source documents were not strong enough. Representative Candice S. Miller, a Republican who is a former secretary of state of Michigan, where she oversaw driver's licenses, was the author of the House language. She said the rules on sources might not be strong enough and that she would introduce legislation in the new Congress to standardize the process further, a spokesman said.

There are millions more Social Security numbers in circulation than there are living people eligible to hold them, according to experts, and birth certificates for fraudulent purposes, which do not have photos or other biometric identifiers, are freely available in some states.

Nojeim of the ACLU said making the licenses machine readable in a common format would allow any commercial entity that asks to see a license—ostensibly to back up the validity of a check or a credit card, for example—to be conveniently privy to a variety of information about the person. Most licenses are already machine readable, but the formats differ, along with the stored information.

The language in the bill was a compromise. The House version would have let the federal government set the eligibility requirements for licenses, but the Senate refused to go along. Under the compromise, individual states can still decide "what categories of individuals are eligible to obtain a driver's license or personal identification card."

That means the states that issue licenses to people without demanding proof of legal status in the United States can continue to do so.

At the American Association of Motor Vehicle Administrators, Jason King, a spokesman, said the solution was "better training for examiners at the front counter, so they know how to spot a counterfeit document." The association sees a simpler benefit in stronger license rules, namely, an improvement in highway safety. Of the 43,000 people killed on American roads in an average year, King said, about a fifth, or 8,600, die in crashes involving a driver who is "improperly licensed." In many of those cases, he said, a driver had a license revoked in one state and crossed a state line to obtain another fraudulently.

In addition to that problem, the states do not all trade information with one another about moving violations, so a driver who goes far from home and runs red lights or speeds may not be endangering his or her license. Reported in: *New York Times*, December 9.

colleges and universities

Washington, D.C.

A proposal by the federal government to create a vast new database of enrollment records on all college and university students is raising concerns that the move will erode the privacy rights of students.

Until now, universities have provided individual student information to the federal government only in connection with federally financed student aid. Otherwise, colleges and universities submit information about overall enrollment, graduation, prices and financial aid without identifying particular students. For the first time, however, colleges and universities would have to give the government data on all students individually, whether or not they received financial assistance, with their Social Security numbers.

The bid arises from efforts in Congress and elsewhere to extend the growing emphasis on school accountability in elementary and high schools to postsecondary education. Supporters say that government oversight of individual student data will make it easier for taxpayers and policy makers to judge the quality of colleges and universities through more reliable statistics on graduation, transfers and retention.

The change also would allow federal officials to track individual students as they journey through the higher education system. In recent years, increasing numbers of students have been attending more than one university, dropping out or taking longer than the traditional four years to graduate. Current reporting practices cannot capture such trends; a mobile student is recorded as a new student at each institution.

Under the proposal, the National Center for Education Statistics at the Department of Education would receive, analyze and guard the data. In making its case for the change, the center points to a history of working with student information and says it has never been forced to share it with law enforcement or other agencies. The proposal is supported by the American Council on Education, the American Association of State Colleges and Universities, and the State Higher Education Executive Officers Association, but opposed by other education organizations,

like the National Association of Independent Colleges and Universities.

A department overview of the proposal insisted that data would not be shared with other agencies and that outsiders could not gain access. By law, the summary says in capitals, "Information about individuals may NEVER leave N.C.E.S.," the National Center for Education Statistics.

But Jasmine L. Harris, legislative director at the United States Student Association, an advocacy group for students, said that since the September 11 attacks, the balance between privacy and the public interest had been shifting. "We're in a different time now, a very different climate," Harris said. "There's the huge possibility that the database could be misused, and there are no protections for student privacy."

She pointed to the National Directory of New Hires, a register of people who re-enter the workforce, which began as an effort to track job trends. Since its creation, however, the database has also been used to track parents who fail to pay child support or who owe the federal government non-tax debt, she said. "The door is wide open," Harris said.

Luke Swarthout, higher education associate at the State PIRG for Higher Education, said his civic group, which has always monitored consumer issues and privacy rights, was of two minds about the plan. Improving the available data was important for Congress, policymakers and the public, who finance higher education through government loans and grants, Swarthout said. "But any time you're compiling a list of millions and millions of students, as they go through college, move and have Social Security numbers, we get concerns from a privacy perspective."

For colleges to hand over information on individual students, Congress would have to create an exemption to existing federal privacy laws, said Sarah Flanagan, vice president for government relations at the National Association of Independent Colleges and Universities.

"The concept that you enter a federal registry by the act of enrolling in a college in this country is frightening to us," Flanagan said. She added that officials from some states had already announced they would like to match the data against prison records. In states where such data is already collected from public universities, she added, there has been pressure to check the school data on students against housing records, driver's licenses and employment records. Reported in: *New York Times*, November 29.

privacy

Washington, D.C.

The State Department will soon begin issuing passports that carry information about the traveler in a computer chip embedded in the cardboard cover as well as on its printed pages. Privacy advocates say the new format—developed in response to security concerns after the September 11 attacks—will be vulnerable to electronic snooping by anyone within several feet, a practice called skimming. Internal State Department documents, obtained by the American Civil Liberties Union under the Freedom of Information Act, show that Canada, Germany and Britain have raised the same concern.

"This is like putting an invisible bull's-eye on Americans that can be seen only by the terrorists," said Barry Steinhardt, the director of the ACLU Technology and Liberty Program. "If there's any nation in the world at the moment that could do without such a device, it is the United States."

The organization wants the State Department to take security precautions like encrypting the data, so that even if it is downloaded by unauthorized people, it cannot be understood.

Frank E. Moss, deputy assistant secretary of state for passport services, said the skimming problem "can be dealt with. We are certainly still working hard on the question of whether additional security measures should be taken."

The technology is familiar to the public in applications like highway toll-collection systems and "smart cards" for entering buildings or subway turnstiles. In passports, the technology would be more sophisticated, with a computer having the ability to query the chip selectively for particular information. The chip, expected to cost about $8, would hold 64 kilobytes of data, the same as early personal computers.

In October, the Government Printing Office awarded $373,000 in contracts to four manufacturers to design the passports, which would contain chips that stored all the printed data on the passport, as well as digitized data on the traveler's face. At an airport immigration checkpoint, an antenna could read a passport waved a few inches away. A digital camera could look at the traveler's face and compare it with the data from the passport chip.

The problem, though, is that the passport might be read by others, too. According to one document obtained by the ACLU, a State Department memo from September detailing negotiations on the subject, the American position is that the data "should be able to be read by anyone who chooses to invest in the infrastructure to do so."

Steinhardt described a test in which a chip was read from thirty feet away, but Moss of the State Department said that was in a laboratory and would be hard to duplicate in the field.

Government officials from the United States, Canada and western European countries, and chip manufacturing experts, have been discussing standards for chips in passports for more than two years under the auspices of the International Civil Aviation Organization, which is affiliated with the United Nations and promulgates a variety of standards for aviation. Steinhardt complained that the organization had ignored the civil liberties group's request to participate in sessions when standards were discussed.

The State Department, which issues about seven million passports a year, hopes to begin issuing a limited number with chips early this year, initially to government employees. To combat passport fraud and theft, the government will soon require all visitors who do not need visas to enter the United States—those who are deemed low security risks because of the countries they come from—to carry passports that are machine-readable and contain "biometric" information like fingerprints or facial measurements.

Australia is already issuing passports with chips, and others will follow soon, Moss said. And since passport requirements are usually reciprocal, the United States anticipates that those countries will demand similar features on American passports.

Neville G. Pattinson, the director of business development, technology and government affairs at Axalto, one of the vendors, said the problem with encryption was that the chip had to be readable by governments all over the world. But, he said, "there is a considerable concern over skimming." The chips raise the possibility of someone "brushing against you with the equipment, in a briefcase or another disguise, and hoping they can read it out of your pocket or purse," Pattinson said. Another possibility is someone embedding a reader in a doorway, he said.

But, he added, low-cost fixes were available. One would incorporate a layer of metal foil into the cover of the passport so it could be read only when opened. Another would put a password into the printed information in the passport. A reader would optically scan for the password, which would be visible only when the passport was open, and then use it to obtain data from the chip.

Another possibility would be to keep the passport in a foil pouch, like those issued with highway toll-collection devices so they can be carried through a toll booth without being read. In multilateral discussions, though, some experts said they feared that terrorists would use the pouches to smuggle weapons.

The ACLU is seeking to portray the new passports as part of a continuing loss of privacy. In March, the ACLU and twelve other organizations from North America, Europe and Asia signed a letter to the aviation organization saying they were "increasingly concerned that the biometric travel document initiative is part and parcel of a larger surveillance infrastructure monitoring the movement of individuals globally." Reported in: *New York Times*, November 26.

prisoner's rights

Denver, Colorado

The American Civil Liberties Union of Colorado (ACLU) announced November 30 the settlement of a lawsuit, filed in 2000 on behalf of a publisher's association,

eight publishers and seven prisoners, that challenged the standards and procedures employed by the Colorado Department of Corrections (DOC) for censoring books, newspapers, magazines, and political commentary.

"The DOC has agreed to a significant system-wide reform of its standards and procedures for reviewing incoming reading material," said Hugh Gottschalk, an ACLU cooperating attorney at Wheeler Trigg Kennedy, who led the litigation team. "We sincerely hope that this agreement, when fully implemented, will substantially improve the DOC's ability to consistently respect the constitutional rights of publishers and prisoners to exchange information and ideas that pose no threat to prison security."

The lawsuit alleged that the DOC's criteria for screening books and periodicals were overly broad, subjective, and unconstitutionally vague. The suit also targeted the procedures employed by the DOC to determine when and whether an incoming book or magazine would be withheld from a prisoner.

When the suit was filed, ACLU Legal Director Mark Silverstein charged that the DOC's flawed criteria and procedures produced "an arbitrary, erratic, inconsistent and irrational regime of censorship that repeatedly violates the constitutional rights of publishers as well as prisoners." Material censored by the DOC had included political commentary from both the left and right; religious periodicals and music magazines; critiques of the criminal justice system; publications that advocate for prisoners' rights; a report issued by the European parliament; David Mamet's play, "The Spanish Prisoner," Laura Esquivel's novel, *Like Water for Chocolate*; and a book criticizing hate groups by Morris Dees, Director of the Southern Poverty Law Center.

According to the ACLU, the settlement will produce substantial improvements. "The DOC has agreed to virtually all the procedural safeguards we advocated during settlement negotiations," Silverstein said. "The DOC has also agreed to narrow substantially the worst of the overbroad criteria for censorship that we challenged."

The settlement also provides that all DOC employees who participate in the review of incoming books and magazines will receive training—with ACLU input—on the new standards and procedures, and further provides for ACLU attorneys to monitor the DOC's implementation of the settlement for two years.

The agreement required the DOC to replace Administrative Regulation AR 300-26—which spells out procedures and standards for censorship—with a new version negotiated by the parties. U.S. District Court Judge Phillip Figa approved the settlement in August. The DOC formally adopted the new version of AR 300-26 in October.

We are very pleased with this settlement," Gottschalk said. "With these major reforms in standards and procedures, and after the training program is fully implemented next year, we are optimistic that these longstanding problems of inappropriate and unjustifiable censorship will be considerably reduced, without jeopardizing any of the DOC's legitimate interests in maintaining order within the prisons."

"Although prisoners have violated the law, they still have a First Amendment right to read and obtain access to ideas and information," said Gwen Young, an ACLU volunteer attorney who served as co-counsel in the case. "Publishers have a First Amendment right to reach their audience, including prisoners. Although these rights are not absolute, the Due Process Clause requires that the DOC apply fair procedures before it decides that a particular magazine would pose a danger. These basic principles of constitutional law are the foundation for this settlement, which we hope will minimize violations in the future."

The former DOC regulation authorized censorship if an article encouraged "hatred or contempt of any persons," and the ACLU said that Denver's alternative weekly, *Westword*, had occasionally been censored unjustifiably on this basis. The ACLU said that the DOC's concern about "security threat groups" (STGs), a prison term for street gangs, led to many cases of unjustifiable censorship. The former regulation permitted censorship when DOC officials concluded that a magazine "depicted association" in an STG. "Numerous issues of such music magazines as *VIBE* and *The Source* were censored when DOC officials concluded, erroneously, that photographs of rap musicians or other entertainers in ads and news stories showed them making special 'gang hand signals,'" Silverstein explained. "The new regulation is designed to end that category of censorship, especially after all DOC employees receive training on the new criteria." Reported in: ACLU Press Release, November 30. □

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