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ALA, book community submit Campaign for Reader Privacy petitions

On Wednesday, September 29, the American Library Association (ALA) joined the American Booksellers Association, Association of American Publishers, and PEN American Center to deliver to Congress more than 180,000 signatures gathered in the Campaign for Reader Privacy. Rep. Bernie Sanders (I-VT) and a bipartisan group of representatives and senators received the petitions.

Salman Rushdie (president of PEN American Center), former U.S. Congresswoman Pat Schroeder (president of the Association of American Publishers), Oren Teicher (COO of the American Booksellers Association), and Carla Hayden (past-president of the American Library Association) presented the petitions on behalf of readers, writers, librarians, booksellers, and publishers at a major press conference at the U.S. Capitol. They discussed community-wide concerns over Section 215 of the USA PATRIOT Act. "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," said Carla Hayden. "When librarians fight against the PATRIOT Act, we're fighting for the public."

Launched in February, the nationwide public awareness campaign and petition drive have raised awareness of changes in the Foreign Intelligence Surveillance Act (FISA) and other existing laws under the USA PATRIOT Act that vastly expanded government authority to search business records, including the records of bookstores and libraries. The petitions call for restoration of safeguards for the privacy of bookstore and library records that were eliminated by the USA PATRIOT Act. ☐

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in this issue

targets of the censor

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the "most censored" stories of 2003–04

In late July, more than 600 people showed up in Monterey, California, to speak at a Federal Communications Commission hearing on ownership concentration in the news media. The participants were a diverse group, young and old, activists and workers, but they had a single consistent message: The mainstream news media were doing a deplorable job of covering the day's most important stories.

That's no surprise. Consolidation of the media in the hands of a few corporate Goliaths has resulted in fewer people creating more of the content we see, hear, and read. One impact has been a narrower range of perspectives. Another is the virtual disappearance of hard-hitting, investigative reporting.

"Corporate media has abdicated their responsibility to the First Amendment to keep the American electorate informed about important issues in society and instead serves up a pabulum of junk-food news," says Peter Phillips, head of Sonoma State University's Project Censored.

Every year, researchers at Project Censored pick through volumes of print and broadcast news to see which of the year's most important stories aren't receiving the attention they deserve. Phillips and his team acknowledge that many of these stories weren't "censored" in the traditional sense—that is, no government agency blocked their publication.

But, according to Project Censored, every one of this year's picks merited prominent placement on the evening news and the front pages of daily newspapers. Instead, they went virtually ignored.

This year's Project Censored list speaks directly to the point FCC critics have raised—stories that address fundamental issues of wealth concentration and big-business dominance of the political agenda are almost entirely missing from the national debate. From the dramatic increase in wealth inequality in the United States to the Bush administration's attack on corporate and political accountability, events and trends that ought to be dominating the presidential campaign and the national dialogue are nowhere to be seen.

1. Wealth inequality in twenty-first century threatens economy and democracy

As the mainstream news media recite the official line about the nation's supposed economic recovery, they neglect to mention that wealth inequality in the United States has almost doubled over the past thirty years. In fact, the Federal Reserve Board's most recent Survey of Consumer Finances supplement on high-income families shows that in 1998, the richest one percent of households owned 38 percent of the nation's wealth.

But that's just part of the problem. "Most Americans believe we take from people at the top to benefit those below," Pulitzer Prize-winning *New York Times* investigative reporter David Cay Johnston said. But our tax system is actually set up such that "people who make $30,000 to $500,000 . . . give relief to those who make millions, or tens and hundreds of millions of dollars a year."

Today, almost one-sixth of the world's population—940 million people—already live in squalid, unhealthy areas, often without water, sanitation or legal security. A recent U.N. report predicted that, absent drastic change to reverse "a form of colonialism that is probably more stringent than the original," one in every three people worldwide will live in slums within thirty years. Sources: *Multinational Monitor,* BuzzFlash.com, *The Guardian*

2. Ashcroft vs. the human rights law that holds corporations accountable

For decades, the United States has trained insurgents and torturers, toppled democratically elected governments, and propped-up brutal dictatorships abroad. But rarely are the agents of repression ever held accountable for the tens of thousands of deaths and the brutal cycles of poverty, subjugation, and violence they leave in their wake. Indeed, many foreign tyrants go on to enjoy plush retirement right here in the United States.

Lawyers have found a way to seek at least a modicum of justice for foreign victims, however. The Alien Tort Claims Act, a 215-year-old law originally passed to prosecute pirates for crimes committed on the high seas, allows non-citizens to sue any individual or corporation present on U.S. soil.

Human rights lawyers have pursued one hundred cases under ATCA since 1980. Defendants have included former high-ranking government and military officials from El Salvador, Guatemala, the Philippines (including ex-president Ferdinand Marcos), Indonesia, Bosnia, and elsewhere. And although the law can only be used to pursue monetary damages rather than prison time, it has often resulted in victims being awarded millions—and in the perpetrators sometimes fleeing the country rather than paying up.

Ten years ago, victims began using the act to go after corporate profiteers, too, allowing Nazi Holocaust survivors to seek redress from the Swiss banks and companies that profited from concentration camp slave labor, for example.

But Attorney General John Ashcroft's Justice Department has set its sights on the act, claiming in a brief last year that the law threatens "important foreign policy interests." Hardly a word has been written in the mainstream media about the Bush administration's attack on the one main legal recourse to seek redress for human rights violations. Sources: OneWorld.net, *Asheville Global Report*

3. Bush administration manipulates science and censors scientists

One of the Bush administration's first moves—on the very day Bush was inaugurated—was to fire engineer Tony Oppegard, the leader of a federal team investigating

a 300-million-gallon slurry spill at a coal-mining site in Kentucky. "Black lava-like toxic sludge containing sixty poisonous chemicals choked and sterilized up to one hundred miles of rivers and creeks," wrote environmental lawyer Robert F. Kennedy in *The Nation*. The EPA dubbed it "the greatest environmental catastrophe in the history of the Eastern United States." Bush then appointed industry insiders to top posts at the EPA in charge of mine safety and health.

In the days and months following the World Trade Center attack, the EPA released more than a dozen statements claiming the air quality in the surrounding "control zone" was safe—despite evidence that asbestos dust was present in quantities well above the one-percent safety benchmark. The agency opened up the area to the public a mere week after the attacks, allowing Wall Street to reopen and cleanup activities to begin. As a result, 88 percent of rescue workers suffered ear, nose, and throat ailments and 78 percent suffered lung maladies, according to a Mt. Sinai School of Medicine study. Half suffered persistent respiratory problems up to a year later.

Last November, the EPA arranged for Syngenta, the Swiss manufacturer of Atrazine, to take over federal research of its product, the most widely used weed-killer in the United States, despite evidence that high concentrations of Atrazine in groundwater may be responsible for semen counts 50 percent below normal in men in U.S. farming communities, is associated with high incidences of prostate cancer, and has resulted in grotesque deformities in frogs when present "at one-thirtieth the government's 'safe' three-parts-per-billion level," wrote Kennedy.

Government interference in scientific research has gotten so bad that sixty of the country's top scientists—including twenty Nobel laureates—issued a statement last February citing the ways the Bush administration has distorted scientific data "for partisan political ends" and calling for regulatory action. Sources: *The Nation*, *National Coalition Against Censorship Newsletter*, OneWorld.net, Office of U.S. Representative Henry A. Waxman

4. High Uranium levels found in troops and civilians

Researchers have found that almost ten thousand U.S. troops died within ten years of serving in the first Gulf War. And more than a third of those still alive have filed Gulf War Syndrome-related claims.

In study after study, research pointed to the use of depleted uranium (DU) in American and British weaponry as the culprit. But authorities concentrated their efforts into obfuscating the problem—downplaying its reach, discrediting scientists and ailing military personnel, and erecting a smoke screen around the "syndrome's" root causes.

More recently, the Uranium Medical Research Center, an independent group of U.S. and Canadian scientists that's conducted studies of Afghan civilians, found overwhelming evidence that the U.S. is also using non-depleted uranium (NDU) in its weapons, which is far more radioactive than DU.

At the International Criminal Tribunal for Afghanistan in Tokyo last December, a team of attorneys from Japan, the United States, and Germany indicted President Bush on a number of war crimes charges—among them the use of DU weapons.

Leuren Moret, president of Scientists for Indigenous People, testified that a U.S. government study conducted on the babies of Gulf War I veterans conceived after the soldiers returned home found that a full two-thirds suffered from serious birth defects or illnesses, including being born without eyes or ears. In Iraq, Moret said, the defects are even worse. Sources: Uranium Medical Research Center, *Awakened Woman*, *Dissident Voice*, *New York Daily News*, Information Clearinghouse

5. The wholesale giveaway of our natural resources

Adam Werbach, executive director of the Common Assets Defense Fund and former Sierra Club president, reviewed the Bush Administration's environmental policy record and came to the conclusion that Bush's record is not only bad, it's "akin to an affirmative action program for corporate polluters."

Vice President Dick Cheney's infamous, secretive, industry-laden energy task force produced what can be boiled down to two main recommendations, to "lower the environmental bar and pay corporations to jump over it," Werbach wrote.

For example, Congress has promised $3 billion in tax cuts to mining corporations to help them access natural gas embedded in underground coal deposits in Georgia's Powder River Basin. The Bureau of Land Management has calculated that miners will waste 700 million gallons of publicly owned water a year in the process, thereby sucking the region's underground aquifers dry and decimating local farms and wildlife.

The Bush administration's Healthy Forests Initiative essentially entails granting logging companies access to old-growth trees—and then subsidizing them for brush clearing. And even the giant sequoias that former president Bill Clinton sought to protect by creating a 327,000-acre national monument in the Southern Sierra Nevada just four years ago risk being logged at a rate of 10 million board-feet of lumber per year—a higher rate than allowed on surrounding national forest lands—in the name of "forest management." Sources: *In These Times*, *High Country News*

6. The sale of electoral politics

The nationwide switch to electronic voting systems—mandated by Congress in an effort to avert another Florida recount fiasco—might seem innocent enough at first, until you look at who's implementing it and how. Indeed, the transfer represents the privatization of the voting process

(continued on page 256)

Bush forms civil liberties board

In an executive order issued August 30, President Bush responded to a key recommendation of the September 11 Commission by creating a civil liberties board composed of high-level government officials tasked with making sure their agencies' programs do not violate privacy and civil rights laws.

Civil liberties advocates blasted the board, comparing it to the proverbial "fox guarding the hen house," and questioned how it could be effective without outside appointees and independent investigative powers.

The President's Board on Safeguarding Americans' Civil Liberties will be housed in the Justice Department and led by the Deputy Attorney General James Comey and the Department of Homeland Security's Under Secretary for Border and Transportation Security Asa Hutchinson. Other members include officials from the Central Intelligence Agency, the National Security Agency, the Terrorist Threat Integration Center, and the Pentagon, along with privacy officials such as Homeland Security's chief privacy officer, Nuala O'Connor Kelly.

The board's official duties include advising the president on civil liberties, helping craft policy, requesting reports from federal agencies, and reviewing a specific agency program when invited to do so by the agency in charge of that policy. The board could not initiate investigations on its own, however, and the order makes no mention of reports to the public.

Lara Flint, a lawyer for the Center for Democracy and Technology—a centrist civil liberties group known for working closely with Congress—found little of value in the proposal. "This is not what a civil liberties board should look like if it is intended to be robust, effective, and independent," Flint said. "It is made up of people who need civil liberties oversight."

The CDT and others have been working with senators turning the 9/11 commission recommendations into legislative language in order to create a civil liberties board with investigative powers and the ability to have "input in the areas where it really needs it, which is where the law is ambiguous or there is no law," Flint said.

Charlie Mitchell, legislative counsel for the American Civil Liberties Union, argued that the president's board could even be counterproductive. "This could be worse than useless because it creates a board with no real power, no real authority, and no independence, and then they get to sign off on programs being OK for civil liberties," Mitchell said. "This is an attempt to head off a board with real authority."

If Congress does adopt legislation creating an independent commission or set of commissions, it would complement, not abolish, the president's board. Marc Rotenberg, executive director of the Electronic Privacy Information Center, said the board looks less like an independent commission than an interagency task force advising the president. Such a task force might not be a bad thing, given the hits the Bush administration has taken over antiterrorism proposals such as the Total Information Awareness program, the TIPS program, and CAPPS II, according to Rotenberg.

"The good news here is that there obviously (is) a concern about civil liberties, and this board brings together high-level officials to think about it," Rotenberg said. "The bad news is there is no mechanism in place to make sure they will get the job done." Reported in: Wired.com, August 31. □

FSM returns to Berkeley

The Free Speech Movement's electrifying act of defiance forty years ago—surrounding a police car at UC Berkeley and using it as a speaker's platform—received a long-delayed curtain call October 8 as movement veterans and former Democratic Presidential contender Howard Dean used another police car as a stage for fiery oratory. This time, however, UC police willingly provided the vehicle, and the former scowls of campus administrators had become smiles.

The noon event was part political rally against President George Bush and part exhortation to continue carrying the torch of activism borne by the FSM when it fought to overturn a ban on campus political advocacy. Police estimated about 3,000 people attended the gathering, the highlight of a weeklong commemoration of the once-ostracized protest movement that is now largely honored for igniting campus activism in America.

One lesson of the 1960s, Dean said, is that the U.S. government sometimes forgets it is "responsible to ordinary Americans and not to corporations and big donors. And George Bush has forgotten who he's supposed to be responsible for," Dean said, the volume of his voice rising to accompanying applause and cheers, "and we're not going to forget on November 2 who he should have been responsible for, and he's going back to Crawford, Texas!"

Unlike October 1, 1964, when FSM orators took off their shoes before standing directly on the roof of the police car that was attempting to take away civil rights organizer Jack Weinberg for setting up a table on the plaza, Dean kept his shoes on as he walked up a make-shift wooden ramp. He stood on a wood platform cushioned by foam rubber that organizers placed on top of the car. The weight of many speakers dented the roof of the 1964-era car, which sat surrounded for thirty-two hours in the center of plaza, about thirty feet from the car used in this year's flashback, a 1996 model.

"To see you today is to move me to tears," FSM member Bettina Aptheker told the crowd that contained many current students and those who were student-age four

decades ago. "Hundreds of us sat down around this police car to stop it from moving," said Aptheker, now chair of the UC Santa Cruz women's studies department. The crowd erupted with applause and cheers.

She recalled her moments on top of the car: "The only words I remember from the speech I gave then was a repeated phrase from Frederick Douglass, the great abolitionist from the nineteenth century, 'Power concedes nothing without a demand.' And the crowd roared back its approval, and in that roar, which penetrated to the very core of my being, my life was forever transformed."

Singer Terry Garthwaite sang "We Shall Not Be Moved," and the poet laureate of the FSM, Julia Vinograd, read from her poem commemorating another well-known FSM episode, the December 2–3 sit-in at Sproul Hall:

> Joan Baez was singing, it was too beautiful
> the way the air on a high mountain is too clear.
> . . . I remember everything.
> Girls dressed like secretaries,
> boys dressed like law clerks
> and we expected America to keep the promises
> it made in eighth grade social studies.

Berkeley's new chancellor, Robert Birgeneau, formerly president of the University of Toronto, struck a provocative note when quoting a complaint about "political correctness" from an unnamed Berkeley professor: "I think speech is less free on campus than it was then." Conservative speakers in Berkeley have been disrupted by protesters on several occasions.

"I think we have to be vigilant in our modern times from both the left and the right to make sure we're willing to allow people to hold opinions that are highly controversial," Birgeneau said to spirited applause.

The chancellor also recalled when, as a Yale student in 1965, he spent an illuminating summer in South Carolina in "a sort of pseudo-commune" teaching and doing civil rights work with members of the FSM from Berkeley. "I cannot tell you how politically naïve I was," Birgeneau said. "However, after spending a full summer with leaders of the Berkeley Free Speech Movement, I was then probably as politically sophisticated as I was ever going to be."

Movement veteran Jackie Goldberg, now a Democratic state assemblywoman from Los Angeles, attacked tax evasion by the wealthy and the erosion of civil liberties under the PATRIOT Act while urging students not to believe reports of political apathy among today's young people.

"They want you . . . to take yourself out of the struggle," she said. "They want you to feel like it is hopeless."

Among those who took off their shoes before climbing on top of the car to address the crowd of protesters that swelled to 3,000 during the ensuing thirty-two-hour standoff was a twenty-one-year-old philosophy student named Mario Savio, whose eloquence quickly propelled him to the role of movement spokesman. Savio's words from the Sproul steps two months later have been branded into the annals of American student protests:

"There is a time when the operation of the machine becomes so odious, makes you so sick at heart, that you can't take part; and you've got to put your bodies upon the gears and upon the wheels, upon all the apparatus, and you've got to make it stop."

The FSM represented not just an extension of the civil rights movement and a fight for free speech on campus but also "an outlet for the feelings of hostility and alienation which so many students have toward the university," Weinberg wrote at the time. On one level, the fight was over the ban on political advocacy that ironically had been formulated in 1934 by the man after whom Sproul Plaza is named, former UC President Robert Gordon Sproul, to thwart Communist influence on campus.

But at the same time, Savio and many protesters targeted then-UC President Clark Kerr's vision of a "multiversity" that serves the knowledge industry. They saw a student-as-product academic factory meant not to foster knowledge but to provide trained labor for the corporate-military-imperialist complex. By the time 800 students were arrested December 3 for occupying Sproul Hall—the largest mass arrest of students in U.S. history—the FSM had been cast by university officials and the press as a danger to society.

Savio was jailed and kicked out of school. Kerr said the demonstrators included "persons identified as being sympathetic with the Communist Party and Communist causes."

Today, the FSM enjoys appreciative news coverage and a warm embrace from UC. "Happy 40th Birthday to the Free Speech Movement," declared one of several campus announcements on the anniversary events.

"Most sections of the campus are very proud of that part of our history," said Dean of Students Karen Kenney. Signs of Cal's pride began in 1997, a year after Savio's death, when the campus named the steps in front of Sproul Hall as the "Mario Savio Steps." In 1998, the Bancroft Library began a Free Speech Movement project and archive, and soon afterward the campus opened a Free Speech Movement Café that doubles as an FSM history gallery.

Asked why the FSM changed from pariah to icon, New York University history Robert Cohen, who along with the late UC Berkeley historian Reginald Zelnik edited a definitive book on the FSM, said university officials in 1964 had a "more constricted view of campus free speech rights" conditioned by the Red Scares of the '30s and '50s and a fear that campus leniency with radical activism would jeopardize state funding.

"In hindsight," he said, "it is easier for UC officials to look at the FSM more calmly and to see that it was at its heart a democratic movement championing free speech."

The chief organizer of the week of commemoration, FSM veteran Michael Rossman of Berkeley, said the

embrace of the FSM by the UC Berkeley administration today "is sincerely meant but somewhat superficial." Rossman said the campus still opposed some forms of student activism, such as "the forty-year struggle of the graduate student instructors to win union recognition."

Rossman stressed that the commemorative events—sponsored jointly by the FSM veterans, campus administration, and the student government—were meant primarily to focus on today's struggles with civil rights and secondarily on FSM history and influence.

"The central broad issue is the endangered state of civil liberties in our time," he said. In this vein, a senior in the audience, engineering major Ni Liu, carried a sign she'd made the night before: "Bring Back the FSM Spirit."

The rally closed with a large Statue of Liberty puppet being freed from a prisoner's hood, like those used at Abu Ghraib prison in Iraq, and from a gag saying "Homeland Security." Reported in: *San Francisco Chronicle*, October 6, 9. □

FBI trailed FSM leader Savio

The FBI trailed Free Speech Movement leader Mario Savio for more than a decade after he led the 1964 FSM at the University of California, Berkeley, and bureau officials plotted to "neutralize" him politically—even though there was no evidence he broke any federal law, according to FBI records newly obtained by the *San Francisco Chronicle*. J. Edgar Hoover's FBI targeted Savio because he was the nation's first prominent student leader of the '60s, and top FBI officials feared protests would spread from Berkeley to other schools, the records show.

The bureau used tactics against Savio that Congress in 1976 found were improper—including some similar to investigative methods that agents may now use against suspected terrorists under the PATRIOT Act and under loosened FBI guidelines, experts said.

According to hundreds of pages of FBI files—and, on the occasion of the fortieth anniversary of the Free Speech Movement, as reported in a lengthy story in the October 10 *Chronicle Magazine*—the bureau:

- Collected, without court order, personal information about Savio from schools, telephone companies, utility firms, and banks and compiled information about his marriage and divorce.
- Monitored his day-to-day activities by using informants planted in political groups, covertly contacting his neighbors, landlords, and employers, and having agents pose as professors, journalists, and activists to interview him and his wife.
- Obtained his tax returns from the Internal Revenue Service in violation of federal rules, mischaracterized him as a threat to the president, and arranged for the CIA and foreign intelligence agencies to investigate him when he and his family traveled in Europe.
- Put him on an unauthorized list of people to be detained without judicial warrant in event of a national emergency, and designated him as a "Key Activist" whose political activities should be "disrupted" and "neutralized" under the bureau's extralegal counterintelligence program known as COINTELPRO.

The bureau took these actions against Savio even after San Francisco FBI agents repeatedly told bureau headquarters that he was not connected with, or influenced by, any subversive political group or foreign power.

A 1968 memo from the San Francisco FBI office said Savio was one of several Bay Area activists who were "independent free thinkers and do not appear to be answerable to any one person or any group or organization."

LaRae Quy, an FBI spokeswoman in San Francisco, declined to comment on Savio's case but said the FBI now operates with a greater concern for First Amendment activities and more oversight from the U.S. Department of Justice, Congress, and the press.

Savio died at fifty-three of a heart attack in 1996 at his home in Sebastopol, California. Lynne Hollander, a former Free Speech Movement activist and Savio's widow, said the FBI made the mistake of believing he threatened national security because he protested government policy.

"That's outrageous. These are all constitutionally protected activities, and the FBI had no business spending time and money taking note of them," said Hollander, a retired librarian who lives in Sonoma County.

Suzanne Goldberg, a Free Speech Movement leader who was married to Savio in the '60s and was also under surveillance, called the FBI's activities disturbing. "The whole thing is an invasion of privacy," said Goldberg, now a psychotherapist in Washington, D.C.

Savio was a brilliant, twenty-one-year-old philosophy student who had helped register black voters in Mississippi the previous summer when he joined in protesting UC Berkeley's enforcement of a ban against political activity on campus in the fall of 1964. Students from across the political spectrum formed the Free Speech Movement and used nonviolent civil disobedience such as pickets and sit-ins. Savio quickly emerged as the movement's most eloquent spokesman and attracted international media attention, urging students to "put your bodies upon the gears and upon the wheels" to stop the university "machine." In response, students occupied the campus' Sproul Hall on December 2, 1964, in an overnight sit-in that led to almost 800 arrests, the largest mass arrest of students in U.S. history.

Hoover soon ordered agents to focus on the student leader, and though Savio became less active politically in the following years as he dealt with sometimes overwhelming

depression, the FBI continued to gather information on him into 1975, three years after Hoover's death.

The records obtained by the *Chronicle* provide the most complete account to date of the FBI's activities concerning Savio. The bureau targeted him during the Cold War, when Hoover was deeply concerned about growing dissent at UC, the nation's largest public university and operator of top-secret federal nuclear laboratories. As the newspaper previously disclosed, Hoover was secretly campaigning at the same time to oust UC President Clark Kerr—whom the movement saw as its enemy—because bureau officials blamed him for not cracking down on student protesters.

David Sobel, general counsel with the Electronic Privacy Information Center, a Washington, D.C., group that has challenged some of the government's efforts to expand the collection of personal information, said many of the tactics used against Savio—such as putting his name on "watch lists" and collecting personal financial data and school records—are "ancestors" of current surveillance systems. He said Savio's case was a "cautionary tale" about how the combination of power and secrecy can lead to intelligence abuses.

California Attorney General Bill Lockyer, who was involved in the Free Speech Movement as a UC Berkeley political science student, called the FBI's treatment of Savio "outrageous." Lockyer said the excesses of the Hoover era have been "reined in, in very substantial and significant ways, and the J. Edgar Hoover culture has been replaced by a significantly more law-abiding . . . environment."

But he said it is necessary to be sensitive to constitutional rights in the war on terrorism and that U.S. Attorney General John Ashcroft's call to expand the PATRIOT Act "raises very serious questions about federal authority being used to step on people's personal liberties."

"The idea that the FBI would continue its surveillance of Mario Savio years after the FSM and put him on watch lists is absurd," said Lockyer, who, as the top state law enforcement official, heads California's anti-terrorism effort. Savio was no threat to national security, he said. "He was somebody who believed deeply in the Bill of Rights and believed the university and the state were stepping on our civil liberties. And he was right." Reported in: *San Francisco Chronicle*, October 10. □

prize for Judy Blume

Judy Blume, whose frank portrayals of the travails of adolescence have won flocks of teenage fans but whose books have sometimes been pulled from library shelves after being deemed inappropriate for preteens, has been selected by the National Book Foundation for its annual medal for distinguished contribution to American letters.

The foundation, a publishing industry organization that sponsors the National Book Awards, has sought in recent years to raise the profile of its awards, which are well known among the literary set but less so among readers of popular titles. Last year, for example, Stephen King won the medal.

Blume, author of *Are You There God? It's Me, Margaret*, *Tales of a Fourth Grade Nothing*, and *Freckle Juice*, among others, is the first author of books written primarily for children to receive the medal, which has been awarded for sixteen years.

In an interview, Blume said that news of the award was "a total shock," and that she had not known the medal existed. "For the National Book Foundation to acknowledge the importance of children's books and those who write them is very satisfying," she continued. "We're the ones who get kids to read."

Blume has also written a few novels for adults, but she is far better known for her more-than-twenty books for young adults, which use plain-spoken language to deal with subjects like menstruation, masturbation, virginity and sexual activity.

In the 1980s, Blume experienced censorship first-hand when she learned that some of her books were being challenged and placed on restricted shelves in libraries or even removed. A strong believer in children's intellectual freedom and their right to read a variety of books, Blume responded to the attacks on her books by becoming a vigorous opponent of censorship. She joined the board of the National Coalition Against Censorship and has brought much-needed attention to the issue and to many of the brave teachers and librarians who fight—at the risk of losing their jobs—to keep controversial books in their schools and libraries.

In 1999, she collected and edited an anthology of short stories for young adults, *Places I Never Meant To Be: Original Stories by Censored Writers*, which featured work by Norma Fox Mazer, Katherine Paterson, Walter Dean Myers, and Paul Zindel. All royalties from the sale of the book go to the National Coalition Against Censorship.

In November 1984, for example, school officials in Peoria, Illinois, banned three of Blume's books from their libraries: *Then Again Maybe I Won't*, about the sexual awakening of an adolescent boy; *Deenie*, about a young girl who discovers her developing body; and *Blubber*, about the travails of a fat girl.

The Peoria officials first said that because elementary school libraries were open to all children from kindergarten through eighth grade, the books had to be removed. They later agreed to restore the books, but to put limits on their circulation.

While some of the shock value has gone from her books as children have become more aware of sexual subjects at a younger age, the books still retain a big audience. Blume

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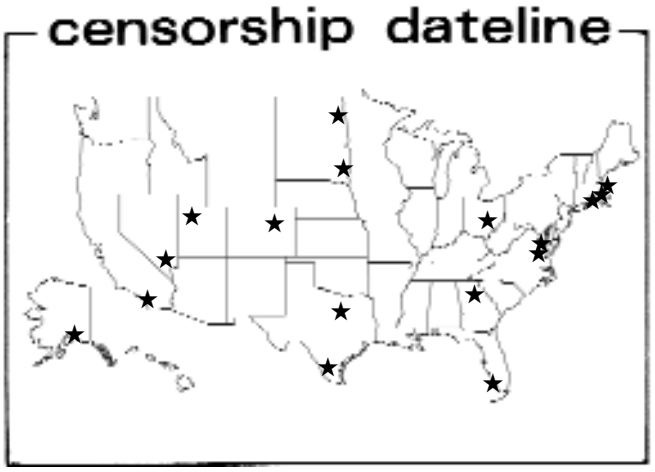


libraries

Ansonia, Connecticut

Middle school students in Ansonia may have trouble finding copies of *One Fat Summer*, by Robert Lipsyte. The coming-of-age novel was pulled from the local schools' display at the Ansonia Public Library, following a parental complaint about the book's content. Parents objected to a paragraph describing the masturbation fantasy of a teenage boy. School officials asked the library to remove the book from its special display of titles for middle school students. The book will remain in circulation on the public library's regular shelves. Reported in: *School Library Journal*, August 31.

Fargo, North Dakota

An English instructor and book reviewer wants to remove a novel from her daughter's school library in Fargo. Pamela Sund Herschlip and her husband, Mark Herschlip, asked that *Mick Harte Was Here* be pulled from the Centennial Elementary School library because of the "damaging nature of the material." The book, written by Barbara Park, contains themes and language inappropriate for elementary students, they said in a letter to the school. Their daughter is a fourth-grader.

"Can't we let our children be innocent?" Sund Herschlip said. "Do we have to expose our children to coarseness through public schools? It's such a tender age."

Sund Herschlip became aware of the book after overhearing her daughter and two friends discussing it. She then read the book herself. Sund Herschlip is an adjunct instructor at Minnesota State University in Moorhead and Minnesota State Community and Technical College. She teaches art, poetry, and research writing. She also reviews art exhibitions and books.

In her professional evaluation of the book, she found some redeeming qualities. "But I think it takes the structure of an adult mind to deal with most of the themes in the book," she said.

Mick Harte Was Here details the grieving process of thirteen-year-old Phoebe after her twelve-year-old brother dies in a bicycle accident. The eighty-eight-page novel is told from Phoebe's point of view. An author's note in the back said she wrote the novel to encourage students to wear bike helmets. The book contains profanity, including use of "damn, " "suck" and the phrase "Oh Jesus."

The Herschlips also were disturbed by a discussion of unplanned pregnancy and what they viewed as a glorification of eating disorders. As Phoebe describes Mick's personality, she mentions he was a surprise. "He loved it, too. Being a surprise, I mean," Phoebe tells the reader. "He was always teasing my parents about it. Telling them that even before he existed, he could outsmart two chemistry majors with birth control pills."

Mark Herschlip, a chemical engineer, said the mention of birth control isn't appropriate in a book for younger students. It isn't something he wants his daughter to talk about. "The problem is there is no rating system on books," he said. "There's no indication of what might be in the book unless you read it, so we rely on our professionals in the schools to choose appropriate materials."

Librarians carefully choose books and materials after consulting reviews, award lists, and other resources, Fargo Schools Superintendent David Flowers said. If a parent objects to any material, he or she can challenge it, Flowers said. When that happens, a committee reviews the material and determines whether it meets school and community values.

The district's policy states "the value and impact of any literary work will be judged as a whole, taking into account the author's intent rather than only individual words, phrases, incidents, or illustrations."

"It's a protection so that no single parent or principal or librarian can arbitrarily decide what a community's values are and dictate that," Flowers said.

In 1997, *Mick Harte Was Here* received the Flicker Tale Award, which is given annually by the North Dakota Library Association. Flicker Tale finalists are chosen by librarians and teachers, said Marvia Boettcher, a member of NDLA and a public librarian in Bismarck. Most finalists are nominated because of quality or their popularity among young readers, she said. North Dakota students select the winner by casting a vote for their favorite finalist. Between 10,000 and 13,000 students vote each year, Boettcher said.

But despite its popularity among children, *Mick Harte Was Here* has faced controversy before. The book has been challenged in five different school districts since 1998, according to the American Library Association. In two of the cases, which involved Texas schools, the book was removed from the shelves for "offensive language."

The other three challenges, two of which took place in Texas and the other in a middle school in Seneca, South Carolina, resulted in the book being retained. Reported in: *Fargo Forum*, October 7.

Athens, Ohio

A small anti-war art exhibit on the third floor of Ohio University's Alden Library displaying posters and pages from books in the library was altered earlier this month at the request of one or more distinguished professors who apparently pressured the dean of libraries to remove pieces they found to be offensive.

The action sparked an energetic censorship debate on campus, with the Faculty Senate approving a resolution urging the library dean to restore the exhibit to its original state.

Lisa Garr, a twenty-one-year-old senior studying viola performance and a resident assistant in Martzolf House, researched and put the display together. Entitled "Art of War," the exhibit came from existing materials in the library, she said. The exhibit shows how artists respond to wars, and the display also sends a pro-peace message, Garr explained.

In an e-mail sent September 7 to Dean of Libraries Julia Zimmerman, Charles C. Alexander, distinguished professor of history, complained about the exhibit's inclusion of a piece depicting President George W. Bush in an unflattering, war-like manner and use of the word "f___" in two other images.

"However one might feel about President Bush and the war on terror," Alexander wrote, "surely such a display in a facility dedicated to diverse inquiry and balanced learning should have no place in this or any other university library."

Alexander also objected to the display's placement between photo-portraits of OU's distinguished professors (including himself) and named Ping Institute professors. His e-mail was copied to OU President Roderick McDavis, acting Provost Kathy Krendl and several distinguished professors.

According to Garr, Gary Ginther, head of the Fine Arts Library where the display is located, approved the project for display. He was also partially responsible, according to interim Provost Krendl, for taking out certain pieces of the exhibit that offended Alexander.

The incident sparked a flurry of e-mails that flowed through OU's faculty grapevine. The e-mails, mainly critical of what senders characterized as "censorship," came from various other faculty. One of them, circulated among School of Theater faculty and staff, came from Maureen Wagner, assistant director of the School of Theater. In it, she writes that "according to (Library) Dean Zimmerman, 'intense pressure' was applied by (distinguished) professors Alexander, (Alonzo) Hamby and (Richard) Vedder to remove a number of so-called 'offensive' artworks."

Hamby confirmed that he also lodged a complaint with Zimmerman against the exhibit. "It seems to me the exhibit was in terribly bad taste, displayed little talent, and had a partisan edge that public institutions (which after all are paid for by taxpayers of all parties) should avoid," Hamby wrote.

He noted that "any First Amendment expert will tell you that the Constitution gives one the right to say just about anything, but not anywhere or any place." He denied exerting any "pressure" on Libraries Dean Zimmerman, other than "voicing a complaint—as many people do on many issues.

"I guess she thought there was some merit to it. I haven't heard back from her," he said.

As a result of the professors' complaints, five artworks photocopied from two books containing anti-war art were removed, according to Garr. She said that professor Alexander saw the display on September 3, Ginther was informed of the complaint on September 7, and he removed the pieces from the exhibit on that day.

The pieces in question featured World War II-era posters supporting the 1940s war effort that were altered to carry sarcastic and pointed messages about the current policies of the Bush administration. The five removed pieces are from the books, *Peace Signs: The Anti-War Movement Illustrated*, by James Mann, and *You Back the Attack! We'll Bomb Who We Want!: Remixed War Propaganda*, by Micah Ian Wright.

One of the posters criticized by Alexander depicted President Bush with red eyes, a menacing fist and a mock Nazi armband with a dollar sign on it. The slogan (supposedly stated by Bush), "What the f___ you gonna do about it?" (with the actual f-word), is printed at the bottom of the poster. Another poster shows a U.S. soldier in combat and the words: "Keep it up brother! There's a lot of countries left to invade."

In his e-mail, Hamby said that he probably would have lodged a complaint if the exhibit had trashed Sen. John Kerry as offensively as it trashed President Bush. "I would have had the same attitude about something studded with hammer-and-sickle emblems purporting to show John Kerry locking lips with Jane Fonda while American prisoners of war were abused in the background," he said.

Provost Krendl said that the issue was not just about censorship. "The library controls the space there. If they remove something from their space, that is not the issue," she said. "The issue here is how do we sort through the issues and protection for a free and open debate?"

Krendl emphasized the importance of developing a procedure for dealing with these types of incidents, and said that a public forum was planned to discuss that procedure.

Experts in these issues, such as lawyers and scholars, were being consulted by OU officials for help with the forum, she said.

Krendl confirmed that the decision to remove the pieces of art was made by Libraries Dean Zimmerman, Associate Dean of Libraries Gary Hunt and fine arts librarian Ginther. Garr, however, said she believes that pressure from "higher-ups" in the university was placed on the library administration to remove the art, and that it was removed by library staff under duress. In one of the e-mail messages, William Owens, chair of the Classics and World Religions Department, said that Zimmerman told him that the pressure to remove the offending pieces had been "intense."

"Censorship is a violation of the First Amendment," Garr said. "You shouldn't take the display down; you could just put up your own. Or take your class to the display and have a discussion about it. This is a public university."

The art removal incident was the central issue at the Faculty Senate meeting September 20. Several faculty senators decried the art removal as censorship and drafted a resolution that encouraged Zimmerman to reinstate the pieces, while some senate members criticized the exhibit for being unbalanced.

One reason the issue surfaced via circulated e-mails was that the OU Theater and Art schools found out about the situation and feared that the case set a bad precedent that might eventually affect their programs, Garr said.

"What is ironic about this is that the foreword for 'Peace Signs' was written by historian Howard Zinn, and the foreword for 'You Back the Attack' was written by novelist Kurt Vonnegut Jr, both of whom are highly respected in the academic field, and (yet) a history professor is the person who called for the books to be removed from the display," Garr said.

The Fine Arts Library has never had complaints before, despite previous displays that had the potential to offend, according to Garr. "The previous exhibit in that space had pictures of a naked obese woman with one of the pictures showing her naked on a toilet, and no one complained," she said. Reported in: *Athens News*, September 23.

Sioux Falls, South Dakota

Does a governor have the right to remove controversial links on a state library's Web site? No, say library supporters in South Dakota who want links to Planned Parenthood and other helpful sites restored to the library's Teen Center section.

It all started when Republican Governor Mike Rounds demanded the removal of specific sites after receiving a letter from Bishop Robert Carlson of the Sioux Falls Catholic Diocese, who said the library was encouraging "our young women and men to turn to Planned Parenthood for any guidance, whether it be sex education or the intrinsic evil of abortion." Bowing to pressure from the governor, the state library board voted earlier this summer to remove the link.

Rounds then asked the library to remove a link to Go Ask Alice!, a Columbia University Web site that provides sexual health information. But the governor's directives didn't stop there—he requested that Teen Center be shut down pending a sixty-day review of all its links. Eventually, two librarians deemed responsible for posting the links lost their jobs.

It didn't take long for protesters carrying anti-censorship signs to start gathering outside the Sioux Falls and Rapid City public libraries. "We're trying to uphold and protect the librarians' job to select materials," says Eric Abrahamson, the sole library board member to vote against removing the Planned Parenthood link. Joe Van De Rostyne, another board member, admits to having mixed emotions about his vote because although the board ultimately takes orders from the governor, the library's main duty is to provide information. "I'm against censorship," he says.

Meanwhile, Rounds has balked at being labeled a censor, saying that the sites can be accessed directly. But actions speak louder than words: since ordering the removal of the library links, the governor has organized a task force to review the Web sites of all state agencies. To make matters worse, Rounds is recommending that none of the library's online resources link to any organization with a political bent.

Although the result of the sixty-day review is unclear, board members are pleased that there's still an ongoing dialogue, Abrahamson says. However, creating "objective criteria" for selecting online resources won't be easy, he adds. The board's next step is to review Teen Center's content and make recommendations to Education Secretary Rick Melmer. "Some of [the links] might go back online," says Richard Van Beek, vice chair of the board. Reported in: *School Library Journal*, September 1.

Mesquite, Texas

Donna Williams says there's a limit to what she wants her children to learn at school. A book Sydney Williams borrowed from her fifth-grade classroom at Pirrung Elementary School two weeks ago crossed the line, the Mesquite woman said, and she wants it removed from the district's school libraries.

"This kind of book scares me," Williams said, flipping through a copy of *Alice the Brave*, by Phyllis Reynolds Naylor. She pointed out references to sex acts written about in *The Arabian Nights.* Throughout the book, the title character obsesses over her widowed father's relationship with her teacher and whether her father is sleeping with the woman.

Williams said her daughter is easily influenced. "And for children like her, this type of book is dangerous." Reported in: *Dallas Morning News*, September 15.

Montgomery County, Texas

A respite from more than three years of challenges to the book selection policies of Montgomery County Memorial

Library System ended rather emphatically this summer with the filing of sixteen requests for reconsideration—fifteen since mid-June. The complainants "have a right to their opinion," Library Director Jerilynn A. Williams said in the July 27 *Conroe Courier*, adding, "We support their rights to choose books for their children to read."

The objections to the books, mostly consisting of young-adult fiction with a gay-positive theme, were posted at the Library Patrons of Texas Web site, whose launch was announced at a July 26 press conference by activists Sheila and Tommy Taylor. The language describing the books is similar to those posted at the Web site of the Fairfax County, Virginia-based Parents Against Bad Books in Schools, to which Library Patrons of Texas links. "It seems to be a concerted effort," Williams commented.

A review committee has considered the Taylors' challenges to *The Perks of Being a Wallflower*, by Stephen Chbosky, and *The Sissy Duckling*, by Harvey Fierstein, neither of which were removed or restricted. The other fourteen challenged titles are: *My Father's Scar*, by Michael Cart; *Dance on My Grave*, by Aidan Chambers; *Stuck Rubber Baby*, by Howard Cruse; *My Brother Has AIDS*, by Deborah Davis; *Deal With It!*, by Esther Drill; *Eight Seconds*, by Jean Ferris; *My Heartbeat*, by Garret Freymann-Weyr; *The Drowning of Stephan Jones*, by Bette Greene; *Good Moon Rising* and *Holly's Secret*, by Nancy Garden; *Hey, Dollface*, by Deborah Hautzig; *What I Know Now*, by Rodger Larson; *Rainbow Boys*, by Alex Sanchez; and *Peter*, by Kate Walker.

The Library Patrons of Texas site claims it "does not advocate censorship," but favors "local control of taxpayer-funded libraries and responsible age-appropriate selection, classification, and access policies sensitive to local community standards and values." Reported in: *Conroe Courier*, July 27.

schools

Anchorage, Alaska

Most West High students know the story of Harper Lee's classic and controversial tale of broiling racism in a small Alabama town, *To Kill a Mockingbird*. The Pulitzer-winning novel is required reading in West classrooms. But its content is apparently too much for their stage.

West principal Jim Bailey in late September canceled the school's planned production of "To Kill a Mockingbird." Bailey said he didn't learn of the play's selection until after the first round of auditions. According to school policy, Bailey should have reviewed the play months ago and denied or approved it then, he said.

Troubled by the play's use of the word "nigger," Bailey asked teacher and drama adviser David Block if they could censor out that word. Block said no. "I didn't even go into rape, murder, all the other things in the play," Bailey said. "I said, 'What preliminary things have been done to prepare our community, our school, and our kids for a play like this?' He said, 'Nothing.'

"And I said, 'We're not going to put the play on.' "

To Kill a Mockingbird chronicles three years in the life of a little girl, Scout, as her father, Atticus, defends a black man wrongly accused of raping a white woman. The accused, Tom Robinson, is ultimately killed. So is the woman's father, the racist alcoholic Bob Ewell.

Block, a graduate of West and teacher there for ten years, said the play seemed ideal for his students—talented young actors raring to broaden their thespian skills. "The kids have wanted to focus on doing something serious and meaningful," Block said. "It just seemed like the one to try."

Block knew the play had potential to cause controversy. But that's true of theater in general, said Block, an active participant in Anchorage's community theater scene. "What may be perfectly appropriate for somebody may be offensive to somebody else," Block said. "We've received calls from the community probably on every show we've done."

Other schools around the country have put on *Mockingbird* since it was adapted for the stage in 1997. Other schools have canceled productions, too. Administrators at a high school in Indianapolis dropped the play after the local chapter of the National Association for the Advancement of Colored People (NAACP) objected.

The Rev. William Greene, president of the NAACP Anchorage, said a school's staff and students should carefully consider their motives for staging a play that deals seriously with racism, and consider the possible fallout.

"What do they expect to accomplish by reacting this?" Greene asked. "Do they feel this is something that would expose racism? And help to eradicate it? Those are the kind of things I would look at. Because we don't need something that's going to inflame the city and make a lot of tension."

Block said he was disappointed when Bailey canceled the play but didn't argue with his boss' decision. "I've never known (Bailey) to make a decision that was capricious or unfounded," he said.

Some students have told Block they understand why Bailey canceled the play. Others aren't so understanding.

Margo Edwards, a senior in the school's swing choir, said in an interview that administrators are overlooking the play's message. "The point of the play is that racism is wrong," Edwards said. "And they are basically banning something that sends a good message."

Hugh Lyford, a senior playing the starring role in West's musical production of "Little Shop of Horrors," said the decision is "hypocritical." It doesn't make sense that students are required to read the book but won't have the option to watch the play, he said.

Students also disagreed with Bailey's suggestion to omit the racial epithets. "Art is art," said Jared Lindman, a junior and a member of the drama, debate, and forensics team. "You can't change it."

Denya Kohler, a senior with a lead role in the school's "Little Shop of Horrors," called the cancellation "an educational loss" for West students. "If we can read it in class our freshman year and watch the movie, I don't see the problem with putting it on stage," Kohler said.

But Bailey and Block agreed that there's a difference between the classroom and the stage. A classroom is a controlled environment, Block said. If something is disturbing or material is sensitive, there's time to talk through it, he said. When racial epithets are used on stage, you lose that "teachable moment" opportunity, Bailey added. He said he's open to letting students do the play in the future, as long as it's done right. Reported in: *Anchorage Daily News*, October 3.

Gwinnett County, Georgia

The town of Hempstead, New York, has a message for Gwinnett County school administrators: Before you target a student wearing a Hempstead shirt, look at a map. Terrell Jones, a student in Gwinnett County's Grayson High School, was weeded out of a classroom by a school administrator because he wore a shirt that read: "Hempstead, NY 516," a reference to the Long Island town and its telephone area code.

According to Jones' family, which moved from Hempstead to the Atlanta suburb, the school thought the shirt referred to marijuana. Jones wasn't allowed to return to class until he persuaded school officials to search the Internet for the town name.

The town's Web site says the area may have been named for Hemel-Hempstead, England. Another theory cites the Dutch city of Heemstede, because settlers had come years earlier from the Netherlands.

In any case, "before they would jump to any conclusions, they should be sure of what they're talking about," town spokeswoman Susie Trenkle said of the Georgia officials.

Hempstead is the nation's largest township, with 759,000 residents spread across twenty-two villages and more than 142 square miles, she said. The student's father, James Jones, said he wants an apology for the August 23 incident.

"It's important to remember that the vigilance of our administrators is important. The administrator saw a phrase on the T-shirt that raised a red flag," said Sloan Roach, spokeswoman for Gwinnett County schools.

Terrell Jones says he will keep wearing the shirt to school. Reported in: Associated Press, August 26.

Bellingham, Massachusetts

A Bellingham High School teacher who assigned students to view photographs of abused Iraqi prisoners filed a federal lawsuit August 24 against his principal and superintendent, claiming they violated his civil rights when they took away his "current events" class this year.

In May, Bellingham High social studies teacher Brian Newark instructed students in his current events class, an elective course, to log onto the CNN or MSNBC Web site and look at photos of prisoners who were abused by U.S. soldiers at the Abu Ghraib prison in Iraq. Newark told students the assignment was optional and said they were entitled to a substitute assignment if they found the images upsetting, according to his lawsuit. Two days later, now retired Bellingham High Principal Gilbert Trudeau told Newark that a parent had complained about the assignment and instructed him to stop using the prison photos in his class.

In June, the chair of the high school's social studies department informed Newark that he would not be teaching current events this year due to "fallout" from the "current events incident," the lawsuit alleges. Newark, in turn, contacted the American Civil Liberties Union (ACLU) of Massachusetts and filed a grievance with the local teachers union.

ACLU attorney Sarah Wunsch said the First Amendment protected Newark's right to use the photos in his classroom as he sees fit. "This was an appropriate assignment," Wunsch said. "These photos were shown everywhere. You would have to have your head in the sand not to see these photos . . . apparently the only place kids couldn't see them was in that class."

Newark is suing Trudeau and Bellingham Schools Superintendent T. C. "Chris" Mattocks, accusing them of violating his constitutional rights. Newark also claims the episode has had a "chilling effect" on teachers' First Amendment rights to free speech.

"This was a current events course and Abu Ghraib was certainly an appropriate subject for discussion," said Leonard Singer, a Boston lawyer who also represents Newark.

According to Newark's lawsuit, Mattocks also accused the teacher of assigning students to watch the videotaped beheading of Nicholas Berg on the Internet, which Newark denies. Wunsch said Newark never assigned students to watch a tape of the American's beheading. The teacher did not learn of that allegation until July, when Mattocks sent him a letter denying his grievance claim.

"That's one of the reasons we think this whole thing is fishy," Wunsch said.

The unidentified parent who complained about Newark's assignment did not object to using the graphic photographs in class. Instead, the lawsuit states, the parent claimed the assignment was "unbalanced" because Newark did not instruct students to view pictures of Berg's beheading.

"The necessary implication is that (Newark's) reassignment was a reaction to (his) political perspective," the lawsuit says. "To the extent that (school officials) were motivated by plaintiff's political views, what they have done is entirely repugnant to the First Amendment."

Newark worked for the Bellingham public schools since 1993, has taught social studies at the high school since 1998 and has been teaching current events since 2000. This spring, twenty-five of the twenty-eight students in his current events class were seniors.

"Quite literally, any one of these students could find him or herself at the Abu Ghraib prison, guarding Iraqi prisoners, within months of the May 10 assignment," the lawsuit states.

More than 100 students had signed up for Newark's current events class this fall, which would have forced the school to expand the course from one to four sections. "The kids like his teaching," Wunsch said. "There's no reason for them to take him away from teaching this class."

Newark filed a grievance with the teachers union on June 8. Trudeau denied his petition a week later, while Mattocks rejected it on July 2, according to Massachusetts Teachers Association spokeswoman Laura Barrett. Reported in: *MetroWest Daily News*, August 25.

colleges and universities

San Marcos, California

Filmmaker Michael Moore had been invited to appear October 13 at California State University San Marcos, but university President Karen Haynes rescinded the offer September 13. The move surprised students and faculty, because the student government overwhelmingly approved Moore's appearance and partial payment for the event—and the approval had been sought just two days before the cancellation by the university.

According to an e-mail she sent to some faculty and students, the president didn't want Moore speaking on campus before the election because she felt the university would be unable to get a conservative whose stature ranks with Moore's.

"Universities are about the exchange of ideas," Haynes said in her brief e-mail. "Some ideas are uncomfortable, but being exposed to them is how we become confident of our own beliefs and values. That said, however, it is important that discussions be balanced."

Later, in a statement posted on the campus Web site and released to local newspapers' opinion pages, she said: "As a public university, we are prohibited from spending state funds on partisan political activity or direct political advocacy." She argued that Moore has campaigned for Democratic candidates and publicly declared his desire to oust Bush, but she said the university would welcome him as a speaker after the election.

Civil liberties lawyers disagreed, however, saying partisan figures have for years spoken at universities, and that sitting presidents, including George Bush, often speak at college commencements, with funding by public universities during an election year.

Nancy Sasaki of the American Civil Liberties Union San Diego chapter concurred with Haynes that the university itself cannot endorse Bush or challenger John Kerry or other political views, and it cannot donate public money to them. But she said the law does not limit the free speech on a university campus or prevent colleges from having speakers with political views, even if universities pay their honorariums.

"It's ludicrous to say you can't invite any speaker with a political viewpoint," said Sasaki.

Student government official Roy Lee immediately said he would ask Moore to come anyway, at a reduced fee, now that the university has withdrawn its support. "It's a disservice to the students, it restricts our academic freedom," said Lee, a junior business major. "We want students to talk about things, we want people to argue. Whatever gets them interested."

Other students and faculty members also questioned whether Haynes' action infringed on the academic freedom of the university. A petition signed by 78 faculty members protested the decision.

The university tried to forge a compromise by offering to postpone the speaking engagement, originally scheduled for October 13, until after the election. Neither Moore nor the students would accept that concession. Indeed, the filmmaker threatened to sue the university for breach of contract. "If they don't do the right thing, follow through on the contract—and we have a written contract and an oral one—then we will take legal action," he said. The university maintains there is no contract.

Meanwhile, the university's student government, Associated Students Inc., started raising its own money to sponsor Moore's visit. The group collected $46,000 to cover Moore's $35,000 fee and the $11,000 cost of renting a hall in nearby Escondido. One donor who gave $15,000 is locally based Herring Broadcasting, which runs the "WealthTV" network. Said programming director Chris Moore, "It didn't matter whether it was for (conservative) Bill O'Reilly or Michael Moore, we wanted to help the students bring someone who provokes and promotes political debate." The speech was rescheduled to take place on October 12, a day earlier than originally planned.

Lura Poggi, executive director of the student organization, said that the group was inundated with telephone calls after the university announced the cancellation. Many of the calls were pledges of money from San Diegans eager to have Moore appear. Poggi said that the group's main reason for inviting Moore was so that he could "inspire or anger—one of the two—our students to get out and vote."

"What's important to us is that we get students involved in the political process," she said. Poggi said the controversy unified the student body. "Even our conservative students," she said, "are saying, 'Absolutely, he needs to come and speak.'"

Sheldon Steinbach, general counsel of the American Council on Education in Washington, D.C., disputed any charges of censorship. "They're not saying Michael Moore

can never appear; all they're saying is his views will have a counterpoise. There's nothing alien in that all."

Lee said the point was to get students involved, and for all his controversial stands on issues, Moore would have done that. The student government is interested in balance, said Lee, who is vice president of communications, and that long before Moore, they invited Gov. Arnold Schwarzenegger to speak, but "We never heard back from him," Lee said.

University vice president for student affairs Francine Martinez, who was part of the executive council that consulted with Haynes about the cancellation, said she was unaware of any effort to seek a conservative speaker before they decided to cancel Moore. Martinez said Moore's $25,000 speaking fee and $12,000 security and travel accommodations would have come from a combination of funds, from the university, from student-paid campus fees, and $6,500 that student government leaders voted 12–3 to spend.

Moore was set to come to Cal State San Marcos last October, but his appearance was canceled because of the Southern California wildfires. Though Moore's flamboyant style and liberal politics have always been front and center in his films and best-selling books, that first invitation came before his record-breaking documentary, *Fahrenheit 9/11*, created such controversy with its attack on President Bush, his family, and his policies. It made film history by becoming the biggest money-making documentary. The university held a free screening of the film October 5.

Other universities have scheduled Moore to speak before the election, including Syracuse University, Pennsylvania's Dickinson College, and Central Michigan University. Although some campuses that invited him have faced controversy, including Utah Valley State College and the University of Nevada, his speeches there were not canceled.

Some universities have sought to offer a conservative viewpoint in response to criticism of the outspokenly liberal Moore. Moore said that when he learned Cal State administrators were concerned about balance, he offered to find them a conservative speaker. "Some schools want that, and we've done that in the past. We even got Ann Coulter for one place, we held our nose, but we did it," Moore joked. Coulter is an outspoken conservative television commentator and best-selling author.

Chemistry professor Jackie Trischman, chair of the Academic Senate, said the faculty had been hoping to host a political debate on the presidential election. "It would have been a great opportunity, but maybe this will be what gets everybody talking and interested in a debate," she said.

Professor Meryl Goldberg, who heads the committee that hosts such lectures, films, and programs, saw a potential upside. "It gives us an opportunity on campus to grapple with some difficult and challenging issues," she said. "Of course, if he was here, people would be talking too. Maybe people would be shouting." Reported in: *San Diego Union-Tribune*, September 15; *Chronicle of Higher Education*, September 20.

Naples, Florida

A Utah author who wrote she has been "sick at heart" since President George Bush took office was asked to delay her visit to Florida Gulf Coast University's campus until after the November election. The decision, supported 10–1 by the university's Board of Trustees on October 6 was made by President Bill Merwin after reading *The Open Space of Democracy*, by Terry Tempest Williams.

The university paid Williams $5,000 to speak on October 24 at an event for freshmen and on October 25 at two public lectures, but postponed the events after administrators read the book. Freshmen are required to read Williams' book, along with two books by other authors, and discuss and write essays on the readings as part of a freshmen program called "First Year Experience."

The book, published by the nonprofit Massachusetts-based The Orion Society, was approved by a faculty committee overseeing the event. But the book was not shipped to the university until a few weeks ago, and Merwin said he didn't get to read the book until recently. Merwin called the book "blatantly politically biased" and said university dollars should not be spent on one-sided political forums. Instead he wanted to make sure there was a balance of opinions—especially so close to the upcoming presidential election—and hoped to get another speaker to counter Williams' speech.

The episode occurred amid controversies at two other public universities where another outspoken liberal and opponent of President Bush—the filmmaker Michael Moore—had been scheduled to speak. George Mason University, in Virginia, and California State University at San Marcos both canceled university-supported appearances by Mr. Moore on their campuses (see pages 234 and 258).

Williams, who is the Annie Clark Tanner Fellow in Environmental Studies at the University of Utah and a writer who focuses on environmental and free-speech issues, said that she strongly dislikes many of the policies of President Bush's administration, but that she had not intended to give a partisan speech. Indeed, she said, her goal was to help people overcome partisan contrariness and to better understand one another through civil dialogue.

Alfred J. Wohlpart, chairman of the Florida university's Division of Humanities and Arts, said he and the other organizers of the event had repeatedly told Merwin that Williams would not deliver an attack on the president. Merwin is "doing what he thinks is in the best interests of the university," Wohlpart, who is also a professor of English, said. But the president's sudden reversal had left him "completely flabbergasted," the professor added.

Although Ms. Williams said she had promised not to make a partisan presentation, she declined Merwin's request to put that assurance in writing. With that refusal, Merwin said, he had no choice but to postpone the event.

In a letter to Merwin, Williams wrote: "The fact that you view my presence as "threatening" to your university because

of statements I have made in print regarding President George W. Bush is deeply troubling. If our institutions of higher learning can no longer be counted on as champions and respectors of freedom of speech, then I fear no voice is safe from being silenced in this country. I understand this morning the Board of Governors supported your decision by a vote of 11 to 1, the dissenting vote belonging to the president of the senate, a faculty member, the only trustee not appointed by Governor Jeb Bush. As an American writer, I believe that to deny the students their own Convocation at this point in time, when this is precisely the conversation we are having now as a nation, is not only a breach of contract, but more tragically, a breach in democracy."

"We have missed a rich opportunity for compassionate understanding and empathy." Williams continued. "Censorship betrays the students' intelligence, individual power of discernment, and their own passionate exploration of ideas as they prepare to vote. I believe your action has stopped the dialogue around Convocation at a time when we need it most. Consequently, the student body of Florida Gulf Coast University is being robbed of the experience of emancipatory education, the gift of being able to participate in critical thinking, meaningful dialogue, and debate, the very process inherent in an open society."

Williams, a registered independent who freely admits her disdain for Bush environmental policies, launched a cross-country tour October 8 to promote her book. In a passage singled out for criticism by Merwin, Williams writes that she has been "sick at heart, unable to stomach or abide by this administration's aggressive policies directed against the environment, education, social service, health care, and our civil liberties—basically the wholesale destruction of seemingly everything that contributes to a free society, except the special interests of big business."

But what the university is not examining are her next few paragraphs, Williams said. She calms down, goes for a walk, and writes a letter to U.S. Sen. Bob Bennett R-Utah, and suggests partnering as an example "of how people can come to listen to one another with real, authentic exchanges."

"I'm taking myself to task and asking for a deeper vision," she said.

The message of the book is not to promote her political views but to create an "open space of democracy," a forum for students to think and discuss opposing thoughts, Williams said. "It's the students who are being harmed by this decision," Williams said.

Laurie Lane-Zucker, executive director of The Orion Society, said the university responded to an advertisement for the tour. FGCU was an easy choice because The Orion Society had worked with the university in the past and the school was in a place likely to have energy because it was a swing state, one of the handful of states that could help decide the presidential election. Of the 133 institutions and organizations that were sent the advertisement, ten were in Florida.

In a letter to President Merwin, Lane-Zucker charged that the decision to cancel Williams's appearance was "undertaken from what I understand was an explicitly political rationale by appointees of Florida Governor Jeb Bush . . . without prior consultation with any of the eight co-sponsoring organizations, and at such a late date (months after the contract was signed and a mere few weeks before the events) that I am, frankly, stunned."

"Both Terry Tempest Williams and The Orion Society . . . have very little interest in one-dimensional political rants," Lane-Zucker continued. "We believe they are unproductive and contrary to our educational process and principles. The primary goal of The Open Space of Democracy Tour, and Terry's book by the same name, is to open, not close, dialogue and to inspire active citizen participation in our democracy. As we state in the tour's descriptive materials, the tour features 'readings and dialogue on questions of American leadership and values, the qualities of a peaceful and secure homeland, and the responsibilities of civic engagement.'"

"What is it exactly that you and your Board colleagues fear? Ideas? Well-articulated passion? Truth? This action is an insult to the intelligence of your students and faculty and exposes a frailty of commitment on the part of your administration and Board of Governors," she concluded.

Although the event was postponed, university spokeswoman Susan Evans said discussions and course work concerning Williams' book would continue as planned.

Williams, who returned her $5,000 payment from the university and asked that the money be given to students to set up a "forum for open expression," said she still would like to visit the university after the election. She has not decided if she will accept payment.

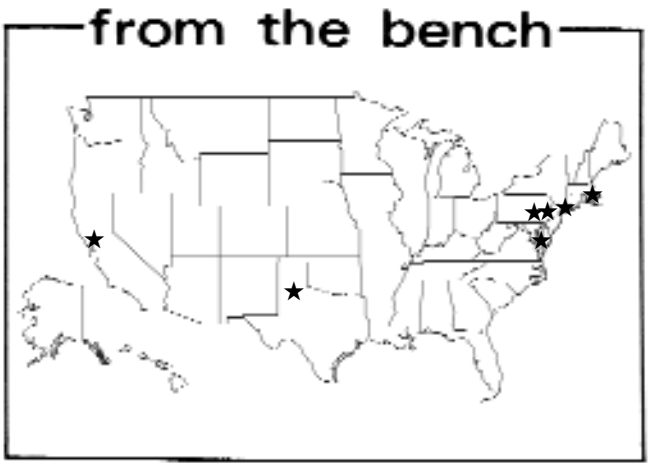
Student Government President Matt Hall, who sits on the Board of Trustees and supports postponing Williams' visit, said he had not read the book and he was concerned because students wouldn't have an opportunity to rebut what could be a political speech.

Merwin said he doesn't want there to be even the suggestion that the university is endorsing a presidential candidate or giving one candidate an advantage. Merwin, who contributed $2,000 to the Bush campaign in 2003 and another $1,750 to the Republican Party of Florida and candidates since 2002, said he would have had the same decision if Williams' views were on any other politician. The decision was made because of a need for balance, he said.

Trustee Edward Morton said he would like to see Williams return after the election. Perhaps a speaker of an opposing view could talk at a later time during the year.

"Without balance, this would be no different that inviting Sean Hannity to make a commentary on *Deliver Us*

(continued on page 258)



PATRIOT Act

Washington, D.C.

A federal judge in New York ruled September 29 that a key component of the USA PATRIOT Act is unconstitutional because it allows the FBI to demand information from Internet service providers without judicial oversight or public review. The ruling was one of several judicial blows to the Bush administration's anti-terrorism policies in recent months.

In a sharply worded 120-page ruling, U.S. District Court Judge Victor Marrero found in favor of the American Civil Liberties Union (ACLU), which filed a lawsuit on behalf of an unidentified Internet service provider challenging the FBI's use of a type of administrative subpoena known as a national security letter. Such letters do not require court approval and prohibit targeted companies from revealing that the demands were ever made.

Marrero, whose court is in the Southern District of New York, struck down Section 505 of the PATRIOT Act which permitted the FBI unchecked authority to obtain subscriber information, toll billing records, and other transactional records from electronic communications service providers "without any judicial oversight or opportunity for challenge." Section 505 authorizes the FBI to issue National Security Letters (NSL) to compel production of certain records whenever the FBI certifies that those records are relevant to a terrorism or counter-terrorism investigation. And, like Section 215 of the PATRIOT Act which governs library and bookstore records, NSL recipients are subject to a limitless gag order that forbids disclosure of even the fact that the FBI has sought or obtained records.

Since many libraries may be "electronic service providers" if they provide public access to the Internet, libraries are among the entities that may benefit from this ruling.

In striking down the provision in *Doe* v. *Ashcroft*, the judge found that the secret administrative subpoenas violated the fourth amendment because they "effectively bar or substantially deter any judicial challenge to the NSL." He further found that even if judicial review were provided, the gag order violated the First Amendment because it represented "a prior restraint on speech that was sweeping in scope" and appeared to apply "in perpetuity." Writing that "democracy abhors undue secrecy," Marrero ruled that "an unlimited government warrant to conceal . . . has no place in our open society."

"Under the mantle of secrecy, the self-preservation that ordinarily impels our government to censorship and secrecy may potentially be turned on ourselves as a weapon of self-destruction," Marrero wrote. ". . . At that point, secrecy's protective shield may serve not as much to secure a safe country as simply to save face."

The judge ordered the Justice Department to halt the use of the letters but delayed the injunction by ninety days to allow for an appeal. The government is reviewing its options, Justice Department spokesman John Nowacki said.

Marrero's ruling was the latest setback in the courts for the Bush administration's terrorism policies, which civil libertarians and some lawmakers consider overly broad. The Supreme Court ruled in June that detainees held as "enemy combatants" may challenge their confinement through the U.S. courts. Two rulings by federal courts in California also struck down portions of statutes making it a crime to provide "material support" to terrorists.

The ultimate impact of Marrero's order was unclear. In addition to having time to pursue an appeal, the government will view the ruling as applying only to New York's Southern District in Manhattan, legal experts said. I. Michael Greenberger, a Clinton administration Justice Department official who teaches law at the University of Maryland, said Marrero's order is unlikely to have any effect until an appellate court rules.

But the ACLU argued that Marrero's ruling is a warning to the government about some of its tactics in the war on terrorism. "This is a wholesale refutation of the administration's use of excessive secrecy and unbridled power under the PATRIOT Act," said Ann Beeson, an ACLU lawyer. "It's a very major ruling, in our opinion."

"This is a landmark victory against the Ashcroft Justice Department's misguided attempt to intrude into the lives of innocent Americans in the name of national security," said ACLU Executive Director Anthony D. Romero. "Even now, some in Congress are trying to pass additional

intrusive law enforcement powers. This decision should put a halt to those efforts."

The secrecy surrounding the use of national security letters has had an unusual impact on the ACLU's lawsuit, which itself was initially filed in secret to comply with the PATRIOT Act, the controversial package of anti-terrorism measures approved by Congress after the September 11, 2001, attacks. Documents in the case also revealed that the government had censored more than a dozen seemingly innocuous passages from court filings, including a direct quote from a 1972 Supreme Court ruling warning that government has a tendency to abuse its powers in the name of "domestic security."

Even now, the plaintiffs are barred from revealing which company filed the lawsuit. Marrero disclosed in his ruling that the FBI has issued hundreds of national security letters before and since the lawsuit was filed in April, but no precise figures have been released.

Beeson said Marrero's ruling applies only to national security letters related to Internet and e-mail service providers. Separate provisions of the PATRIOT Act also enhanced the government's ability to use such letters against financial and credit institutions.

The decision is unlikely to have any immediate impact on libraries for two reasons. First, the decision has been stayed and it is likely that it will remain so during appeal. Second, because of the cloak of secrecy that has shrouded the NSL process, it is impossible to know whether NSLs have been served in libraries and if so how often or in what circumstances this has occurred.

Longer term, the decision may have an impact on pending litigation challenging the gag order in Section 215, which is virtually identical to the gag order struck down by the court. Reported in: ALA Washington Newsline, September 29; *Washington Post*, September 30.

Washington, D.C.

A federal judge ordered the government August 28 to explain why Yaser E. Hamdi, an enemy combatant captured in Afghanistan, has remained in solitary confinement in a military brig for more than two years, even as prosecutors and defense lawyers are negotiating his imminent release. The judge, Robert G. Doumar, of Federal District Court in Norfolk, Virginia, said in his order that "without question, the isolation of a prisoner from the general population for an indefinite period of time raises Eighth Amendment issues," as well as due process concerns. The Eighth Amendment bars cruel and unusual punishment for prisoners.

The judge noted that Hamdi, who was born in Louisiana and retains his American citizenship, "has been incarcerated in solitary confinement, incommunicado" for more than two years. He ordered federal officials to produce a sworn statement "under penalty of perjury" from the commander of the Navy brig in South Carolina "explaining the reasons for his solitary confinement apart from any other prisoners or actual or alleged enemy combatants."

The Bush administration's treatment of Hamdi drew a sharp rebuke in June from the Supreme Court, which rejected the Justice Department's assertion that the executive branch has broad and virtually unchecked authority to detain enemy combatants indefinitely and without access to legal counsel.

The historic decision led to negotiations for Hamdi's release and his possible return to Saudi Arabia, and the Justice Department said in a court filing that the two sides had reached the rough outlines of an agreement, with only details remaining to be worked out. A hearing had been scheduled, but Judge Doumar agreed to postpone it for a day—provided that the Justice Department turn over its sworn explanation for Hamdi's solitary confinement and other materials.

Hamdi's attorney, Frank W. Dunham, Jr., said that the prisoner's indefinite detention in solitary confinement in South Carolina amounted to cruel and unusual punishment. Even if Hamdi is not immediately released, he said, "Hamdi's solitary incommunicado confinement should end." Reported in: *New York Times*, August 28.

political protest

New York, New York

A state judge in Manhattan angrily ordered the city September 2 to release more than 550 protesters who had been detained without seeing a judge—some for as long as sixty hours—after they were arrested at demonstrations against the Republican National Convention. When not all the protesters had been released by 6 P.M., he held the city in contempt and ordered a fine of $1,000 for each person still held, without setting a time frame.

The judge, John Cataldo of the State Supreme Court in Manhattan, demanded during a noon hearing that the city immediately process the demonstrators. Throughout the afternoon, knots of exhausted but relieved-looking protesters with disheveled clothing and grime-covered hands and arms emerged onto Centre Street from the Criminal Courts Building.

Many raised their hands in triumph and were greeted with boisterous cheers, whistles, and sometimes even flowers from hundreds of onlookers who had gathered. Others looked on nervously, waiting to hear news of relatives and friends.

The city's corporation counsel, Michael A. Cardozo, issued a statement saying: "The judge was wrong not to permit the city sufficient time to complete the processing of arrestees. The release of those individuals is unfortunate to say the least." The judge and lawyers for the protesters and the city reconvened at 6 p.m. to discuss the progress of the releases, which had not been completed. Clearly frustrated, Judge Cataldo levied the fine on the city.

"The important thing is not the fine but to have these people released," the judge said.

The abrupt release of the detainees and the threat of tens of thousands of dollars in fines capped a dramatic episode surrounding the convention, as more than 1,000 protesters who were swept off the streets were sent in handcuffs into the city's criminal justice system. The city said it had cleared court dockets and opened additional courtrooms to handle the expected flood of protesters, but only a trickle of those arrested appeared in court.

Defense lawyers and protesters said something was amiss in the Police Department's detention process. City officials had maintained that those arrested were not being held for longer than twenty-four hours—the legal limit—without seeing a judge and that they were being given access to lawyers. The defense lawyers and protesters claimed the police were using long detentions as a tactic to keep the streets clear until the convention was over.

During the hearing in Judge Cataldo's courtroom, the city conceded that some protesters were held too long. "We couldn't get everyone processed as quickly as we liked," Cardozo said. He said the police had been overwhelmed by the number of arrests within a four-hour period, when about 1,200 people were taken into custody at different locations in Manhattan for offenses that ranged from disorderly conduct to resisting arrest to various degrees of assault. "We're doing our best" to move people through the system, he said.

Judge Cataldo replied, "I'm ordering that."

At one point, clearly exasperated, the judge told Cardozo, "These people have already been the victims of a process. I can no longer accept your statement that you are trying to comply."

Judge Cataldo referred to a list produced by the court indicating that 120 people had been in police custody for more than thirty-eight hours, and that 440 others had been in jail for a day and a half without having had an arraignment—the hearing at which charges are brought and bail is set. The State Court of Appeals ruled in 1991 that anyone arrested in New York who is not arraigned within twenty-four hours is eligible for immediate release.

The city and police officials said they could not pinpoint the cause of the delays. "I'm presuming it's volume," said Paul J. Browne, the chief spokesman for Police Commissioner Raymond W. Kelly. "What I'm assuming is that the volume caused some delay. I'm not prepared to say where in the process the delays were."

He denied that the long holding time was a deliberate tactic to keep protesters behind bars until the convention ends. Some members of the National Lawyers Guild circulated what they called an internal Police Department memo that seemed to suggest that protesters be held as long as possible, but Browne flatly called it a forgery.

During the hearing, Norman Siegel, a veteran civil rights lawyer, told the court that one client, a seventeen-year-old Trinity School student, had been in jail for forty-two hours. "There is no reason, I submit, that this process had to take this long," Siegel said. The charge against the student was not known.

Siegel, along with lawyers from the Legal Aid Society and the National Lawyers Guild, filed writs of habeas corpus and began arguing in court that some protesters must be released. They said the vast majority of protesters were being held not for felonies but for misdemeanors like disorderly conduct that should have been processed in a few hours. Siegel complained to Judge Cataldo that the protesters were being treated worse than criminals. "The only people being disadvantaged here are the protesters," he said. "We're arraigning robbers who have only been in ten hours."

One lawyer, Elizabeth Fink, contended in court that some protesters in custody were wrongfully arrested in the first place. Accounts from people who said they were going about their business on the streets when they got caught in mass arrests seemed to back up her claim.

"People around the country are watching this," Siegel said. "I'm getting more and more calls asking, 'How could this happen in New York City?"'

Relatives of the detained expressed similar concerns. Tom Roderick, 61, was outside the court hoping to find his daughters, Emma Rose, 19, and Anne Marie, 16, who he said had been held for forty-four hours. He said it took a full day just to get their arrest numbers. He had been trading shifts with his wife so that one of them was always at home, waiting for a phone call.

Tales from those detained or their families had a consistent narrative: an arrest, followed by seemingly endless hours on buses, in holding pens, and in cells at central booking before being allowed any outside contact, even brief communication.

Hanna Ingber, 23, said she was held from 9 P.M. on a Friday until early Sunday morning after being arrested at the end of a bicycle protest in the East Village. She said she followed a commanding officer's directions to leave the demonstration through a line of police officers. She was there on a date, she said. Hours later, after being handcuffed and photographed, she said, the crowd was broken into groups, put on buses, and driven to the detention center on the Hudson River.

The center has been a focus of steady complaints; many detainees said they were covered in oily grime from the floors. Ingber said the officers told them the process would not take long. In her account, as they sat outside the detention center in the bus, several of the men complained that their handcuffs were too tight; one was yelling that he could not feel his hands, which another man said looked blue. Two officers came aboard. "What do you want me to do?" said one, "I'm not a doctor." The other one said, "You were the ones who had to riot. This is what you get."

Ingber said that about 11:30 that night she was corralled into a pen inside the detention center, where she remained until about 11:30 A.M. Saturday. She said she was released about 1:30 A.M. Sunday.

The police issued a breakdown of the 1,735 protesters arrested who had identification, showing that 1,135 were from outside New York State; 61 of those arrested refused to identify themselves, the police said. Reported in: *New York Times*, September 3.

access to information

Washington, D.C.

A federal judge in New York, complaining that the Bush administration "shows an indifference" to the freedom of information laws, ordered the Pentagon and other agencies to produce a list of all their documents on the detentions at Abu Ghraib prison in Iraq by October 15. The ruling, issued September 15 by Judge Alvin K. Hellerstein in U.S. District Court in Manhattan, came in a suit filed July 2 by the American Civil Liberties Union. The group sued after the federal government failed to provide any relevant documents in response to a Freedom of Information Act request it made on October 7, 2003.

The request was for documents about the treatment and deaths of detainees while in United States custody in Iraq, among other subjects. The group provided a list of seventy priority documents, all of which were mentioned in public reports or press accounts.

In his ruling, Judge Hellerstein wrote that the "glacial pace" of the government's response "fails to afford the accountability of government" that the freedom of information laws require. On August 17, the judge had ordered the government to start producing the seventy documents, but none had been released.

"If the documents are more of an embarrassment than a secret, the public should know of our government's treatment of individuals captured and held abroad," he wrote.

He stopped short of ordering the Pentagon to turn over the actual documents by the October deadline, after Assistant United States Attorney Sean Lane argued at a hearing that there were too many of them—at least 20,000, he said—to produce that soon. Lane said that many of the Pentagon's documents could not be released for national security reasons, and that the agency was working to identify those it would seek to withhold.

The Pentagon offered to produce a list of its relevant documents by February. In imposing the October 15 deadline, Judge Hellerstein said the federal agencies could make a separate, sealed list for classified documents they did not want to release. But he required the government to give an explanation for each document it would not release.

Jameel Jaffer, a staff lawyer for the ACLU, said the ruling was "a huge step forward" and would allow the group to begin court challenges to force the release of the documents. Reported in: *New York Times*, September 16.

colleges and universities

Swarthmore, Pennsylvania

Students who sued Diebold Election Systems won their case against the voting machine maker September 30 after a judge ruled that the company had misused the Digital Millennium Copyright Act and ordered the company to pay damages and fees. Lawyers for the students called the move a victory for free speech.

A judge for the California district court ruled that the company knowingly misrepresented that the students had infringed the company's copyright and ordered the company to pay damages and fees to two students and a nonprofit Internet service provider, Online Policy Group.

Last October, students at Swarthmore College in Pennsylvania posted copies and links to some 13,000 internal Diebold company memos that an anonymous source had leaked to Wired News. The memos suggested that the company was aware of security flaws in its voting system when it sold the system to states.

Diebold sent several cease-and-desist letters to the students and threatened them with litigation, citing the Digital Millennium Copyright Act, or DMCA. Online Policy Group also was threatened after someone posted a link to the memos on a Web site hosted by the ISP. Diebold said the memos were stolen from a company server and that posting them or even linking to them violated the copyright law.

The Electronic Frontier Foundation, which took on the case for the Online Policy Group, argued that the memos were an important part of the public debate on electronic voting systems. After a slew of bad publicity criticizing their strong-arm tactics, Diebold backed down and withdrew its legal threats in December, but a spokesman said at the time that no one should interpret the move as implying that the DMCA did not apply in the case.

"We've simply chosen not to pursue copyright infringement in this matter," spokesman David Bear said.

But the California district court judge ruled otherwise. Judge Jeremy Fogel wrote in his decision that "no reasonable copyright holder could have believed that portions of the e-mail archive discussing possible technical problems with Diebold's voting machines were protected by copyright." The judge ruled that Diebold "knowingly materially misrepresented" that the students and ISP had infringed Diebold's copyright.

Wendy Seltzer, staff attorney for the Electronic Frontier Foundation, said she hopes the decision will encourage ISPs to resist takedown demands from companies that use the

DMCA to bar the speech of their clients. Seltzer said she hoped the decision would show colleges and ISPs that they shouldn't cave because they think litigation will be too expensive and useless.

"For people who are facing threats under the Safe Harbor provision of the DMCA, this gives them another tool in the arsenal to resist demands," Seltzer said. "If the ISP now has the right to cover its fees and costs, the ISP can be more confident in standing up to its accusers."

Diebold will have to pay the students and the ISP their attorney fees, court costs, and various other damages, which Seltzer said will probably be in the "low six figures." Seltzer said the figure wasn't going to bankrupt Diebold but she said that was never their goal.

The ruling makes Diebold the first company to be held liable for violating section 512(f) of the Digital Millennium Copyright Act, which makes it unlawful to use the DMCA takedown threats when the copyright holder knows that infringement hasn't occurred.

"We weren't out to get Diebold," Seltzer said. "We were out to crack down on the misuse of copyright threats. It's a matter of showing Diebold and other companies that there is a cost to making false threats and to show ISPs that they have a remedy if they feel they are being unfairly threatened. It's not free to threaten infringement when there's no good faith claim for infringement." Reported in: *Wired News*, September 30.

Lubbock, Texas

A federal judge has struck down "free-speech zones" at Texas Tech University, ruling that the policy of requiring students who wish to give speeches to stay within the designated areas is unconstitutional. Judge Sam R. Cummings of the U.S. District Court in Lubbock ruled September 30 that a public institution could not limit speech to such zones.

The case was brought by Jason Roberts, a law student who had sought to speak about his view that "homosexuality is a sinful, immoral, and unhealthy lifestyle." He asked administrators for permission to give the speech outside the designated zone—a twenty-foot-wide gazebo that can hold about forty people.

According to the lawsuit, officials turned down the request, saying that it was "the expression of a personal belief and thus is something more appropriate for the free-speech area, which is the gazebo area." With the help of several civil-liberties groups, Roberts then sued the university.

Hiram Sasser, one of Roberts's lawyers and litigation director of the Liberty Legal Institute of Plano, Texas, described the ruling as a "sweeping victory."

"Everyone should be happy about striking down speech codes because these rules will always be used to silence those that aren't in power," Sasser said. Sasser said he had not yet been able to contact Roberts, who graduated in May.

The lawsuit also was supported by the Foundation for Individual Rights in Education, which has fought such speech zones at several colleges. In 2003, after the foundation, which is commonly known as FIRE, first sent a letter to Texas Tech about the restrictions, the university created a committee to examine the issue and later increased the number of zones from one to five.

A year ago, FIRE prevailed in a similar case after suing Citrus College, in California, over its free-speech policies. A student there said administrators had refused to let him hold a "pro-America rally" outside the designated free-speech zones unless he did it as part of a registered club. The college repealed the policy the day before lawyers were scheduled to appear in court to defend the speech code. Reported in: *Chronicle of Higher Education* online, October 4.

publishing

San Francisco, California

A federal appeals court in San Francisco ruled August 9 that the government could prohibit anti-tax author Irwin Schiff from selling his 1990 book *The Federal Mafia: How It Illegally Imposes and Unlawfully Collects Federal Income Taxes* because it gives fraudulent advice and tells people how to evade income taxes. The U.S. Court of Appeals for the Ninth Circuit held 3–0 that while the Constitution allows the publication of ideas without government interference, a book can be forbidden if it's found to entail false advertising. The ruling said Schiff was free to "explain his unorthodox tax theories without simultaneously urging his readers to buy his products."

Anyone but Schiff or his associates may sell the $38 volume. The court also hinted that Schiff may be able to sell a new edition of his book if he takes out the portions that promote his tax-evasion products and services.

American Civil Liberties Union (ACLU) lawyer Allen Lichtenstein voiced relief that the judges did not block Schiff from expressing his ideas, but only their commercial application. "The government was suggesting that those theories, in and of themselves, and the exposition of those theories should be prohibited," said Lichtenstein, who had filed an *amicus* brief supporting Schiff on behalf of the ACLU, the Freedom to Read Foundation, and other free-speech groups.

Schiff was indicted by a federal grand jury in March for tax evasion and assisting in the preparation of fraudulent tax returns. He faces a maximum sentence of forty-three years in prison and $3.25 million in fines on those charges.

The court's eighteen-page decision upheld a June 2003 order by Judge Lloyd D. George of Federal District Court in Las Vegas that prohibited sale of the book by Mr. Schiff and two associates. "The defendants have been selling

products that help their customers engage in illegal activity," and Schiff, through his book, "is making fraudulent claims," Judge Procter Hug, Jr., wrote. He was joined by Judges Arthur L. Alarcon and William A. Fletcher.

The tough language of the opinion contrasted with the tone of a February hearing in which Justice Department lawyers were grilled by two judges, who expressed skepticism that the book could be banned.

In his self-published book, Schiff asserted that people could legally escape income taxes by putting "zero" in each box for reporting income on their tax returns. The courts have rejected that claim as nonsense. Reported in: *American Libraries* online, August 13; *New York Times*, August 10.

newspapers

Washington, D.C.

A federal judge in Washington lifted a contempt order and the threat of jail against a *Time* magazine reporter August 24 after he submitted to questioning by a special prosecutor who is investigating the disclosure of a covert CIA officer's identity to the columnist Robert Novak and other journalists. The reporter, Matthew Cooper, was questioned in a two-hour deposition about his contacts with I. Lewis Libby, chief of staff to Vice President Dick Cheney, but only after Libby's lawyer assured Cooper's lawyer that Libby had waived a confidentiality agreement with the reporter.

The deposition became known only when the judge lifted the contempt order at the request of the special prosecutor, Patrick J. Fitzgerald. On August 9, the judge, Thomas F. Hogan, ordered that Cooper be jailed, and *Time* fined $1,000 a day, for refusing to name the government officials who might have disclosed the intelligence officer's identity to him. The judge suspended the sanctions while *Time* pursued an appeal.

While Cooper's deposition relieved him of the burden of a contempt citation, many questions about the investigation of the leak remain unresolved. It is not known, for example, what role, if any, Libby may have played in identifying the CIA officer, Valerie Plame, to Novak, Cooper, or other journalists who wrote about her by name last summer. Disclosing the identity of a covert officer of the Central Intelligence Agency can be a crime.

Floyd Abrams, a lawyer representing both Cooper and *Time*, said that Libby had been "one of the sources" for an article that Cooper co-wrote last July that mentioned Plame. But Abrams would not say precisely what material Libby had provided to Cooper and declined to say whether Libby was among those who had given Plame's name to *Time*.

In his earlier ruling in the Plame matter, Judge Hogan said a Supreme Court decision from 1972 known as Branzburg required Cooper to disclose his sources. "*Branzburg*," the judge wrote, "makes clear that neither the First Amendment nor the common law protect reporters from their obligations shared by all citizens to testify before the grand jury when called to do so."

Time's managing editor, Jim Kelly, said: "We continue to feel a journalist should not be compelled to give up a confidential source. In this case, the confidential source, of his own free will, completely waived his confidentiality." Cooper would not have cooperated with prosecutors without Libby's consent, Kelly added.

Novak is believed to be central to the investigation because it was he who first identified Plame, in a syndicated column published on July 14, 2003, when he described her as "an agency operative on weapons of mass destruction." He did so in the context of a column about Plame's husband, Joseph C. Wilson, IV, a former diplomat sent by the CIA to Africa in 2002 to investigate the possibility Iraq had tried to buy uranium from Niger. Citing "two senior administration officials" as sources, Novak reported that it was Plame who had suggested sending her husband to Africa.

Novak's lawyer, James Hamilton, has refused to say whether the columnist has received a subpoena from the special prosecutor.

Wilson had suggested the White House leaked his wife's name as retribution for his criticism of the administration, including an Op-Ed article published in the *New York Times* on July 6, 2003, eight days before Novak's column. In his article, Wilson asserted that President Bush had relied on discredited evidence when, in his 2003 State of the Union address, he said Iraq had sought uranium from Africa.

On July 17, 2003, three days after Novak's column was published, *Time* published an article on its Web site—under the bylines of Cooper, Massimo Calabresi, and John F. Dickerson—that explored what it described as the Bush administration's "feud" with Wilson.

"Some government officials," the reporters wrote, "have noted to *Time* in interviews (as well as to syndicated columnist Robert Novak) that Wilson's wife, Valerie Plame, is a CIA official who monitors the proliferation of weapons of mass destruction."

It is not known why the special prosecutor was so interested in questioning Cooper about Libby. Kelly, *Time's* managing editor, characterized the deposition on Monday as having been "all about Matt's conversations with Mr. Libby." But Kelly declined to answer any other questions about what Cooper had been asked, and Cooper also declined to comment.

In addition to the case involving *Time*, NBC said in a statement earlier this month that Tim Russert, the moderator of "Meet the Press," had agreed to be questioned by the special prosecutor's office about his contacts with Libby last summer. In the statement, NBC said that Russert had

not been the recipient of a leak and that prosecutors had not asked him questions that would have forced him to disclose a confidential source. And the *Washington Post* reported that one of its reporters, Glenn Kessler, testified in June about two conversations with Libby, telling prosecutors that in neither had Libby mentioned Plame or Wilson.

Other journalists who have received subpoenas in the investigation include another *Post* reporter, Walter Pincus, and Judith Miller of the *Times*. Abrams, who is representing Miller, said a hearing on her request to quash the subpoena was scheduled before Judge Hogan in early September. Reported in: *New York Times*, August 25.

Washington, D.C.

A federal judge held a reporter in contempt October 7 for refusing to divulge confidential sources to prosecutors investigating the leak of an undercover CIA officer's identity. U.S. District Court Judge Thomas F. Hogan ordered *New York Times* reporter Judith Miller jailed until she agreed to testify about her sources before a grand jury, but said she could remain free while pursuing an appeal. Miller could be jailed up to eighteen months.

Hogan cited Supreme Court rulings that reporters do not have absolute First Amendment protection from testifying about confidential sources. He said there was ample evidence that U.S. Attorney Patrick Fitzgerald of Chicago, the special prosecutor in the CIA leak case, had exhausted other avenues of obtaining key testimony before issuing subpoenas to Miller and other reporters.

"The special counsel has made a limited, deferential approach to the press in this matter," Hogan said.

Fitzgerald is investigating whether a crime was committed when someone leaked the identity of CIA officer Valerie Plame, whose name was published by syndicated columnist Robert Novak on July 14, 2003. Novak cited two "senior administration officials" as his sources.

The Novak column appeared after Plame's husband, former Ambassador Joseph Wilson, was critical in a newspaper opinion piece of President Bush's claim that Iraq sought to obtain uranium in Niger. The CIA had sent Wilson to Niger to investigate that claim, which he concluded was unfounded.

Miller's lawyer, Floyd Abrams, said he would quickly file notice of an appeal of Hogan's ruling with the U.S. Court of Appeals for the District of Columbia Circuit. He and Miller both noted that although she gathered material for a story about Plame, she never wrote one.

"I think it's really frightening when journalists can be put in jail for doing their job effectively," Miller told reporters outside the courthouse.

Fitzgerald also has issued subpoenas to reporters from NBC, *Time* magazine and the *Washington Post.* Some have agreed to provide limited testimony after their sources, notably Lewis "Scooter" Libby, who is Vice President Cheney's chief of staff, released them from their promise of confidentiality (see page 242).

Miller and Bill Keller, the *Times'* executive editor, said they would not agree to provide testimony even under those circumstances. Novak never has said whether he has been subpoenaed. Reported in: Associated Press, October 7.

New York, New York

A federal judge held five reporters in contempt August 18 for refusing to identify their sources for stories about Wen Ho Lee, a former nuclear weapons scientist once suspected of spying. U.S. District Court Judge Thomas Penfield Jackson imposed a fine of $500 a day each for Associated Press reporter H. Josef Hebert; James Risen and Jeff Gerth of the *New York Times*; Robert Drogin of the *Los Angeles Times*; and Pierre Thomas of ABC, who was at CNN when the stories were done. Jackson said the fines would be delayed pending appeals. Attorneys for the journalists said they would appeal.

The reporters contend they provided all of the relevant information they could without breaking a commitment to protect their sources. The sanctions come one week after another federal judge held a *Time* magazine reporter in contempt for refusing to testify before a grand jury investigating the leak of a CIA officer's identity.

"The threat to First Amendment rights that's going on this summer is unprecedented," said Lucy Dalglish, executive director of the Reporters Committee for the Freedom of the Press. "We have reporters being subpoenaed. We have judges issuing illegal prior restraints on the media."

"All this has to do with secrecy. The government is trying to keep more and more secrets all the time, and journalists are working harder to uncover those secrets. Given the terrorism climate, all this has come to a head," she said.

Lee is seeking the identity of the sources for his lawsuit against the departments of Energy and Justice. He alleges the agencies gave reporters private information on him and suggested he was a suspect in an investigation into possible theft of secrets from Los Alamos National Laboratory in New Mexico.

All but one of fifty-nine counts against Lee eventually were dismissed and then-President Clinton apologized for Lee's treatment. He was never charged with espionage. He pleaded guilty to one felony count of mishandling nuclear weapons information.

In his order, Jackson rejected the reporters' arguments that Lee could obtain the information he seeks elsewhere. He said he was holding the five in contempt because they violated his explicit order in October to disclose the information. "The journalists declined to reveal their confidential sources," Jackson wrote.

Hebert, a thirty-four-year AP veteran, said he was disappointed by Jackson's ruling. "I believe strongly that when a reporter gives a source the assurance that his or her confidentiality will be protected, he cannot go back on his

word," Hebert said. "To do so would be a disservice to the source, destroy the reporter's credibility with future sources, and hinder essential newsgathering."

George Freeman, assistant general counsel for the *New York Times*, said: "The *Times* continues to believe, as we have for decades, that confidential sources are critical for us to give the public as broad a perspective as possible on the important issues of the day."

Los Angeles Times vice president Martha Goldstein said, "The ruling seriously jeopardizes the press's ability to report about our government's actions and the public's right to know."

During the hearing, Lee's lawyer, Brian Sun, said learning the identities of the journalists' sources was critical to pursuing Lee's privacy action against government officials. "Although the journalists would posit this as a battle of the First Amendment, we would submit it's not just that," Sun said. "It's undisputed that classified information was leaked and government officials acknowledged there were leaks. (Lee) is being deprived of crucial information."

Jackson's twelve-page order avoided addressing the question of First Amendment rights, instead focusing on narrower issues such as whether the reporters truthfully and fully answered questions from Lee's attorney in depositions.

At one point, Jackson called Gerth's statement in depositions that he could not recall some of his confidential sources "not credible." He also rejected an argument from attorneys that the subpoenas effectively punished reporters for publishing information they lawfully obtained.

Lee is "not seeking to 'punish' the journalists for publishing the information; rather, he seeks an order of contempt because they will not reveal sources that they have been ordered to reveal," Jackson wrote.

A week earlier, U.S. District Court Judge Thomas Hogan in Washington held *Time* magazine reporter Matthew Cooper in contempt for failing to reveal sources as part of the investigation into the leak of the identity of CIA officer Valerie Plame. But in late August the citation was lifted after Cooper agreed to testify (see page 242).

"Reporters' ability to quote sources anonymously is a fundamental and crucial tool in getting important information to the public," said Stuart Wilk, vice president and associate editor of The *Dallas Morning News* and president of the Associated Press Managing Editors Association. "Courts have held repeatedly that journalists can protect their sources. APME would hope that principle ultimately will prevail." Reported in: *San Francisco Chronicle*, August 18.

Internet

San Francisco, California

In a resounding defeat for the music industry, a federal appeals court on August 19 turned back copyright owners' attempt to shut down peer-to-peer file-sharing services. Affirming a lower court decision, the appellate judges said that even assuming 90 percent of the material exchanged via online file-sharing is copyright-protected, that still leaves hundreds of thousands of legitimate uses, ranging from public domain works to music that artists voluntarily offer for free downloading in order to spark the interest of fans.

The judges found that the software distributed free by such services as Grokster and StreamCast is different from the original Napster—which the same U.S. Court of Appeals for the Ninth Circuit shut down three years ago. There is no centralized index of available files, and the companies do not control how their millions of customers around the world use their products. They cannot, therefore, be held responsible for what the industry says are overwhelmingly illegal uses.

The decision is important because it recognizes both the many "significant noninfringing uses" of peer-to-peer technology, and the value of technological change to art and culture. "We live in a quicksilver technological environment with courts ill-suited to fix the flow of internet innovation," the judges noted. Indeed, new technology—from the player piano to the photocopy machine and the VCR—"is always disruptive to old markets," yet the answer is not to shut down the technology.

The court was apparently influenced by an *amicus* brief from the American Civil Liberties Union (ACLU), the American Library Association (ALA), and other library groups and online archives, which discussed the many positive uses of file-sharing technology—including both "fair use" of copyrighted works, and downloading of public domain materials such as Shakespeare's plays. Fair use permits all members of the public to copy or borrow for purposes such as commentary, criticism, parody, or scholarship. It also allows copying for personal use in some circumstances, including, quite possibly, making available or listening to portions of songs.

Examples of important and legitimate uses of file-sharing software, as noted by the ACLU/ALA brief, include the more than 9,500 public domain books now available through Project Gutenberg; music distributed for free by up-and-coming artists; and material from online political campaigns. Thus, said the ACLU, despite the blitzkrieg of public relations conducted by plaintiffs, this case is not simply about college students who believe that they should not have to pay for music when they can simply download it from the Internet. Rather, at stake in this case is the fundamental issue of whether citizens can be denied valuable technological tools for sharing information and ideas simply because some may use those tools for improper purposes. . . .

Particularly for digital libraries and other entities devoted to public education and the free flow of information, peer-to-peer technology provides the most cost-effective and, in some cases, the only feasible alternative for accomplishing their mission.

Having lost this case last year at the district court level, the recording industry has already moved on to more direct methods of trying to stop massive online file-sharing. Suits against hundreds of individuals are now pending in courts around the country. In many of these cases, the defendants probably are guilty of infringement. But, as the Electronic Frontier Foundation pointed out, a copyright system that "makes criminals out of" millions of music lovers, badly needs reconstruction. The EFF proposed a variety of creative solutions that would protect peer-to-peer technology while actually providing more revenue for artists. Reported in: Free Expression Policy Network, August 20.

San Francisco, California

A U.S. appeals court ruled August 23 that a lower tribunal had no right to decide a case brought against U.S. Internet giant Yahoo! by two French groups trying to halt online sales of Nazi memorabilia. The long-running case is seen as a critical test of legal jurisdiction in cases involving the World Wide Web, and pits a French law banning the sale of Nazi flags, literature, and other items, against U.S. free speech rights.

The French associations, La Ligue Contre le Racisme et l'Antisemetisme (The League against Racism and Anti-Semitism—LICRA) and L'Union des Etudiants Juifs de France (Jewish Students Union of France—UEJF) want to stop Yahoo! in the United States from allowing the sale of Nazi memorabilia. They claim that French Internet users can access such sales, which break a French law banning the circulation of Nazi symbols and which were removed by a French court order from Yahoo!'s French site.

The Ninth Circuit appeals panel ruled 2–1 that the lower court should have held back from ruling as the two groups had yet to file their cases in a U.S. court in their bid to collect a fine imposed by a French court. "Yahoo! must wait for LICRA and UEJF to come to the United States to enforce the French judgement before it is able to raise its First Amendment claim. However, it was not wrongful of the French organizations to place Yahoo! in this position," wrote Judge Warren Ferguson.

A French court in May 2000 ordered Yahoo! to destroy all Nazi-related messages, images, and text on its California server within three months, under penalty of a fine of FRF 100,000 (USD 13,300 dollars) per day. Yahoo! did not fully comply with the order on its U.S. site, but the fine could not be collected in the United States without further U.S. court proceedings and Yahoo! chose to pursue its appeal in France.

Yahoo! filed a complaint in the U.S. district court in San Francisco in December 2000 asking the judge to declare the French court's rulings unenforceable in the United States as they breached the U.S. Constitution's First Amendment guarantee of freedom of expression. The court granted Yahoo's request for a summary judgement in the case, ruling that enforcement of the French court orders would violate Yahoo!'s First Amendment rights.

But two of the three appeals court judges ruled that the court had no right to accept the case until the French groups had moved formally to enforce the French rulings in the United States. However, while ruling the lower court had been premature in its judgement, the judges did not rule directly on the core issue of whether the French groups can collect their fines in the United States.

"France is within its rights as a sovereign nation to enact hate speech laws against the distribution of Nazi propaganda in response to its terrible experience with Nazi Forces during World War II," Ferguson wrote. "Similarly, LICRA and UEJF are within their rights to bring suit in France against Yahoo! for violation of French speech law," he said, declining to rule on the basis of the suit.

But dissenting Judge Melvin Brunetti said LICRA and UEJF did effectively use the U.S. legal system to serve Yahoo! with the French court's order. "Yahoo! could feasibly be responsible for all retroactive penalties that accrue until Yahoo! is in compliance with the French order. The threat to Yahoo! is concrete and growing daily," he wrote.

In February last year, a former Yahoo! boss, Timothy Koogle, was acquitted in a Paris court of charges of illegally selling Nazi memorabilia online through the U.S. company's auction site. The court decided that neither charge brought against Koogle—"justifying a crime against humanity" and the "exhibition of a uniform, insignia, or emblem of a person guilty of crimes against humanity"—had been proven. Koogle, a fifty-one-year-old U.S. citizen and resident, had been taken to court by the Association of Auschwitz Deportees, a group of survivors of the infamous Nazi death camp. Reported in: *Agence France Presse*, August 25.

Boston, Massachusetts

The U.S. Court of Appeals for the First Circuit decided October 5 to rehear arguments in a case that could have a profound effect on e-mail privacy. In September, the Electronic Frontier Foundation (EFF) submitted an *amicus* brief in the case, *U.S.* v. *Councilman*, urging such a rehearing.

In the earlier decision, a panel of First Circuit judges ruled that an e-mail service provider did not violate criminal provisions of the Wiretap Act by monitoring the content of users' incoming messages without their consent. However, the Wiretap Act is the same law that requires the government to get a wiretap order before intercepting e-mails, and the panel decision could be read to eliminate this requirement. As the panel itself admitted, "it may well be that the protections of the Wiretap Act have been eviscerated as technology advances."

The brief requesting a rehearing, authored by law professors Orin Kerr and Peter Swire and cosigned by a number of civil liberties organizations, argued that the original

panel decision in the *Councilman* case should be reheard by the entire First Circuit Court of Appeals.

"The First Circuit clearly understands the need to quickly reconsider the court's earlier ruling, which raised significant constitutional questions and threatened to disrupt the traditional understanding of wiretap law," said Kevin Bankston, EFF attorney and Equal Justice Works/ Bruce J. Ennis fellow. "Upon rehearing the case, the full First Circuit should recognize that the original decision rewrote the field of Internet surveillance law in ways that Congress never intended."

The original panel decision has been withdrawn pending the First Circuit's rehearing of the case, which will occur in December.

child pornography

Harrisburg, Pennsylvania

A federal court struck down a Pennsylvania law September 10, ruling that the state could no longer force Internet service providers to block customers' access to Web sites thought to be distributing child pornography. The decision is considered a broad victory for both free speech and Internet-rights advocates who have argued that although the Internet Child Pornography Act of Pennsylvania was well-intentioned, its methods and unintended effects were unconstitutional.

Sean Connolly, a spokesman for the Pennsylvania attorney general, Jerry Pappert, said his office was reviewing the 110-page decision and might appeal. "We're disappointed with the court's ruling," he said. "This law was designed to block access to child pornography. We believe it has worked well in Pennsylvania."

The law—the only one of its kind in the United States and one that other states have watched closely as it was challenged in court—required Internet service providers doing business in Pennsylvania, upon notification by the attorney general's office, to disable access to specified child pornography items "residing on, or accessible through, its service." That proviso, opponents of the law argued, made Internet service providers liable for offending material that might reside on a private computer on the other side of the globe.

Fearing criminal penalties and the negative publicity associated with appearing to resist legal curbs on child pornography, many local and national Internet carriers had little choice but to comply with the Pennsylvania law.

"The blocking affected the global network," said John Morris, a staff lawyer with the nonprofit Center for Democracy and Technology. "So a customer in England might not be able to access a site in Spain because of a law in Pennsylvania."

The Center for Democracy and Technology, along with the American Civil Liberties Union and a small Pennsylvania Internet carrier, filed a challenge to the law last year. They argued that, in addition to procedural problems with the law, it was technically impossible for providers to isolate a single offending site, and so entire swaths of innocent sites were being blacked out with each blocking order.

Judge Jan E. Dubois was ultimately persuaded that given the current state of technology "the Act cannot be implemented without excessive blocking of innocent speech in violation of the First Amendment." The court also found that the law violated interstate commerce rules established by the Constitution.

"The Pennsylvania law was an aberration in the way the states approached this," said Stewart A. Baker, the general counsel for the United States Internet Service Providers Association, a trade group. "Our members always thought it was a distraction from the extensive efforts they make to work with law enforcement to address child pornography."

For its part, the Pennsylvania attorney general's office maintains that the technological shortcomings cited by the plaintiffs and Internet service providers, or ISP's, were simply untrue. "We argued in court that the technology does exist to block individual sites that contain child porn," Connolly said, "and if other sites were blocked by the ISP, then the ISP was doing something wrong." Reported in: *New York Times*, September 11. □

libraries

Phoenix, Arizona

If Phoenix officials decide to proceed with a plan that would ban patrons from accessing Internet pornography at library computers, they'll do so without the support of the Phoenix Public Library Advisory Board.

Mayor Phil Gordon calls the city's plan to require filters that block objectionable material for all users "overdue" and "absolutely necessary." Board members, however, believe it would violate First Amendment rights and lead the city into a legal quagmire.

The board's opposition was not a surprise. City Librarian Toni Garvey has been unusually silent on the issue, and board chairman Tim Blake has stated publicly that he hopes the city isn't "rushing to judgment" in its implementation of the proposed plan.

"It's pretty clear in my mind that we are stepping outside our constitutional bounds," board member Robert Villasenor said. "You say that free speech is not the issue here, but I very distinctly see this as the issue." Board members said that by filtering Internet content, the city would be making subjective decisions about what legal information could be seen by patrons. That, they said, violates federal law.

But Gordon said that the city already makes such decisions by opting not to carry pornographic magazines or adult videotapes. He said that he, in consultation with the city attorney, doesn't believe that the city is constitutionally obligated to provide the public access to Internet porn.

"There's enough private entities, home computers out there," he said. "People can access it elsewhere."

Gordon asked city management to come up with an appropriate policy. Library board members said they would act on any direction the council gives them, but board vice chair Tanner Flynn encouraged the city to start tracking how many individuals are accessing pornographic Web sites so that they can see if the proposed policy is really necessary. "I would like to see empirical evidence as to how many are doing this," Flynn said. Reported in: *Arizona Republic*, September 6.

Washington, D.C.

The Justice Department has argued in a recent court case that librarians, booksellers, and other businesses can easily challenge a controversial provision of the USA PATRIOT Act by appealing to a super-secret court that approves surveillance of terrorists and foreign intelligence agents. The only problem, according to a document released in August, is that the same court does not allow anyone but government attorneys and agents inside its doors.

The rules governing the Foreign Intelligence Surveillance Court also do not include procedures for outside litigants to file memorandums or otherwise influence a case, according to a copy of the rules obtained by the American Civil Liberties Union (ACLU).

Jameel Jaffer, an ACLU staff lawyer, said the court rules "do not seem to contemplate the possibility that anyone other than a government attorney may appear before the court," nor do they allow for outside attorneys to file motions to quash the subpoenas the court issues.

The surveillance court was established as part of the Foreign Intelligence Surveillance Act (FISA) of 1978 and has operated in almost total secrecy since then. Justice Department statistics provided to Congress indicate the court approved more than 1,700 searches and seizures last year, eclipsing the number of traditional criminal wiretaps authorized by local and federal courts.

The five-page list of rules gives a rare glimpse into the inner workings of the FISA court, outlining the powers available to each judge and the procedures for applying for warrants and other operational details. The rules were provided to the ACLU by the FBI, which indicated they were the most recent FISA court rules in the agency's possession, Jaffer said.

A duty of the court is to oversee one of the most controversial provisions of the PATRIOT Act, Section 215, which allows the FBI to obtain "tangible things" from businesses during counterterrorism and counterintelligence investigations. The broadly worded section has raised the ire of librarians, in particular, because it would allow the FBI to seize library circulation records while forbidding the library to publicly reveal the search.

Attorney General John D. Ashcroft said in September that the section had never been used, but recent court filings indicate the FBI may since have sought to use it. In a Michigan lawsuit filed by the ACLU, Justice attorneys have argued that anyone targeted under the provision would have the ability to contest the issue. "If and when a Section 215 order is served on these plaintiffs, they will have ample opportunity to challenge it before the court that issues the order (i.e. the FISA Court)," the attorneys wrote in a July brief.

But the court's rules say that only attorneys empowered by the attorney general or government agents may appear before it, and there is no mention of accepting outside motions or briefs.

Patrice McDermott, deputy director of government relations for the American Library Association, said the government's arguments "appear to be a red herring."

"They keep saying you can challenge it, but they have never indicated how anyone could actually do so," she said. Reported in *Washington Post*, August 30.

Washington, D.C.

Public libraries and schools around the nation have suddenly stopped receiving any new grants from a federal program that is wrestling with new rules on how it spends $2.25 billion each year to provide high-speed Internet and telephone service. The moratorium on what is known as the e-rate program began over the summer, with no notice, and may last for months, causing significant hardships at schools and libraries, say state officials and executives at the company that runs the program.

The suspension came after the Federal Communications Commission, in consultation with the White House, imposed tighter spending rules that commission officials say will make it easier to detect fraud and waste in the program.

As much as $1 billion in grants the states say they expected to receive by the end of the year may be affected, one official estimate said. That led state administrators to either take money from other educational programs or postpone paying their phone and Internet companies.

"We are fearful that they could shut down our service," said Curt Wolfe, chief information officer for North Dakota. The federal program contributes more than 60 percent of the money, or about $1.7 million a year, that pays for Internet services and to link video services for the state's 100,000 students, he said. "If this isn't resolved this month, we're going to be in very serious trouble," he said. "We don't have extra funds to get us through this, and this is a major issue for every state."

Robert Boucher, who works for the Wisconsin education agency that arranges for the financing of the state's schools and libraries, said the state had not received commitments for about $22 million, or about two-thirds of the amount necessary for Internet and telephone services for the state's 426 school districts and 387 public libraries.

The tighter spending rules also forced the Universal Service Administrative Company, the nonprofit group that runs the program under the commission's oversight, to hastily liquidate more than $3 billion in investments. The sale generated a loss, but officials said they had not yet calculated the amount.

And the changes are expected to lead to higher charge imposed on telephone companies—and passed on to consumers—later this year or early next year. The increase may be necessary, senior officials at the universal service company said, because of a cash squeeze created by the tighter spending rules and an FCC decision over the last nine months to reduce the phone companies' contributions to the e-rate program.

Although commission officials said they had made the decisions leading to the moratorium in close consultation with the White House Office of Management and Budget, administration officials sought to distance themselves from the FCC's moves and said that the budget office had never issued a formal legal opinion on the appropriateness of some of the changes. Commission officials say the changes were crucial for better monitoring of the program.

"The e-rate program is vital for America, but we must insist that it complies strictly with the highest government accounting and auditing standards," Michael K. Powell, chairman of the commission, said. "Any delays are temporary while we place the program on sounder footing. We are committed to ensuring these funds flow responsibly to America's classrooms and libraries as soon as possible."

The e-rate program was created by the Telecommunications Reform Act of 1996 as a way to finance telephone and Internet services for the states. The program expanded an earlier universal service program to include public schools and libraries and the Internet, giving money both for equipment and for service.

Derided by its opponents as the "Gore Tax" because it was advanced by Vice President Al Gore, the program has occasionally been attacked in Congress by some Republicans. In recent interviews, administration and commission officials denied that the changes were intended to hinder the program. But some officials have said that in tightening the rules, the government may have made unintentional mistakes.

The changes have created significant tension between the FCC and the Universal Service Administrative Company. Executives say they have felt whip-sawed by the commission. For instance, the executives say, top officials in Mr. Powell's office approved in July a set of investment guidelines for the more than $3 billion held by the company. Two months later, the commission ordered the immediate liquidation of those investments to comply with the new budget restrictions.

Senator Olympia J. Snow, the Maine Republican who co-sponsored the provision that led to the creation of the program in 1996, expressed concern that the moratorium

could jeopardize its longer-term prospects. "This has the potential to imperil the program by leaving it in a state of such uncertainty," she said. "It raises questions about why these decisions were made." She and Senator John D. Rockefeller, IV, Democrat of West Virginia, sent a letter to Powell, seeking an explanation.

The Universal Service Administrative Company was set up to provide money to the states for phone and Internet services in four areas—schools and libraries; rural health care; remote or underserved areas that are more expensive for phone carriers to service; and low-income customers. Officials say the spending restrictions have been applied only to the schools and libraries and to relatively small rural health care programs.

The Clinton administration decided to list the money held in the universal service accounts on the federal budget, which had the effect of reducing the deficit by billions of dollars. But after considerable debate, former officials recalled, the Clinton administration decided not to apply a series of restrictions that are imposed on money considered part of the public Treasury. As late as April 2000, William E. Kennard, the chairman of the FCC at the time, issued an opinion that the fund should be maintained outside the Treasury, and by implication, not be subject to the rules that are now being applied to it.

Some lawmakers have recently criticized the e-rate program as laden with fraud and waste, and the FCC has given it more scrutiny. Last October, the FCC in consultation with the White House budget office ordered the company to begin applying generally accepted accounting principles for federal agencies by Oct. 1, 2004.

But officials said it was only last summer when they began to realize that the change would have consequences that would sharply limit the program's ability to spend and manage its money. The problems have been made worse, some officials said, by the decision of the FCC over the last nine months to reduce the level of contributions made to the library and school program by telephone companies by $550 million.

"There was a lot of pressure to keep the contribution factor down until the election passes, after which it will then have to rise again," said Anne L. Bryant, a member of the board of the universal services company and executive director of the National School Boards Association, which represents 95,000 school board members in 15,000 school districts.

FCC officials said they reduced the contribution level because it appeared that the universal service company had been holding more than $3 billion, and they were concerned that it would be criticized for sitting on so much idle cash.

"It was the right decision to draw down, based on what we knew at the time," said Jeffrey Carlisle, chief of the Wireline Competition Bureau at the FCC. "But under what we know now, I'm not sure we would have made the same decision." He and other commission officials denied that this was a move to keep the rates down until after the election.

In a September 16 letter to Mr. Powell, Frank Gumper, the chairman of the Universal Service Administrative Company, predicted that the changes in the accounting and spending rules could delay "meaningful cash outlays" into 2006 and could delay more than $1 billion in financing commitments that would be ready to be sent by the end of the year. He also predicted that "a significant increase in the contribution factor in future quarters is likely."

The immediate cause of the crisis is the application of a federal budget law, the Anti-Deficiency Act, to the e-rate program. The company had issued financial commitment letters to the states for amounts whose total exceeded the company's budget, because the schools and libraries as a whole spend less than 80 percent of the money they requested, company officials said. But FCC officials say the Anti-Deficiency Act prohibits the company from making commitments greater than its cash on hand.

The Anti-Deficiency Act created a second problem. With the FCC's permission, the company had placed more than $3 billion in bonds and bond mutual funds to earn annual interest of more than $25 million. But under the act, those investments count as part of the company's total spending and offset the amount available for the states. Reported in: *New York Times*, October 3.

Honolulu, Hawaii

Carlos Hernandez was using a computer at the Hawaii State Library May 18 and visiting a gay Web site's online chat room when he was interrupted by a security guard. The guard told Hernandez the site was pornographic and he would have to leave the library and could not come back for a year, or else face arrest.

A new state law makes returning to the warning site criminal trespass in the second-degree, a petty misdemeanor, and violators are subject to a $1,000 fine and/or thirty days in jail, in addition to being banned from the area for a year. The American Civil Liberties Union of Hawaii, on behalf of Hernandez and Ken Miller, executive director of a group called The Center, filed a lawsuit in U.S. District Court September 7 asking that the law used by the guard be declared unconstitutional.

"When you have overzealous employees like the guard at the library, this law gives them the authority to ban (gays) from gathering in public places," Miller said. "We have been alienated from so many government services, it just continues to build on the fact that we are again seen as less than others. It continues the stigma that we are not welcome."

The state law, known as Act 50, gives public officials broad powers to ban individuals from using public spaces such as beaches, streets, sidewalks, and even public buildings. The law was written by Sen. Robert Bunda as a tool to remove homeless people living at Mokule'ia beaches and was signed into law in May by Gov. Linda Lingle. Lingle and

Attorney General Mark Bennett were named as defendants in the lawsuit.

Act 50, also known as the "squatters law," allows any police officer or other authorized individual to ban someone from public property for up to one year simply by issuing a "warning statement advising the person that the person's presence is no longer desired on the premises." The state law does not define what conduct would justify a yearlong ban or place any limits on which public property, and there are no court hearings or other judicial reviews.

"This law gives unbridled discretion to police and others to engage in arbitrary and capricious denials of protected expression based on nothing more than their individual prejudices and predilections," said ACLU legal director Lois K. Perrin. "This statute is a classic, standardless law in blatant violation of the United States and Hawaii constitutions."

Bennett said the statute does not have the "evils" the ACLU claims. "The lawsuit says that because there is a potential that some state or county official could misuse the law, it makes the law unconstitutional on its face," Bennett said. "That just is not, in my opinion, a legally viable principle." Bennett said there are situations in which it is appropriate and lawful for the state to issue warnings and to bar people from particular state premises, and to arrest them for trespassing if they ignore those warnings.

"The state has the right to protect its interests," he said. "The state can't bar somebody because they are exercising their First Amendment rights, but that doesn't mean a trespass statute which allows the state to bar someone for perfectly legitimate reasons, is unconstitutional." Bennett said Act 50 is in line with other trespassing laws and he expects to win the case.

"If there are individual cases in which individuals misuse the law, or any other law, then it should be dealt with on a case-to-case basis," he said. "If someone believes they have been improperly told to leave state property both before and after this statute, they can complain about it, can bring it to a person's superior. If they think they have been improperly barred they can ask the state to reverse that."

The lawsuit claims that the rights of due process and free speech are being violated by the law and asks for a preliminary and permanent injunction stopping any more warnings from being issued or anyone from being prosecuted under the law.

"Although this ill-conceived law was intended to target homeless individuals, its enforcement has not been so limited, " Perrin said. "For example, a security guard elected to ban one of the plaintiffs in this lawsuit from the Hawaii State Library simply because he used one of the library's public computers to access www.gayhawaii.com, a resource Web site for the gay community. The United States and Hawaii constitutions clearly protect such activity."

Police say they have not yet used the new law to evict squatters from public lands because no system has been set up to record the warnings issued and they knew it would likely face legal challenges.

"Fortunately, there are enough people in law enforcement and the prosecutors that have issues with the way the bill was written. We haven't used it at all," said Maj. Michael Tucker of the Honolulu Police Department. "We are not against the intent, it's just how it would be implemented. We need to have a repository on the warnings and doing it through records is a little cumbersome." Tucker said existing illegal camping laws are adequate for dealing with homeless people living in public areas. Reported in: *Honolulu Advertiser*, September 8.

Deming, Washington

The FBI wants to know who checked out a book from a small library about Osama Bin Laden. But the library isn't giving out names, saying the government has no business knowing what their patrons read. The library in Deming isn't much larger than a family home. Located in rural Whatcom County, it hardly seems the site for a showdown with the feds.

"I think we all figure it's places like the New York Library System that's going to be one of the first we hear about," said the attorney for the Whatcom County Library System, Deborra Garret.

At the center of the issue is a book titled *Bin Laden: The Man Who Declared War on America*. The FBI confiscated the original book after a patron reported than some one hand wrote a bin Laden quote in the margin that read: "Let history be witness I am a criminal." The FBI demanded to know the names and addresses of everyone who ever checked out the book.

"Libraries are a haven where people should be able to seek whatever information they want to pursue without any threat of government intervention," said Director of Whatcom County Library System, Joan Airoldi. Because of privacy policies, the library does not give out circulation records without a court order. When the FBI got a grand jury subpoena, the library filed a motion to quash it—citing the rights of all people who use the library: "Like the right to read and to read the material of one's choice without fear that someone will come around with questions about why you chose that book," said Garrett.

The FBI withdrew the subpoena, reserving the right to file it again.

If the feds had demanded the records under the PATRIOT Act, the library would have had to hand them over without question and without help from the courts.

The FBI still has the bin Laden book. Librarians point out it's overdue. Reported in: KOMOTV.com, October 5.

schools

West Bend, Wisconsin

A thirteen-year-old student who professed to be an atheist was harassed at Silverbrook Middle School for refusing to stand and recite the Pledge of Allegiance. Catherine Goodsett-Wein said her daughter, Rachel Morris, returned home in tears after hearing a message on the school's public address system suggesting that students who refused to stand were unpatriotic.

Cindy Guell, Silverbrook's principal, said she never meant to make Rachel feel uncomfortable. The message, "The reason you stand is to honor our country," was broadcast to classes because Guell thought Rachel and other students didn't know the reason for standing, Guell said. A student read the message, and one similar to it, on September 8 and 9 before the pledge was recited in classes, she said.

The principal "is making other children think my daughter is a bad person, and they won't want to be friends with her," said Goodsett-Wein. "At that age, their relationship with their peers is the most important thing to them."

Goodsett-Wein said her daughter, a straight-A student and member of the school's track and field team, objects to reciting the pledge because it contains the phase "one nation under God."

"She's not disrupting anything if she's quietly sitting there," Goodsett-Wein said. "She's not rebellious. But they're categorizing her like she's a troublemaker."

Rachel said she was "embarrassed" by the attention she received from some students, "who stared at me like I was bad" when she didn't stand.

Randal Eckart, the school district's superintendent, said he sent a memo to all principals telling them to advise students that standing and reciting the pledge was not mandatory. "I told them that America stands for freedom, and students should have the right to rise or stay seated and to participate or not participate in the pledge," he said.

The Freedom From Religion Foundation, a Madison-based organization that supports the separation of church and state, wrote the district, saying that Rachel "had been deprived of her constitutional rights." The foundation cited a Supreme Court ruling and state law that support Rachel's decision to refrain from reciting or standing during the pledge, said Annie Laurie Gaylor, the organization's spokeswoman.

Gaylor's letter urged the district to adopt a policy patterned after one in the Madison School District that reminds students of their rights each time the pledge is recited.

"Instead of remedying the situation, the announcement made it worse," Gaylor said. "It's compounding the humiliation of this student. It's implying that she's not a good American if she doesn't stand."

Rachel, who started attending Silverbrook after moving to West Bend from Germantown, never recited the pledge at other schools she attended, Goodsett-Wein said. "After kindergarten it was never an issue," she said. "Nobody ever harassed her. In fact, three or four kids even joined her" in not reciting it, Goodsett-Wein said.

Rachel's ten-year old sisters, Jennifer and Melissa, students at Fair Park Elementary School, had no problems after they declined to stand and recite the pledge, Goodsett-Wein said.

Guell said she discussed the matter with Rachel after her homeroom teacher brought it to Guell's attention. During the conversation, Rachel asked Guell why students were standing, Guell said. At Guell's urging, an assistant principal wrote the message, Guell said. The message that Guell introduced replaced one that simply said, "Please rise," she said.

"I thought if she was questioning why, probably other kids were," Guell said. "That's a good question for middle school kids." Rachel said she never asked Guell to explain the reason for standing. Reported in: *Milwaukee Journal-Sentinel*, September 9.

intelligence gathering

Washington, D.C.

House Republican leaders introduced legislation September 24 that grafts broadened police powers onto a plan to reform the nation's intelligence gathering agencies. Like a bill passed earlier by a Senate committee, the proposal adopts recommendations of the September 11 commission for establishing a national intelligence director and center for counterterrorism. But it also calls for new police powers that would, among other things, set federal standards for state driver's licenses and step up inspections of travelers to the United States.

Democrats and some Republicans said the additions needlessly politicized what had been a remarkably bipartisan effort in the Senate, dimming prospects that a bill would be signed before the November elections. But the House Republican leaders said they were confident a bill would be on President Bush's desk before November 2. They predicted that Democrats would find it hard to vote against reforms that, by centralizing authority over the government's intelligence agencies, would strengthen the nation's ability to defend itself.

House Speaker Dennis Hastert (R-Ill.), said the bill would go through half a dozen committees on its way to the House floor the following week. The House bill would give an intelligence director and a counterterrorism center less power than the bill passed by the Senate Governmental Affairs Committee. The House leadership more closely reflected the White House vision of the new director and center than did the Senate or the September 11 Commission.

Under the House bill, like the Senate bill, the director would have supervisory authority over the CIA, the Defense Intelligence Agency and the other fifteen U.S. spy agencies that do not contribute directly to combat. But the director's authority would not be as broad in the House bill. The director would have less power to set agency budgets, and would be less the initiator of top agency appointments than someone who reacts to the choices of others.

But it is the law enforcement aspects of the 335-page House bill that quickly proved the most controversial. The bill would make it easier to deport aliens who help or join terrorist groups; give the government warrant powers to help track "lone wolf" terrorists; set minimal federal standards for state-issued drivers' licenses and identity cards; and increase the number of border patrol agents and immigration and customs agents.

Some of these measures were included in a Justice Department memo leaked last year and dubbed "PATRIOT Act II" by critics who said they would further erode civil liberties that were weakened by the PATRIOT Act, passed in the wake of the September 11, 2001, terrorist attacks.

"Our bill is the most comprehensive effort yet introduced that deals with the problems uncovered by the 9/11 Commission," Hastert said. But Rep. Jane Harman (D-Calif.), the ranking Democrat on the House Intelligence Committee, said the bill "has complicated the process." Reported in: *Los Angeles Times,* September 26

Washington, D.C.

Rep. Porter Goss, President Bush's nominee to head the CIA, introduced legislation this summer that would give the president new authority to direct CIA agents to conduct law-enforcement operations inside the United States—including arresting American citizens. The legislation, introduced by Goss on June 16 and touted as an "intelligence reform" bill, would substantially restructure the U.S. intelligence community by giving the director of Central Intelligence (DCI) broad new powers to oversee its various components scattered throughout the government.

But in language that did not receive public attention, the Goss bill would also redefine the authority of the DCI in such a way as to substantially alter—if not overturn—a fifty-seven-year-old ban on the CIA conducting operations inside the United States.

The language contained in the Goss bill has alarmed civil-liberties advocates. It also prompted one former top CIA official to describe it as a potentially "dramatic" change in the guidelines that have governed U.S. intelligence operations for more than a half century.

"This language on its face would have allowed President Nixon to authorize the CIA to bug the Democratic National Committee headquarters," Jeffrey H. Smith, who served as general counsel of the CIA between 1995 and 1996, said. "I can't imagine what Porter had in mind."

At the time he introduced the bill, Goss thought the 9/11 Commission might recommend the creation of a new domestic intelligence agency patterned after Britain's M.I.5. The commission ended up rejecting such a proposal on civil-liberties grounds. But in his bill, Goss wanted to give the DCI and a newly empowered CIA the "flexibility"—if directed by the president—to oversee and even conduct whatever domestic intelligence and law-enforcement operations might be needed to combat the terrorism threat, the congressional official said.

"This is just a proposal," said a congressional official familiar with the drafting of Goss's bill. "It was designed as a point of discussion, a point of debate. It's not carved in stone."

The Goss bill tracks current law by stating that the DCI shall "collect, coordinate, and direct" the collection of intelligence by the U.S. government—except that the CIA "may not exercise police, subpoena, or law enforcement powers within the United States." The bill then adds new language after that clause, however, saying that the ban on domestic law-enforcement operations applies "except as otherwise permitted by law or as directed by the president."

In effect, one former top U.S. intelligence community official said, the language in the Goss bill would enable the president to issue secret findings allowing the CIA to conduct covert operations inside the United States—without even notifiying Congress. The former official said the proposal appeared to have been generated by Goss's staff on the House Intelligence Committee, adding that the language raises the question: "If you can't control a staff of dozens, how are you going to control the tens of thousands of people who work for the U.S. intelligence community?"

Goss introduced his legislation, H.R. 4584, on June 16—before the September 11 Commission issued its own recommendations for the creation of a national intelligence director, as well as a new National Counterterrorism Center that would conduct "joint operational planning" of counterterrorism operations involving both the FBI inside the United States and the CIA abroad.

The proposal comes at a time when the Pentagon is also seeking new powers to conduct intelligence operations inside the United States. A proposal, adopted last spring by the Senate Intelligence Committee at the request of the Pentagon, would eliminate a legal barrier that has sharply restricted the Defense Intelligence Agency and other Pentagon intelligence agencies from recruiting sources inside the United States.

That restriction currently requires that Pentagon agencies be covered by the Privacy Act, meaning that they must notify any individual they contact as to whom they are talking to and what the agency is talking to them about—and then keep records of any information they collect about U.S. citizens. These are then subject to disclosure to those citizens.

Pentagon officials say this has made it all but impossible for them to recruit intelligence sources and conduct covert

operations inside the country—intelligence gathering, they say, that is increasingly needed to protect against any potential terror threats to U.S. military bases and even contractors. But critics have charged the new provision could open the door for the Pentagon to spy on U.S. citizens—a concern that some said is only amplified by the language in the Goss bill. Reported in: *Newsweek*, August 16.

Washington, D.C.

The Transportation Security Administration said September 21 that it planned to require all airlines to turn over records on every passenger carried domestically in June, so the agency could test a new system to match passenger names against lists of known or suspected terrorists. The data will vary by airline. It will include each passenger's name, address and telephone number, and the flight number. It may also include such information as the names of traveling companions, meal preference, whether the reservation was changed at any point, the method of ticket payment, and any comment by airline employees, like whether a passenger was drunk or belligerent in encounters with airline personnel.

The goal, the agency said, is to reduce the number of passengers selected for more intensive screening, including "wanding," pat-downs and hand-searches of carry-on luggage, and to increase the chance that people on government watch lists will in fact be searched. Under the current system, the airlines check their passengers' names against government lists of suspicious people. But, the government, fearing that the lists could fall into the wrong hands, does not give the airlines all the names.

The new order, to take effect after a thirty-day comment period, would require airlines to provide the same kind of information on passengers that several, including JetBlue and Northwest, voluntarily turned over to the government or to a private company looking at ways to spot terrorists. The airlines were embarrassed by disclosure that they did so willingly.

"We believe the government needs to have a legal order to compel production of this data," said Jack Evans, a spokesman for the Air Transport Association, the trade group of the major carriers, who added that delivering the information under government order would protect the carriers from passenger lawsuits.

The department's sensitivity on the issue is reflected by the fact that it is placing several documents related to the proposal in the Federal Register for public comment, a first for the agency, which is promising to listen to airlines, privacy advocates and others who opposed an earlier proposal. "We're giving them a chance to comment on the order, which we almost never do," said Justin Oberman, director of the Office of National Risk Assessment at the Transportation Security Administration. "We want to do this collaboratively," he said.

The proposal, for a program called Secure Flight, replaces one for a program that was to be called Capps 2, for Computer Assisted Passenger Prescreening System, but appears to contain some of the elements that privacy advocates had found objectionable in the first proposal. The security agency said it had dropped Capps 2 because of objections to "mission creep." Capps 2 would have been used not only to determine who should be subjected to additional scrutiny before boarding and who was on the "no fly" list, but also to catch people for whom there were outstanding warrants for violent crimes. The Secure Flight program will not be used to apprehend those wanted people, officials said.

But the American Civil Liberties Union (ACLU) said the program appeared to retain most of the objectionable features of the one that was dropped. By demanding the entire airline "passenger name record," the security agency would be receiving not only the traveler's name, phone number, and address, said Barry Steinhart of the ACLU, but also information like "whether you ordered the low-salt kosher meal and who is sleeping in your hotel room."

He said there was nothing to prevent the government from reviving the idea of using the airport security system to catch people wanted for unrelated crimes. But he added that his group had never opposed the idea of having the government, rather than the airlines, check passenger names against a watch list. "The question is not whether TSA should do the administration, it's what program they should be administering," he said.

He said he was struck by the argument that the agency did not trust the airlines with all the names of possible terrorists. "If they weren't giving the worst names to airlines, what were they doing? Who were they screening, then?" he asked.

Secure Flight continues to make use of another feature that raised the hackles of privacy advocates: government use of commercial data about citizens who are not accused of any crime. The TSA said it would use that data with techniques used by private companies to find people who might be committing identity theft. In the agency's case, the object would be to find people who might be flying under assumed names, and thus might be security risks.

But Mark O. Hatfield, Jr., a spokesman for the agency, said that in every hearing where screening had been discussed, members of Congress asked how the security agency would ensure that travelers were using their real names.

Lisa S. Dean, the agency's privacy officer, said under the proposed system, "we're not looking for every passenger as a potential terrorist. What we're looking for is the people who are actually on that list."

But at the Electronic Privacy Information Center, which recently used the Freedom of Information Act to obtain TSA documents that showed how the Capps 2 program had grown beyond aviation purposes, Marcia C. Hofmann, staff counsel and director of the Open Government Project, gave Secure Flight a mixed review. She said the agency had

made a step forward by asking for comment, but she added, "The TSA has exempted Secure Flight from as many legal obligations under federal privacy law as it possibly could."

For example, she said, federal privacy law usually requires that when an agency creates a system of records, individuals can have access to information about them, and correct or amend it. "TSA exempted Secure Flight from that," she said. And the information could be used for activities that have nothing to do with aviation security, she said.

When Congress created the TSA almost three years ago, it ordered the agency to come up with a better way to screen passengers; the one used now was invented by Northwest Airlines in the mid-1990's as a way to pick which luggage to screen, in response to the 1988 Libyan bombing of a jetliner over Lockerbie, Scotland. The existing system, Capps 1, relies on factors like paying cash for a ticket and booking a one-way flight.

The agency said Capps 1 snags about 15 percent of travelers and Secure Flight would subject only about one-third that number to more intrusive scrutiny. Steinhart of the ACLU said the agency had no firm basis for the 15 percent estimate.

In fact, its record-keeping is so poor, the TSA will not be able to compare those "selected" in June with the list of who would have been selected through the new system because the agency does not know who was picked in June for secondary screening. Reported in: *New York Times*, September 22.

political protest

New York, New York

Since coming under fire for their handling of protesters arrested during the Republican convention (see page 238), New York City officials have said that sluggish fingerprint processing in Albany was a major cause of the long delays in releasing detainees, although state officials have denied any tardiness. But much of the fingerprinting may not have been legal in the first place. According to lawyers at the New York Civil Liberties Union, the city may have violated state law by routinely fingerprinting arrested protesters.

In a letter sent October 5 to Police Commissioner Raymond W. Kelly, officials of the organization wrote that, although the law allowed the police to fingerprint people charged with minor offenses in certain circumstances, "this could not justify the routine fingerprinting of the nearly 1,500 people reportedly arrested during the convention for minor offenses."

Donna Lieberman and Christopher Dunn, the group's executive director and associate legal director respectively, wrote that state criminal-procedure law defined narrow circumstances for fingerprinting when the offenses are minor. Those circumstances are when the police cannot establish the person's identity, when they suspect that the identification supplied is not accurate, or when they suspect that there is an outstanding warrant.

Legal questions about the fingerprinting policy have come up before. At a hearing in September over the city's treatment of arrested protesters, Justice John Cataldo of State Supreme Court in Manhattan noted that the city could have dispensed with the fingerprinting entirely as most of the offenses were so minor that state law did not require it.

Lieberman and Dunn also wrote that they found the "blanket fingerprinting" of people arrested at demonstrations troubling because "the entry of fingerprints into law enforcement databases can have lifelong consequences."

Normally, when a person is arrested and fingerprinted in New York, the State Division of Criminal Justice Services checks the prints in its system and sends them to the Federal Bureau of Investigation as well, state officials said. Information about arrest records and outstanding warrants is then sent back to the city's Police Department.

As a result, the lawyers wrote, they are "deeply troubled by the notion that the NYPD may have forced hundreds of political activists," as well as "a number of innocent bystanders arrested during the convention, to surrender their fingerprints for entry into state and federal databases."

Saying that they were prepared to sue the city if necessary, the lawyers asked that any illegally obtained fingerprints held by the police, the state, or the FBI be destroyed.

John Feinblatt, criminal justice coordinator for the Bloomberg administration, defended the city's actions, saying the fingerprints were automatically destroyed and, therefore, could not pose a threat to those arrested in the future. "The normal procedure for violation arrests is to take fingerprints for one purpose and one purpose only: to definitively establish who the person is and whether he has a warrant or other law-enforcement hold," he said. "After that the prints are destroyed and not made part of any permanent record. That's exactly what was done with every violation during the RNC, no more, no less."

Without commenting on whether the city had broken the law, he added, "In an age of identity theft and high-quality fake ID's, fingerprints are the only surefire way to establish who's in front of you." State and federal officials said they did keep fingerprints from violation arrests.

In the view of Dunn of the civil liberties union, though, destroying the fingerprints would not remedy the fact that they were illegally taken. "The practice has to stop," he said. "It's an unlawful practice. And more importantly, we're skeptical that fingerprints that were sent to New York State or the FBI have been destroyed." Reported in: *New York Times*, October 6.

(continued on page 265)

libraries

Washington, D.C.

Following howls of protest from libraries across the nation, U.S. Attorney General John Ashcroft rescinded a controversial order demanding that libraries destroy copies of a federal statute and accompanying regulations and documents. The mandate in question was sent to libraries designated by Washington as official depositories, where federal statutes, regulations, and other documents are routinely shipped in order to make them available to the general public.

"You don't want to mess with the public documents librarians. They are the pit bulls of democracy," said Patricia Ianuzzi, director of the Moffitt and Doe Libraries at the University of California, Berkeley—the latter a designated federal depository. Ianuzzi said she had never heard of the federal government trying to recall copies of legislation enacted by Congress, as Ashcroft attempted to do with the Civil Asset Forfeiture Reform Act, which had been shipped to depositories four years ago.

"I can only assume that the person who issued the order didn't know what they were doing," she said.

The other documents on the recall list, sent to librarians on July 20 by federal Superintendent of Documents Judith C. Russell, included Civil and Criminal Forfeiture Procedure, Select Criminal Forfeiture Forms, Select Federal Asset Forfeiture Statutes, and Asset Forfeiture and Money Laundering Resource Directive.

Michael Gorman, president-elect of the American Library Association (ALA), blasted the Justice Department move. "The topics addressed in the named documents include information on how citizens can retrieve items that may have been confiscated by the government during an investigation," he wrote in an official statement issued on July 30.

On learning of the mandatory withdrawal, the ALA filed a Freedom on Information Act request for the documents to force Ashcroft's agency into issuing a statement on the "unusual action."

Gorman noted in his July 30 statement that written notification had not yet been issued. The written order never came before the Justice Department capitulated. On August 2, Russell issued the following statement: "As you know, on July 22, 2004, a notice was posted to FDLP-L advising depository libraries that the Department of Justice had requested the withdrawal of five publications that were intended for internal use only.

"In response to the Government Printing Office's further inquiry into this matter, the Department of Justice has requested that I advise depository libraries to disregard the previous instructions to withdraw these publications. In making this request, the Department of Justice said, although these materials were 'intended only for the internal training use of Department of Justice personnel and, as such, were inappropriately distributed to depository libraries through an administrative oversight,' the Department has determined that these materials are 'not sufficiently sensitive to require removal from the depository library system.'

"Since 1995, GPO has issued recall letters for twenty publications at the request of the publishing agencies. Seven of these publications were recalled because they were for official use or internal use only, as occurred in this instance. Both GPO and the Department of Justice regret any inconvenience resulting from the initial request for withdrawal." Reported in: *Berkeley Daily Planet*, August 10; ALA Washington Office Newsline, August 2.

Evanston, Illinois

Evanston Public Library's board of trustees voted May 19 to retain Steven Kellogg's *Pinkerton, Behave*! on library shelves, despite a parent's claim that a scene in the picture book is too scary for young children. Parent Mary Beth Schaye objected to the book's depiction of a burglar who breaks into the home of Pinkerton's owners. The burglar holds a gun to the mother's head before the great Dane saves the family. Schaye says she was shocked to come upon the illustration while reading the book to her three-year-old daughter. Seven other parents supported Schaye's effort to remove the book.

After the board decided against withdrawing the book, Schaye then asked that copies of the original dust jacket—which shows a burglar toting a gun—be placed over the cover of the newer 2002 edition, which features a close-up

of Pinkerton, so that parents would be forewarned. (The library's children's collection includes both editions.) The board declined her request. Reported in: *School Library Journal*, July 14.

broadcasting

Washington, D.C.

Buffy the Vampire Slayer and *Will and Grace* passed the indecency test at the FCC August 9, as the agency rejected complaints against the popular TV shows filed by two conservative-leaning interest groups. The complaints filed by the Parent Television Council and Americans for Decency were dismissed in a 5–0 vote because the commission found the shows didn't violate its indecency regulations. Both shows were aired in primetime.

The PTC, one of the more active groups on the indecency front, run by L. Brent Bozell, complained to the commission about an episode of "Buffy" that aired April 22, 2003, on WDCA, a UPN affiliate in Washington. In the episode, the characters Spike and Buffy fight before having sex, according to the order.

"The commission noted that there was no nudity and there was no evidence that the activity depicted was dwelled upon or was used to pander, titillate, or shock the audience," the commission said in a release.

Americans for Decency, a Phoenix-based group run by T. C. Bundy which claims in its mission statement that it wants to "reduce sexual violence and victimization" by "educating about the danger and harm of pornography," contends that a single episode of *Will and Grace* that aired March 31, 2003, on Fox Affiliate KSAZ in Phoenix was indecent. In the episode, a "woman photographer passionately kissed (a) woman author and then humped her (what she called a 'dry hump')," according to the order.

While the commission did not say that a "dry hump" is always within the bounds of the commission's rules on broadcast propriety, the panel did note that "both characters are fully clothed, and there is no evidence that the activity depicted was dwelled upon, or was used to pander, titillate, or shock the audience."

Indecency has become a hot topic in Washington, but it exploded as a public-policy concern following increased use of versions of the f-word on the air and the Super Bowl halftime show. Since then, the FCC has taken steps to increase fines for indecency and toughened its regulation for exactly what makes up indecency. Congress also has gotten in on the act, with both houses approving legislation that substantially increases the fines for indecency. The legislation has yet to become law.

The commission defines indecent speech as language that, in context, depicts or describes sexual or excretory activities or organs in terms patently offensive as measured by contemporary community standards for the broadcast medium. Reported in: Reuters, August 10. □

(most censored stores . . . from page 224)

into the hands of a select few fervent GOP supporters who've insisted on keeping their operating systems and computer codes a trade secret, meaning they enjoy absolute control over the entire voting process, including ballot counting and oversight.

One prime example is Diebold, Inc., one of the nation's top e-voting machine manufacturers. Diebold already operates more than 40,000 machines in thirty-seven states across the country. Many of these are in Georgia, which last November became the first state to conduct an election entirely with touch-screen machines. Oddly, incumbent Democratic Governor Roy Barnes lost to Republican candidate Sonny Perdue, 46 percent to 51 percent—a swing from as much as sixteen percentage points from the last opinion polls. In the same election, incumbent Democratic Senator Max Cleland likewise lost to his Republican challenger, Saxby Chambliss, thanks to a last-minute swing of nine to twelve points.

Similar upsets occurred in Colorado, Minnesota, Illinois, and New Hampshire—all in races that had been flagged as key partisan battlegrounds, and all won by the Republican Party. Sources: *In These Times*, *The Independent*, *Democracy Now!*

7. Conservative organization drives judicial appointments

Ever since the Reagan administration, Republicans have pursued an aggressive campaign to stack the federal courts with right-wing judges through the Federalist Society of Law and Public Policy, an organization founded in 1982 by a small group of radically conservative law students at the University of Chicago.

With the help of Republicans in Congress, eighty-five extra federal judgeships were created under Presidents Ronald Reagan and George Bush (the first), while Bill Clinton got nine. Now, seven out of twelve circuit courts are anti-abortion, and seven of the nine Supreme Court Justices are Republican appointees. During Bush Sr.'s tenure, one White House insider boasted that no one who wasn't a Federalist ever received a judicial appointment from the president.

One of George W.'s earliest moves in office was to consolidate the Federalist Society's power even further, by eliminating the longstanding role in the evaluation of prospective judges by the resolutely centrist American Bar Association, whose ratings had long kept extremists and incompetents off the bench.

As one might expect, the Federalists have consistently acted in favor of property over individual rights, business deregulation, creationist teachings, and much of the rest of the right-wing agenda. One of this President Bush's most longstanding legacies may very well be a hard-right judiciary that lasts for decades to come. Source: *The American Prospect*

8. Secrets of Cheney's energy task force come to light

When George W. Bush first took office, he said the country's energy crisis would be a top priority. The U.S. faced nationwide oil and natural gas shortages and a series of electrical blackouts were rolling across California. The president established the National Energy Policy Development Group (NEPDG) and appointed Vice President and former Halliburton CEO Dick Cheney as its head.

One of the big issues on the table was oil, which accounted for 40 percent of the nation's energy supply and provided fuel for the vast majority of the country's transportation. For the first time in history, the U.S. had become reliant on foreign imports for more than 50 percent of its oil supply.

But rather than lay the groundwork for converting the economy to alternative, renewable sources, NEPDG's report, later released by Bush as the National Energy Policy report in May 2001, promoted a central goal of "mak[ing] energy security a priority of our trade and foreign policy." In other words, Cheney's group wanted to find additional sources of oil overseas, and ensure U.S. access to that oil.

Documents recently obtained from Cheney's Energy Task Force as the result of a Freedom of Information Act lawsuit filed by the public-interest group Judicial Watch indicate that Cheney and his colleagues had their sights on the black gold under the Iraqi desert well before the September 11 attacks.

Last July, the Commerce Department finally turned over records that included "a map of Iraqi oilfields, pipelines, refineries and terminals, as well as two charts detailing Iraqi oil and gas projects, and 'Foreign Suitors for Iraqi Oilfield Contracts,'" according to *Judicial Watch*'s subsequent press release. There were also similar maps and charts for Saudi Arabia and the United Arab Emirates. The documents were dated March 2001. Sources: *Judicial Watch, Foreign Policy in Focus*

9. Widow brings RICO case against U.S. government for 9/11

As the 9/11 Commission completed its first year, Ellen Mariani and her attorney held a press conference to announce her own startling conclusions. Mariani, wife of Louis Neil Mariani, who died when terrorists flew United Airlines flight 175 into the World Trade Center's south tower, had come to believe that top American officials—including President Bush, Vice President Cheney and Secretary of Defense Donald Rumsfeld—had foreknowledge of the attacks, purposefully failed to prevent them, and had since taken pains to cover up the truth.

The administration, she argues in a federal lawsuit, allowed September 11 to happen so that Bush and Co. could launch their seemingly endless, global "War on Terror" for their own gain. The suit uses the Racketeer Influenced and Corrupt Organization (RICO) Act—a law created to go after the mafia—to charge the nation's leaders with conspiracy, obstruction of justice and wrongful death.

Her lawyer, Philip J. Berg, a former deputy attorney general of Pennsylvania, filed a sixty-two-page complaint that included forty pages of evidence. He sent a press release announcing the lawsuit and press conference to 3,000 print and broadcast journalists. Only Fox News showed up at the conference, however, and they never covered the topic. Source: Scoop.co.nz

10. New nuke plants: Taxpayers support, industry profits

If you thought nuclear energy was dead, think again: The Bush administration's energy bill—yet another product of Cheney's industry-stacked Energy Task Force—doesn't offer any incentives for companies to switch to renewable energy sources. But it does provide for taxpayer cash for companies that build new nukes.

A secretly crafted provision of the bill, released late on a Saturday night last November, offers energy companies as much as $7.5 billion in tax credits to build six new nuclear reactors. Shockingly, the administration that's so concerned with winning the "War on Terror" also removed terrorism protection provisions included in the House version of the bill, and reversed a previous ban on the export of enriched uranium, which may be used to construct nuclear bombs—bombs that could eventually be sent back here.

And while both Democrats and Republicans managed to defeat the most troubling version of the bill last fall, supporters—particularly New Mexico Republican Senator Pete Domenici—are still trying to push those provisions through, in some cases as riders on other bills. Sources: Nuclear Information and Resource Service, *WISE/NIRS Nuclear Monitor* □

(prize for Judy Blume . . . from page 228)

has also made some updates in the books, like replacing the belts and pins that hold sanitary napkins in place in *Are You There God?* with sticky strips to attach them directly to underwear.

In announcing the award, Harold Augenbraum, executive director of the Foundation, said, "Judy Blume is the

first recipient of the National Book Foundation Medal for Distinguished Contribution to American Letters whose primary audience is young readers. Our Board of Directors feels very strongly about presenting this Award to Ms. Blume, whose work has influenced and inspired countless children since the early '70s. Much of her readership first discovered her books on their own and as suggested reading in school, and continued to seek out her stories right into their adulthood, as she has written novels for older readers as well. Ms. Blume's active participation in the causes of the literary community and her struggles against censorship have also been exemplary."

Judy Blume was born in New Jersey in 1938 and graduated from New York University in 1961. She began writing stories when she was in her twenties. *Are You There God? It's Me, Margaret* was published in 1970, bringing her wide public attention and the devotion of many adolescent girls. In that decade, Blume wrote thirteen other books: eleven for young readers and one for teenagers, as well as *Wifey,* a novel for adults.

Her most popular series for younger readers are the books featuring the irrepressible Fudge, and among her best-known novels for young adults are *Deenie, Tiger Eyes,* and *Forever.* Her two other best-selling adults novels are *Smart Women* and *Summer Sisters.* She is the founder and trustee of The Kids Fund, a charitable and educational foundation. Her books have sold more than 75 million copies and her work has been translated into over twenty languages.

In 1996, Blume was awarded the Margaret A. Edwards Award for lifetime achievement by the American Library Association, and was named a Distinguished Alumna of New York University. She has won more than ninety awards, but says what she values most are the thousands of letters she receives each month from readers of all ages who share their feelings and concerns with her.

The previous recipients of the National Book Foundation Medal for Distinguished Contribution to American Letters are Jason Epstein, Daniel Boorstin, Saul Bellow, Eudora Welty, James Laughlin, Clifton Fadiman, Gwendolyn Brooks, David McCullough, Toni Morrison, Studs Terkel, John Updike, Ray Bradbury, Arthur Miller, Philip Roth, and Stephen King. Reported in: *New York Times,* September 15. □

(censorship dateline . . . from page 236)

from Evil," he said, referring to a book written by the conservative radio and television show host. A university needs speakers of different ideologies but must balance them because many students are impressionable and may be just beginning to form opinions, he added.

But the university is mistaken in thinking they must balance a speaker's views, said Jonathan Knight, director of Academic Freedom and Tenure at the American Association of University Professors in Washington, D.C. "There's no reason for the administration to assume that the appeal of this author or of any author constitutes some kind of statement about the university itself," he said.

Trustee Donna Price Henry, who is the president of the Faculty Senate, said postponing the event felt like censorship. "Part of what we try to do with our students is to open up the dialogue," she said. "She (Williams) is very biased in her viewpoint, but to me, it's not like we are inviting Michael Moore to campus." Reported in: *Naples Daily News,* October 7.

Fairfax, Virginia

George Mason University became the second public college in weeks to cancel a planned speaking engagement by the controversial filmmaker Michael Moore, citing misgivings about using public funds to pay Moore's $35,000 fee. Officials from the university-life division of George Mason had set up the engagement earlier in September, Daniel Walsch, a spokesman for the Virginia institution, said October 1. But the university's president, Alan G. Merten, who had been out of town when those arrangements were made, intervened to cancel the booking, the spokesman said.

Moore's most recent film, *Fahrenheit 9/11,* is a scathing attack on President Bush, and the director's partisanship figured in the decision last month by officials of California State University, San Marcos to call off a university-sponsored appearance by Moore on that campus (see page 234).

Walsch said President Merten's reasons for canceling Moore's appearance at George Mason differed from those of the Cal State officials. The San Marcos administrators had said they feared that political debate on the campus would be skewed by Moore's appearance in the run-up to the November election. But Walsch said that neither politics nor the electoral calendar had played any role in George Mason's decision.

"Michael Moore could have been anybody," Walsch said. "He could have been Rush Limbaugh. It was just the use of public monies that we were looking at."

Walsch also said the university's decision was not influenced by complaints from state legislators that poured in after word got out about Moore's scheduled appearance. One such complaint came from Virginia Delegate Richard H. Black, a Republican from neighboring Loudoun County, who said it would be profligate to spend $35,000 in tax money on a single speech—especially one by an avowed liberal trying to unseat President Bush.

"There are a million people in Virginia who would give anything to make $35,000 a year," said Black. "How do we justify giving Michael Moore, a multimillionaire, $35,000

for a one-night stand?" Black said he had never before opposed a paid speaking engagement.

Speakers' fees vary widely, and can run as high as $100,000—the price for an appearance by former President Bill Clinton or the conservative talk-show host Sean Hannity.

Walsch said George Mason's contract with Moore gave leeway for either party to back out within five days of the scheduled date for the speech. "We were well within our contractual rights to do this," he said.

Moore threatened Cal State-San Marcos with a lawsuit for breach of contract when that university canceled his engagement on its campus. The student government there quickly raised enough money to sponsor Moore on its own, and has confirmed with his booking agency that the filmmaker will appear at a venue off the campus on October 12.

The California and the George Mason appearances were to have been part of Moore's twenty-state "Slacker Uprising Tour," which is described on Moore's Web site as "a coast-to-coast effort to bring the nonvoting majority out of hibernation and kick some political butt."

At a recent event at the University of Michigan at Ann Arbor, Moore's sold-out appearance garnered $12,000 in ticket sales from an audience of about 3,700, according to Ashwini Hardikar, the student-government officer who set up the engagement.

Moore's appearance at George Mason would have taken place in a 6,000-seat facility, and people not connected with George Mason would have paid $5 per seat to attend. Reported in: *Chronicle of Higher Education* online, October 4.

scholarly exchange

Las Vegas, Nevada

The Bush administration denied entry to all sixty-one Cuban scholars scheduled to participate in the Latin American Studies Association's international congress in Las Vegas, deeming them "detrimental to the interests of the United States." The last-minute move, which came on the heels of new restrictions on travel by Americans to Cuba, provoked anger and dismay among leading American academics, who called it an unprecedented effort to sever scholarly exchanges that have been conducted since 1979.

Darla Jordan, a spokeswoman for the State Department, said the decision reflected the stricter policies toward Cuba announced last year by President Bush as a strategy to hasten the end of Fidel Castro's government. Citing sixty-eight members of the opposition in Cuba who remain in prison there after being arrested in 2003, she said, "We will not have business as usual with the regime that so outrageously violates the human rights of the peaceful opposition."

But organizers of the conference said they learned of the denial only a few days before the meeting, after months of assurances by State Department officials that the visas were on track. Those rejected include poets, sociologists, art historians, and economists, among them a professor who was a visiting scholar at Harvard last fall and others who have frequently lectured at leading American universities.

"This is attacking one of the fundamental principles of academic life in the United States, which is freedom of inquiry, " said Marysa Navarro, a historian at Dartmouth who is president of the association, the world's largest academic organization for individuals and institutions that study Latin America. "I asked when was the decision made, and I was told that it was very recent and it was very high up, so it was either the secretary of state or the White House."

"It's an election year," she added, "and I think we're being held hostage to satisfy that sector of the U.S. electorate which is against any kind of relations with Cuba."

The Bush administration has undertaken tough measures against Cuba in the pre-election season that administration officials say are intended to help establish Cuba as a democratic free-market state. But critics say the measures are chiefly devised to strengthen the incumbent's backing among Cuban-Americans in Florida, a swing state.

"Restricting access of Cuban academics to the United States is consistent with the overall tightening of our policy," Jordan said, noting that Cuban academic institutions are state run. "Our policy is not about restricting academic exchanges or freedom of expression. It is the Castro regime that does that through its restrictive issuance of passports and exit permits only to those academics on whom it can rely to promote its agenda of repression and misrepresentation about Cuba and the United States."

But this characterization of the invited Cuban academics was angrily rejected by John Coatsworth, director of the David Rockefeller Center for Latin American Studies at Harvard. "I can tell you with a certainty that that's a lie," Professor Coatsworth said, noting that among the scholars denied visas are five contributing authors to a book on the Cuban economy in the early twentieth century, which the center is publishing next month.

He said that one, Omar Everleny Pérez Villanueva, who was a visiting scholar at Harvard last fall, even wrote his dissertation on the benefits of direct foreign investment in Cuba. "They are honest, they're courageous, they do superb work," Professor Coatsworth said. "These are the kind of people who let the Soviet Union become Russia. This policy of restricting people-to-people contacts only benefits those who would benefit from violent change instead of a peaceful transition."

Professor Navarro said that the United States had not imposed blanket restrictions on scholars from other countries where political dissidents are jailed. Among the

presenters at the conference are four scholars from China who apparently had no difficulty with visas, she said.

Though 75 percent of the association's 5,000 members live in the United States, its international congress, held every eighteen months, draws participants from all over the world. Forty-five sessions out of 600 will have to be canceled, organizers said, including panels on contemporary Cuban poetry, gender in Cuban literature, and Cuban agriculture.

The message it confirms to the rest of the world, said Kristin Ruggiero, a historian who directs the Center for Latin American and Caribbean Studies at the University of Wisconsin, Milwaukee, "is that the borders are closing." Reported in: *New York Times*, October 1.

broadcasting

Washington, D.C.

Pop singer Janet Jackson's bare breast flash earlier this year during the nationally televised Super Bowl football game will cost twenty CBS television stations a record total of $550,000 for violating indecency rules, U.S. communications regulators said September 22. The Federal Communications Commission voted to fine the CBS stations, owned by conglomerate Viacom, Inc., $27,500 each for airing the incident.

"The U.S. Constitution is generous in its protection of free expression, but it is not a license to thrill," said FCC Chairman Michael Powell. "The context of the halftime show leads us to conclude that the breast-baring finale was intended."

Jackson's fellow singer Justin Timberlake ripped her costume, briefly exposing her bejeweled breast during the halftime show at the National Football League's championship game on February 1, sparking about 542,000 complaints filed with the FCC.

The agency decided against fining the other 200-plus CBS affiliates that aired the show but are not owned by the network, stating that they were not involved in the planning, selection, or approval of the halftime festivities.

"Every licensed station broadcasting over the public airwaves has a legal obligation to uphold community standards," said Brent Bozell, head of the Parents Television Council which had complained about the Jackson incident.

In addition to owning the CBS television network, Viacom also owns the MTV network, which was involved in producing the halftime show. The FCC said Jackson's partial nudity was in apparent violation of the broadcast indecency standard, but decided against taking action against other parts of the broadcast as well as commercials despite other complaints.

U.S. regulations bar television and radio stations from airing obscene material, and they are limited to airing indecent material, such as explicit sex talk, to late hours when children are less likely to be watching or listening.

CBS countered that it had no advance knowledge of the stunt and did not believe indecency rules had been violated. "We are extremely disappointed in the ruling," the CBS network said in a statement. "We are reviewing all of our options to respond to the ruling."

The Jackson incident also prompted a crackdown by the FCC on the antics of television and radio stations to the point that many broadcasters are now instituting tape delays of live events to ensure they do not run afoul of the rules.

The $27,500 fine is the maximum currently allowed by law although Congress is contemplating legislation to hike that to as much as $500,000 per incident.

FCC Commissioner Jonathan Adelstein dissented from the decision only to fine the CBS-owned stations, noting that the fine was paltry compared to the $2.3 million on average the network took in for a thirty-second commercial during the game. "Today's enforcement action goes out of its way to focus narrowly on the exposure of Janet Jackson's breast on twenty CBS-owned stations," he said. Reported in: *Wired News*, September 22.

New York, New York

CBS announced in late September that it would not air a report on forged documents that the Bush administration used to sell the Iraq war until after the November 2 election. A network spokesperson issued a statement declaring, "We now believe it would be inappropriate to air the report so close to the presidential election."

The *60 Minutes* segment was ready to air on September 8, but was bumped in favor of the now infamous report that relied on supposed National Guard memos whose authenticity CBS now says it cannot confirm. The furor over the Guard memos created a situation where CBS executives say "the network can now not credibly air a report questioning how the Bush administration could have gotten taken in by phony documents."

The shelved *60 Minutes* story deals with the origins of documents purportedly showing that Iraq under Saddam Hussein tried to obtain uranium from Niger—documents that turned out to be forgeries. The story, according to a *Newsweek* online report, asks "tough questions about how the White House came to embrace the fraudulent documents and why administration officials chose to include a sixteen-word reference to the questionable uranium purchase in President Bush's 2003 State of the Union speech."

Though such questions are clearly relevant to a presidential campaign that largely revolves around Bush's decision to invade Iraq, CBS said it would keep the answers to itself until the election has passed. Some questioned whether there might not be another motive behind the decision. Sumner Redstone, CEO of CBS's parent company

Viacom, made an unusual political statement at a gathering of corporate leaders in Hong Kong. "I don't want to denigrate Kerry . . . but from a Viacom standpoint, the election of a Republican administration is a better deal. Because the Republican administration has stood for many things we believe in, deregulation and so on," he said. "The Democrats are not bad people. . . . But from a Viacom standpoint, we believe the election of a Republican administration is better for our company."

Redstone repeated these sentiments in an interview with *Time*: "There has been comment upon my contribution to Democrats like Senator Kerry. Senator Kerry is a good man. I've known him for many years. But it happens that I vote for Viacom. Viacom is my life, and I do believe that a Republican administration is better for media companies than a Democratic one."

According to a write-up by *Forbes*, which sponsored the conference where Redstone issued his endorsement of Bush—the CEO asserted that "he never gets involved in any aspects of the network's news coverage." But many found that claim hard to believe when made by any media industry chief executive, and it seemed particularly dubious given *Forbes'* report that "Redstone said he has been talking daily to top CBS officials and to Viacom board members about the controversy" over the Guard memos. Reported in: FAIR-L, September 28.

art

Denver, Colorado

City officials removed three pieces of art from a rotating display at Denver International Airport in July after six employees complained about them. The art was deemed too stressful for passengers and workers to view in light of the heightened security following 9/11, said Lindy Eichenbaum Lent, communications director for Mayor John Hickenlooper.

The contemporary art display called "The Luggage Project" was organized by Max Yawney, a New York artist. Yawney asked artists from around the world to make suitcases into art. One of the banned pieces was created by artist Madeleine Hatz, who lives in New York. Her suitcase is splattered with glossy red and black paint and contains bricks. A bumper sticker inside the suitcase reads, "Blood for Oil. Billionaires for Bush." Billionaires for Bush is a satirical group that opposes President Bush.

Hatz claims she's been censored. "Art is controversial, and we have a right to freedom of speech," she said. "I'm showing that there's a connection between blood spilled and oil spilled," she said.

Another banned suitcase was a piece of luggage with a Dalmatian print and a handle made from a box cutter. A third piece showed a yellow case containing small toy planes and missiles. It was later reinstated after Vicki Braunagel, co-manager of aviation at DIA, decided it was only "borderline offensive."

Braunagel said she found the three pieces "inappropriate" and pulled them July 9—the same day the exhibit went up—after consulting with Hickenlooper's office.

The airport doesn't have a written policy defining controversial art, but is considering developing one, Braunagel said. It hasn't been an issue up until now, said Colleen Fanning, arts program manager for DIA.

The luggage display originally contained forty-three pieces and was part of a rotating show on the walkway between the concourse and Terminal A. It was located before the security screening area, and all the art was enclosed in glass cases. Reported in: *Rocky Mountain News*, July 30.

Gettysburg, Pennsylvania

When he proposed to "lynch" the Confederate battle flag on the Gettysburg College campus, John Sims wondered whether he'd get a thumbs down from the school's art committee. Instead, "Oh my god, they were more psyched than I was," recalled Sims, a thirty-six-year-old artist based in Sarasota, Florida. "I was like, wow, these are some cool white people."

He doesn't think so anymore. After complaints and threats against the artist and college officials, plans to dangle the politically charged symbol of the Confederacy from a noose atop a thirteen-foot gallows on the quadrangle—near the bloodiest battlefield of the Civil War—have been changed. Sims's exhibition, which also features a rebel flag dolled up drag-style in fuchsia satin and a feather boa, was moved indoors, to the college's Schmucker Art Gallery.

"They put a release out like a month before the show that said, 'Artist to Lynch Confederate Battle Flag,'" he said about the work he calls "The Proper Way to Hang a Confederate Flag." "And then they say, 'Turn this into a teaching moment.' Get out of here."

Classes were in session and fall was in the air at Gettysburg College as police secured the perimeter of the art gallery. Outside, a few of the school's 2,500 students wandered a quadrangle lined with red antebellum buildings. Inside, students worked beside a uniformed guard, installing Sims's "Recoloration Proclamation: The Gettysburg Redress."

The exhibit displays Confederate battle flags, but in the colors of the African liberation movement (green, red, and black), along with other colors. One hangs next to voting booths used in Florida for the 2000 presidential election. And across from them is the flag with white feathers on fuchsia and silver spangly stars—a collaboration between Sims and a friend.

The Confederate battle flag is a symbol of bigotry and hatred to many people, but to others it is a way to remember the 258,000 Southerners who died in the Civil War.

Members of the college art committee had hoped to use the exhibit to foster discussion of Gettysburg's history, but officials and students acknowledge that those plans have tripped, skidded, and fallen flat.

Sims "picked a hot town for this," said Elizabeth Basham, 21, a senior from Lexington. "I'm upset he's not coming to explain what he was trying to do here." Students should get behind the artist, she said. "But I think a lot of them are scared."

In an airy office with a bodyguard outside, college President Katherine Haley Will called the experience "fascinating." She has been in the job only since June 1 and said it's been "a really interesting issue as a new president" to try to balance "artistic expression and freedom of speech and the need to secure a campus of students you're responsible for."

The reality of the second part came to her when the FBI called last month. "You really do have to take them seriously," she said about threats to harm the school, the students, and the administration. "So we're preparing for the worst and hoping for the best."

On August 16, the school's public relations department sent out its news release with the headline "Artist to 'Lynch' Confederate Flag at Gettysburg College." It had the college's contact information and Sims's Web site address on it.

Back in Florida, Sims said he got hundreds of e-mails and calls. So did Will and other college officials, about 200 in all. "Well, maybe 300," said Patricia Lawson, a college public relations official. "I've personally received an e-mail from a Klansman," Will said. Insofar as the FBI and the Southern Poverty Law Center, which tracks hate groups, can determine, several groups are behind the threats, the college said. A Confederate veterans group threatened to boycott the town, which makes its living from battlefield visitors. The town has given permits to groups whose leaders say they were bringing hundreds of demonstrators to protest at the exhibit opening.

"It's pretty bad timing," Sabrena Meyerhoff, a leader of the Adams County Republican Party, said of the art exhibit controversy. "And history is history. So many men died here; we should respect that."

At Ernie's Texas Lunch, a few blocks from the campus, "I hear the KKK's coming, skinheads, and that's totally ridiculous," said Jessica Stouffer, 30, ringing up a customer. "The man's an artist. It's nothing against the actual flag and what the flag stands for. But that's kind of scary, with the college kids. I mean, they're only 18 or so."

Molly Hutton, Schmucker Art Gallery director, led the committee that signed on to the gallows plan. She moved to Gettysburg two years ago from the San Francisco Bay area, where she was curator for a private art collection. She said the mock hanging of the flag was meant to be "something people couldn't avoid, that you would have to confront multiple times."

Hutton added: "We are an institution that witnessed the before and after of the Civil War. This was to try to begin a dialogue about one of the symbols of that conflict. . . . I think we're all a little disappointed."

Sims has done flag-related art shows in Harlem and Tampa, but he designed the gallows especially for Gettysburg. To him, the Confederate battle flag "speaks to a notion of white supremacy. It cannot be the symbol that represents southern heritage. It just can't."

He said he's not coming because "I have every right to lynch it [and] I wanted to do it outside." About the people he has dealt with at the college, he said, "I think they're all great. They just got in over their heads." Reported in: *Washington Post*, September 3.

McAllen, Texas

Weslaco artist Rene Garza, 27, was surprised and upset that the International Museum of Art and Science rejected a controversial sculpture of his for an upcoming installation in the museum's fledgling sculpture garden. The installation was for a fund-raiser in late July for the sculpture garden. By the time the piece was rejected, the museum's two curators had already indicated they liked the six-foot sculpture of a globe made of gas station signs and scrap mufflers sitting on an oil barrel, Garza said. Museum staff had picked up the piece from Garza's Weslaco home days earlier and the sculpture had been on display.

When Lewis Savoie, the museum's executive director, returned from a trip in Spain, he indicated he did not want Garza's sculpture in the installation. "It was so 1980s," Savoie said, referring to the pieces' themes of the oil industry's effect on the world's societies and economies. "It was a political statement that was outdated and possibly damaging to the museum. "We're not a platform for political statements."

Two of the museum's major contributors are oil and energy companies, Savoie said. "I need to consider the overall well-being of the museum," he explained.

Garza, who describes his art as looking at the global world and the need for freer markets, said he doesn't understand the reference to 1980s art, but said he finds the United States to be very similar to that of more than twenty years ago. "You've got (President Ronald) Reagan, you've got (President George W.) Bush, we've got the same political climate," Garza said. "How do you boycott this (oil and gas) industry? We are run by this industry."

The museum is a private charity but receives more than half its revenue from public coffers, according to the museum's 2002 tax forms.

Fifty-seven percent, or $843,741, of the museum's $1.48 million revenue came from government contributions, according to the 2002 tax form. The city of McAllen gave the museum $672,075 this current fiscal year, which ends September 30, said Jerry Dale, the city's finance director.

McAllen city commissioners Hilda Salinas and Brian Godinez said they had not received any complaints or comments about the situation. The museum operates under its own board of directors and the city has little influence on its decision, although it is one of its largest contributors, Godinez said.

"If the artist or those in the artist community felt it was wrong, I'd encourage them to come and let us know," Godinez said. Another board member, Mike Blum said the museum has grown tremendously in the past few years and he understands Savoie's decision to avoid some controversial pieces of artwork in order to ensure that contributions continue to increase. "There's a war going on in Iraq and there's terrorism in general around the world and there are people that are critics of the U.S. for various reasons," Blum said. "One can conclude from looking at this particular piece and draw some conclusions that a (non-profit organization) that is out in the business world trying to raise money might upset people that don't need to be upset."

Savoie said Garza was told he could submit another piece of work but failed to do so. Garza said he felt this piece had the most important message. "If you have art that is friendly to corporations, then you can exist," Garza said. Reported in: *McAllen Monitor*, August 8.

etc.

Salt Lake City, Utah

Just three weeks before it officially kicked off, the first-ever city-sponsored book club generated controversy with one of its first recommendations. And the Salt Lake City mayor's office hunkered down to head off an anticipated firestorm over the book club's profanity- and blasphemy-laced choice. Meanwhile, at least one councilman asked the mayor's office to consider picking a new book.

City officials apparently became aware of the controversy after the *Deseret Morning News* inquired about the book, *The Curious Incident of the Dog in the Night-Time*, by English author Mark Haddon. The popular book about an autistic Sherlock Holmes wannabe who uncovers the truth about a slain dog is replete with four-letter words, including at least twenty-two f-words, sixteen s-words, and thirty-three profane references to Jesus Christ and God. The book also includes a four-letter reference to female anatomy that—in context—is "horribly abusive" to women, one council member said.

"If young men were talking to their girlfriends and mothers that way, we as a society would be offended and rightfully so," Councilman Eric Jergensen said. "We as a society should not be recommending this type of literature."

Annette Daley, the only person on the mayor's book committee who is a member of The Church of Jesus Christ of Latter-day Saints, agreed there weren't many, if any, social conservatives on the panel who might have provided more balance to the selection process.

"This is the mayor's book club, and the mayor certainly doesn't make any beans about the fact that he's not conservative," she said. "(The committee members) reflect his political and intellectual ideologies."

Daley said she loved the book and believes others of her faith can enjoy it. After all, she said, kids hear worse language in high school.

"It's just going down the road of book censorship," one of the mayor's staffers said. "I read the book and I don't see what's so offensive about it."

The book was part of the inaugural "Salt Lake Reads Together" initiative, which kicked off September 15 and was designed to get city residents reading the same books together. Many cities have run popular citywide book clubs beginning with one created by Seattle's public library in the late '90s.

Council members insisted their motives weren't to censor but rather they want the mayor's office to choose a book that the whole community can read. This book, some council members said, could not be enjoyed by most LDS faithful (who make up 45 percent of Salt Lake City residents), as well as Baptists, Muslims, Catholics, or even atheists offended by profanity.

Jergensen said people should be free to read the book and check it out at city libraries but Salt Lake City, the municipality, shouldn't be promoting or encouraging people to read it. "I think we as a city would not recommend dropping the f-bomb every other word, so why are we promoting it?" he said. "Politicians are excoriated for using that kind of language in public." Reported in: *Deseret News*, August 24.

foreign

Beijing, China

The Internet's most popular search engine, Google, has been accused of supporting Chinese internet controls by omitting contentious news stories from search results in China. State-sponsored Internet providers in China routinely block access to Internet sites deemed inappropriate by the government. These include both Chinese and foreign news sites carrying reports that criticize the Chinese government.

Researchers at Dynamic Internet Technology (DIT), a US company that provides technology for circumventing Internet restrictions in China, have discovered that the recently-launched Chinese version of Google News omits blocked news sources from its results. The origin of a computer sending a search request can be identified using its Internet protocol (IP) address.

Google admits to omitting some news sources within China but says this is meant to improve the quality of the service. "In order to create the best possible news search experience for our users, we sometimes decide not to include some sites, for a variety of reasons," says a statement issued by the company. "These sources were not included because their sites are inaccessible."

Bill Xia, chief executive of DIT, however, accused Google of reinforcing Chinese Internet restrictions by leaving some sites off its list. "When people do a search they will get the wrong impression that the whole world is saying the same thing," he said.

DIT enables Chinese Internet users to get around government restrictions by connecting to computers located outside of the country. Some users recently reported that Google's Chinese news search returned different results depending when they searched using a computer based outside of China. The claims were substantiated by researchers who connected to computers inside the country.

In the past, other search companies have also been accused of supporting Chinese Internet controls. In 2002, for instance, Yahoo's Chinese search engine was modified to provide only limited results for queries related to the banned religious group, Falun Gong.

And Xia noted that Google recently acquired a stake in a Chinese search company called Baidu.com.

Ben Edelman, of the Berkman Center for Internet and Society, part of Harvard University in the United States, said Google will face increasing pressure from the Chinese government to adhere to its restrictions as it extends its reach. "As Google gains more interest in China and even comes to have financial interests in China, it's hard to imagine Google won't do so," he told commented. Reported in: New Scientist, September 21.

Bagdad, Iraq

Iraq's interim government closed the Baghdad office of the Qatar-based Al-Jazeera television network for one month in August, citing national security concerns. "This decision was taken to protect the people of Iraq and the interests of Iraq," Interim Prime Minister Ayad Allawi told a news conference August 8. Allawi said the order to close Al-Jazeera, which was to take effect immediately, came after an independent commission monitored the network's reports.

"They came up with a concise report on the issues of incitement and the problems Al-Jazeera has been causing."

Jihad Ballout, the network's spokesman, told CNN in an interview from Qatar: "I don't think that Al-Jazeera ever incites violence."

Government ministers had been critical of the Arabic-language network, saying it has been airing dangerous, inciteful images and reports. Among those images are videos of people abducted in the recent wave of kidnappings.

"I got an order from the National Security Committee to close Al-Jazeera starting from today for one month just to give them the chance to readjust their policy against Iraq," said Interior Minister Falah al-Naqib. When asked why, al-Naqib said "you know exactly" what the network has been doing. "They have been showing a lot of crime and criminals on TV. They transferred a bad picture about Iraq and about Iraqis. They have encouraged the criminals and the gangsters to increase their activities in the country," al-Naqib said.

In a statement, the Interior Ministry added: "Al-Jazeera has accepted to be the mouthpiece of terrorist and criminal groups thus contributing to attempts to impair security and achieve aims of terrorism in spreading terror in the minds of peaceful Iraqi citizens with activities that have nothing to do with acts of violence. In so doing, it has contributed to hindering the Iraq reconstruction process by justifying kidnappings and killing of foreigners working here. It has also subjected the security, safety, and property of citizens as well as government facilities' security and safety of national armed forces to danger." Reported in: CNN.com, August 8.

Kuwait City, Kuwait

Kuwait, a major U.S. ally in the Persian Gulf, has banned Michael Moore's *Fahrenheit 9/11* because it deems the movie insulting to the Saudi Arabian royal family and critical of America's invasion of Iraq. "We have a law that prohibits insulting friendly nations, and ties between Kuwait and Saudi Arabia are special," Abdul-Aziz Bou Dastour, cinema and production supervisor at the Information Ministry, said.

He claimed the film "insulted the Saudi royal family by saying they had common interests with the Bush family and that those interests contradicted the interests of the American people."

The ministry made the decision to bar *Fahrenheit 9/11* in mid-July after the state-owned Kuwait National Cinema Co. asked for the license to show the movie. The company monopolizes cinemas in Kuwait, but all movies must first be sanctioned by government censors.

Fahrenheit 9/11, which won the top honor at May's Cannes Film Festival, depicts the White House as asleep at the wheel before the September 11, 2001, attacks in New York and Washington. Moore accuses President Bush of fanning fears of future terrorism to win public support for the Iraq war.

The Saudi royal family took issue with the movie for claiming that high-ranking Saudi nationals were allowed to flee the United States immediately after the attacks at a time when American airspace had been closed to all commercial traffic. The 9/11 commission investigating the 2001 terrorist attacks found no evidence that any flights of Saudi nationals took place before the reopening of national airspace on September 13.

The film is already playing elsewhere in the Middle East, including the United Arab Emirates and Lebanon. Reported in: Associated Press, August 1.

Beirut, Lebanon

Dan Brown would have never predicted that his novel would be censored. "I can't imagine why," he answered on his Web site to the question of whether he feared repercussions because of the controversy surrounding *The Da Vinci Code.* "The theory I reveal is one that has been whispered for centuries. It is not my own."

However, the Catholic Information Center in Lebanon didn't care, they wanted the book off the market. Surete Generale banned the world bestseller after the Catholic Center complained. On September 10, Lebanese booksellers had to take all French, English, and Arabic copies off the shelves. The ban came after Surete Generale asked the Catholic Information Center two weeks ago for their opinion on *The Da Vinci Code*, which has sold millions of copies worldwide.

According to an official statement by the Directorate Generale of Surete Generale, the department always contacts religious authorities when new books might cause trouble. "Religious books are referred to the Catholic Center of Information, Dar al-Fatwa, the Higher Shiite Islamic Council or to the Mashaykhat al-aql (Druze) to be studied," the statement said. "The measure . . . aims at making the concerned religious authorities take part in subjects that either touch religions or sensitivities among sects, especially . . . such books that include a distortion of the religion . . . which might cause disturbance due to the society's sensitivity over such issues."

"Our answer was that the books harmed Christian beliefs," explained the center's president, Father Abdou Abu Kasm. "It said that Jesus Christ married Mary Magdalene and sired a bloodline. We denounce such attempts to harm Christian beliefs. It may be allowed in other countries, but in Lebanon, the law forbids the harming of religious beliefs," he said.

The law allows the "censoring authorities" to censor obscene and pornographic materials, political and religious materials, which could harm the national security of the country. This clause is regularly applied to films. In January 2002, Virgin Megastore was raided by Lebanese police confiscating 600 DVD films including "The Great Escape," "Rush Hour," "Key Largo," and comedies such as "Some Like It Hot" and "The Nutty Professor." "The Insider" by Michael Mann, a film about the tobacco industry, was only shown in Lebanese cinemas after an interview with Shiite Sheikh Sayyed Mohammed Hussein Fadlallah was taken out.

Lebanese filmmaker Randa Sabag was asked by authorities to cut forty minutes from her award winning *A Civilized People*. She refused and it was never shown in Lebanon.

However, print products are usually left alone. Only a few books on the civil war have been censored. In fact, Lebanon is regularly praised for its low level of censorship in a region where the banning of books is daily business. But with the banning of *The Da Vinci Code*," Lebanon became the first and only country worldwide to ban it.

"The Syrians have permitted it," said Bassam Shibura, a partner with Dar Al Arabia Lil Ouloum (Arab Publishers for the Sciences), that holds the rights for the Arabic edition of *The Da Vinci Code*. According to Shibura, the book has passed the censors in the Gulf and he is now awaiting Saudi Arabia's decision. "I told Surete Generale, you are the only country to ban a book that has been translated into fifty languages," he said.

The Lebanese publishers' association sent an open letter to President Emile Lahoud to denounce "such suppression of freedoms."

"We now have a Culture Ministry, so why do security authorities deal with culture?" the letter asked.

Even though Shibura did not expect the novel to be banned in Lebanon, he was aware that it might cause problem. "When I was translating it, I was trying to amend some things in order to appease the Saudi authorities, because that is our biggest market. But you would have to change the whole story." Reported in: *Lebanon Daily Star*, September 16. □

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Internet

Sacramento, California

Aiding the industry that helped him gain worldwide fame, Gov. Arnold Schwarzenegger signed legislation September 21 aimed at discouraging online piracy by requiring anyone disseminating movies or music on the Internet to disclose their e-mail address. California file sharers who trade songs or films without providing an e-mail address will be guilty of a misdemeanor, under the first-in-the-nation measure that could make it easier for law enforcement to track down people who illegally download copyrighted material.

The bill is the latest attempt by film and music trade associations to combat the hard-to-police use of file-sharing software. The signing was hailed by the bill's sponsor, the Motion Picture Association of America, whose president, Dan Glickman, noted in a statement that Schwarzenegger had "a unique understanding of the powerful impact of piracy." The governor remains a member of the Screen Actors Guild, which supported the bill.

Opponents, including the San Francisco-based Electronic Frontier Foundation and the American Civil Liberties Union, say the measure infringes on privacy rights of computer users and would turn casual file-sharers into criminals. The measure, SB1506, was carried by state Sen. Kevin Murray (D-Los Angeles) at the behest of the Motion Picture Association of America, which says it loses $3.5 billion annually to piracy and is concerned that online trading of films is a burgeoning problem for them.

Vans Stevenson, a senior vice president for the trade association, said the new law "will be another tool" used to combat piracy. He said the group hoped to work with state and local law enforcement officials on enforcing the measure.

Schwarzenegger did not comment on the signing. But he has made no secret of his opposition to the online sharing of copyrighted material. A week earlier he signed an executive order prohibiting state employees from using software designed for file sharing. Reported in: *San Francisco Chronicle*, September 22.

Los Angeles, California

Now that most college students have returned to their campuses—and their high-speed Internet connections—record companies once again are suing campus-network users suspected of trading pirated music. On September 30, the industry trumpeted the names of twenty-six colleges and universities at which thirty-two students and other network users are being sued. Those thirty-two defendants are among 762 individuals accused of illegally swapping copyrighted songs in a new round of lawsuits filed across the country by the Recording Industry Association of America.

In March and April, the record industry stepped up its campaign against illegal file sharing on campus networks by explicitly naming institutions where it said illegal file sharing had occurred. The music industry continued to file lawsuits during the summer, but it focused on users of commercial networks. Over the summer, the industry also expanded the number of users named in its monthly lawsuits from an average of about 500 to the September figure. The lawsuits have been broadened to cover suspected song pirates using both established peer-to-peer networks, like KaZaA, and relatively new ones, like eDonkey.

"This is a concerted and intentional effort to expand the scope of the antipiracy program," said Jonathan Lamy, a spokesperson for the record industry.

While the industry continues to pursue people it suspects of music piracy, it has reached settlements with many of the suspects cited in previous lawsuits. More than 1,000 of the defendants already named in suits this year have agreed to pay penalties and fees averaging about $3,000. The industry says it does not keep track of how many of the settlements have involved college students or staff members. Reported in: *Chronicle of Higher Education* online, October 1.

Washington, D.C.

Responding to a request by law enforcement officials, the Federal Communications Commission tentatively concluded August 4 that new Internet-based telephone services should be subject to some of the same laws that enable the government to monitor conversations of terrorists and criminal suspects with relative ease. While many crucial details remain to be completed as the agency begins to write new rules, the notice of proposed rulemaking issued by the commission was its first formal step into a subject of considerable controversy.

The Justice Department and FBI have been saying for months that any efforts by the commission and its chair, Michael K. Powell, to have the new Internet-phone carriers less regulated than traditional phone companies should not allow the Internet carriers to avoid the requirements of the Communications Assistance for Law Enforcement Act.

That law gives law enforcement agencies the ability to tap into phone systems by requiring telephone carriers to engineer their systems so that federal agents have easy access for surveillance. In addition, the law shifts the considerable costs of surveillance to the industry.

The Justice Department, the Federal Bureau of Investigation, and other law enforcement agencies have said that the Internet telephone services pose significant new difficulties in monitoring conversations of suspects.

Some industry executives have maintained that, although they support efforts of law enforcement, new rules could be both too expensive and too difficult to apply to the new technology. The United States Telecom Association, which represents the nation's largest telephone companies, said earlier this year that the ruling requested by law enforcement officials might "impede technological progress" and impose "unreasonable costs on carriers and consumers."

The rules being developed will determine how much the companies will have to pay and which companies will bear the heaviest burdens and obligations. Complicating the rulemaking is the expectation that as the Internet phone service gains popularity, a huge number of calls will be between an Internet user on one end of a conversation and a customer of a more traditional phone service on the other.

The new technology has posed some challenges to surveillance. Unlike the telephone service, which sends a steady electronic voice stream from caller to receiver over a wire, the Internet telephone service sends out bursts of data packets that are disassembled on one end of the conversation and reassembled on the other, just like e-mail and instant messaging.

Commission officials said that, in the coming months, they also expected to consider potential privacy issues raised

by trying to monitor Internet-based conversations of suspects without also listening in on other conversations. A previous effort by the FBI to monitor e-mail, called Carnivore, raised an outcry of criticism by privacy and civil liberties groups who said the surveillance equipment could tap into communications not subject to wiretap warrants.

Commission officials said that they hoped the costs and technological challenges could be overcome by a group of companies.

In recent months, the group has developed a specialty of being able to monitor Internet phone conversations. The companies offering the surveillance technology include Verisign and Fiducianet. Executives and lawyers from the companies have been meeting with senior commission officials in recent weeks, according to documents on file with the commission, to describe their services and propose what the new rules should require.

Under the rules being considered, new Internet telephone companies like Vonage would be able to satisfy their obligations by retaining the companies that offer surveillance technology.

In a statement accompanying the proposal, Powell, the head of the commission, emphasized that trying to make the Internet-based phone services subject to provisions of the communications assistance act "does not indicate a willingness on my part to find that" such phone services should be subject to other regulations that apply to telephones.

"The Notice of Proposed Rulemaking we issue today," Powell said "demonstrates that the interests of the law enforcement community can be fully addressed for potential information services, and these interests need not be an excuse for imposing onerous common carrier regulations on vibrant new services."

The commission also determined that the law enforcement requirements applied to the popular "push to talk" services, a kind of walkie-talkie feature, offered by companies like Nextel.

In other developments, the commission approved a proposal to permit Tivo, Inc., which sells television-recording devices, to market equipment that would enable users to transmit digital television programs across the Internet. Holders of copyrighted programming, like the Motion Picture Association and the National Football League, have opposed such equipment, arguing it would encourage the illegal distribution of their programs.

The commission's decision approved eleven other proposed new technologies for copying programs, including those offered by Microsoft, Sony and RealNetworks.

A third measure approved by the commission prohibits sending spam as text messages to mobile telephones. The order approved by the agency does not apply to all unsolicited text messages. Reported in: *New York Times*, August 5. □

intellectual freedom bibliography

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