newsletter on intellectual freedom
IFC ALA

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FBI documents confirm ALA's PATRIOT Act concerns

Federal Bureau of Investigation documents indicate that the FBI sought to use Section 215 of the USA PATRIOT Act less than one month after Attorney General John Ashcroft told American Library Association (ALA) President Carla Hayden and the American public that this power had never been used. The records, turned over to the Freedom to Read Foundation (FTRF) and other First Amendment organizations, do not indicate how many times the FBI has invoked Section 215 since October 2003.

"These documents demonstrate there is no validity in the Department of Justice's ongoing suggestions that librarians and other critics of PATRIOT Act provisions are 'hysterical,'" Hayden said. "The guidance memo confirms the ALA's understanding of the scope and nature of the business records authority granted by Section 215 and that the judicial review is of a lower legal standard than was previously provided in U.S. law."

The records about the government's use of the PATRIOT Act were obtained through a Freedom of Information Act (FOIA) request filed in October 2003 on behalf of the FTRF, the American Civil Liberties Union, the Electronic Privacy Information Center and the American Booksellers Foundation for Free Expression. Five documents were released, including a guidance memorandum on Business Records Orders and an e-mail that acknowledged that Section 215 can be used to obtain physical objects—including a person's apartment key—in addition to records.

"From the latest documents we've received from the government, it appears that Attorney General Ashcroft released records when it suited his political purposes and then attempted to withhold them when it didn't," said Jameel Jaffer, an ACLU Staff Attorney. "The records we've obtained suggest once again that the government's secrecy decisions are guided not by national security concerns but by political ones."

Even after the requesters filed legal action in December 2003, the FBI attempted to stonewall the request for information, stating that the records could not be produced before June 2005. The United States District Court for the District of Columbia ultimately overturned the FBI's decision to withhold the documents until 2005 and ordered the FBI to release the documents over a period of six weeks.

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Nancy C. Kranich, Chair

in this issue

targets of the censor

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periodicals

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Alice series tops list of 2003's most challenged books

Phyllis Reynolds Naylor's Alice series toped the list of most challenged books of 2003, ending the four-year reign of J. K. Rowling's Harry Potter series, according to the American Library Association's (ALA) Office for Intellectual Freedom. The Alice series drew complaints from parents and others concerned about the books' sexual content.

The "Ten Most Challenged Books of 2003" reflect a wide variety of themes. The books, in order of most frequently challenged are:

- Alice series, by Phyllis Reynolds Naylor, for sexual content, using offensive language, and being unsuited to age group.
- Harry Potter series, by J. K. Rowling, for its focus on wizardry and magic.
- *Of Mice and Men*, by John Steinbeck, for using offensive language.
- *Arming America: The Origins of a National Gun Culture*, by Michael A. Bellesiles, for inaccuracy.
- *Fallen Angels*, by Walter Dean Myers, for racism, sexual content, offensive language, drugs and violence.
- *Go Ask Alice*, by Anonymous, for drugs.
- *It's Perfectly Normal*, by Robie Harris, for homosexuality, nudity, sexual content and sex education.
- *We All Fall Down*, by Robert Cormier, for offensive language and sexual content.
- *King and King*, by Linda De Haan, for homosexuality.
- *Bridge to Terabithia*, by Katherine Paterson, for offensive language and occult/satanism. □

survey shows americans' support of fundamental freedoms back to pre-9/11 levels

Americans' support for their First Amendment freedoms—deeply shaken by the terrorist attacks of September 11, 2001—continues to rebound and is back at pre-9/11 levels, according to the annual State of the First Amendment survey, conducted by the First Amendment Center in collaboration with *American Journalism Review* magazine.

"The 2004 survey found that just 30 percent of those surveyed agreed with the statement, 'The First Amendment goes too far in the rights it guarantees,' with 65 percent disagreeing. The nation was split evenly, 49 percent to 49 percent, on that same question two years ago, in the survey following the '9/11' attacks," said Gene Policinski, acting director of the First Amendment Center.

"Despite the ongoing war on terrorism worldwide and regular warnings from authorities about domestic attacks, a significant majority of Americans continue to support a free and open society," Policinski said. "Still, having about one-in-three Americans say they have too much freedom is a disturbing figure."

Other findings in the survey also show that Americans' support for First Amendment freedoms falls in specific areas or circumstances. Large numbers of Americans would restrict speech that might offend racial or religious groups and would restrict music that might offend anyone. Also, about four in ten respondents—a figure typical of findings in prior surveys—said that the press in America has too much freedom.

Among the key findings of this year's survey:

- About 65 percent of respondents indicated overall support for First Amendment freedoms, while 30 percent said the First Amendment goes too far—a nine-point swing from last year and a dramatic change from the 2002 survey in which Americans were evenly divided on the question at 49 percent each.
- Only 1 percent of Americans could name "Petition" as one of the specific rights guaranteed by the First Amendment. Only one of the five freedoms was identified by more than half of those surveyed: 58 percent named "Speech." For the other rights: Religion—17 percent; Press—15 percent; Assembly—10 percent.
- About 58 percent said that the current amount of government regulation of entertainment programming on television is "about right;" 16 percent said there is "too much," while 21 percent said there is "too little." Broadcasters and producers should note, however, that 49 percent of respondents would have current daytime-and-early-evening regulations regarding references to sexual activity extended to cover all twenty-four hours; and 54 percent would extend those regulations to cable, which currently is not covered by such FCC rules.
- 50 percent said they believe Americans have too little access to information about the federal government's efforts to combat terrorism—up from 40 percent in 2002.
- About 53 percent of those surveyed opposed a constitutional amendment to ban flag-burning, a proposal now pending the U.S. Senate.
- About 70 percent said that including the words "one nation, under God" in the Pledge of Allegiance does not violate the principle of the separation of church and state.
- Just 28 percent rated America's education system as doing an "excellent"or "good" job of teaching students about First Amendment freedoms.

The annual State of the First Amendment survey, conducted since 1997 by the Center for Survey Research and Analysis at the University of Connecticut, examines public attitudes toward freedom of speech, press, religion and the rights of assembly and petition. The survey was done this

year in partnership with *American Journalism Review* magazine. The national survey of 1,000 respondents was conducted by telephone between May 6 and June 6, 2004. The sampling error is plus-or-minus 3 percent. □

censorship of the written word: still alive and kickin'

Following is the text of talks delivered by Robie Harris, author of It's Perfectly Normal: Changing Bodies, Growing up, Sex, and Sexual Health *and* It's So Amazing! A Book about Eggs, Sperm, Birth, Babies, and Families, *and Jerilynn Williams, director, Montgomery County Library System (Conroe, Texas) and recipient of the 2003 PEN/Newman's Own First Amendment Award for successfully defending Harris' books. The presentations were delivered at the program sponsored by the ALA Intellectual Freedom Committee, the Association of American Publishers Freedom to Read Committee, and the American Booksellers Foundation for Free Expression during the ALA Annual Conference in Orlando, Florida, in June. Harris discussed censorship, why her books are challenged, and why kids and teens need access to books on sexual health. Williams discussed the ever-present attempts to censor the written word and how librarians can "survive a materials challenge and thrive in the process."*

Harris has written picture books and nonfiction books for children and teens. Her picture books include: Don't Forget to Come Back!, *illustrated by Harry Bliss*; I Am Not Going to School Today! *and* Goodbye, Mousie, *illustrated by Jan Ormerod*; Hi, New Baby! *and* Happy Birth Day!" *illustrated by Michael Emberley. Harris and Emberley also created growing up stories, a series for younger children. The third book in this series*, Sweet Jasmine, Nice Jackson, What It's Like to Be 2—and to Be Twins, *will be published this summer*.

It's Perfectly Normal *is a Booklist Editors' Choice, a New York Times Book Review Notable Book of the Year, a Publishers Weekly Best Book of the Year, and a School Library Journal Best Book of the Year.* "It's So Amazing! *is an ALA Notable Children's Book, a Cooperative Children's Book Center Choice Title, a Children's Literature Choice List Title, and a Horn Book Magazine Fanfare Title. A tenth anniversary edition of* It's Perfectly Normal *and a fifth anniversary edition of* It's So Amazing! *also will be published this summer.*

Williams has worked in libraries for more than three decades, beginning as a student aide in her elementary school. She began her professional career as a school librarian, working at secondary schools in several locations in Texas and New York, before becoming Associate City Librarian at the Bryan (Texas) Public Library. From 1989 to 1997, she was coordinator of the Houston Area Library System, a public library cooperative serving 28 counties in southeast Texas. In June 1997, Jerilynn became the library director for Montgomery County. She was one of eight librarians to represent Texas at the White House Conference_on Libraries and Information Services in July 1991 and currently represents Texas in WHCLIST, a task force dedicated to improving library and information services. In 2003, in addition to the PEN award, she received the Texas Library Association's SIRS Intellectual Freedom Award for her defense of access to information.

remarks by Robie Harris

It is an honor to be part of this event with our leader, Judith Krug, who has and continues to champion the fight to defend our freedom to read and our freedom to write, not only for adults, but for our children as well. Judith is THE person who for over thirty years has made it her mission to make sure that intellectual freedom remains a cornerstone of our democracy and a right for every citizen.

And it's also an honor to be here with Nancy Kranich, Chair of the ALA Intellectual Freedom Committee, Congresswoman Patricia Schroeder, President and CEO of the Association of American Publishers, and Judith Platt, chair of their Intellectual Freedom Committee. The AAP understands that one of the fundamental issues confronting all U.S. publishers today is intellectual freedom. They are also deeply involved in the increasingly difficult fight to protect the basic right of free expression at home and abroad. They understand that it's not only the freedom to read and to write that needs to be protected. It's also, in a democracy, absolutely essential to protect the freedom to publish.

And last but not least, it's an honor to have Chris Finan, president of The American Booksellers Foundation for Free Expression—the bookseller's voice in the fight against censorship—support my work. ABFFE's mission is to promote and protect the free exchange of ideas, particularly those contained in books, by opposing restrictions on the freedom of speech; issuing statements on significant free expression controversies; participating in legal cases involving First Amendment rights, including the PATRIOT Act; and providing education about the importance of free expression to booksellers, other members of the book industry, politicians, the press and the public. With the critical work these three organizations do, I as an author, feel fully supported in the work I do. I thank all three organizations for that!

And what a privilege to be here with librarian extraordinaire, the most alive and kickin' librarian I have ever met, Jerilyn Williams. Her politically astute and successful defense of my books on sexual health, *It's Perfectly Normal* and *It's So Amazing!,* resulted in keeping them in the

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tiny trackers: use of RFID by libraries and booksellers

The following is the edited text of remarks made at a program "Tiny Trackers: The Use of Radio Frequency Identification (RFID) Technology by Libraries and Booksellers," sponsored by the ALA Intellectual Freedom Committee and Washington Office, Office for Information Technology Policy at the ALA Annual Conference in Orlando, Florida, on June 27.

At the program, a panel of experts from a variety of areas related to or affected by RFID technology explained the benefits and drawbacks of RFID use. The panelists were James Lichtenberg, president of Lightspeed; Douglas Carp, Senior Director and General Manager, ID Products Group at Checkpoint Systems; Donald Leslie, Library Industry and Market Manager, 3M; Karen Saunders, Assistant City Librarian for Santa Clara City Library; and Lee Tien, Senior First Amendment Attorney, Electronic Frontier Foundation. The program was moderated by Nancy Kranich, chair of the ALA Intellectual Freedom Committee.

remarks of James Lichtenberg

As president of Lightspeed, L.L.C., based in New York City, James Lichtenberg provides counsel to clients in publishing, information technology, business and higher education. His focus is the transformation of enterprise due to the impact of new information technology. He contributes regularly to Publisher's Weekly *on that issue and is a frequent industry speaker. He serves as a member of the Board of the Book Industry Study Group (BISG) and the chair of its new technology group. A former senior vice president at Hill & Naughton, he was vice president of the higher education division of the American Association of Publishers. He is an adjunct professor of information technology at Polytechnic University and among his clients are the American Library Association, the Author's Guild, the Conference Board, Houghton Mifflin, John Wiley, Harvard, Yale and the Chronicle of Higher Education. He is a graduate of Harvard College with a B.A. in English Literature and he received a M.S. in sociology and socioeconomics from the New School of Social Research.*

It's really amazing to see such a large audience for what is theoretically a fairly abstract abstruse technical issue, but of course it has a lot more punch in it than that. Over this past year, I participated in quite a number of conversations and presentations about RFID, including the Association of American Publishers and the Book Industry Study Group. I think today my task is to provide a contextual overview in order to set the stage for the real experts who will follow me.

But before I begin, let's do a little survey—a sort of reality check. How many of you have only recently become aware of RFID? How many of you actually know what the letters mean or stand for? How many of you know how the technology basically works? And how many of you actually are using it currently in your libraries?

Well, as you attest and as the number of articles in the press over the last year also attest and we're talking about the *New Yorker*, *Wired*, major newspapers, as well as the 10,000 trade magazines that work in this area, RFID could very well be the next "big thing" as they say, in the advertising industry. But unless we manage the privacy question, it could also be the next big technology train wreck.

Perhaps the way to think about RFID that's most useful is as ID identifiers. You're all familiar with identifiers on books, whether it's the title or the author, or ISBN number or the MARC record, or whatever. But up to now, identifiers would only work with some kind of human intervention and originally, that was eyes. You had to look at the book in order to identify it. Which reminds me of a wonderful Groucho Marx joke that says, "Outside of a dog, a book is a man's best friend. Inside the dog, it's too dark to read." Along with eyes, recently as you know, we have barcodes, but they still require a human intervention. In other words, some human being has to hold the book or carton of ice cream to the scanner so that it could read the barcode. The books, of course, were completely passive, as was the ice cream.

With RFID, books and, in fact, any physical object, whether a crate, a box of books, a bar of chocolate can identify itself automatically to an appropriate reader. And once the data collected from these readers are then sent into a computer system and connected to the Internet, you can see what a whole new ballgame this process of identification becomes. So I think it's safe to say with RFID that we're standing at what may be the threshold, the "through the looking glass moment" when a new technology has the potential to transform the way we do business and the way we live.

Like all technology breakthroughs, it's actually a combination of the old as well as the new, and the old used in new ways in order to make possible dreams that, up until now, did not seem possible. RFID embeds an old technology, radio, into computer chips and thereby adds intelligence to objects, so they can tell us where they are, what they are and what's happening. In our case, the objects of most interest are single books or boxes of books or skids of boxes of books, all of which can be self-identifying; they identify themselves in real time, in detail, automatically and instantly as they leave the printer, as they are loaded into the warehouses, they arrive at the bookstore, on the library shelf or leave in the patron's book bag.

RFID has been with us since World War II in much more primitive and larger form, where information plus communication was put onto U.S. and British airplanes to allow them to identify themselves to reading devices, big sort of broadcast

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IFC report to ALA Council

The following is the text of the Intellectual Freedom Committee's report to the ALA Council, delivered by IFC Chair Nancy Kranich at the ALA Annual Conference in Orlando, Florida, on June 30.

The ALA Intellectual Freedom Committee (IFC) is pleased to present this update of its activities. Under Information, this report covers privacy, the ALA privacy audit, the updated document Privacy Q&A, media concentration, and the Child Online Protection Act (COPA). Under Projects are updates on Lawyers for Libraries, Banned Books Week, and *Outspoken: Chicago's Free Speech Tradition*. The committee's action items (under Action) include one resolution on the FCC's new policy on broadcast indecency, plus revisions to a number of existing intellectual freedom policies and Interpretations of the Library Bill of Rights in preparation for publication of the seventh edition of the *Intellectual Freedom Manual.*

Information

Privacy Tool Kit—The IFC's Privacy Tool Kit is almost complete. Similar in style and purpose to the Libraries & the Internet Tool Kit, this resource assists librarians in protecting users' privacy and confidentiality. The Tool Kit is available at www.ala.org/oif/iftoolkits/privacy, and includes:

- Background Information about Privacy and Libraries
- ALA Privacy Policies and Guidance (including Guidelines for Developing a Library Privacy Policy)
- Federal and State Privacy Laws and Policies
- Court Orders
- Guidelines for Dealing with Law Enforcement Inquiries (available on the OIF Web site)
- Privacy Procedures
- Privacy Communications
- Bibliography

Privacy Q & A—The IFC Privacy Subcommittee has reviewed the entire Q&A document and will add several new topics: RFID in libraries; the use of social security numbers in library records; library workplace privacy; and use of personally identifiable information for non-administrative use.

Media Concentration—Evidence has shown that concentration of media ownership reduces the number of independent and alternative voices in the community, thereby diminishing the library's ability to provide a wide range of views and information to its users. At the 2003 Annual Conference, the ALA Council adopted the resolution "New FCC Rules and Media Concentration," opposing new rules changes related to media ownership caps and cross-ownership rules that would encourage further concentration of the media. Following the 2003 Annual Conference, the IFC established a subcommittee on the Impact of Media Concentration on Libraries. Its mission is:

- To examine the impact of these mergers on intellectual freedom, access to information, and diversity of opinion in local communities, and
- To review how libraries can counter the effects of media consolidation by identifying innovative ways to provide materials and information presenting all points of view.

To further its mission, the IFC held an open hearing at this conference on media consolidation, localism and diversity. Prior to the conference, OIF briefed concerned librarians and library users with a press release with links to documents located on its Intellectual Freedom Media Concentration page at www.ala.org/ala/oif/ifissues/mediaconcentration.htm.

Immediately following the open hearing, Dr. Mark Cooper of the Consumer Federation of America and Lucy A. Dalglish of the Reporters Committee for Freedom of the Press made presentations at the program "From Many Voices to Few: Media Consolidation and Intellectual Freedom," which was cosponsored by the ALA IFC and the ALA Committee on Legislation. The speakers discussed the consequences of media concentration and its impact on the First Amendment, providing librarians background and context for understanding the policy issues so they can counter trends by providing materials and information that present all points of view on current and historical issues at a time when big media are getting bigger and reducing the diversity of voices presenting news and entertainment.

Child Online Protection Act—On June 29, 2004, the Supreme Court upheld an injunction against the Child Online Protection Act (COPA), a law that proposes restrictions on Internet content deemed "harmful to minors." The 5─4 decision sends the case back to the District Court for a trial. Writing for the majority, Justice Anthony M. Kennedy said, "There is a potential for extraordinary harm and a serious chill upon protected speech." The Freedom to Read Foundation had filed an *amicus curiae* brief in support of First Amendment rights.

Projects

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

In 2003, three regional training institutes were held: Washington, D.C. (February), Chicago (May), and San Francisco (October). A fourth and fifth were held in 2004: Dallas (February) and Boston (May). A sixth institute is in the planning stages. To date, over 150 attorneys, trustees, and librarians have attended these five trainings, and an e-list has been created to allow for ongoing communication.

Topics discussed include the USA PATRIOT Act, Internet filtering, the library as a public forum, meeting

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FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council delivered by FTRF President Gordon Conable at the ALA Annual Conference in Orlando, Florida.

As President of the Freedom to Read Foundation, I am pleased to report on the Foundation's activities since the 2004 Midwinter Meeting:

The USA PATRIOT Act and Library Privacy and Confidentiality

The Freedom to Read Foundation (FTRF) regards the protection and preservation of library users' privacy and civil liberties as one of its primary missions. In pursuit of this goal, FTRF joined with the American Booksellers Foundation for Free Expression (ABFFE) and other civil liberties organizations as amici curiae in *Muslim Community Association of Ann Arbor* v. *Ashcroft*, a facial legal challenge to Section 215 of the USA PATRIOT Act, which amends the business records provision of the Foreign Intelligence Surveillance Act to permit FBI agents to obtain all types of records, including library records, without a showing of probable cause. The government filed a motion to dismiss the plaintiffs' complaint, and the District Court heard oral arguments on the government's motion in December 2003. We are awaiting a decision in the case.

FTRF also has joined with ABFFE and the American Library Association (ALA) to file an amicus curiae brief in *John Doe and ACLU* v. *Ashcroft*, the ACLU's constitutional challenge to the PATRIOT Act's expansion of the FBI's authority to use National Security Letters to obtain records without judicial review. The ACLU filed the lawsuit in the Southern District of New York in April, but disclosure of the case is limited due to the secrecy provisions of the PATRIOT Act. Much of the case remains under seal, but the judge has ordered all information about the facial challenge to be filed publicly, including FTRF's *amicus* brief.

The Foundation's efforts to address the USA PATRIOT Act also include supporting legislation designed to scale back portions of the Act and opposing new legislation that poses a potential threat to library users' right to be free from unreasonable government surveillance. FTRF signed a letter in support of the "Civil Liberties Restoration Act of 2004" (CLRA; S. 2528), introduced in the U.S. Senate by Senator Kennedy (D-MA) on June 16, 2004. Cosponsors include Senators Leahy (D-VT), Durbin (D-IL), Feingold (D-WI), and Corzine (D-NJ). The CLRA is intended to restore the checks and balances that preserve our First Amendment rights and other civil liberties, and to end the abuse of immigrants and others who come as future citizens and visitors to our country.

FTRF also joined with ALA and numerous other organizations in signing a letter opposing H.R. 3179, the "Anti-Terrorism Intelligence Tools Improvement Act of 2003," which would expand the powers granted to law enforcement under the USA PATRIOT Act.

The Foundation continues to inform and encourage its members and all Americans to support the passage of other bills to amend portions of the USA PATRIOT Act. In particular, the Foundation supports Congressman Bernie Sanders (I-VT) in his efforts to pass the Freedom to Read Protection Act and Senators Feingold, Leahy, Craig (R-ID), and Durbin's work on behalf of the Security and Freedom Enhanced Act (SAFE). A full listing of pending legislation addressing the problems in the USA PATRIOT Act is appended to this report.

Litigation

As part of its mission to preserve First Amendment freedoms in the library and more generally, the Freedom to Read Foundation participates both as plaintiff and *amicus curiae* in lawsuits designed to defend the right to read and to receive information freely. Since the Foundation last reported to Council, it has joined in the following lawsuits:

City of Littleton, Colo., v. *Z. J. Gifts*: This lawsuit was filed to determine the extent to which prompt judicial review must be assured following a government body's refusal to issue a license to an adult-oriented business. The plaintiff, Z. J. Gifts, brought a facial challenge to Littleton's adult-business licensing ordinance when it opened a retail store deemed by the city to be an adult-oriented business. Z.J. Gifts claimed the law was unconstitutional because the licensing scheme, which operates as a prior restraint on protected speech, fails to assure a prompt and final judicial decision following a refusal to issue a license. The Tenth Circuit Court of Appeals ruled in favor of the plaintiff, finding the challenged portions of the law unconstitutional. The defendant city appealed to the U.S. Supreme Court, which granted certiorari. FTRF joined with ABFFE and four other organizations to file an *amicus curiae* brief in favor of the plaintiff. On June 7, 2004, the Supreme Court overturned the initial decision, finding the statute constitutional.

Video Software Dealers Association, et al. v. *Maleng*: The plaintiffs filed this lawsuit to challenge a Washington State law barring the sale or rental to minors of any video game containing depictions of violence directed against law enforcement officers. FTRF joined with fellow members of the Media Coalition to file an *amicus curiae* brief in support of the plaintiffs. U.S. District Court Judge Robert Lasnik issued a preliminary injunction barring enforcement of the law while the case is before the court. Both parties filed cross-motions for summary judgment, and oral arguments on the motions were held on June 24.

FCC petition for reconsideration: FTRF joined in filing a petition with the Federal Communications Commission

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effort to limit PATRIOT Act falls a vote short

An effort to bar the government from demanding records from libraries and booksellers in some terrorism investigations fell one vote short of passage in the House July 8 after a late burst of lobbying prompted nine Republicans to switch their votes.

The vote, a 210 to 210 deadlock, amounted to a referendum on the antiterrorism law known as the USA PATRIOT Act and reflected deep divisions in Congress over whether the law undercuts civil liberties. Under House rules, the tie vote meant the measure was defeated.

The outcome led to angry recriminations from House Democrats, who accused Republicans of "vote-rigging" by holding the vote open for an extra 23 minutes to get enough colleagues to switch votes. Frustrated Democrats shouted "Shame, shame!" and "Democracy!" as the voting continued, but Republicans defended their right as the majority party to keep the vote open to "educate members" about the dangers of scaling back government counterterrorism powers.

"We're more interested in catching terrorists who are trying to kill Americans than we are in leaving the Capitol in time for happy hour," said Stuart Roy, a spokesman for the majority leader, Tom DeLay, Republican of Texas.

The library proposal, tacked onto a $39.8 billion spending bill, would have barred the federal government from demanding library records, reading lists, book customer lists and other material in terrorism and intelligence investigations. The antiterrorism law expanded the government's authority to secure warrants from a secret intelligence court in Washington to obtain records from libraries and other institutions, using what many legal experts regard as a lesser standard of proof than is needed in traditional criminal investigations.

Federal law enforcement officials say the power to gain access to such records has been used sparingly. Still, the provision granting the government that power has become the most widely attacked element of the law, galvanizing opposition in more than 330 communities that have expressed concern about government abuse. Critics say the law gives the government the ability to pry into people's personal reading habits.

"People are waking up to the fact that the government can walk into their libraries, without probable cause, without any particular information that someone was associated with terrorism, and monitor their reading habits," Representative Bernie Sanders, the Vermont independent who sponsored the measure, said.

Republicans lobbied furiously to defeat the amendment. President Bush threatened to veto the spending bill if the provision was included, and the Justice Department sent a letter saying that at least twice in recent months "a member of a terrorist group closely affiliated with Al Qaeda used Internet services provided by a public library."

Even so, the measure appeared headed for passage, leading by at least 18 votes as the set time for voting wound down. The House traditionally holds its votes open for 15 minutes to give lawmakers time to get from their offices to cast their votes, but the vote on Sanders's amendment stayed open for 38 minutes, officials said.

Democrats identified eight of the nine Republicans who switched their votes: Michael Bilirakis of Florida, Rob Bishop of Utah, Thomas M. Davis, III, of Virginia, Jack Kingston of Georgia, Marilyn Musgrave of Colorado, Nick Smith of Michigan, Tom Tancredo of Colorado and Zach Wamp of Tennessee. One Democrat, Brad Sherman of California, switched his vote to aye from nay, officials said. In all, eighteen Republicans joined Democrats in supporting the measure; four Democrats opposed it.

"The timing was well within the rules of the House floor," said Burson Taylor, a spokeswoman for Representative Roy Blunt, the majority whip. "Sometimes that plays to our advantage, sometimes it plays to the Democrats' advantage."

But Democrats accused Republicans leaders of corrupting the voting process and drew comparisons to the dustup last November over a Medicare bill, which squeaked through the House after Republican leaders held the vote open for three hours to get colleagues to switch their votes. The House ethics committee is looking into accusations that one lawmaker was offered a bribe on the House floor for his vote.

Representative Nancy Pelosi, the House Democratic leader, said after the vote: "Republican leaders once again undermined democracy, this time so that the Bush administration can threaten our civil liberties. How thoroughly un-American."

Representative Jerrold Nadler (D-NY) said: "The Republicans are so desperate to look into bookstore and library records that they violated the very principles of democracy to block an amendment that had already passed. This is an outrage."

Debate on the House floor revealed deep disagreement over even fundamental questions about what power the government now has to demand library records and how that power has been used since the law was enacted after the September 11 attacks. Last September, Attorney General John Ashcroft accused critics of the government's library powers of fueling "baseless hysteria," and he grudgingly declassified government data showing that the Justice Department had not yet used the power to seize library records.

But the department has refused to say how often the authority has been used since, saying the information remains classified. The American Civil Liberties Union said last month that documents disclosed in court challenges showed that the Federal Bureau of Investigation had sought to use that section of the law soon after Ashcroft's declaration (see page 165).

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ALA to monitor Internet filter implementation, provide support to library staff and users as CIPA deadline approaches

On the eve of the July 1 deadline for implementation of Internet blocking technology as required by the Children's Internet Protection Act (CIPA), the American Library Association (ALA) announced it will continue to monitor the use and long-term impact of filters in libraries and provide ongoing assistance to library staff and users in dealing with the execution of the controversial law.

"Libraries nationwide have made their initial decision about whether or not to install filters, but all libraries continue to work to ensure a safe and responsible online experience for all their users," said ALA President Carol Brey-Casiano. "Because millions of Americans depend on America's public libraries as their sole access to the Internet, we must remain vigilant that we do not further deepen the divide between those who have Internet access at home, work or school and those who do not have this opportunity."

The ALA successfully argued before the U.S. Supreme Court that adult library patrons must have the ability to disable Internet filters to ensure access to constitutionally protected information.

According to a December 2002 report from the Kaiser Family Foundation, how the filters are configured can make a difference in how much information is blocked. The Foundation warns that filters set at high levels block access to a substantial amount of constitutional material, including health information, with only a minimal increase in blocked pornographic content.

"The Internet is one of many important information resources. Our goal as librarians is to help people of all ages make the most of it and become information literate—able to safely and effectively find the resources they want and need," Brey-Casiano said. "We hope library users will tell us when filters fail, either by allowing through illegal content or by incorrectly blocking access to sites like Rolling Stones.com, so that we can make adjustments and evaluate effectiveness."

The ALA maintains a Web site sharing information and reports from the field related to CIPA and Internet filtering at www.ala.org/cipa. The association plans to undertake additional research on filtering use in libraries and continue to regularly continue to update the Web site with ongoing information for library staff and users.

"Librarians also are concerned that parents must not be lulled into a false sense of security with filters," Brey-Casiano added. "We must teach children to protect their privacy online and find the best the Web has to offer while avoiding illegal content." □

in review

Operation Hollywood: How the Pentagon Shapes and Censors the Movies. **By David L. Robb. Prometheus Books. 2004. 384 p. $28.00.**

Operation Hollywood can be best summarized by its subtitle: *How the Pentagon Shapes and Censors the Movies*. David L. Robb documents the systematic collusion between the Pentagon and the film industry. In return for support from the military that can be worth millions of dollars, the film industry must submit its scripts to the Pentagon's film liaison office for review. Phil Strub, head of this office since 1989, is one of the chief villains of the book since he has made more than one hundred producers change their films and TV shows so that they portray the military in a more positive light (362). Additional units of the military can also intervene, even to the extent of eliminating references to competing branches as a condition for their support.

Most often, the film industry caves in to the Pentagon's demands, especially when the movie requires difficult to duplicate filming locations such as aircraft carriers and nuclear submarines. The heroes of the book are those directors and producers such as Kevin Costner, Oliver Stone, and Robert Aldridge who stood up to Pentagon pressure and made their movies in keeping with their artistic vision. Many others such as Jerry Bruckheimer and John Woo habitually agree to the required changes for the economic advantages of military support.

While the Pentagon's policy states that one of the reasons for review is historical accuracy, Robb includes several cases where the Pentagon required well-documented events to be changed because they reflected poorly on the military. Another troubling aspect is that the Pentagon reviews scripts even when the only request is to film on publicly accessible locations such as the Presidio in San Francisco.

In the foreword, Jonathan Turley, a law professor at George Washington University, states that Robb's book should outrage most Americans and lead to hearings in Congress (21). Even as a staunch defender of intellectual freedom, I cannot say that this issue is high on my priority list even if I do not question the book's accuracy, since the author gives an extensive list of sources. I certainly was not surprised, because acquiring positive media coverage is something that even we librarians are encouraged to do. When I asked about filming policies in colleges and universities on a library discussion list, I learned that one of our major public universities reviews all scripts and further reserves the right to deny use of its facilities in cases where it considers the overall content of the film, advertisement, or project inconsistent with the University's goals and ideals.

Finally, I believe that only film buffs will finish this book since there is no progression of any sort. Each of the forty-eight chapters details the Pentagon review of one or more films including what the military objected to and

whether those responsible for the film made the changes or not. I soon began keeping Leonard Maltin's *Movie & Video Guide* by my side to help identify many films quickly forgotten for good reason.

Yes, the Pentagon may be abusing its economic power by providing goodies to filmmakers who play ball; but I, for one, would much rather have congressional hearings on the abuses of the PATRIOT Act.—*Reviewed by Robert P. Holley, Professor, Library & Information Science Program, Wayne State University, Detroit, MI* ☐

IFRT presents Immroth, Oboler, and SIRS-ProQuest awards

The ALA Intellectual Freedom Round Table honored the 2004 recipients of the John Phillip Immroth Memorial Award, the Eli. M. Oboler Award, and the SIRS-ProQuest State and Regional Achievement Award at a program at the ALA Annual Conference in Orlando, Florida, June 26.

The recipient of the John Phillip Immroth Memorial award for 2004 was Nolan T. Yelich, State Librarian of Virginia. The Immroth Award honors intellectual freedom fighters within and outside the library profession who have demonstrated remarkable personal courage in resisting censorship. For several months, Yelich vigorously and publicly pursued the complete record of Governor James Gilmore's administration for the State Archives of Virginia.

The recipient of the SIRS-ProQuest State and Regional Achievement Award for 2004 was the Colorado Association of Libraries Intellectual Freedom Committee (CAL IFC). The SIRS-ProQuest State and Regional Achievement Award recognizes successful and effective intellectual freedom committees or coalitions that have made a contribution to the freedom to read in libraries, or to the intellectual freedom environment in which libraries function. CAL IFC was honored for its development and implementation of a statewide initiative to educate the public about the USA PATRIOT Act.

Wendell Berry and David James Duncan, coauthors of *Citizens Dissent: Security, Morality and Leadership in an Age of Terror* (Orion Society, 2003), were the 2004 recipients of the Eli M. Oboler Memorial Award. The award is presented for the best published work in the area of intellectual freedom in the preceding two years. ☐

study finds film ratings are more lenient

A new study from the Harvard School of Public Health has found that a decade of "ratings creep" has allowed more violent and sexually explicit content into films, suggesting that movie raters have grown more lenient in their standards. The study criticized the ratings system, which is run by the Motion Picture Association of America, for confusing and murky descriptions of movie content and called for a standardized universal rating system that would be used across all entertainment media.

The study, which was issued July 13, quantified what children's advocates and critics of the ratings system have said anecdotally for years: that a movie rated PG or PG-13 today has more sexual or violent content than a similarly rated movie in the past.

"The M.P.A.A. appears to tolerate increasingly more extreme content in any given age-based rating category over time," the study said. "Movies with the same rating can differ significantly in the amount and type of potentially objectional content. Age-based ratings alone do not provide good information about the depiction of violence, sex, profanity and other content."

Rich Taylor, a spokesman for the Motion Picture Association, the studios' trade association, pointed out that the standards for judging acceptable depictions of sex and violence in American society were constantly changing, and that it would not be surprising if that changed for movie ratings as well.

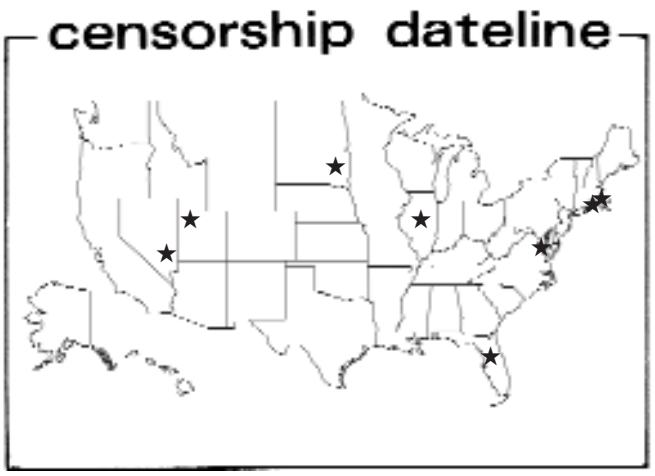
The study of 1,906 feature films between 1992 and 2003 found more violence and sex in PG movies ("Parental guidance suggested") and more of those elements and profanity in PG-13 movies ("Parents strongly cautioned"). It also found more sex and profanity in R-rated movies ("Under 17 requires accompanying parent or adult guardian") than a decade ago.

"When you look at the average, today's PG-13 movies are approaching what the R movies looked like in 1992," said Kimberly Thompson, associate professor of risk analysis and decision science at Harvard's School of Public Health, who was a co-author of the study. "Today's PG is approaching what PG-13 looked like a decade ago."

Thompson and her fellow researcher, Fumie Yokota, looked at a combination of data, relying on descriptions for each film provided by the association's ratings board and by two independent groups that rate the movies, Kids-In-Mind and Screen It! They found significantly more violence in G-rated animated films compared with nonanimated films and concluded that "physicians should discuss media consumption with parents of young children."

The researchers created a scale for judging the content of each movie, with films that had more sex and violence getting higher scores. In comparing the content of varying movies with similar ratings, they found a clear upward slope of scores over time. For example, Disney's 1994 movie *The Santa Clause* was rated PG, while the 2002 sequel, *The Santa Clause 2*, which had comparable content, was rated G.

(continued on page 219)



libraries

Washington, D.C.

The Department of Justice asked the Superintendent of Documents to instruct depository libraries to destroy all copies of a series of materials. DOJ claims these are "training materials and other materials that the DOJ staff did not feel were appropriate for external use." GPO/SuDocs did what it is required to do and did a specific check with DOJ on this request —so that is not the issue. It is the case, however, that—as one attorney put it—these are the types of materials that law offices have on hand "to help people get their stuff back" from the government. Moreover, if law offices and law libraries have them, they are hardly for internal use only.

Following protests by librarians across the country, and the release of a statement by ALA President-Elect Michael Gorman decrying the order to withdraw and destroy the DOJ materials, the DOJ withdrew its request on August 2. Its spokesman told the press that while the DOJ determined that 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." Reported in: ALA Washington Office Newsline, July 23, August 3.

Ocala, Florida

The Marion County Public Library Advisory Board and county staff may take the next six months to plow through and revamp the library's book-acquisition polices. But the committee has already addressed part of the problem that caused the protracted controversy over its functions and sexually explicit library books. Now, County Administrator Pat Howard just has to approve it.

A revised method for handling objections to library books, the process that ignited the ongoing dispute over the library, has sat on Howard's desk for more than two months. Howard, who under county policies possesses the power to implement some library rules, said he held off because he disagreed with one change prescribed by the advisory panel.

The changes were made to the county's "request for reconsideration" policy. Library patrons trigger a review of a questionable book by submitting such reviews. An eighty-three-year-old Ocala woman filed such a petition last July against a sex-splashed novel entitled *Eat Me* and started the public ruckus over library procedures and books that seemed to reach a procedural, if not political, culmination June 1.

The library board, which recommended in a 7–3 vote to reinstate *Eat Me* after Library Director Julie Sieg banned it, struggled with the appeal process before rendering its decision in December. By February, they had drafted a revised policy, which won unanimous support. The new measure was forwarded to Howard in March.

One noticeable change is in the terminology. The policy would now be called a "Statement of Concern." Much of the initial reconsideration process remains the same. But two new steps involve giving the objecting patron reviews of the book in question and charging library staff to offer help in finding other books.

Unlike the current method, the proposed policy says that complainants must be Marion County residents with valid library cards. In another switch, the patron "must attest" to having read, listened to or viewed the material "in its entirety."

That became an issue with *Eat Me*, the first book pulled from the library because of its content. Loretta Harrison, the woman who objected to the Australian novel, acknowledged in her complaint that she had read only a few pages before putting the book down.

Once an appeal is filed, a three-member library staff committee still has four weeks to review the material and make a recommendation, under the draft policy. But the library director would get two weeks, instead of one, to make a determination of what would happen to the book. Any patron has thirty days to appeal the outcome, once the head librarian announces it to the library board. The board would review the material as well, as now happens, and recommend its position through a roll call vote.

The proposed method is more specific on the next steps once that vote occurs. The draft policy says the library

director makes the final determination—which is unclear in the current guidelines—within fourteen days of the vote. Sieg took two months to make a final ruling on *Eat Me* after the library board voiced its opinion.

Another new aspect restricts the number of complaints and appeals to one per title. In one instance, that means if the director makes a decision and no one appeals, other patrons are blocked from challenging the same book. If the director decides on an appeal to a previously filed "statement of concern," no other appeals to that book will be considered.

No such provisions exist in the current policy.

Howard said he declined to take action earlier because he wanted the library debate before the County Commission to play out and because he didn't like the idea of the library director handling the appeal. He would prefer another person, perhaps the library's supervisor or the county administrator, be written in as the next-level judge. Howard wants the library board to consider that at separate meetings of a policy subcommittee and the full board. If they agree, he will likely sign off on the new format shortly afterward. Meanwhile, the plan, as decided on June 1, for the library board to review all policies under its control will continue.

Library Board Chair Terry Blaes said the board would be receptive to considering Howard's amendment. "It seems that we're starting over from square one, so if the county administrator wants us to revisit that, it does seem appropriate," said Blaes, adding that her desire is to clear up the questions, particularly by limiting the number of appeals, that landed the board in the middle of the *Eat Me* controversy. "Hopefully, that will cut down on the number of requests because every time this happens it takes a lot of staff time." Reported in: *Ocala Star-Banner*, June 5.

Sioux Falls, South Dakota

Following a board's decision in early July to remove a link to the Planned Parenthood Teenwire Web site from the South Dakota State Library's site, Gov. Mike Rounds decided July 12 to temporarily block Internet access to the library's Web site for teenagers. "As a parent, I would be very disturbed to have my children connecting to any of these Web sites that are found through the state Web site at this time," Rounds said as links connected to the library's teen center page disappeared.

"The governor is not the master father of the state of South Dakota," said Judith Krug, director of the American Library Association's Office for Intellectual Freedom. "At least I don't think he was elected on that basis."

Earlier this year, a school librarian in Huron asked the State Library to remove the links to the Planned Parenthood teen wire and the Kaiser Family Foundation's Web site. In April, the State Library Board turned down that request, and in May, Robert Carlson, bishop of the Sioux Falls Catholic Diocese, asked Rounds to intervene.

On July 9, the Library Board voted to remove the Planned Parenthood link from the library's Web site for teenagers. Three days later, Rounds said another portion of the library's Web site, known as the teen center, allowed people to link to outside sources that he feels are not appropriate for young people.

"I think that moms and dads that have got kids that are twelve, thirteen, and fourteen years old would not want items that are on that Web site to be made readily available to their children on the Internet or through connections with, of all places, a Web site sponsored by taxpayers of the state of South Dakota." Rounds said he will assemble a committee to review the links.

Asked why the State Library Board wouldn't be the right group to perform the review, Rounds said, "I suspect that we can probably start with them, but in this particular case, I'm not automatically going to say that they're the right group to do it at this time."

Loy Maierhauser of Rapid City and about twenty other high school students and recent graduates rallied at the public library July 12 protesting Rounds' Planned Parenthood decision. She said up to thirty adults joined the Students Against Censorship rally. "It seems as though our governor is censoring one particular group without really regards to the content," she said in an interview. "It's kind of like pulling a book off the library shelf just because of the author."

Reed Abrahamson, son of the only State Library Board member to vote against Rounds' request, joined in the protest, Maierhauser said. A protest also was planned for Sioux Falls, she said.

Maierhauser wasn't critical of Rounds' yanking the teen center links. "I think that the governor's decision . . . was fine. I think that what needs to happen is that all the sites need to be reviewed and maybe step up the regulations and just make sure that everything on there is OK for teens."

Rounds said it was one person's job to put the teen center site together, and a supervisor apparently approved it. Neither of those people work for state government anymore, but not because of the Web site issue, he said. Rounds did not know how long the site had been in existence.

Krug said if Rounds is setting himself up as the arbiter of what's appropriate for young people, that's wrong. "The fact that someone would superimpose himself or herself on a library and begin to demand removal of certain information from a Web site because that person does not believe it is appropriate for whatever age person is, to my way of thinking, a real act of censorship," she said.

It's not censorship, Rounds said, because people can still see the content by going directly to the sites. Others will have to wait until state officials decide whether the sites are appropriate to be linked from a state page, he said.

Rounds refused to identify any of the banned links.

A quick scan of the teen center site before the plug was pulled revealed links to information about popular culture. Some categories, still visible from the Library site, include

"Words to Chill By," "Homework," "Life after High School," "That's Life," "Good Times," and "Teen 'Zines." Mouse clicks on those lead nowhere.

One deleted link, from the health section, was to Go Ask Alice!, which provided answers to health concerns and some explicit sexual questions.

Explicit information that helps young people protect themselves is exactly the kind of information they need, Krug said. "I would prefer that they be answered legitimately than having the kids find out the answers to their questions behind the library or behind the school."

Go Ask Alice! is a leading health question-and-answer service with an archive of over 2,500 responses to questions e-mailed anonymously. It is provided by Health Services at Columbia of Columbia University in New York.

Rounds said he made a judgment call, and that's one reason he was elected. The governor said using some of the links in question is like a librarian deciding to read an article from *Playboy* magazine during children's story time. Telling the librarian not to do that is a matter for public policy, he said.

"I don't think there's going to be very many people disagreeing with me that some of the items found on those links are absolutely not appropriate for young teenagers." Reported in: *USA Today*, July 13

Layton, Utah

An apparent murder-mystery fan has crossed out the swear words in five of the ten titles in the "Murder, She Wrote" mystery series held by Davis County Library's Central branch, and used black, purple, green, and pink ink to write in substitutes such as "darn," "gosh," and "heck."

"It bothers me 'cause I'm trying to read a book," said Charlene Heckert, the patron who discovered the defacement and reported it to library authorities. Defacing public property is a class B misdemeanor in Utah, punishable by a sentence of up to six months and a $1,000 fine. Noting that the library would probably only seek restitution, Davis County Librarian Pete Giacoma asserted that the crime "would be prosecuted if we were to find who did it, by luck or accident." He went on to say, "I think the worry of the public, every once in a while, is that we're doing it. We're not."

Giacoma urged patrons to "contact us and let us know" if they find any other unauthorized editing of library materials. Reported in: *American Libraries* Online, July 23.

schools

Normal, Illinois

Families who object to racial slurs in required high school books say more should be done in the Unit 5 school district than just offering students something else to read. "We have never asked that these books be banned," said Rozalind Hopgood of Bloomington, a parent who filed a complaint last fall. "We've asked that they be removed from the required reading list."

In July, the Unit 5 Diversity Advisory Committee suggested books that could be read by students who do not want to read John Steinbeck's novel *Of Mice and Men*. The group, made up of parents and community members, also recommended the district consider permanently removing the book from among those that students are required to read in sophomore-level literature classes.

Several people complained about the Steinbeck book, and others, last fall. Those who want the books removed say the themes are addressed—without using slurs—in other books. "If we're going to talk about the injustices of the past, we have to do it in a way that honors everyone," said Hopgood, whose daughter was given alternative books and studied in the library during her scheduled literature class. "It's very difficult for me to understand why (the books) are still there."

The advisory committee recommended keeping *A Raisin in the Sun*, *To Kill a Mockingbird* and *The Adventures of Huckleberry Finn*, but offered *The Chosen* as an alternative to *Huckleberry Finn*. The group said alternative books should be selected if necessary for the other books. They would be used by students who do not want to read the assigned book.

The committee recommended *The House on Mango Street* and *The Way to Rainy Mountain* as alternatives to *Of Mice and Men*, which does not "address multicultural and socially sensitive issues in a meaningful, respectful manner."

"This work could be offensive," the committee wrote in its report.

Mango Street includes some racial language and slurs, but it is not "excessive or gratuitous," the report said. The overall message of the book—the pursuit of the American dream—is clear, committee members wrote. "Instructors must provide students with necessary background information, a comfortable classroom environment and the opportunity for meaningful discussion regarding this text," the report said.

Bruce Boswell, the district's executive director of secondary education, said a teachers' task force recommended *Mango Street* and *The Chosen* as alternatives.

Jerry James, a Normal resident who complained last fall, said he wants *Huckleberry Finn* pulled from the reading list because its dialect is hard to understand and its racial slurs create a "degrading" situation for black students. "There needs to be a lot more discussion and there needs to be different opinions discussed," James said. "Nobody is willing to deal with the deep psychological issues."

Sue Cain, a former English teacher who leads the education committee for the local branch of the National Association for the Advancement of Colored People, said students should be given choices among books that share the same theme. Those students can work in groups. Larger class discussions can address the theme and any controversies.

The diversity committee recommended teachers learn about diversity and sensitivity in the classroom. The committee said "literary previews" should be provided to parents and students at registration and before each book is read. Read-along guides should be sent home while a book is being studied, added the committee.

Darlene Hill of Bloomington, whose daughter will be in seventh grade this fall at Parkside Junior High School, met with school officials after finding out a book her daughter was assigned last year contained racial slurs. This year, she plans to examine the reading list and request alternative books if necessary. "You can teach the issue without having to use that derogatory word," said Hill. Reported in: pantagraph.com, July 26.

university

Providence, Rhode Island

A women's studies professor at the University of Rhode Island who has written widely on the international trafficking of women and children says the university censored her by ordering her to remove two articles from her university Web site, after two people mentioned in the articles threatened to sue her.

The professor, Donna M. Hughes, said the university violated her academic freedom and is preventing the dissemination of valuable information. "Those particular articles have really had a lot of impact on policy," Hughes said. "The university is basically saying we're no longer going to defend our faculty members."

Hughes has testified before Congress and has spoken internationally about the practice of selling women and children for sex.

In a statement released in late May, Louis J. Saccoccio, the university's lawyer, said that "academic freedom is a core value of the university" and that the institution was studying the legal issues involved in Hughes's case.

The professor's articles were published by *National Review* Online in the fall of 2002 and by *Vital Speeches of the Day*, a magazine, in January 2003. They refer anonymously to a British man who, Hughes wrote, is suspected of selling Romanian babies for adoption in the United States and of being involved in sex trafficking.

In the articles, Hughes calls him and a female associate "wolves in sheep's clothing," saying that even while they engage in sex trafficking, they have attended international meetings and tried to pass themselves off as people concerned with stopping the practice.

Last fall Hughes received a letter from a London law firm that said it represented the man and woman, who have been identified in British newspapers. The letter ordered her to remove the articles from her Web site or face a defamation lawsuit. After Hughes informed the university of the letter, in October, administrators asked her to temporarily remove the articles from her Web site while the university investigated. But by March, Hughes said, she had heard nothing further from the university—despite several inquiries—so she told Saccoccio, the university's lawyer, that she intended to repost the articles.

At a meeting in April, she said, Saccoccio "clearly stated the case did not have merit." But he told her that any lawsuit "would be expensive to defend and therefore we won't defend you."

In May, Hughes and Frank R. Annunziato, executive director of the university's chapter of the American Association of University Professors, went to the American Civil Liberties Union for help. The ACLU sent a letter to Robert L. Carothers, the university's president, saying that "although we recognize that there are potential costs to the university in facing a defamation suit in England, we think there is an even greater cost to the university when it allows the mere threat of an action by an individual overseas to result in removal of speech of public importance on the university's Web site."

In his statement, which he released in response to that letter, Saccoccio said the university "has been working cooperatively" with Hughes and the AAUP to resolve her case and "establish guidelines for future cases of the same nature." He added, "The international setting, along with the use of the Internet as the means of publication of the alleged defamatory material, made this case both unique as well as more complicated than usual."

Annunziato said the case should be a wake-up call to academics who post articles online. With journals printed in the United States, he said, authors are protected by the First Amendment. But that may not be the case for articles published online and downloaded in other countries, where judges have allowed foreigners to pursue lawsuits against American citizens and institutions in courts where the First Amendment does not apply.

"Professors think that we have the First Amendment here and that that's a defense against defamation," he said "But in the Internet world, that may not count."

Hughes said she has not decided what to do next. She could file a grievance or a lawsuit against the university. She still lists the titles of the two articles on her university Web site, and the titles appear to be linked to the texts. But when a reader clicks on the links, the files are empty. Reported in: *Chronicle of Higher Education* online, June 7.

publishing

Boston, Massachusetts

A leading publisher of scholarly journals has rejected a controversial study by a Boston University professor and a

colleague that had already passed the peer-review process. The article suggests that workers at IBM semiconductor plants were at a higher risk of dying of cancer than the population as a whole.

The publishing company, Elsevier, said its decision was not based on concerns about legal retribution by IBM, which maintains that the authors do not have a right to publish the article. Rather, Elsevier said that its journal, *Clinics in Occupational and Environmental Medicine*, publishes "only review articles," not original research, which it says can be found in the article.

IBM has denounced the study as flawed and contends that the authors, Richard W. Clapp and Rebecca A. Johnson, are bound by a court order barring them from publishing the study because it is based on data that were provided as part of a court case under conditions of confidentiality. Clapp maintains that the confidentiality restrictions no longer apply.

Clapp is a professor of environmental health at Boston University. Johnson is a private consultant who helped Clapp with computer analysis of the data.

The rejection from Elsevier came in an e-mail message from Catherine Bewick, the company executive who oversees the journal and others in Elsevier's Clinics of North America series. The message was sent to Joseph LaDou, guest editor for a forthcoming special issue on the semiconductor industry.

Elsevier's director of corporate communications, Eric Merkel-Sobotta, said that "the article was rejected by a guest editor because it was in the wrong format." Dr. LaDou, who is director of the International Center for Occupational Medicine at the University of California at San Francisco, said that characterization was "totally untrue. I've never said anything of the kind," he said.

Dr. LaDou said it appeared that Elsevier was "taking the easy way out." He said he does not consider the article to be original research but an analysis of IBM's data, "to the extent that they were willing to share it." He has been eager to publish the study, which he considers important despite its limitations. He acknowledged that the work is not technically a "review" article because it does not distill information from previously published studies.

Dr. LaDou said seven of the nine other authors whose articles are scheduled to appear in the special issue of *Clinics* have told him that they would be willing to withhold their articles—a sort of boycott—unless the study by Clapp and Johnson were published in that journal or in some other appropriate journal.

As an alternative, Dr. LaDou had hoped to be able to publish the article in a forthcoming special issue of the *Journal of Occupational and Environmental Medicine*, of which he is also a guest editor. It is scheduled to appear at about the same time as the *Clinics* special issue, in November.

Dr. LaDou had tried to get the article approved based on its prior peer review. But the editor in chief of the *Journal of Occupational and Environmental Medicine*, Paul Brandt-Rauf, said that while he was not concerned about the legal issues related to IBM, he would still want to submit the article to peer review, or examine the comments of the prior peer-reviewers, before accepting it. That could take several months.

Articles in that journal, which is published by the American College of Occupational and Environmental Medicine, often include original research.

Since online journals often have shorter turnaround times for reviewing articles, Dr. LaDou said that if Clapp decided to go that route, he would refrain from pursuing the boycott of the Elsevier special issue until it became known whether the online journal would publish the Clapp-Johnson study. Reported in: *Chronicle of Higher Education* online, June 10.

entertainment

Las Vegas, Nevada

Singer Linda Ronstadt's eviction from a hotel in America's "sin city" of Las Vegas, for mildly praising filmmaker Michael Moore during a stage show, mushroomed into the latest celebrity free-speech controversy to dog the highly charged 2004 presidential campaign. The *New York Times* ran an editorial condemning the move, Moore demanded that Ronstadt receive an apology and promised to appear on stage with her singing "America the Beautiful" if she did, and a *USA Today* headline said the incident was proof that "Celebrities declare own war—on Bush."

The Aladdin Hotel stood by its decision to remove Ronstadt to a waiting tour bus July 16. But Planet Hollywood International, which with others has agreed to buy the casino and is seeking a state gaming license, said that when it takes over, one of the first things it would do was invite Ronstadt back to sing.

"We respect artists' creativity and support their rights to express themselves," Planet Hollywood chief Robert Earl said.

But an Aladdin spokeswoman, Tyri Squyres, said Ronstadt "was there to entertain not make a politically charged comment."

Squyres added that when Ronstadt praised Moore as a "great patriot" for making the anti-Iraq war film *Fahrenheit 9/11*, about half the audience of 4,500 people booed and left and about 100 demanded their money back, even though Ronstadt was singing an encore. Some people said the crowd was "liquored up," and Squyres said one reason Ronstadt was asked to go was "to defuse the situation."

For some, the incident was the latest example of an increasing tide of anti-Bush remarks from prominent entertainers that has become a side-show to the battle for the White House. But for others, it was a sign that the 2004 election is going to be one of the most passionate and divisive campaigns since the height of the Vietnam War.

But virtually all agree that Ronstadt's dedication of an encore song to Moore was mild in comparison to comedian Whoopi Goldberg's ribald comments about the president at a John Kerry fund-raiser, or Ozzy Osbourne projecting of Bush's image onto that of Adolf Hitler's during a rock concert. And of course, it was extremely mild compared to the criticisms leveled at Bush by Moore in his hit film.

Las Vegas Review-Journal columnist Norm Clarke said that Ronstadt criticized the hotel during her show for advertising it as a "Greatest Hits" concert, which it wasn't and that was a cause of the problem, not just politics. "They (the Aladdin) paid big bucks for her to come in and perform and then she bad-mouthed the property. They were able to use the Michael Moore quotes as the main excuse, but they were rankled by her remarks earlier in the show," Clarke said.

The Las Vegas Sun, the city's other daily paper, said that that the Aladdin "overreacted" and "Las Vegas should be embarrassed at her treatment here."

"The intermingling of politics and entertainment has a long history, one that surely predates all of our lifetimes. Marlon Brando, Lenny Bruce, Bono, John Lennon . . . the Dixie Chicks . . . the list of entertainers who have used their time in the limelight to express political opinions is inexhaustible," the paper said. It added, "Ronstadt has been touring the country since May and has been praising Moore at each stop. Las Vegas should be embarrassed at her treatment here. Nowhere else but in the Entertainment Capital of the World has she been treated so inappropriately." Reported in: Reuters, July 21.

foreign

Beijing, China

China has begun filtering billions of telephone text messages to ensure that people do not use the popular communication tool to undermine one-party rule. The campaign, announced July 2 by the official New China News Agency, came after text messages sent between China's nearly 300 million mobile phone users helped to expose the national cover-up of the SARS epidemic last year. Text messages have also generated popular outrage about corruption and abuse cases that had received little attention in the state-controlled media.

It is a sign that while China has embraced Internet and mobile phone technology, the government has also substantially increased its surveillance of digital communications and adopted new methods of preventing people from getting unauthorized information about sensitive subjects.

In early July, government officials began making daily inspections of short-message service providers, including Web sites and the leading mobile phone companies. They had already fined ten providers and forced twenty others to shut down for not properly policing messages passing through their communication systems.

All such companies are being required to install filtering equipment that can monitor and delete messages that contain key words, phrases or numbers that authorities consider suspicious before they reach customers. The companies must contact the relevant authorities, including the Communist Party's propaganda department, to make sure they stay in touch with the latest lists of banned topics, executives in the industry said.

Although text messaging is still in its infancy in the United States, it has become a primary means of communication in China. Chinese mobile phone users sent 220 billion text messages in 2003, or an average of 7,000 every second, more than the rest of the world combined. Many people with mobile phones like text messaging because it is quieter and less expensive than making phone calls. Messages can also be sent to multiple people at once and, at least until recently, were considered too unimportant or technologically difficult to monitor.

The authorities have become increasingly attuned to the threat posed by mobile messaging, as it has become not only a convenient way to talk and gossip, but also a competitor in the news business. Phone messaging is faster and easier than using chat sites on the Web, which have also become forums to disseminate information and opinions. China had already taken steps to monitor Web sites more carefully and had arrested several dozen "cyberdissidents" for posting articles or expressing views on the Internet that the authorities deemed unacceptable.

Some mobile phone users said they had had trouble sending ordinary text messages around the fifteenth anniversary of the June 4, 1989, crackdown on democracy demonstrations in Beijing, perhaps because of tighter policing of the service. One user said that messages he sent that included the numbers 6 and 4 close together were never delivered, perhaps because they were screened as a possible reference to the date of the crackdown.

Wang Hongwei, a twenty-five-year-old air-conditioning technician in Beijing, said he got up to 100 text messages every day—from friends, colleagues, and news sites. He said he had found the service slower and less reliable recently, although he had not heard of the new monitoring orders.

"I don't think there's any justification for filtering every single message," he said. "The government should not be deciding what people say to each other."

Industry experts say message filtering technology is relatively straightforward, much like programs to block junk e-mail. The challenge is to provide robust software that can process enormous volumes of text messages without reducing their efficiency.

"You can filter as much as you like, just like a list of words," said Wang Yuanyuan, a sales manager at Venus Info

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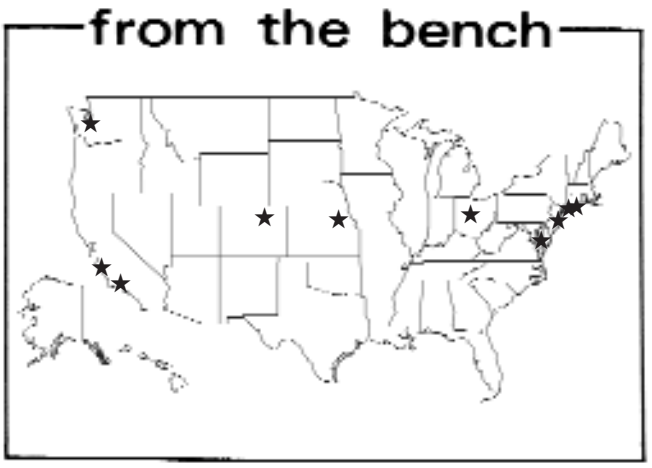

U.S. Supreme Court

The Supreme Court June 29 rejected Congress's latest effort to curb children's access to sexually explicit material on the Internet. But at the same time, it gave the Bush administration a second chance to defend the law as a trial on its constitutionality goes forward in U.S. District Court in Philadelphia.

The 5-to-4 majority kept in place an order that the district court issued in 1999, blocking enforcement of the Child Online Protection Act until its validity can be resolved. The six-year-old law, which imposes criminal penalties of as much as $50,000 a day on commercial Internet sites that make pornography available to those younger than seventeen, has never taken effect.

The decision came on the final day of the Supreme Court's term. Justice Anthony M. Kennedy, writing for the majority, said that the government must now show why the voluntary use of filters to screen out material unsuitable for children would not work as well as the law's criminal penalties. Filters "impose selective restrictions on speech at the receiving end, not universal restrictions at the source," Justice Kennedy wrote.

The opinion, which was joined by Justices John Paul Stevens, David H. Souter, Clarence Thomas and Ruth Bader Ginsburg, suggested strongly that the government would not be able to demonstrate that the penalties were better than filters. Not only are filters less restrictive, but they "also may well be more effective," Justice Kennedy said, because they can block pornography from anywhere in the world, while the statute applies only to pornography posted on the Web from within the United States.

Even so, the court kept open the possibility that the law, known as COPA, might ultimately be upheld. "This opinion does not hold that Congress is incapable of enacting any regulation of the Internet designed to prevent minors from gaining access to harmful materials," Justice Kennedy said. He said the decision "does not foreclose the district court from concluding, upon a proper showing by the government that meets the government's constitutional burden as defined in this opinion, that COPA is the least restrictive alternative available to accomplish Congress's goal."

Under the court's First Amendment precedents, government-imposed restrictions must go no further than necessary to accomplish a "compelling government interest"—in this instance, protecting children from harmful material on the Internet. The government must show that it is using the "least restrictive means" to achieve its goal.

The coalition of Internet publishers and free-speech groups that filed suit to block the law have argued that the existence of filters showed that criminal fines and prison sentences were not the least restrictive approach. A year ago, the Supreme Court upheld a law that required public libraries to install Internet filters as a condition of receiving federal money.

In a dissenting opinion, Justice Antonin Scalia said the majority had subjected the Child Online Protection Act to too searching a constitutional review. He said that because the commercial pornography that is the law's target "could, consistent with the First Amendment, be banned entirely, COPA's lesser restrictions raise no constitutional concern."

The three other dissenters, Justices Stephen G. Breyer and Sandra Day O'Connor along with Chief Justice William H. Rehnquist, took a different approach. They said, in an opinion written by Justice Breyer, that the law should be interpreted to apply only to a narrow category of obscene material and should be upheld on that basis.

"Properly interpreted," Justice Breyer wrote, the law "imposes a burden on protected speech that is no more than modest," reaching only "borderline cases" beyond speech that is obscene and that thus lacks legal protection. Justice Breyer said that while the plaintiffs raised the specter that the law might apply to famous novels or serious discussions of sexuality, this was not the case. "We must interpret the act to save it, not to destroy it," he added.

Further, Justice Breyer said, there was little reason to suppose that filters would achieve the purpose of shielding children. He said the software "lacks precision" and depends for its effect on parents' willingness to pay for it, install it and monitor their children's computer use.

The court and Congress have had a tangled relationship on the question of Internet pornography. In 1997, the court unanimously invalidated Congress's first effort, the Communications Decency Act of 1996. Congress responded quickly by passing the Child Online Protection

Act the next year, responding to a number of the court's concerns by defining pornography more precisely and limiting the reach of the statute to commercial Web sites.

The American Civil Liberties Union, which had organized the successful challenge to the first law, sued to block the new law as well, and won in both the Federal District Court and the United States Court of Appeals for the Third Circuit, in Philadelphia. The Third Circuit found then that the law's reference to "contemporary community standards" would give "the most puritan of communities" an effective veto over Internet content.

The Supreme Court, in a 2002 decision, disagreed with that analysis and sent the case back to the Third Circuit. This time, the appeals court ruled that the law did not meet the First Amendment's "least restrictive means" test. The Bush administration then appealed that ruling to the Supreme Court, leading to the decision in *Ashcroft* v. *American Civil Liberties Union*.

Mark Corallo, a spokesman for the Justice Department, expressed the administration's dismay with the ruling. "Congress has repeatedly attempted to address this serious need, and the court yet again opposed these common-sense measures to protect America's children," he said.

Senator Patrick J. Leahy (D-VT), who was the only member of the Senate to vote against the law, said he had warned that the law would not withstand a constitutional challenge. "Technology has continued to produce better solutions than this law offers," he said.

Ann Beeson, associate legal director of the ACLU, who argued the case at the court, said she was confident that the law would eventually be struck down. "We urge John Ashcroft to stop wasting taxpayer dollars in defending this unconstitutional law," she said.

"This is a win for the Internet, and for the Constitution, but it is not a loss for families," said Judith Krug, director of the American Library Association (ALA) Office for Intellectual Freedom and the Freedom to Read Foundation (FTRF), which filed an *amicus* brief in the case. "Parents who choose to filter their children's access are exercising parental responsibility. When the government mandates filters, however, it's censorship."

"Librarians care deeply about children and safe Internet access," Krug said. "We must redouble our efforts to educate children and their parents in the appropriate use of the Internet."

The decision was also welcomed by the publishing industry. In a statement, Association of American Publishers President Pat Schroeder said: "We're very pleased with the ruling and Justice Kennedy's strong First Amendment statement. We keep fighting these battles because we fully agree with the federal judge who issued the preliminary injunction when he said that 'we do the minors of this country harm if First Amendment protections, which they will with age inherit fully, are chipped away in the name of their protection'." Reported in: *New York Times*, June 30.

The Supreme Court ruled June 28 that people being held by the United States as enemy combatants can challenge their detention in American courts—the court's most important statement in decades on the balance between personal liberties and national security.

The justices declared their findings in three rulings, two of them involving American citizens and the other addressing the status of foreigners being held at the Guantánamo Bay Naval Base in Cuba. Taken together, they were a significant setback for the Bush administration's approach to the campaign against terrorism that began on September 11, 2001.

"Due process demands that a citizen held in the United States as an enemy combatant be given a meaningful opportunity to contest the factual basis for that detention before a neutral decisionmaker," an 8-to-1 majority held in the case of Yaser Esam Hamdi, a Saudi-born United States citizen seized in Afghanistan in 2001. Only Justice Clarence Thomas dissented from the basic outlines of the decision.

Justice Sandra Day O'Connor wrote that the campaign against terrorism notwithstanding, "a state of war is not a blank check for the president when it comes to the rights of the nation's citizens."

In the Guantánamo case, the court ruled, 6 to 3, that federal courts have the jurisdiction to consider challenges to the custody of foreigners. The finding repudiated a central argument of the administration.

"Aliens at the base, like American citizens, are entitled to invoke the federal courts' authority," Justice John Paul Stevens wrote for the majority. "United States courts have traditionally been open to nonresident aliens."

The dissenters were Chief Justice William H. Rehnquist and Justices Thomas and Antonin Scalia.

In the other case involving an American citizen, José Padilla, the court ruled on what at first glance was a technical issue: that Padilla filed his habeas corpus petition in the wrong court. A 5-to-4 majority said he should have filed in federal court in South Carolina, since he has been held in a brig in Charleston, rather than in the Southern District of New York.

The majority said, too, that the proper target for his case is not Defense Secretary Donald H. Rumsfeld but, rather, Cmdr. Melanie Marr, who is in charge of the brig. "This rule serves the important purpose of preventing forum shopping by habeas petitioners," the majority held.

Chief Justice Rehnquist wrote the opinion, joined by Justices O'Connor, Scalia, Thomas and Anthony M. Kennedy. Justices John Paul Stevens wrote an emotional dissent that was joined by Justices David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer.

Justice Stevens wrote that there was ample precedent for finding that the Southern District of New York, where a

material-witness warrant was first issued for Padilla, was the proper court to take up the case, and he lamented that the majority seemed to sidestep the main issues.

"At stake in this case is nothing less than the essence of a free society," Justice Stevens wrote. "For if this nation is to remain true to the ideals symbolized by its flag, it must not wield the tools of tyrants even to resist an assault by the forces of tyranny."

The American Civil Liberties Union called the rulings historic and said they embodied "a strong repudiation of the administration's arguments that its actions in the war on terrorism are beyond the rule of law and unreviewable by American courts."

Representative Jerrold Nadler of New York, ranking Democrat on the House Judiciary Committee's subcommittee on the Constitution, said the decision "reaffirms that even in a time of war, the president does not have the authority to act as a tyrant."

Although the cases of Hamdi, Padilla, and the Guantánamo detainees all arose from the terror attacks of September 11, 2001, and weighed national security against personal liberty, they were considerably different from one another in circumstances.

The Guantánamo case involved foreigners: about 600 men of various nationalities seized in Afghanistan and Pakistan during operations against the Taliban; sixteen of the detainees, all maintaining their innocence, filed suit. Their case, *Rasul* v. *Bush*, named for the detainee Shafiq Rasul, was argued before the justices on April 20.

Besides the basic issue in their case, there was a secondary but still vital question involving the status of Guantánamo Bay, itself. Since a 1950 Supreme Court case has been interpreted to mean that enemy combatants held outside the United States have no right to habeas corpus, the detainees had to show through their lawyers that Guantánamo Bay is functionally, if not formally, part of the United States.

On the one hand, a long-ago treaty with Cuba said that it retained sovereignty over the base. On the other hand, the treaty also said that the United States exercised jurisdiction and control.

In any event, the United States Court of Appeals for the District of Columbia Circuit ruled last year that the federal courts lacked jurisdiction to hear habeas corpus petitions from the detainees—a position that the Supreme Court rejected. The majority noted that the 1950 case cited by the administration involved German citizens captured by United States forces in China, then tried and convicted of war crimes by an American military commission in Nanking, and finally imprisoned in occupied Germany.

In contrast, the Supreme Court majority noted, the Guantánamo detainees are not only held in territory arguably under United States control but they also have not had their guilt or innocence determined, unlike the Germans of a half-century ago, and have been held without formal charges.

Justice Scalia's dissent, joined by Chief Justice Rehnquist and Justice Thomas, was as emotional in tone as was Justice Stevens's dissent in the other direction in the Padilla case. The majority's holding in the Guantánamo case was so reckless as to be "breathtaking," Justice Scalia asserted. He went on to declare that the majority's position needlessly upset settled law, and was particularly harmful in a time of war. "The commander in chief and his subordinates had every reason to expect that the internment of combatants at Guantánamo Bay would not have the consequence of bringing the cumbersome machinery of our domestic courts into military affairs," he wrote.

As for the Hamdi and Padilla cases, although they both involve American citizens, the similarities largely end there. For one, Hamdi was captured in Afghanistan, where the Bush administration contends he was fighting for the Taliban. (His father asserted that he had gone to Afghanistan to do relief work.) Padilla was arrested at O'Hare Airport in Chicago.

Their cases, *Hamdi* v. *Rumsfeld*, and *Rumsfeld* v. *Padilla*, were argued together on April 28, having reached the Supreme Court by opposite paths. Hamdi's lawyers were appealing a ruling by the United States Court of Appeals for the Fourth Circuit, in Richmond. That court held last year that Hamdi was entitled to challenge his detention by petitioning for a writ of habeas corpus. But the Fourth Circuit dismissed his petition after holding that the government had provided ample justification for classifying him an enemy combatant.

In the Padilla case, the government brought the appeal to the Supreme Court in hope of overturning a ruling by the United States Court of Appeals for the Second Circuit, in New York City. Citing a law passed by Congress in 1971 to prohibit the detention of citizens without explicit authorization by Congress, the Second Circuit found that the president was without authority to detain Padilla, despite the Congressional resolution authorizing military force after the September 11 attacks. Reported in: *New York Times*, June 28.

The Supreme Court handed a major political victory to the Bush administration June 24, ruling 7–2 that Vice President Dick Cheney is not obligated, at least for now, to release secret details of his energy task force.

The majority of the justices agreed with the administration's arguments that private deliberations among a president, vice president and their close advisers are indeed entitled to special treatment—arising from the constitutional principle known as executive privilege—although they said the administration must still prove the specifics of its case in the lower courts.

"A president's communications and activities encompass a vastly wider range of sensitive material than would

be true of any ordinary individual," the court said in a summary of the majority opinion written by Justice Anthony M. Kennedy.

By sending the case back to the lower federal courts, the majority removed a significant political headache for President Bush and Vice President Cheney. As a practical matter, the outcome means that the final resolution will not come until well after the November elections.

Critics of the Bush administration have long complained that its energy policies are far too friendly to the energy industry. It is no coincidence, the critics have said, that Cheney was formerly the chief executive of Halliburton. In pursuit of their claims, the critics have been trying to learn the names of the industry officials consulted by the administration when it was developing its policies in early 2001.

The critics scored a significant, albeit temporary, victory when the lower courts held that Judicial Watch, a conservative legal organization, and the Sierra Club, a liberal environmental group, were entitled through the discovery process, or pretrial information-gathering, to the names and roles of the private citizens who deliberated with the energy panel.

Discovery orders are ordinarily not appealable before a trial on the principle that they would create far too many piecemeal appeals. The administration urged the justices to make an exception, asserting that discovery itself, in this case, violated the Constitution by intruding on a president's "core functions" of seeking advice and developing legislation.

The seven justices in the majority acknowledged that argument. "This is not a routine discovery dispute," they held. "Special considerations control when the Executive's interests in maintaining its autonomy and safeguarding its communications' confidentiality are implicated."

But the victory was not a complete one for the White House, as the justices rejected Cheney's request that they immediately determine that he is not subject to discovery. Instead, the justices said Cheney still had to prove his case.

Justices Ruth Bader Ginsburg and David H. Souter dissented, declaring that the lower courts ought to be able to consider right now what should be available through discovery. Reported in: *New York Times*, June 24.

An inconclusive decision by the Supreme Court June 14 left "under God" in the Pledge of Allegiance while keeping the issue alive for possible resolution in a future case.

All eight justices who took part in the case agreed that the federal appeals court in California ruled incorrectly last year when it held, in a lawsuit brought against a local school district by the atheist father of a kindergarten student, that the reference to God turned the daily recitation of the pledge into a religious exercise that violated the separation of church and state.

But in voting to overturn that decision, only three of the justices expressed a view on the merits of the case. With each providing a somewhat different analysis, Chief Justice William H. Rehnquist, Justice Sandra Day O'Connor and Justice Clarence Thomas all said the pledge as revised by Congress exactly fifty years ago was constitutional.

The other five justices, in an opinion by Justice John Paul Stevens, said that the United States Court of Appeals for the Ninth Circuit should not have decided the case because the plaintiff, Dr. Michael A. Newdow, lacked standing to bring it.

While that procedural ruling left the constitutional issue unresolved, it did have the effect of removing a potentially inflammatory issue from the election-year agenda. Even if another plaintiff, one who has standing, challenges the pledge in a new case, there is virtually no chance that case could reach the Supreme Court before next year.

Dr. Newdow and the child's mother, Sandra Banning, who were never married, live apart and under a California court's custody order, Banning has the final say over their daughter's education. Banning, a Christian, filed a brief with the Supreme Court expressing her desire that her daughter, who is now ten, continue to recite the pledge with "under God" in it.

Referring to Dr. Newdow, Justice Stevens said that "the interests of this parent and this child are not parallel and, indeed, are potentially in conflict." He said that while Dr. Newdow was free to "instruct his daughter in his religious views," California law did not give him "a right to dictate to others what they may and may not say to his child respecting religion." Lacking a plaintiff with standing, the federal courts did not have jurisdiction over the case, Justice Stevens said. Justice Antonin Scalia recused himself last fall from the case, *Elk Grove Unified School District* v. *Newdow*, at Dr. Newdow's request, after having publicly criticized the Ninth Circuit's ruling.

Dr. Newdow, an emergency room physician who is also a lawyer, said he had heard from "fellow atheists who are waiting in the wings" to bring similar lawsuits of their own. How the next case might turn out is anyone's guess, he said, noting that "three justices said the pledge is O.K. and five didn't say anything."

Dr. Newdow argued his own case before the Supreme Court with passion and flair. Asked in the interview whether that was the experience of a lifetime, he answered by expressing great frustration with the California family law. "The experience of a lifetime is to love your kid and be with her," he replied.

The competing opinions were portraits in irony, some probably intentional and some, perhaps, not. Justice Stevens, one of the court's most liberal members, offered a paean to judicial restraint in explaining why the court should not reach the merits of the case. The "unelected, unrepresentative judiciary in our kind of government" should not reach out unnecessarily to decide cases, Justice Stevens said, quoting from an opinion written in 1983 by

the conservative icon Robert H. Bork, then an appeals court judge. Justice Stevens is a consummate craftsman, and the sly reference was clearly intentional.

Chief Justice Rehnquist, who like his fellow conservatives, is usually inclined to a strict application of the court's rules on standing, this time criticized the majority's invocation of the doctrine as "novel," "ad hoc," and so narrowly drawn as "to be, like the proverbial excursion ticket—good for this day only."

Whether the chief justice intended it, that remark mirrored almost exactly the criticism of the majority opinion he joined four years ago in *Bush* v. *Gore*, the case that decided the 2000 election through an unusual application of equal protection principles and with instructions that the decision not be cited as precedent for any other case.

Addressing the merits of the pledge issue, Chief Justice Rehnquist said that "reciting the pledge, or listening to others recite it, is a patriotic exercise, not a religious one." In her opinion, Justice O'Connor called the pledge a permissible example of "ceremonial deism" rather than religious worship, similar, she said, to the words the Supreme Court's marshal intones at the start of each session: "God save the United States and this honorable court."

While both Justice O'Connor and Chief Justice Rehnquist found the pledge constitutional under the Supreme Court's existing precedents, Justice Thomas took a different approach. The court's church-state precedents made the pledge unconstitutional and those precedents should be re-examined, he said.

The issue of Dr. Newdow's standing had shadowed the case, and the outcome was not particularly surprising. The appeals court had ruled that while he did not have standing to sue on behalf of his daughter, he had the right to assert that he, as a parent, was injured by his daughter's exposure to a religious message that contradicted his own lack of belief.

That analysis was erroneous, Justice Stevens said. Emphasizing Banning's "veto power" under state law, Justice Stevens said that Dr. Newdow could not use his status as a parent to go to court to "challenge the influences to which his daughter may be exposed in school when he and Banning disagree." He added, "When hard questions of domestic relations are sure to affect the outcome, the prudent course is for the federal court to stay its hand." Reported in: *New York Times*, June 15.

At first glance, the Supreme Court's June 7 ruling in *City of Littleton* v. *Z. J. Gifts* appeared to be a significant win for the First Amendment, or at least for the owners of adult bookstores. Answering a long-lingering legal question, the high court ruled that when governments deny licenses to adult businesses, courts must rule promptly on appeals filed by owners of the businesses. Merely allowing owners to file their appeals promptly is not enough to protect First Amendment interests, the Court said in a ruling written by Justice Stephen Breyer.

But divisions in the ranks of the justices, plus other aspects of the ruling that upheld the Colorado procedures at issue in the case, soon led experts in the field to view the decision as barely a victory at all.

"I don't know that they fixed anything," said Cincinnati lawyer H. Louis Sirkin, who filed a brief in the case on behalf of the First Amendment Lawyers Association.

"I'm not happy with it," added New York lawyer Michael Bamberger, a lawyer for the American Booksellers Association who also filed a brief in the case. Both First Amendment advocates forecast a new round of litigation to sort out the meaning of the decision as it applies to efforts by local governments to restrict or eradicate adult bookstores.

The ruling came in the case of Christal's, an adult bookstore that opened in Littleton in 1999. Instead of seeking a license under the city's adult-business licensing ordinance, the owners, Z. J. Gifts, went to court to challenge the ordinance on its face, claiming it violated the First Amendment. A federal judge rejected the owners' claims, but the U.S. Court of Appeals for the Tenth Circuit sided with the owners in part. Recognizing the First Amendment harm that is done when government delays or restricts free expression, the appeals court said the city's procedures did not guarantee a prompt judicial decision on zoning appeals when license applications were rejected.

The Supreme Court granted review in the case to clarify whether the First Amendment requires a prompt decision, or merely prompt access to the courts. Breyer's majority opinion came down on the side of prompt judicial decisions. "A delay in issuing a judicial decision, no less than a delay in obtaining access to a court, can prevent a license from being issued within a reasonable period of time," he wrote.

But he went on to say that Colorado's regular procedures for handling civil lawsuits satisfy the requirement for prompt decisions, "as long as the courts remain sensitive to the need to prevent First Amendment harms and administer those procedures accordingly." No special procedures or "unusually speedy" treatment is needed for cases involving expression-related businesses, Breyer stated.

"We have no reason to doubt the willingness of Colorado's judges to exercise these powers wisely so as to avoid serious threats of delay-induced First Amendment harm," Breyer wrote. If there is any undue delay, he suggested, "federal remedies would provide an additional safety valve."

But several justices in concurring opinions signaled that Breyer's treatment of the issue does not sufficiently protect against abuse. Justice John Paul Stevens said, "the mere possibility of promptness is emphatically insufficient to guard against the dangers of unjustified suppression of speech."

Justice David Souter, joined by Anthony Kennedy, also sounded an alarm. "Because the sellers may be unpopular with local authorities, there is a risk of delay in the licensing and review process. If there is any evidence of foot-dragging,

immediate judicial intervention will be required," Souter wrote.

Justice Antonin Scalia also concurred in the ruling, but said that Christal's was not engaged in any activity protected by the First Amendment.

Breyer's "trust the courts" attitude is not justified, said the First Amendment lawyers who filed briefs in the case. "The court is a little unrealistic when it says the courts will do what they are supposed to do," said Sirkin.

Added Bamberger, "Having procedures gives the courts the discretion to apply their procedures in some cases but not in others."

They said the Breyer opinion, even though its bottom line calls for prompt judicial decisions, will give them little ammunition to challenge lower courts' handling of appeals by adult-business owners. As long as courts treat appeals from adult businesses no worse than other types of suits, they fear, any kind of slow handling of their cases will suffice. If, for example, courts in other kinds of cases do not rule on appeals for months, then such a delay could be found acceptable in adult-bookstore cases—even though the delay would suppress protected forms of expression. Reported in: FirstAmendmentCenter.org, June 8.

The U.S. Supreme Court agreed June 14 to hear a case involving a high-school girls' basketball coach in Alabama who says he was fired for complaining to supervisors that his players' facilities were inadequate compared with those for boys.

Roderick Jackson, the coach, sued the Birmingham Board of Education in 2001. Both the trial court and the U.S. Court of Appeals for the Eleventh Circuit dismissed the case, ruling that federal gender-equity law covers neither retaliation nor those affiliated with alleged victims of discrimination. The law, Title IX of the Education Amendments of 1972, bars gender discrimination at institutions that receive federal funds.

In their appeal, Jackson's lawyers assert that because Title IX is an extension of the Civil Rights Act of 1964, it should follow the latter law's provisions. That law forbids retaliation against individuals who file or issue complaints.

"Retaliation has been a serious issue ever since Congress first considered passing Title IX," said Marcia D. Greenberger, co-president of the National Women's Law Center, which is representing Jackson before the Supreme Court. "At the hearings at the time, people were talking about not only the problem of discrimination but the problem of retaliation."

In a "friend of the court" brief filed in support of Jackson's appeal, the U.S. solicitor general, Theodore B. Olson, argued that the Eleventh Circuit Court "erred in ruling that Title IX never prohibits retaliation" and that "it also erred in ruling that protection against retaliation could not extend to teachers and coaches who complain about discrimination directed to their students."

In urging the Supreme Court justices to decide the issue, the solicitor general also noted that other circuit courts have issued conflicting rulings. Reported in: *Chronicle of Higher Education* online, June 15.

schools

San Jose, California

Declaring that school safety and free speech are "not necessarily antagonistic goals," the California Supreme Court on July 22 unanimously overturned the felony conviction of a high school student whose violence-laced poem had been deemed a criminal threat.

The ruling will clear the criminal record of a Santa Clara County teenager identified by the court as George "Julius" T., who, as a fifteen-year-old sophomore, was sentenced to 100 days in juvenile detention for giving classmates copies of a poem he had written that mentioned bringing guns to school. The prosecution of the teenager attracted national attention, and several prominent writers, including Nobel Prize winner J. M. Coetzee and Pulitzer Prize winner Michael Chabon, weighed in on behalf of the young poet.

In a decision written by Justice Carlos R. Moreno, the court ruled the boy's poem did not amount to an unequivocal threat under the state's criminal threat law.

"Following Columbine, Santee and other notorious school shootings, there is a heightened sensitivity on school campuses to latent signs that a student . . . may embark on a shooting rampage," Moreno wrote. "Ensuring a safe school environment and protecting freedom of expression, however, are not necessarily antagonistic goals."

The decision permits schools to continue to discipline, even expel, students who are feared to be dangerous, but states that courts must stringently review criminal convictions that involve creative work. Lawyers who sided with George said the ruling made clear that the artistic work of students deserves the same constitutional protection as the work of established authors and artists.

On the Friday before his arrest, George approached a girl in his honors English class at Santa Teresa High School in San Jose and asked her if the school had a poetry club. He had been at the school two weeks. He gave the girl a copy of a poem he had labeled "Dark Poetry" and titled "Faces." He told her the poetry described him and his feelings. "Tell me if they describe you and your feelings," he told her.

"Faces" began: "Who are these faces around me? Where did they come from?" It ended with these lines: "For I am Dark, Destructive, & Dangerous. I slap on my face of happiness but inside I am evil!! For I can be the next kid to bring guns to kill students at school. So parents watch your children cuz I'm BACK!!"

The girl became so scared she fled the campus. She e-mailed her English teacher about the poem the next day, and police went to George's home on Sunday and arrested him. George also had given his poetry to another girl, who did not read it until Monday. She burst into tears when she read it, and said it terrified her.

Testifying in juvenile court, George said he never imagined the girls would take his poetry as a threat. He said he wrote "Faces" during his English class after having a particularly bad day. His parents had forgotten to give him money for lunch, and he had misplaced something he needed, he said.

George had no history of violence and wrote his brooding poetry at a time when his family was broke and lived with an uncle, who had guns. The boy had been disciplined at a previous school for urinating on a wall and was asked to leave a second school for plagiarizing from the Internet. He told the juvenile court that he wanted his poem to have a powerful ending that evoked danger. "I just wanted to . . . kind of get you, like, like, whoa, that's really something," he said on the stand.

He was expelled from his school, and after serving his time in juvenile hall, attended another school while his case was on appeal. In overturning his conviction, the state Supreme Court stressed that George wrote that he could be the next kid to bring guns to school, not that he would.

"While the protagonist in "Faces" declares that he has the potential or capacity to kill students given his dark and hidden feelings, he does not actually threaten to do so," Moreno wrote for the court. "While perhaps discomforting and unsettling, in this unique context this disclosure simply does not constitute an actual threat to kill or inflict harm." A creative work can constitute a criminal threat, but courts must look at whether the work was really intended as a threat, he said.

In George's case, there were no incriminating circumstances, Moreno said. "There was no history of animosity or conflict" between George and the classmates with whom he shared his work, and "no threatening gestures or mannerisms," Moreno said. "The themes and feelings expressed in 'Faces' are not unusual in literature," Moreno wrote. "The protagonist describes his duplicitous nature—malevolent on the inside, felicitous on the outside."

Still, the court said school officials were justified in taking action after learning of the poem.

Justice Marvin Baxter, in a separate concurring opinion, said authorities would have been remiss if they had not investigated and responded vigorously to the "menacing" poem.

"School and law enforcement officials had every reason to worry that defendant, deeply troubled, was contemplating his own campus killing spree," Baxter wrote.

University of Santa Clara law professor Gerald Uelmen, who helped in the appeal, said the decision may deter prosecutors from taking such students to court. "I think they will have second thoughts," Uelmen said. The ruling also will require appeals courts to conduct stringent reviews of any criminal conviction involving a creative work that is protected by the First Amendment, Uelmen said.

Deputy Atty. Gen. Jeffrey M. Laurence, who represented the prosecution in the case, said the court recognized that "schools need to be vigilant." He said the ruling would force courts to determine case by case whether a creative work constituted a threat.

"The court is not carving out any special rules for poetry, lyrics or artwork, but they do recognize that those media may have some ambiguity," Laurence said.

The American Civil Liberties Union of Northern California, which argued on behalf of George in the case, called the ruling "a resounding victory for students' First Amendment rights of creative expression."

"This case provides much-needed guidance to both school officials and law enforcement in responding in a sensible and measured way when confronted with student work that raises questions about safety," said Ann Brick, staff attorney for the ACLU. Reported in: *Los Angeles Times*, July 23.

colleges and universities

New Haven, Connecticut

Three prominent physicians who sued Yale University for infringing their rights to free speech in the workplace under Connecticut law were awarded $5.5 million July 23 by a jury in state Superior Court.

Morton Burrell, Arthur Rosenfield, and Robert Smith were all professors in the university's School of Medicine in the mid-1990s. In their lawsuit, filed in January 2000, they contended that Yale had retaliated against them for trying to alert the institution about mismanagement and substandard care in the medical school's diagnostic radiology department.

Despite demotions and pay cuts enacted by the university, Dr. Burrell and Dr. Rosenfield are still employed by Yale. After being removed from his post as head of MRI by the university, Dr. Smith subsequently left both Yale and medicine itself to practice law.

The trio of physicians claimed that their warnings to Yale administrators about problems caused by cost cutting in the diagnostic radiology department—including risks to patients and violations of Medicare rules—were answered with their removal from prominent positions at the school and substantial salary cuts.

During the trial, Yale portrayed the three physicians as disgruntled employees embroiled in a private dispute with the university. The university claimed the state statute at issue in the trial "protects employees' free-speech rights

only when they are speaking on matters of public concern. Our argument was that this was a workplace dispute and that the matters the plaintiffs were speaking about were not covered by the statute."

Jacques J. Parenteau, the lawyer who represented Dr. Burrell and Dr. Smith at the trial, called Yale's characterization of the dispute "an absolute lie." He said that the three physicians had a combined 80 years of service at Yale, during which they built formidable reputations in the field. "Of course they were disgruntled," said Parenteau. "But they were disgruntled for the right reasons, and the law protects their right to speak out." He said that Connecticut's strong laws protecting freedom of speech in the workplace may have played a decisive role in the jury's verdict and award in favor of the physicians. "The jury had better sense about what the statute means than Yale does," he said.

The jury awarded $3.8 million to Dr. Rosenfield. Dr. Burrell received $1.4 million, and Dr. Smith received $258,000. A judge will decide on the exact amount to be awarded to the three physicians to cover the costs of litigation in the case. Reported in: *Chronicle of Higher Education* online, July 26.

Topeka, Kansas

Kansas State University may remove the adviser to its student newspaper after all, a federal judge ruled at a hearing July 14. A week earlier, the same judge temporarily blocked Kansas State from reassigning Ron Johnson, whom university officials decided not to reappoint as news adviser for the *Collegian,* following complaints about the newspaper's coverage of diversity issues on the campus this spring.

Johnson, who also holds a non-tenure-track teaching appointment at the university, filed a lawsuit against his direct supervisors, Todd F. Simon, director of the university's journalism school, and Stephen E. White, dean of arts and sciences at Kansas State. As part of his lawsuit, Johnson asked to be reinstated as adviser to the newspaper.

But in denying his request for a temporary injunction that would stop Kansas State from removing him from the advisory position, Judge Julie A. Robinson of the U.S. District Court in Topeka, ruled that both Johnson and Katie Lane, a former editor of the *Collegian* and a plaintiff in the case, had not provided sufficient evidence to show that Johnson's reassignment had violated their First Amendment rights to free speech.

Judge Robinson also said that the federal court lacked jurisdiction to rule on whether Johnson's removal had violated his contract with the university. The judge's ruling does not preclude Johnson from continuing with his lawsuit.

"It's disappointing," Johnson said. "I thought we built as good a case as we could."

At the hearing, Dean White testified that he had decided to reappoint Johnson to a full-time teaching position in the university's A. Q. Miller School of Journalism and Mass Communications despite a 7-to-1 vote by tenured faculty members to remove Johnson from the department this spring. White said in June that despite his concerns about Johnson's performance as the *Collegian's* adviser, he believed the instructor was a "very effective teacher."

University officials have denied that recent complaints about the *Collegian's* coverage influenced their decision to remove Johnson as its adviser. Cheryl G. Strecker, a lawyer representing Kansas State, said she hoped the ruling would "vindicate" the university. "There is no evidence that any administrator at the university ever acted, directly or indirectly, to control the content of the Collegian," Strecker said.

Patrick J. Doran, who represented Johnson, described the case as "emotional." "I would not have brought this complaint," he said, "if I did not feel there were First Amendment issues involved." Reported in: *Chronicle of Higher Education* online, June 16.

Columbus, Ohio

A federal judge ruled June 4 that Ohio State University must allow a pro-marijuana festival to be held on the campus, in Columbus. The university administration had canceled the ninth annual Hempfest.

"We are disappointed in the ruling," William Hall, vice president for student affairs, said. "But we respect the court's decision and will comply with the ruling."

The chief organizers of the event, Sean Luse and Mark Verhoff, said they received an e-mail message from Pat Hall, director of student judicial affairs, telling them that the festival had to be canceled. The festival's sponsoring organization, Students for Sensible Drug Policy, then asked Judge Algenon L. Marbley of the U.S. District Court in Columbus to bar the university from canceling the event.

Luse said the reason given for the cancellation was that the student organization had not notified the campus police ten business days before the event, as required. Luse said the group had put in its notification ten days before the event, but not ten weekdays. Rich Hollingsworth, associate vice president of student affairs, said the cancellation had nothing to do with the event's theme.

In his ruling, Judge Marbley said that "not allowing Hempfest to occur would deprive [the student group] and the Hempfest speakers and attendees their freedoms of speech and assembly."

Luse said his group's lawyer had argued that the ten-day requirement was unnecessary because the campus police department works seven days a week. The ten-day rule was instituted by university officials when campus police officers found members of the group smoking marijuana at a campus function in November. The students are also seeking compensation for financial and economic damages, Luse said.

"We were very surprised, but we knew we had a strong case," he said of the ruling. "I think this is inspiring to stu-

dent groups across the country. Students need to know that when someone plays around with your constitutional rights, you can win. Reported in: *Chronicle of Higher Education* online, June 7.

broadcasting

Washington, D.C.

A U.S. appeals court on June 23 refused to allow loosened federal rules on media ownership to take effect, dealing a blow to large broadcasters like News Corp. and Tribune Co. that may be looking to expand their reach. Businesses will not be able to own more than one television station in a city, or both a newspaper and TV or radio station in a city, until the Federal Communications Commission better explains why that would not harm competition, the court said.

"The commission has not sufficiently justified its particular chosen numerical limits for local television ownership, local radio ownership, and cross-ownership of media within local markets," the U.S. Court of Appeals for the Third Circuit in Philadelphia said in a 218-page opinion.

The decision was the latest blow to the federal agency, which has been struggling to write new media ownership rules for years after a series of judicial challenges. It could also put decisions off until after the presidential election.

FCC Chair Michael Powell said in a statement that the ruling was "deeply troubling" and would make it harder for the agency to limit greater media consolidation. "This has created a clouded and confused state of media law," Powell said. He has said the looser limits would help broadcasters better compete and reflect the proliferation of cable, satellite television and Internet offerings.

Powell and the other two Republicans on the panel approved the rules. The FCC's two Democrats and consumer groups feared the rules would allow media giants to grow even bigger to the detriment of local news reporting and diverse viewpoints.

The court's chief judge voted against much of the decision, saying his two colleagues had overreached. "The Court has substituted its own policy judgment for that of the Federal Communications Commission," Chief Judge Anthony Scirica said in a dissenting opinion.

Opponents who waged a grass-roots campaign against the rules cheered the court's decision. Andrew Schwartzman, a lawyer for Prometheus Radio Project, which challenged the rules, said the court had ordered the FCC to "take the deregulatory thumb off of the scale."

It looks like the court agreed with us that preserving democracy is more important than helping big companies grow bigger," Schwartzman said. The FCC or parties could ask the full appeals court to review the case or appeal to the U.S. Supreme Court.

"We doubt the FCC would be able to issue new rules in the near future—certainly not before the elections, and probably not before January 2005, when there could be changes in FCC leadership, depending on the outcome of the presidential election," Legg Mason analyst Blair Levin said in a note.

The rules, adopted last year, lifted a 1975 ban on owning both a newspaper and a television or radio station in the same town. The rules said a company could own two TV stations in a media market, and in the biggest cities, three stations. While the court agreed that the FCC was justified in setting limits on media ownership and lifting the ban on cross-ownership, it did not approve of the cuts made.

The court criticized a formula developed to determine whether a given media market had enough different news outlets to allow for consolidation. The formula gave too much weight to Internet Web sites and smaller TV stations, it said. The court also ordered the FCC to reconsider ownership limits set for radio stations.

"We will, of course, advocate vigorously the industry's position that no further restrictions are necessary in the upcoming remand proceeding at the FCC," said Newspaper Association of America President John Sturm.

"We're disappointed the court didn't agree with us on various ownership issues. Bottom line is the decision doesn't affect any of our operations," said Andrew Butcher, a spokesman for News Corp., owner of the Fox network and New York Post. Reported in: *New York Times,* June 24.

protest

New York, New York

A federal judge has barred general searches of protesters' bags at the Republican National Convention and ruled out the use of closed four-sided pens to contain the protesters. But in a ruling issued July 16 and released July 19, the judge, Robert W. Sweet, did not entirely ban the controversial pens, requiring only that demonstrators be able to move freely in and out of them. He also ruled that police officials could initiate general searches of bags of convention demonstrators if they receive information of a specific security threat.

In the ruling, which both sides claimed as a victory, Judge Sweet wrote that he intended to strike a "delicate balance" that would "encourage free expression in a secure society."

The judge found that the New York City police had used excessive tactics to control political demonstrations in the past. His ruling came in a suit filed in U.S. District Court in Manhattan by the New York Civil Liberties Union, which had hoped to prevent the police at the convention from using tactics that led to scuffles and some injuries to demonstrators at a protest against the war in Iraq near the United Nations in February 2003.

Lawyers for the police battled to stave off any court orders that would tie their hands as they prepare for the convention, which F.B.I. officials have named as a possible target for a new attack they say Al Qaeda is planning in the United States.

Christopher Dunn, the civil liberties union's lead lawyer in the case, called the ruling a "historic victory for the right to protest" and said the judge had knocked down police tactics that "severely restricted demonstrations." But Paul J. Browne, the senior spokesman for the Police Department, said the decision only upheld policies the police had already adopted, and did not cause any change in the department's planning for the convention.

The civil liberties group had tried to force the police to abandon the use of the pens, which are set up with metal barriers that are hard to climb over and impossible to crawl under. At the February 2003 demonstration, police used the barriers to create block-long four-sided enclosures and, once they were full, barred demonstrators from leaving.

Ann Stauber, 61, a plaintiff in the suit, went to that protest in a mechanized wheelchair she has used since 1991 because of a debilitating genetic disease. A police officer, Marvina C. Lawrence, broke the wheelchair's controls while blocking Ms. Stauber from leaving a pen to find a bathroom, a civilian review board investigation confirmed.

Judge Sweet found that the pens as they were configured that day had caused "irreparable harm" to the demonstrators' First Amendment rights. He ordered no action, only suggesting "creating a larger number of openings which may be monitored by police."

Leslie Cagan, national coordinator for United for Peace and Justice, which organized the rally, called the ruling a step in the right direction, but questioned the need to use pens at all. Three-sided barricades can be "reconfigured at a moment's notice" to trap demonstrators inside, she said, adding that the police have from time to time picked up the barricades and used them to push people back.

The issue of the searches arose because of a construction workers' demonstration on April 10, 2003, in favor of the Iraq war, where police were ordered to search the bags of all demonstrators and bar anyone who refused to allow a search.

At the convention, the police will not be able to search bags without showing "both a specific threat to public safety and an indication of how blanket searches could reduce that threat," Judge Sweet wrote. He imposed no restrictions on the use of metal detectors.

"We're not planning to search everybody," Browne said. "But if we get information that somebody is carrying a bomb and we have a description, we're going to go look for it."

The judge also ordered the police to provide extensive public information in advance about any streets it plans to close for the demonstrations. He rejected as legally inappropriate the civil liberties union's challenge to the deployment of mounted police to disperse demonstrators.

Gail Donoghue, a lawyer for the city, said officials were relieved that the judge did not require them to write a raft of new rules before the convention, or to negotiate with protesters over security plans. "We're just not going there," she said. "The Police Department is not willing to abdicate its responsibility for public safety and make it a matter of negotiation."

The use of the pens has been but one sticking point in the tense negotiations between the city and United for Peace and Justice over where protest organizers can hold a rally, which could attract 250,000 people, the day before the convention. Reported in: *New York Times,* July 20.

prior restraint

Denver, Colorado

In a rare case upholding a prior restraint on the press, the Colorado Supreme Court narrowly ruled July 19 that the news media may not publish details from transcripts of a closed-door hearing in the Kobe Bryant sexual assault case. By a 4-3 vote, the court upheld District Court Judge Terry Ruckriegle's order threatening news organizations with contempt of court if they published information from the mistakenly released transcripts.

The court conceded that Ruckriegle's order amounted to a prior restraint on the free press, which is presumed to be unconstitutional. But the majority said the order was justified by the facts and context of the case.

"The state has an interest of the highest order in this case in providing a confidential evidentiary proceeding under the rape shield statute," the court ruled. "[S]uch hearings protect the victims' privacy, encourage victims to report sexual assault, and further the prosecution and deterrence of sexual assault."

Christopher Beall, an attorney for the seven news organizations that received the transcripts in error, said the groups were "disappointed" in the ruling and were considering an appeal to the U.S. Supreme Court.

The organizations that received the transcripts are The Associated Press, CBS, *The Denver Post* , ESPN, Fox News, the *Los Angeles Times* and Warner Brothers Television.

The court did not completely uphold Ruckriegle's order. It overturned Ruckriegle's directive to news organizations to destroy their copies of the transcripts, and instructed him to determine whether portions of the transcripts should be released to the public on a redacted basis.

Beall said a compromise involving redacted transcripts was unlikely to alleviate the media's concerns. "We feel that there is no basis for a prior restraint on any of the information in the transcripts," he said.

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libraries

Ann Arbor, Michigan

A writer banned from the public library for a year for repeatedly swearing claims his constitutional right to free speech has been violated.

The Ann Arbor District Library suspended Fredric Alan Maxwell after he used expletives on at least three occasions and then tried to return after being banned for a month. Maxwell, who has written a biography of Microsoft CEO Steve Ballmer and is working on one of Apple CEO Steven Jobs, said he moved to Ann Arbor for the city's great libraries. He considers it unacceptable that he can't swear in them.

"To me, this falls way below the ideal of Ann Arbor," he said. "I thought these battles were fought and won decades ago."

Library Director Josie Parker said the library would not suspend someone's privileges simply for using a word. Though she declined to comment on Maxwell's case, she outlined the circumstances in a staff memo, saying Maxwell first was warned about swearing after he did it to a woman librarian on December 12.

Police kicked him out, and the library suspended him for a month after he used foul language again on December 30, an incident he said involved him using an expletive in a "low library voice" when he had computer problems. Maxwell said a librarian approached him and told him he couldn't say such things, and he responded by repeating it and telling her he could use whatever language he wanted.

"If she was offended, that's her problem," Maxwell said. "It comes with the territory. Yeah, maybe other words would have described my feelings on the policy, but it was my choice."

When he tried to go to the library two weeks later, police again were summoned to remove him, and his suspension was enhanced to a year, according to the memo.

Maxwell said police told him his swearing violated a city ordinance and cited him for trespassing.

Parker said the library's rules are posted in the building and on the Web site. In the last twelve months, nearly 1.2 million people have visited all branches of the Ann Arbor District Library. Fourteen were suspended.

Ann Arbor Police say Maxwell had an obligation to abide by library rules, and that the institution has a right to keep him out.

Maxwell, who once was arrested in Washington for protesting against scaled-back hours at the Library of Congress and has testified to Congress three times about public access to the Library, said he abhors the idea of suing a library, but wants his privileges back and an apology. He said he didn't break any of the rules. Reported in: *Detroit Free Press*, June 4.

Auburn Hills, Michigan

Librarians across Michigan are crying foul over a widespread request for library cardholder information, and some argue the query amounts to an attack on privacy rights. Law student Caleb Marker, a clerk at the firm of Flory & Associates in Okemos, has demanded libraries hand over patron names, addresses, telephone numbers and e-mail addresses from at least eighty-five Michigan libraries. Marker's request was made under the Michigan Freedom of Information Act, which allows the public access to documents created or held by a public body. Library directory information, however, is considered private and is exempted from disclosure by the state's library privacy laws.

None of the libraries have turned over the information, Marker said, though some have asked for a ten-day extension to respond. Marker said he is considering challenging the state library privacy laws in court.

"It's like protecting who your customers are, who your donors are. You just don't release that kind of information," said Christine Lind Hage, director of the Clinton-Macomb Public Library who received and denied Marker's request. "Libraries are very protective of that privacy because we feel very strongly that people should not be afraid to ask for or seek out information."

Marker, a twenty-one-year-old law student, said he wasn't aware Michigan law prevented him from receiving the

information and said libraries should be made to comply with his request. Marker says he's trying to gather research to create a profile of library users.

"I'm not asking for private information, like what books they check out," he said. "I'm only asking for information that you could get in a telephone book or on the Internet."

Marker's request, which was sent to libraries whose names begin with the letters A through H, generated a strong buzz among librarians. "Confidentiality is a core value of librarianship," said Clara Bohrer, President of the Public Library Association, who is also the director of the West Bloomfield Township Public Library. "The possibility of surveillance . . . undermines a democratic society."

Marti Custer, director of the Baldwin Public Library in Birmingham, said she wondered if perhaps the firm was simply publicity hungry. Custer said she plans to deny the request. "In that case, there's nothing wrong with the public understanding that libraries do fight for privacy," she said.

Dexter District Library Director Paul McCann warned that any public listing of patrons would be a gold mine for spammers or marketing firms. McCann also received and rejected Marker's request. "It's completely unnecessary to know if your neighbor has or does not have a library card," he said. Reported in: *Detroit News*, July 6.

church and state

Madison, Wisconsin

A group brought a lawsuit June 17 against the Bush administration over the president's religion-based initiative, alleging that the program illegally favors religious organizations for federal contracts. The lawsuit, by the Freedom From Religion Foundation, which is in Wisconsin, contends that the religion-based initiative has the effect of favoring religious groups over secular ones, violating the First Amendment.

President Bush announced the religion-based initiative early in his presidency but has been unable to persuade Congress to approve some of his proposals. He has instead sidestepped lawmakers with executive orders and regulations to give religious organizations equal footing in competing for federal contracts. The White House says the goal is to level the playing field for religious groups and ease bureaucratic barriers.

"They're not leveling the playing field," said Annie Laurie Gaylor, co-founder of the Freedom From Religion Foundation. "They're cajoling religious organizations to come to them and telling them how to fill out the forms and giving untried groups money. We think it's about promoting religions."

A White House spokesman, Jim Morrell, said he had not seen the lawsuit and could not comment on the allegations. Still, he said, the initiative does not finance religion but rather makes it easier for religious groups to navigate cumbersome federal regulations to apply for grants.

The suit cites various agencies with offices set up to help religious groups apply for grants.

The lawsuit asks a judge to bar the use of taxpayer money for religion-based endeavors and require new rules to bar financing of social service organizations that include religion as an integral component of their services. Reported in: *New York Times*, June 18.

broadcasting

Washington, D.C.

The Federal Communications Commission said June 18 that it would raise the maximum fine for indecent material on broadcast television and radio 18 percent to $32,500 an incident, to adjust for inflation. Fines for indecency have been criticized as inadequate because many broadcasters take in large profits, and Congress is trying to increase the penalties. Previously, fines for violations of federal decency standards were $27,500 an incident. Federal law calls for F.C.C. fines to be increased to account for inflation every four years.

In a separate measure sponsored by Senator Sam Brownback (R-KS), the Senate voted 99 to 1 to raise the maximum penalties for broadcasters that violate federal decency standards. The provision includes a tenfold increase in maximum fines for each violation, to $275,000 from $27,500. The lone dissenter was Senator John B. Breaux, Democrat of Louisiana, who has been a consistent ally of the broadcasters. The House has already passed a measure to raise fines to as much as $500,000 an incident.

Indecency on the airwaves has attracted worldwide attention since pop singer Janet Jackson's breast was exposed this year during the National Football League's Super Bowl championship game on Viacom, Inc.'s CBS broadcast network. Reported in: *New York Times*, June 21.

Washington, D.C.

The Senate voted June 22 to repeal rules adopted by the Federal Communications Commission that make it easier for the nation's largest media conglomerates to expand and enter new markets. The rules, approved last June by a divided FCC, largely removed previous ownership restrictions on media companies. They struck down the rule that in most markets had prevented one company from owning both a newspaper and a television or radio station in the same city. In the largest markets, the new rules also enabled a company to own as many as three television stations, eight radio stations and a cable operator. They also allowed the largest television networks to buy more affili-

ated stations, although Congress later rolled back that provision.

The new rules have already been blocked temporarily by the United States Court of Appeals for the Third Circuit in Philadelphia, which is considering a challenge (see page 182).

By a voice vote, the Senate approved a provision to repeal the rules and restore tougher restrictions. Supporters of the effort said that the Senate's decision provided them with a backstop in case the appeals court did not rule in their favor. But the legislation still faces formidable political obstacles—a similar measure was dropped from a different bill this year after encountering stiff resistance from both the Bush administration and Republican leaders in the House, which would need to reconcile the latest measure in a conference committee.

"I'm not predicting any greater or lesser success than last time," Senator Byron Dorgan (D-ND) said in an interview after the vote. Dorgan is a cosponsor of the measure with Senator Olympia J. Snowe (R-ME) "The president and the speaker of the House are determined to protect these rules," Dorgan said. "I am simply pounding away at this and trying at every opportunity I can to roll the rules back."

"Last June, the FCC performed one of the most complete cave-ins to corporate interests against the public interest in the history of the country," he added. "When the number of people and corporations who control what 293 million Americans see and hear in the media shrinks to just a relative handful, democracy suffers."

A third provision, approved by a voice vote, directed the FCC to study the effectiveness of the V-chip in controlling how much violence children watch on television. That measure, sponsored by Senator Ernest F. Hollings (D-SC), directed the commission to ban violent programming during hours children most watch television if the commission's study found that the V-chip was not effective.

The provisions were applauded by parents' organizations and other groups concerned about violence and sex on television and were criticized by the broadcasters.

The Parents Television Council said the provisions took a "crucial step forward in the fight to return common-sense decency standards to broadcast media."

Edward O. Fritts, president of the National Association of Broadcasters, said the industry's own efforts to police itself were "far more preferable to government regulation when dealing with programming issues."

"We also believe that most Americans would acknowledge that broadcast programming is considerably less explicit in terms of violence and sexual content than that which is routinely found on cable and satellite channels," Fritts said.

The measures were attached to a Defense Department authorization bill and were the latest attempt by Republicans and Democrats in the Senate to overturn the deregulation of the media ownership rules. The House bill also raised the fines for indecent programs but included no amendment on the media ownership rules.

The media ownership rules, which have been supported by many of the biggest broadcasters and newspaper publishers, provoked widespread opposition from a coalition of consumer, civil rights, labor and religious organizations. The effort to overturn them began as soon as the FCC adopted them last June.

The architect of the new rules, Michael K. Powell, the chair of the FCC, has said they are vital in light of a series of court opinions questioning the old rules and a marketplace where consumers can subscribe to cable and satellite television services with hundreds of channels and delve into the limitless offerings of the Internet. But critics have said that a small handful of companies dominate the programming on the airwaves and that consolidation in the industry has led to a decline in the diversity of voices and coverage of local news and community events. They also have drawn a connection between the growth of the media conglomerates and declining programming standards.

Last year, a similar provision blocking the new ownership rules was attached by Congress to a spending bill, but it was largely stripped out of the measure this year after the White House threatened to veto it. As a compromise that enabled final passage of that measure, the White House and Congress agreed to a narrower provision that rolled back one important element of the media rules.

The 2003 rules gave television networks the ability to grow to reach 45 percent of the national audience with their local affiliate stations from the previous limit of 35 percent. But in the compromise that was reached between the White House and the lawmakers who were critical of the rules, the legislation lowered that cap to about 39 percent, which is the current reach of CBS, owned by Viacom, and Fox, owned by the News Corporation. Reported in: *New York Times*, June 23.

colleges and universities

Buffalo, New York

The federal government has indicted an artist and assistant professor at the State University of New York at Buffalo over his use of biological materials in his artwork. The indictment prompted alarm among his fellow artists, who saw hints of censorship and worse in the action.

The professor, Steven Kurtz, 46, was charged June 29 with illegally obtaining the biological substances, which included e. Coli bacteria and other materials. It was unclear how Kurtz planned to use the materials in his biotech-themed artwork, which in the past has included performance art and multimedia presentations. His defenders say that Kurtz was merely trying to provoke discussion

through art and that the government's decision to seek an indictment would stifle such debate.

The four-count indictment handed down by a federal grand jury in Buffalo charged Kurtz with wire fraud and mail fraud. Also indicted was Robert Ferrell, chair of the University of Pittsburgh's human genetics department. Dr. Ferrell was accused of obtaining biological organisms for Kurtz on the pretext that they would be used in a classroom

Michael Battle, the United States attorney for New York's western district, said the indictment had nothing to do with terrorism. Instead, he said, it was "a case about fraud." The precise basis of the fraud charges was unknown.

The case began as the result of an investigation that was prompted by the sudden death of Kurtz's wife at their home in Buffalo on May 11. Kurtz phoned 911, and a paramedic noticed laboratory equipment in the house. That observation led agents from the Joint Terrorism Task Force to search the house for hazardous materials and investigate Kurtz's use of the materials.

Ed Cardoni, who runs Hallwalls, a contemporary arts center in Buffalo, said the organization Kurtz belonged to, the Critical Art Ensemble, is peaceful, but "critical of capitalism and the corporate control of biotechnology." He called Kurtz's art "multimedia, conceptual in nature and interactive."

Karen Finley, a New York performance artist, said that as a result, artists and arts organizations are "feeling very fearful" about invasions of their freedom.

The Massachusetts Museum of Contemporary Art in North Adams, had scheduled a group exhibition that included the work of Kurtz and the Critical Art Ensemble. Nato Thompson, the curator of the show, said the F.B.I. confiscated Kurtz's artwork as well as other material from his home. The show opened May 30 without Kurtz's piece on display.

Thompson said the charges in the indictment are "a far cry from bioterrorism. This is obviously an admission that they're barking up the wrong tree. But it's put the chill in a lot of people." Reported in: *New York Times*, July 1.

Lakeland, Ohio

An adjunct professor of philosophy at Lakeland Community College has sued the Ohio college, saying it violated his First Amendment rights when it punished him for disclosing his religious beliefs to students in class. James G. Tuttle had taught at the college, which is outside of Cleveland, for four years when a student complained, in the spring of 2003, to James L. Brown, dean of the division of arts and humanities, that Tuttle had referred to his Roman Catholic faith too often. Tuttle said that he was then stripped of his seniority, had his course load reduced, and ultimately was barred from teaching philosophy and religion courses.

Tuttle, who is not under contract with the college, is seeking reinstatement of his courses, back pay, and compensatory damages, according to the complaint, filed in U.S. District Court in Cleveland. The complaint also asserts that college officials discriminated against him on the basis of his religious beliefs.

"I don't know how to hide the fact that I am a Catholic Christian when I am teaching a philosophy course," Tuttle said. "I just want students to know where I am coming from, but I never expected to be punished for that."

Tuttle brought his case to the attention of the Foundation for Individual Rights in Education, which is supporting his lawsuit. The group has written to college officials denouncing their actions and has blasted the college publicly.

"Surely the message is not that the university as an employer should be entitled to tell professors that their personal belief system cannot be imported," said David French, president of the organization, which is known as FIRE. "That's part and parcel of the learning process. When an institution tries to make professors hide their personal beliefs, it has grave implications for academic freedom."

Tuttle said that when he learned about the student's complaint, he thought, "Oh, gosh. Here we go again." It was not the first time a student had found fault with his teaching style. Two years earlier, he had engaged his students in a discussion about whether Jesus Christ was crazy. A student, whose husband worked in a mental facility, later complained to administrators about his use of the word "crazy," which she called offensive.

After that complaint, Tuttle said, he decided to put a disclaimer on his syllabus to let students know that he is a Catholic. "Please be aware of where I am coming from and where you are coming from," the syllabus states. "If you initially feel uncomfortable with me as an instructor, please feel free to talk to me outside of the classroom."

In a letter to Tuttle dated April 21, 2003, Brown wrote that he was bothered by the disclaimer on the syllabus more than anything he had read in the student's complaint. "The level of arrogance is unnerving," the letter said. "I think that you would be happier in a sectarian classroom."

Brown went on to write that he was reducing Tuttle's teaching load to one section of ethics and would have another professor at the college monitor his courses. Afterward, the dean wrote, he would determine whether Tuttle would be teaching in the spring of 2004.

Tuttle went on to teach the ethics course last fall, but he said that he was never monitored. He said he had watched as part-time instructors with less seniority were offered the philosophy and religion courses that he normally taught. Tuttle was offered up to three sections of logic, but he declined to teach them, saying he had little expertise or interest in the subject.

Tuttle said that an Orthodox rabbi and a nun who wears a habit teach at Lakeland. "If the idea is to disguise people's religion, they are at the very least applying it in an arbitrary way," said Jeffrey A. Brauer, Tuttle's lawyer. Reported in: *Chronicle of Higher Education* online, July 7.

copyright

Washington, D.C.

Three leading higher-education groups are warning U.S. lawmakers that a bill designed to stop illegal song and movie swapping on commercial networks, such as KaZaA and Grokster, could unleash a flood of frivolous lawsuits against colleges.

The groups—the American Council on Education, the Association of American Universities, and the National Association of State Universities and Land-Grant Colleges—sent a letter in July to members of the Senate Judiciary Committee explaining their concerns. The groups worry that the legislation, the Inducing Infringement of Copyright Act of 2004, S 2560, could make colleges liable for contributing to copyright infringement merely by giving people on their campuses access to peer-to-peer technology or high-speed computers.

The legislation would give copyright owners, especially the entertainment industry, a powerful new tool to fight online trading of music and songs. Referred to as the Induce Act, the bill would hold liable anyone who "intentionally induces any violation" of copyright. Inducement is defined as the act of aiding, abetting, or inducing someone to infringe a copyright. Violators could be punished with fines or prison sentences.

"We are concerned that the broad concepts of 'aiding,' 'abetting,' or 'inducing,' and the uncertain standard of imputed intent, will increase the risk that colleges and universities will face claims of infringement when they develop and provide to students and faculties high-speed computer networks and beneficial new applications that will dramatically enrich" teaching, learning, and research, the letter reads. Nils Hasselmo, president of the Association of American Universities, signed the letter.

John C. Vaughn, executive vice president of that organization, said he feared that the legislation would promote needless litigation against colleges, increasing their legal expenses. "Any copyright owner could sue for any number of frivolous reasons," he said. "Particularly if you're a big company or a big university, you want to avoid having to go through all these court costs."

The senators who are promoting the bill, Orrin G. Hatch of Utah, chair of the Senate Judiciary Committee, and Patrick J. Leahy of Vermont, the committee's top Democrat, say the bill's purpose is to punish commercial file-sharing networks that foster illegal downloading. The legislation is strongly backed by the Recording Industry Association of America, which blames the illegal swapping of music online for the plummeting sales of compact disks. Further aggravating the industry group was a federal court ruling last year that held that Grokster was not liable for contributory copyright infringement.

But consumer groups and electronics and Internet companies say that the legislation is so broadly worded that the manufacturers of popular devices, like iPod and DVD players, and even journalists who write about technology, could be prosecuted under the bill's inducement standard.

Educause, an academic-technology group, also is concerned about the bill and is considering drafting a letter to members of Congress explaining that the legislation could chill technological innovation, said Garret W. Sern, an Educause policy analyst. "It seems like a lot of peer-to-peer networks currently do have some legitimate uses," he said. He offered as an example Pennsylvania State University's LionShare, a project to encourage the exchange of academic materials on a sanctioned peer-to-peer network. "If students use it for illegal purposes, will that mean the whole network will shut down?" Sern asked. Reported in: *Chronicle of Higher Education* online, July 27. □

(IFC report . . . from page 170)

room and display area policies, and how to defend against censorship of library materials.

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

For more information about the Lawyers for Libraries project, please contact Jonathan Kelley at jkelley@ala.org or 1-800-545-2433, ext. 4226.

Banned Books Week—ALA's annual celebration of the freedom to read, "Banned Books Week," begins September 25 and continues through October 2, 2004. This year's theme, "Elect to Read a Banned Book: Ban No More in 2004," highlights intellectual freedom in a democratic society. More information on the twenty-third BBW can be found at www.ala.org/bbooks.

Outspoken: Chicago's Free Speech Tradition—The OIF is cosponsoring *Outspoken: Chicago's Free Speech Tradition* in conjunction with the Newberry Library, the Chicago Historical Society and other local groups. *Outspoken* will offer public programs, including lectures and discussions, curriculum materials, and exhibits at the Newberry Library and the Chicago Historical Society and will run from October 1, 2004, through January 15, 2005. The programs will kick off on Saturday, October 2, during Banned Books Week (September 25 through October 2, 2004) with a keynote lecture on intellectual freedom and libraries by Carol Brey-Casiano, followed by a Banned Books read-out in Chicago's historic Bughouse Square.

Action

FCC Indecency Standards—In the past year, a public debate over the content of broadcast radio and television programs arose after the Federal Communications Commission ruled that the singer Bono's use of an expletive while accepting a Golden Globes award did not rise to indecency. The controversy intensified after the exposure of singer Janet

Jackson's breast during the Super Bowl broadcast a few months later. In response to these controversies, the Federal Communications Commission reversed years of longstanding precedent and adopted a new indecency standard in March of this year. This new indecency standard poses a great threat to freedom of expression by redefining indecency as any expression or programming that could be categorized as profane, blasphemous, vulgar, or coarse. In addition, the new policy claims new authority to fine individual performers as well as broadcasters for even a one-time, inadvertent use of a potentially offensive word.

Already, these new policies are chilling free expression on television and radio. Broadcasters are restricting live broadcasts, censoring taped programming, and canceling shows on radio and television deemed too risky to broadcast under the new rules.

The IFC moves the adoption of its resolution, Resolution on the Federal Communication Commission's New Policy On Broadcast Indecency (CD#19.2). [The resolution was approved; see the following sections.]

Intellectual Freedom Manual: Seventh Edition—The Office for Intellectual Freedom is working with ALA Editions toward publication of the seventh edition of the *Intellectual Freedom Manual* by the 2006 Midwinter Meeting. In preparation for each new edition, the Intellectual Freedom Committee reviews all ALA intellectual freedom policies.

In the spring, the IFC identified and proposed revisions to nine Interpretations of the *Library Bill of Rights* and three additional intellectual freedom policies, including the *Freedom to Read Statement*.

Proposed revisions to the Interpretations and other policies were mailed April 16, 2004, to the ALA Executive Board, Council, divisions, Council committees, and round tables. (See CD#19.3 for the review status of all reviewed policies.) The IFC considered comments received both prior to and during the 2004 Annual Conference and now is submitting eight revised policies for Council's adoption:

1. "Access for Children and Young People to Videotape and Other Nonprint Formats"; the IFC moves the adoption of its revisions to this policy, CD#19.4;
2. "Access to Library Resources and Services Regardless of Gender or Sexual Orientation"; the IFC moves the adoption of its revisions to this policy, CD#19.5;
3. "Exhibit Spaces and Bulletin Boards"; the IFC moves the adoption of its revisions to this policy, CD#19.6;
4. "Free Access to Libraries For Minors"; the IFC moves the adoption of its revisions to this policy, CD#19.7;
5. "Restricted Access to Library Materials"; the IFC moves the adoption of its revisions to this policy, CD#19.8;
6. "Policy concerning Confidentiality of Personally Identifiable Information about Library Users"; the IFC moves the adoption of its revisions to this policy, CD#19.9;
7. "Policy on Governmental Intimidation"; the IFC moves the adoption of its revisions to this policy, CD#19.10; and
8. "Freedom to Read Statement"; the IFC moves the adoption of its revisions to this policy, CD#19.11.

In closing, the Intellectual Freedom Committee thanks the Division and Chapter Intellectual Freedom Committees, the Intellectual Freedom Round Table, the various unit liaisons, and the OIF staff for their commitment, assistance, and hard work.

Resolution on New Federal Communications Commission (FCC) Rules and Media Concentration

WHEREAS, freedom of expression and diversity of opinion are essential to democracy, and

WHEREAS, these intellectual freedom principles are the bedrock of American librarianship, and

WHEREAS, the Library Bill of Rights states: "Libraries should provide materials and information presenting all points of view on current and historical issues," and

WHEREAS, America's libraries are essential to the collection, preservation, and provision of local information and history to their communities, and

WHEREAS, the mandate of the Federal Communications Commission (FCC) is to foster diversity, localism, and competition in the U.S. broadcast system, and

WHEREAS, the FCC on June 2, 2003, voted 3-2 to change its rules on media ownership to allow a company (1) to own television stations that can reach a higher percentage of the national audience (2) to increase the number of stations it owns in a given area, and (3) to allow a company to own television stations and newspapers in the same market, and

WHEREAS, the FCC's action removes safeguards against undue concentration of media ownership, inevitably reducing the number of independent voices and decreasing the amount of locally produced and locally relevant news and programming, and

WHEREAS, concentration of media ownership and production diminishes libraries' ability to provide a wide range of views and information, and

WHEREAS, without a diversity of opinion, the ability of libraries to provide materials and information presenting all points of view on current and historical issues to their communities is diminished, therefore be it

RESOLVED, that the American Library Association (ALA) deplores the action of the Federal Communications Commission (FCC) of June 2, 2003, and voices in the strongest possible terms opposition to these changes in the media ownership rules that encourage further concentration of the media, and be it further

RESOLVED, that ALA supports Congressional legislation to void the FCC's regulatory action, including S.1046,

the "Preservation of Localism, Program Diversity, and Competition in Television Broadcast Act of 2003,"and supports Congressional efforts to reduce media concentration in the United States, and be it further

RESOLVED, That this resolution be forwarded to the Federal Communications Commission, to Members of both Houses of Congress, and to others as appropriate.

Cosponsored by the ALA Intellectual Freedom Committee (IFC) and the Committee on Legislation (COL). Initiated by Social Responsibilities Round Table (SRRT). Endorsed by Government Documents Round Table (GODORT). Endorsed in principle by Intellectual Freedom Round Table (IFRT). Adopted by the ALA Council, June 25, 2003, Toronto, Canada.

Resolution against the Use of Torture as a Violation of the American Library Association's Basic Values

The following resolution was approved by the ALA Council at the ALA Annual Conference in Orlando, Florida, on June 30, 2004.

WHEREAS ALA is among the preeminent defenders of intellectual freedom and government openness in the U.S., and

WHEREAS intellectual freedom, our primary value as librarians, cannot be more seriously violated than by forcing speech or enforcing silence through systematic violence by government against detained individuals, and

WHEREAS the US government has proven its readiness to use torture (as well as hooding, shackling, drugging, sleep deprivation, etc.) in the interrogation of suspected terrorists or their suspected accomplices in its anti-terrorist legislation, and

WHEREAS the use of torture and coercive interrogative practices is inhumane, illegal and destructive of the democratic sensibilities of a free society, the cultivation of which we as an Association and as a profession are committed, and

WHEREAS the secrecy which attends the use of torture violates our commitment to open government and the necessity of true and accurate information of our government's actions, and

WHEREAS the violence of torture violates our commitment to the rule of law as a protector of the integrity and dignity of the human person, and

WHEREAS the barbarity of torture fundamentally violates our commitment to the preservation of the human spirit, and

WHEREAS the threat of torture or the use of torture and similar practices of coercing testimony, confessions, or information is universally condemned under international law [e.g the Geneva Convention, Articles 3 and 31 and by the Univeral Declaration of Human Rights, 1948, Article 5] and (a)the Fourth Amendment's right to be free of unreasonable search or seizure (which encompasses the right not be abused by the police) (b)the Fifth Amendment's right against self-incrimination (which encompasses the right to remain silent during interrogations), (c)the Fifth and the Fourteenth Amendments' guarantees of due process (ensuring fundamental fairness in criminal justice system), and (d)the Eighth Amendment's right to be free of cruel or unusual punishment], therefore be it

RESOLVED, that the ALA condemns the use or threat of torture by the US government as a barbarous violation of human rights, intellectual freedom, and the rule of law. The ALA decries—along with condemnation of the practice of torture anywhere—the suggestion by the US government that under a 'state of emergency' in this country or declared by this country torture is an acceptable tool in pursuit of its goals.

supporting documentation

The legal basis for this follows, including some explication of issues raised by these references:

- Universal Declaration of Human Rights 1948, Article 5 states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."
- Article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by 153 countries, including the U.S. in 1992.
- Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture), ratified by 136 countries, including the U.S. in 1994.
- European Convention for the Protection of Human Rights and Fundamental Freedoms African Charter on Human and Peoples' Rights.
- American Convention on Human Rights [Signed at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, 22 November 1969].
- The 'Laws of War': the prohibition against torture is also fundamental to international humanitarian law which governs the conduct of parties during armed conflict. Article 3 to the Geneva Conventions, for example, bans "violence of life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" as well as "outrages upon personal dignity, in particular humiliating and degrading treatment." Article 31 of the Fourth Geneva Convention: "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties."
- 1999 Initial Report of the United States to the U.N. Committee against Torture: in the United States, the use of torture "is categorically denounced as a matter of policy and as a tool of state authority. No official of the government, federal, state or local, civilian or military, is authorized to commit or to instruct anyone else to commit torture. Nor may any official condone or tolerate torture in any form Every act of torture [..]" is illegal under the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51)

at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987]. is illegal under existing federal and state law, and any individual who commits such an act is subject to penal sanctions as specified in criminal statutes."

- The US Constitution: Torture violates rights established by the Bill of Rights. The U.S. courts have located constitutional protections against interrogations under torture in: (a) the Fourth Amendment's right to be free of unreasonable search or seizure (which encompasses the right not be abused by the police); (b) the Fifth Amendment's right against self-incrimination (which encompasses the right to remain silent during interrogations); (c) the Fifth and the Fourteenth Amendments' guarantees of due process (ensuring fundamental fairness in criminal justice system); and (d) the Eighth Amendment's right to be free of cruel or unusual punishment.
- In numerous cases, the U.S. Supreme Court has condemned the use of force amounting to torture or other forms of ill treatment during interrogations, including such practices as whipping, slapping, depriving a victim of food, water, or sleep, keeping him naked or in a small cell for prolonged periods, holding a gun to his head, or threatening him with mob violence.
- *Miranda* v. *Arizona:* The U.S. Supreme Court in 1966 also established a rule requiring the police who seek to question detainees to inform them of their "Miranda" rights to remain silent and to have an attorney present during the questioning. In explaining the need for this rule, the Court noted the continuing police practice of using physical force to extract confessions, citing, as an example, a case in which police beat, kicked and burned with lighted cigarette butts a potential witness under interrogation.
- Torture would also violate state constitutions, whose provisions generally parallel the protections set forth in the federal Bill of Rights. Article 4 of the Convention against Torture obligates state parties to ensure that all acts of torture are criminal offenses under domestic legislation.
- The principal federal law that would apply to torture against detainees is 18 U.S.C. 242, which makes it a criminal offense for any public official willfully to deprive a person of any right protected by the Constitution or laws of the United States.
- Neither international nor domestic law conditions the right not to be subjected to torture on citizenship or nationality. No detainee held by U.S. authorities—regardless of nationality, regardless of whether held in the U.S. or in another country, and regardless of whether the person is deemed a combatant or civilian—may be tortured. All applicable international law applies to U.S. officials operating abroad, including the Convention against Torture and the Geneva Conventions.
- Some explication relevant to the particular questions raised by the government's consideration of the use of torture in its "War Against Terrorism":

1. The prohibition against torture is universal and covers all countries both regarding U.S. citizens and persons of other nationalities.
2. The Convention against Torture provides that any statement that has been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.
3. Under customary international law as well as under international human rights treaties, torture or other cruel, inhuman or degrading treatment is prohibited at all times and in all circumstances. It is a non-derogable right, one of those core rights that may never be suspended, even during times of war, when national security is threatened, or during other public emergencies.
4. According to the U.S. government, " U.S. law contains no provision permitting otherwise prohibited acts of torture or other cruel, inhuman or degrading treatment or punishment to be employed on grounds of exigent circumstances (for example, during a "state of public emergency") or on orders from a superior officer or public authority."
5. The European Court of Human Rights has applied the prohibition against torture contained in European Convention on Human Rights in several cases involving alleged terrorists. As it noted in one case, "The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct;"
6. The Committee against Torture, reviewing Israel's use of torture as a method of interrogation against suspected Palestinian terrorists, stated, "The Committee acknowledges the terrible dilemma that Israel confronts in dealing with terrorist threats to its security, but as a State party to the Convention Israel is precluded from raising before this Committee exceptional circumstances as justification for [prohibited] acts" Some people argue that the goal of saving innocent lives must override a person's right not to be tortured. Although such an exception might appear to be highly limited, experience shows that the exception readily becomes the standard practice. For example, how imminent must the attack be to trigger the exception and justify torture—an hour, a week, a year? How certain must the government be that the detainee actually has the necessary information? The international community, however, rejected the use of torture even in this type of case. International human rights law—as well as U.S. law—do not contain any exceptions to the prohibition against torture. □

Internet

Boise, Idaho

A graduate student at the University of Idaho was acquitted June 10 of federal charges that he had fostered terrorism by running Web sites devoted to Islamic causes. The most serious and closely watched charges against Sami Omar Al-Hussayen, a computer-science student from Saudi Arabia, stemmed from a controversial provision of the USA PATRIOT Act that makes it illegal to provide advice and assistance to terrorist groups. Prosecutors from the U.S. attorney's office in Boise, Idaho, used the provision to argue that Al-Hussayen, who managed a pair of Web sites that allegedly featured links to the Palestinian militant group Hamas, had knowingly helped recruit and finance terrorists.

The prosecutors also argued that Al-Hussayen had offered financial support to a group called the Islamic Assembly of North America, and that he had turned its Web site into a network that promoted terrorism in Chechnya and the Middle East.

But the defendant's lawyers said that he had done little to determine the sites' content, and that the sites are protected under the First Amendment. The Web sites were not kept on university servers, and most of the evidence presented at the trial came from Al-Hussayen's home computer.

After seven days of deliberation, a jury found Al-Hussayen not guilty on three counts of terrorism and on three additional charges of making a false statement and committing visa fraud. Jurors were unable to reach decisions on eight other false-statement and visa-fraud charges, and Judge Edward J. Lodge of the U.S. District Court in Boise declared mistrials on those counts.

Al-Hussayen's attorneys argued since his arrest in February 2003 that he was only volunteering his skills to the Michigan-based assembly to maintain its Web sites that promoted Islam. His defenders further argued that he had little to do with the creation of the material posted, and they said the material was protected by the First Amendment right to freedom of expression and was not designed to raise money or recruit militants.

Al-Hussayen, a member of a prominent Riyadh family, has been jailed since his arrest, continuing to work toward his doctorate from his cell. He had previously been declared subject to deportation regardless of the trial's outcome. Had he been convicted on the terrorism charges, Al-Hussayen could have been imprisoned for fifteen years on each count.

Elizabeth Brandt, a professor of law at the university, said the verdict was "a vindication of the judicial system" and a victory for Al-Hussayen. "I think twelve jurors understood what was going on," she said, "that the government brought its full power down on one little guy who was active in his faith and put together charitable Web sites."

But Brandt said the case may already have damaged foreign students' confidence in due process and their willingness to study in the United States. "Anybody who thinks international students aren't scared by cases like Al-Hussayen's is kidding themselves," she said. Reported in: *Chronicle of Higher Education* (online), June 11; *Seattle Times*, June 10.

book burning

Cedar Rapids, Iowa

A church's plan for an old-fashioned book-burning was thwarted by city and county fire codes. Preachers and congregations throughout American history have built bonfires and tossed in books and other materials they believed offended God. The Rev. Scott Breedlove, pastor of The Jesus Church, wanted to rekindle that tradition in a July 28 ceremony where books, CDs, videos and clothing would have been thrown into the flames.

Not so fast, city officials said.

"We don't want a situation where people are burning rubbish as a recreational fire," said Brad Brenneman, the fire department's district chief. Linn County wouldn't go for a fire outside city limits, either. Officials said the county's air quality division prohibits the transporting of materials from the city to the county for burning.

Breedlove said a city fire inspector suggested shredding the offending material, but Breedlove said that wouldn't seem biblical.

"I joked with the guy that St. Paul never had to worry about fire codes," Breedlove said.

The church decided to have its members throw materials into garbage cans and then light candles to symbolically "burn" the material. Reported in: CNN.com, July 12.

political protest

Charleston, West Virginia

Trespassing charges against two people who wore anti-Bush T-shirts to the president's July 4 rally at the West Virginia Capitol were dropped July 15 because a city ordinance did not cover trespassing on Statehouse grounds. Nicole and Jeff Rank of Corpus Christi, Texas, were removed from the event in restraints after taking off an outer layer of clothes to reveal homemade T-shirts that had President Bush's name with a slash through it and the words "Love America, Hate Bush" on the back. The Ranks were given summonses to appear in Charleston Municipal Court and released.

Charleston Municipal Judge Carole Bloom dismissed the charges on the motion of Assistant City Attorney Deloris Martin. Nicole Rank, 30, who was doing environmental work for the Federal Emergency Management Agency in the wake of Memorial Day flooding in the state, was released from her position after her arrest without getting another assignment. She remains employed with FEMA. Jeff Rank, 28, who is an unemployed oceanographer, was in West Virginia to be with her.

She said it is not uncommon to leave one FEMA job before being assigned another, although she had expected to work in West Virginia longer. The couple said they were pleased with the case's outcome and planned to return to Texas immediately.

Jeff Rank said the couple did not go the Capitol with the intention of being arrested. They are supporters of Democratic nominee John Kerry, but wanted to take advantage of an opportunity to see Bush and "give him a fair hearing."

"We certainly did not expect to be arrested for expressing our freedom of expression," Jeff Rank said. He said they were not protesting in any other way than simply wearing the shirts and did not say anything.

Law enforcement officers told the couple to take the shirts off, cover them or get out. When they refused and sat down, they were arrested. They then stood and accompanied the police, said Charleston Mayor Danny Jones. The Ranks said they have not protested at other political events and do not have any immediate plans to do so again.

"We'll continue to exercise our right to free expression when we see fit. We're not professional protesters," Jeff Rank said. "We're going to get on with our lives and go back to Texas and get jobs."

Jones said, "I don't think this was just about a T-shirt issue. There were other things going on there. The officers, quite frankly, feared for the safety of the Ranks." Jones said the city officers who filed the trespassing charges were acting under the direction of the Secret Service. "The officers are in a bind here," Jones said.

"I think we need some guidance. Perhaps the Secret Service should have been called and let the Secret Service do with them what they want," Jones said. "The city of Charleston does not engage in violating people's rights. We want everybody to come here," said Jones, a Republican.

Still, he said he would not apologize to the Ranks. "They were there to get arrested. They succeeded."

Andrew Schneider, executive director of the ACLU's West Virginia chapter, said the organization has been monitoring a pattern of similar cases in other states. The ACLU in September filed a federal lawsuit against the Secret Service, seeking an injunction against the Bush administration for segregating protesters at his public appearances. The Secret Service agreed to stop the practice, ACLU attorney Witold Walczak said.

"This case demonstrates we will be out there watching and monitoring to make sure free speech rights are not violated regardless of political affiliation," Schneider said. Reported in: *Huntington Herald-Dispatch*, July 15. □

(censorship of the written word . . . from page 168)

libraries in her county, even after scurrilous accusations and personal attacks by those who felt the books should be removed. But Jeri had the full support of those on the other side of the issue, Main Street Montgomery, the citizen's group who rallied against the removal of these books. Jeri, you are my hero!

Yes, censorship is still alive and well, and kickin'! And I know that because it was Jeri who broke the news to me that *It's Perfectly Normal*, was number seven on the top ten list—no not Letterman's top ten list—but ALA's top ten list of books in 2003 that had the most library challenges. (I believe seven out of those books are for children and/or teens.)

I let out an audible "Oh-hhhhh . . . " when I heard that news from Jeri—an "Oh-hhhh . . . " that she probably could have heard all the way from Massachusetts to Texas without benefit of a telephone.

Whenever I find out about a challenge to one of my books, first, there is always the "Oh-hhhh . . . " Simultaneously, there is a feeling that I call "a sick uncomfortable feeling" in the pit of my stomach. What follows is this question: "Why did I write ever these books that are causing librarians to spend so much time defending, often in hostile settings, what I created?"

Finally, I take a deep breath. And I know the answer to why I write these books. I write them for kids and teens because in some small way I hope that they will find them useful, reassuring, and interesting. Then I feel fine and yet again feel proud of the responsible work that Michael Emberley and I and my editors at Candlewick Press, Amy Ehrlich and Mary Lee Donovan, have done by creating books on sexual health. But still, I never get used to hearing that there is a challenge to one of my books.

I want to also say what a privilege it is to talk with all of you—our librarians. Every time I speak about censorship issues, I always say the following: "Our librarians are the real heroes in our democracy. They are the keepers of our democracy by allowing children, teens, and adults to choose the books they want to read or may randomly come across in a library. This allows them to have access to ideas and information they may seek, or need, or come across by happenstance. Every librarian, each one of you, is on the front line of your community—defending that freedom. As a children's book author, I am only in front of my computer."

Dealing with censorship is not new for me. In 1965, I was part of the Bank Street College of Education's Writer's Lab in New York City. Three of us—children's book writers, Irma Simonton Black, William Hooks, and I—were hired to write a five minute opening segment for CBS's Captain Kangaroo Show for five days a week, for a year. When we arrived on the set of the show for the very first time, we were told to go to a meeting with the CBS censors about our script—a script The Captain had approved. We had written five segments for that opening week that included naming the rooms in a house or an apartment and the pieces of furniture that are typically in each room. Of course, we included the bathroom and named the sink, the tub or shower and the toilet. The censors said the word "toilet" had to be excised from the script. We argued that to leave out " toilet" would be dishonest and the saying of that word would not harm young children in any way. Please note that in the script we did not even say what goes in a toilet. (Think about what I write about now!) We lost. Our segment was aired without the word "toilet."

And today censorship has NOT gone away. I wish it would. We would all have a lot more time to do our jobs. But the truth is that in today's cultural and political climate, part of our job is doing what's in the best interest of our children and teens. And that may come in the form of defending and standing up for their right to read what they choose—be it nonfiction or fiction.

When I asked Michael Emberley if he would like to illustrate a book I had not yet sold, a book for pre-teens and teens on sexual health called *It's Perfectly Normal*, I told him that if he said "yes" that we would both have to put on blinders. That meant that even if a responsible and knowledgeable adult told us that if we put a particular piece of information or illustration in the book, there would be parents, teachers, librarians, health professionals, and clergy who would not buy these books, our litmus test would be the following question: "Is this text or art something preteens and teens need to know to stay healthy and stay safe?" If the answer was "Yes!" we would have to include that particular text and/or art in the book. And that's what we did.

Everyone has values. I don't know how to write without my values coming through. If you look at the table of contents in my books on sexual health, you'll get some idea of my values. And I know that not everyone agrees with my values. Michael's and my shared value was and is—to be honest. For if we were not honest, our books would have had no credibility for kids and teens. They would not ring true to them. Our values are in these books. And if anyone disagrees with them, that is their right. I would never, ever as an author say that my books should be in every home, every school, or every library or bookstore in America. But I would say that in our democracy, anyone, any family, school, health professional, or clergy member who chooses to have my books should have the right to do so. Another shared value Michael and I have is our respect for children and teens. That is why whatever we create for them also has to be age-appropriate, and scientifically accurate, as up-to-date as possible, comprehensive.

Often a school superintendent, principal, teacher, librarian, health professional, or clergy member will say to me, "If you would be willing to take the following topics out of your books: homosexuality, sexual abuse, masturbation, abortion, HIV/AIDS, and other sexually transmitted diseases, and only talk about abstinence, and not talk about contraception, take that out too, then every school, library, or health, or pastoral setting could purchase your books and you'd sell a lot more books."

And then the rest of the conversation goes like this: I respond, "I can't do that." "Oh your publisher won't let you!" the person says. I respond, "No, it's not my publisher. I can't do that." And then I explain why. That if I did that I would be leaving out information that kids need. And I wouldn't sleep at night. That my value is that children and teens have a right to have access to information that can help them to stay healthy.

The bottom line is that these book challenges are NOT about my books nor me. And they are not about selling books. They are about a bigger question. Do we the adults have the right to keep ideas and information and stories from our kids and teens—ideas and information and stories that are in for example such books as: Lois Lowry's *The Giver*, Katherine Patterson's *Bridge to Terabithia*, Robert Cormier's *We All Fall Down*, or the Harry Potter series—books that make our kids and teens think, question, wonder, dream, laugh, cry, and gain knowledge and understanding about themselves and the world they live in?

Here's what happens when my publisher or I hear about a challenge. How do we hear about a challenge? Someone—

friend, a colleague, the librarian who is being challenged, or another librarian—contacts either my publisher or me. Or the press calls my publisher and then he contacts me. I will talk about two cases—one in Ocala, Florida, and the other in Anchorage, Alaska. And as most of you know, these are not the only places where there have been challenges. It's not only Texas and Florida. It's also Massachusetts, Vermont, Ohio, Virginia, Colorado, and so on. And I am sure that there are challenges we do not even know about.

Here's the story of what you might label as a book challenge. In a small, rural library in Vermont, one day a copy of *It's Perfectly Normal* was not to be found. The librarian bought a new copy. A year later, the original, now dog-eared, book was mailed back to the library with a letter that said. "I stole this book from your library a year ago. I felt that children and teens should never see or read this book. But then my fourteen- year-old niece got pregnant. And I realized the kids who come to your library need this book more than I do."

When I hear about a challenge, sometimes I talk to the librarian directly. But most of the time, I get my information from a reporter who calls me or from press accounts. So if any of the information I am about to share with you is incorrect, please let me know.

A challenge in Ocala, Florida, took place in 2001, and we won this one. Actually, the correct thing to say is that librarian Julie Sieg won this challenge—meaning the books remained in the library collection. But this spring, I was sent a newspaper editorial from the *Star-Banner* that said the following: "The books are back, but not without consequences. In fact, the County Commission has tried . . . to outright ban the books . . . considered reducing the number of library board officials, suggested stripping the library board of policymaking authority and book collection oversight, and the latest, brought to us courtesy of Commission commissioner Randy Harris, a threat to reduce funding for new library books."

Julie Sieg was the courageous librarian who defended her professional choice. I found out about this 2001 challenge when a reporter called my publisher and then called me. Here's how the conversation began. (I always jot down notes of what is said when talking with the press.)

The reporter, "Do you want to defend your book?"

"No," I replied. "I have no need to defend my books. I am proud of my books."

The reporter went on to tell me that there was a burning of xeroxed pages of *It's Perfectly Normal* after a public hearing on this book challenge.

"Do you think this is a book burning?" asked the reporter. "They only burnt Xerox pages from your book."

"Yes, this is a book burning," I replied. "And I hope you report it in your story. The words I wrote and the images Michael Emberley drew were burned. They were from our book. So yes, that is a book burning. What I also object to is the message that is given to children, that if you don't like something you destroy it. Rather than it's your right to disagree, and not read this book. In a democracy, we have to let our children know that there are differences among us, even vast differences, and we have to teach our children to respect the differences among us, not try to destroy them."

One more quote from Ocala, and I am not sure whether this was my book or not. This quote was in *Newsweek*. "It's not censorship, it's just removing it from the library." Library advisory board member Eddie MasCausland, on his proposal to ban a sex-education book from the public library in Marion County, Florida.

A challenge in Anchorage, Alaska took place in 2001. A friend who lives in Anchorage called to tell me what was happening. This was a school challenge to *It's Perfectly Normal*. By the time I heard about it the following had happened: A formal challenge had been made to take the books out of the public school libraries. I may have the days wrong, but, according to my notes, on a Wednesday night the book was presented to the school district's Controversial Issues Review Committee. The committee voted 11─0 to keep the book on open shelving. Two teen students were on the committee.

That Friday, three things happened: (1) The school superintendent announced at a press conference that she agreed that both of my books on sexual health should be removed from every library in the district.

(2) A TV reporter and camera crew went to a youth soccer game, showed *It's Perfectly Normal* to parents, by opening the book to a page with nudity, showing all kinds of bodies, and asked if this book should be in schools. A resounding NO! from the parents. This was filmed and that TV segment of showing the book to the soccer parents was aired that night with no mention of the intention of this book—educating our kids and teens about sexual health and hoping accurate information will help them to stay healthy. (3) On that Friday, a letter that was mailed from the office of State Representative Joe Green to all of his constituents' homes that said, "I question the age appropriateness of this book for school age children." In addition, the mailing contained a second page with ten xeroxes (without signed legal permission from the illustrator or publisher) of Michael Emberley's drawings from our book, drawings with no text and out of context. On the back side of this xeroxed page the following words were typed in large letters and capitals, WARNING! ADULT MATERIAL ENCLOSED!

The school board meeting was scheduled the following Monday night for a public hearing and vote. This was after the school superintendent had given her opinion to the public on Friday and even after on Wednesday, the Controversial Issues Review Committee had voted unanimously to keep *It's Perfectly Normal* and, I believe, *It's So Amazing*! in the libraries on open shelving. But after a long and heated debate, we lost. The books were taken off the library shelves.

But the truth is that most challenges we hear about, we win, and that most often, that means the books are kept on open shelving. Here's how we—my publisher and/or I respond—to a book challenge. Whenever we hear of a challenge, the publisher calls the librarian, asks what has happened, tells the librarian that he or she has our support and if wanted, a kit of materials will be sent out, including a letter from my editor on why she published my books on sexual health, along with reviews, awards and praise, and other relevant materials. Then PEN AMERICAN Center's Children's Book Committee is notified and they send a letter written by children's book authors Elizabeth A. Levy and Vera Williams saying that "Pen's 28,000 members applaud librarians for supporting young readers' right to choose and have access to the many different voices and images that are part of their world." Later on, the letter states the following: "If young people come upon something in a book they disagree with, they have the right to close the book, or to speak up or write about their opinion. But they do not have the right to keep someone else from reading a book with a different point of view." This is a value Michael Emberley and I hold dear.

Often I am asked to come to give a speech in the city or town where the challenge is still on going. I am happy to help out in any way I can. But when a challenge is still not resolved, my mere presence will only inflame the controversy. I am happy to come and speak after there has been a decision.

I am often asked, "Do these continued challenges make you afraid? Do they make you feel intimidated?" "No," is my answer, but not my complete answer. In some ways they do make me feel afraid—afraid that kids and teens may not have access to ideas and information they may seek, or need, or have the right to have. And this worries me greatly because of all of the misinformation that is on the media or that our kids and teens glean from their peers.

My other fear is that I hope that these challenges to my work don't affect me in a way that would cause me to "self-censor" my work, even unconsciously not use a word or not write about a subject because of the experience I have had of being a challenged author. For example, if a book or a story called for the use of words such as "stupid" or "hate", or "poop"—words I have recently used in books, I would hope that the effect of these challenges would not cause me not to use these words, even in a picture book for young children. Words like these should never be used gratuitously. But if they make sense to use in a text, I hope that I will never hesitate to use them. But I worry about this for me and other writers and illustrators as well, and hope that this does not extend to what a publisher will or will not publish.

Another question I am frequently asked is: "If you had it to do all over again, would you write *It's Perfecly Normal* and *It's So Amazing*?" The answer is a resounding YES!—if only for this child. On March 9, 1997, a cover article, entitled "*Perfectly Normal*, Do You Want Your Kids To Read This Book," by Michael Sokolov, was published in *The Philadelphia Inquirer Sunday Magazine*. In this wonderfully written and responsible article on the people who challenged this book in Chester County, Pennsylvania, Sokolov quoted a person from the group who challenged my book. "It's full of lies," Scalia says. "Why would I want it in the library at all? To me, this book is ultimate child abuse, and it should be removed."

"As it happens," the article goes on to say, "*It's Perfectly Normal* was indirectly involve(d) in a case of child abuse . . . Last year, a ten-year-old girl in Delaware showed her mother . . . [the chapter on sexual abuse] and said, "This is about me." The girl's comment led to a criminal investigation. In September, her father was convicted in Superior Court of Wilmington of multiple counts of unlawful sexual intercourse, and two months later sentenced to sixty-two years in prison."

The book was used in the trial. And I believe that the hero was the mom who allowed her child to choose what she wanted or needed to read and the librarian who believed that kids and teens have the right to have access to information they may want or need. I believe this could have happened with any book for kids and teens that included sexual abuse. But the fact that Michael's and my book may have helped in some small way of making this child's horrific and traumatic life better is why I continue to work on books that I hope are honest.

I have focused on the challenges. The bad news is that these challenges keep on coming. But let me tell you the good news. Our books on sexual health are now in twenty-seven countries and nineteen languages. The two latest foreign coeditions are in Mongolia and Kosovo. The publication of our updated tenth anniversary edition of *It's Perfectly Normal* and of our updated fifth anniversary edition of *It's So Amazing*! is just around the corner; these books will available this summer. I'm writing and publishing a lot of books that get into the hands of children. So is Michael Emberley. And Michael Emberley and I will complete our book on sexuality for children ages four and up in 2006. That book is called *It's Not the Stork!*

The good news is that we, the children's book authors and illustrators, with your help, are still alive n' kickin'—even those of us who don't live in Texas. And I invite you on the way out pick up one of our new brochures which science educator Sally Crissman and my publisher created on how to introduce these books to children and teens. We hope they are helpful.

Thank you, all of you, for your courage and support. As creators of children's books, we know we can't do it alone and without you. And knowing that all of you in the real world support the work we do is what keeps us day-in and day-out doing the work we love to do.

remarks by Jerilynn Williams

"Challenges are not simply an expression of a point of view; on the contrary, they are an attempt to remove materials from public use, thereby restricting the access of others. Even if the motivation to ban or challenge a book is well intentioned, the outcome is detrimental. Censorship denies our freedom as individuals to choose and think for ourselves. For children, decisions about what books to read should be made by the people who know them best—their parents or guardians."

These words from ALA's 2003 promotional materials for Banned Book Week are the most succinct statement of why we gather here today. For me, they encapsulate the situation in Montgomery County, Texas, which escalated in the fall of 2002 and continues to this day.

The "adventure" began with a dozen citizens protesting the book *It's Perfectly Normal: Changing Bodies, Growing Up, Sex & Sexual Health* during the Commissioners' Court session, where approval of a $10 million bond referendum for improvements to Montgomery County libraries was to be finalized. I was in the courtroom to defend the Library System's FY2003 Budget proposal and to answer questions about new facilities that would be built if the bonds were approved. However, the need for additional action became evident when the County Judge, without having read or reviewed the entire book, accepted protesters' claims that the work was obscene and promoted homosexuality. He then directed that it be removed from library shelves, in violation of the reconsideration procedure that is outlined in the Court-approved Collection Development Policy. An explanation of the process for requesting reconsideration of a work was followed by my commentary on the role of the public library in meeting citizens'—all citizens'—information needs with a wide variety of resources.

Later in the day and throughout the week, there were additional discussions with members of the Commissioners' Court, which is the governing body for the Library System. Eventually, it was agreed that reconsideration activities should proceed under existing policies. However, because we only had four copies of the book, it remained off the shelves until the re-evaluation was complete. At two subsequent Court sessions, more than 200 citizens heatedly voiced either opposition to or support for the work, the library director, and the review process. Prior to one session, home-schooled children of the protesters were brought to picket on the courthouse square, carrying signs proclaiming "No kiddie porn" and seeking my removal.

When it became clear that the reconsideration procedure involved review by a panel comprised of only library staff members, protesters promoted citizen input as the way to correct the process. I was directed to find a way to do it. As a result, five citizens were added to the review committee when juvenile or YA materials were being reconsidered. Thus, a group of ten individuals—five from designated library staff positions and five citizens appointed by the Commissioners' Court—would convene to examine, re-evaluate, and recommend a course of action regarding challenged materials from the children's or young adult sections.

In the end, the reconsideration committee recommended that *It's Perfectly Normal* and *It's So Amazing,* the companion book by Robie for younger readers, be retained in the library collection in their original classifications. (Actually, some of the Reconsideration Requests called for *anything* that Robie Harris had written on *any topic* be removed from our libraries' shelves.) The decision regarding *It's Perfectly Normal* and *It's So Amazing* was accepted by the Court and the works were returned to library shelves.

During the difficult days of the book controversy, many people asked how I was managing the situation. One certainly does not survive this level of conflict in a vacuum. You call on reserves and resources, some known, tried-and-true basics and others that miraculously appear.

First, there was the support provided by so many. Family, friends, and colleagues produced lots of hugs and many chocolate treats as well as abiding faith in what was being done to ensure access to information. There were calls and cards and emails of encouragement from individuals across the state, Texas Library Association members and vendors, as well as people in other parts of the country who learned of the protest from media coverage or from their friends or families. Representatives of Candlewick Press were in touch within days of the initial protest. ALA staff maintained regular contact and reported our progress. One librarian from Missouri e-mailed her positive thoughts then added, "Stand strong because you are standing in for all of us!" You can only imagine how my resolve swelled with that admonition.

Representatives of groups, some familiar and others unknown to me, added their endorsements and commitments to intervene. The PEN Children's Book Committee offered to write to the censors and/or to members of the Court. The ACLU monitored and prepared to act on termination threats. Library Friends and Advisory Board members appeared in the Court room to add visual and vocal support for our efforts.

A critical factor was the involvement of the group which formed as Mainstream Montgomery County (MMC). Green Party members had been using the meeting room of our South Regional Branch to explore alternatives to the County's political status. Prompted by their study of First Amendment rights and, possibly, inspired by displays on Banned Book Week, attendees were angered by the book banning efforts instigated by a conservative Christian group, known as the Republican Leadership Council—the RLC. In response, more than 100 county residents, including some forty high school students, gathered at the Branch to demonstrate their opposition to the Judge's directive and to formally organize as Mainstream Montgomery County.

Led by co-founders, Ann Bayerkohler and Karyl Palmisano, this grassroots effort began to counteract the RLC's influence. Within three days, more than 300 people had signed petitions to show their support of the Harris books, the library system's selection procedures and reconsideration process, and the Library Director. RLC members had targeted my integrity and professional ability. One prominent church leader stated that because I allowed these books to remain on library shelves, I was promoting child abuse and, therefore, was a child molester. Another pastor noted that "anyone who supports these books should be given her fourteen-days notice and be replaced by someone who has morals and will put only good books on the shelves."

Karyl had been vocal in her support of the Library System since the Internet filtering conflict but Ann said that the attacks on me personally spurred her into action.

Communication was another critical element. Although I never responded directly to the hate-filled letters in the newspapers, library supporters did write "our side of the story." I met frequently with members of the MMC and also with other like-minded citizens groups, such as the League of Women Voters, as well as numerous citizens who just dropped by. In fact, it seemed that I did little else for nearly three months.

My door was also open to the media. There were countless newspaper and television interviews as well as a radio talk show where the role of the public library and the need for information to meet diverse needs were explained once again. Our local community college held a forum on First Amendment rights and book selection for the public library. A sound bite was developed—just to be certain that a consistent message was conveyed: "Not every book is appropriate for every person, but *every* person should have *their* book."

Ultimately, several thousand signatures were obtained on Mainstream Montgomery County petitions. Members positioned themselves outside each of the library facilities as well as at post offices, super shopping centers, and other places where citizens might be approached and asked to sign. The petitions were then presented to the Commissioners' Court. What an impact!

While the book controversy raged, work to inform and encourage support of the $10 million bond issue for library construction was also progressing. Members of Mainstream Montgomery County side-by-side with Library Board and Friends representatives worked tirelessly to explain the need for additional facilities and that the book protests were merely a smokescreen being used to defeat the referendum. I am thankful to say that this time the "good guys" did win. The referendum passed and next month construction will begin on the first of three new branch libraries, which should open in 2005.

However, this is a continuing saga. Last summer, Mainstream Montgomery County members defended the Library System's Collection Development Policy once more. RLC members hailed the U.S. Supreme Court's decision regarding the Children's Internet Protection Act and initiated efforts to rewrite the selection guidelines. The proposed revision included eliminating the use of professional reviews as evaluation tools and removing the ALA Freedom to Read and Freedom to View statements as well as the Texas Library Association Intellectual Freedom Statement.

Again, members of the County Commissioners' Court were lobbied by individuals on both sides of the issue. MMC members and library supporters did their jobs well. The motion to alter the policy failed on a 3 to 2 vote. Thus, the existing policies remain in place.

My thanks goes to each MMC member, to Library Friends and community supporters as well as to those of you who heard or read of the book situation and contemplated positive thoughts or whispered prayers of encouragement . . . even the ones that began, "Thank Heavens, it's not me!"

What was learned? First, there was and is firm faith in what universal access means to all of us. It is not a new commitment, merely ongoing. "To enrich lives by providing access to information, ideas, and interactions," is the vision statement of the Montgomery County Memorial Library System. Inherent within this statement is acceptance of First Amendment rights and my pledge to connect individuals with the information they need.

Based upon the experience, here is my list of the Top Ten Things You Should Know about Dealing with Materials Challenges:

- You must determine your personal commitment to intellectual freedom and universal access. A raging book controversy has been called a trip to Hell, something you would not wish on your worst enemy. But I am here to tell you that you can survive and, even, thrive.
- Second, it is critical that you have a formal collection development policy in place that is approved by your governing body. Know and use it consistently.
- Prepare to defend the materials selected under it . . . but don't become a censor yourself, just because you think an item might be challenged.
- Be honest and objective with the challengers and with the media or those who report the activity. Remain professional, calm, and objective in your interactions.
- Maintain confidentiality of library records. The protesters may tell others that they have checked out the work but you should not reveal the connection.
- Remain available to address concerns, discuss the selection policy and reconsideration process; supply copies of the policy and forms as needed. Train your library staff regarding IF issues and reconsideration procedures; then, keep them aware as challenges occur.

- Express appreciation for the interest that parents, students, administrators, co-workers and other concerned individuals show –whether in support of the materials or to challenge them. Ask challengers for their suggestions of what might be added to the collection in order to meet their needs rather than removing items that others might need. Listen to what they have to say.
- Stay informed of trends, concerns, and issues that may impact your ability to secure and provide information services.
- Keep a record and report challenges to appropriate entities at the state and national level.
- Seek assistance, as appropriate, and receive it graciously, even if you do not think it is necessary.

Lastly, having survived such difficult time, I am now driven to further commitment. Initially that means keeping the flame of access glowing in my area because censors do not rest. They will attack on another day because they feel just as strongly about their views as we have come to feel about our opinions. Equally as important, it means a promise to be there for the next person who experiences a challenge, standing fast and lending support when some else may be facing protest and defamation. You have my promise to listen; my shoulder to lean upon; and my earnest empathy coupled with the knowledge that you can survive a materials challenge and thrive in the process. ☐

(tiny trackers . . . from page 169)

receivers that were stationed strategically on the battlefield. So originally, RFID could be said to have been used to pierce the fog of war. At night or in the fog, a plane would fly over one of these readers which would look at it, and the plane would beam back, don't shoot me I'm an American. And if it didn't beam back, then the plane was probably in trouble.

What's changed in the last sixty years is the degree of miniaturization, which has been astounding, plus computer and memory power, which is even more astounding, plus the cost of production of this kind of stuff, which is dropping, plus the emergence of the Internet, which makes it possible for any information to be any and everywhere essentially instantaneously.

So what we have with RFID tags are smart memory chips with tiny radio antennas used to transmit information and often, it's just that same barcode, now called an electronic product code, EPC, but in some cases, the information can actually change. You can read right to certain kind of chips so as a product moves through different events in its life it can say, okay I've been sold, or okay now I'm in the warehouse, or okay whatever. This is a very interesting aspect of RFID.

But I will let my copanelists deal with the real technology and the complexities of all this. What I think is now is we're right at the point at which RFID technology will be used to pierce the fog of commerce, so you can know where every book or every bicycle, or every Gap T-shirt is at the key points in its life cycle. Today RFID tags are so small as to be nearly invisible. They can be put on any material hard or soft, in a paper label, in the fabric of a piece of clothing, on any product—toothpaste, televisions, toys, t-shirts—even toddlers, which brings up some interesting issues that I don't think we'll go into today unless you would like to do that.

So if you have an Easy Pass or an E-pass, I think they're called down here, that allows you to pay your toll as you roll by the booth, you're using RFID technology. What's inside that little plastic thing is an RFID chip that's read by the mechanism at the toll booth. That information is passed from the reader to the transit authority computer and then it's linked to your bank account or your credit card or however you set up payment and that deducts automatically the $3.00 or $7.00, or whatever it is. If you start there and go sort of far out, some of the things that people are talking about are smart refrigerators. They will know how long the milk is in there, so when it starts to become a biology experiment it will automatically tell the online supermarket to send you a new carton and then your domestic robot will go to the door, open it, take the carton, put it in the refrigerator, and hopefully, will pour out the old milk.

There are a couple of really important points here. Despite all the buzz in the press and among consultants, this technology in fact is just maturing, and it's lacking in many standards and much capacity. It's very easy to imagine all these wild things, but we're not quite there yet. Not surprisingly, companies don't know exactly what to do. It's interesting that in the last month or so, Hewlett Packard, Sun, and IBM have each announced programs to help companies get into RFID. A friend of mine at a large consumer company, who has attended all the Wal-Mart meetings (Wal-Mart is the big driver of this technology), confirms the confusion in the corporate landscape. As one corporation executive is quoted as recently saying, "Our RFID requirements are not focused today, but they will be defined ultimately within the next year, I'm sure." That sort of says it all as far as I'm concerned.

Part of the problem with RFID is not just the chips in receiving it and so forth; it requires a whole new level of middle ware, of software, to manage and analyze these cascading terabytes of data. As each of the things that are out there in the world—and there are seven trillion things, individual items, created every year—starts to talk (talk about a tower of Babel!) and here is where the privacy question starts to gain purchase because unless these chips are physically destroyed, they can always be read. It doesn't matter if they're on or off. If the right reader gets the information, they can be read.

The second problem is that libraries and book publishers have rather different RFID needs. In library use, as

those of you who are brave enough to have embarked on this path know, the chips have to be persistent. They have to last. The books come in, they're shelved, and they're checked out, and then they're checked back in, then they're checked out, then they're checked in; it's sort of a waltz that hopefully goes on for a decade or two. Whereas a book buyer, especially if the person wants to opt out of this, when the book gets to the checkout point, at Barnes & Noble or wherever, the checkout person can easily blow the chip's mind by just blasting it with a little too much electricity; the circuit breaks and then it's as good as not being there.

The other point that we need to remember is that RFID is really running on two tracks. What's not going to happen right away is customers facing use of RFID tags in individual products. It's not going to be on the milk, it's not going to be on your Coke cans, it probably won't be, and for sure it won't be on the books you buy in a commercial setting. That may take four years, that may take eight years; it's anybody's guess at this point. But what's amazing to me and I think really important, is that in the library world, it is already happening. We're going to hear the specifics about how it is already happening in just a few minutes.

Wal-Mart and the Department of Defense are really the big movers behind RFID use. Wal-Mart believes that by October of this year, thirteen of their distribution centers, but more importantly, 600 of their stores, will be using it. They are already requiring that their top 100 suppliers be RFID enabled, not on individual products, but on the boxes and the skids that bring the products into Wal-Mart. One of the things that is going to happen here is that as people start to use RFID, inspired by or demanded by Wal-Mart, they're probably going to use it for their own purposes as well.

One bicycle company on the Pacific coast said, the biggest incentive was Wal-Mart's mandate, but since we had to spend the money, we are looking at ways to improve our own inventory system by using RFID. I think that this will happen over and over again, including in our industry. If you're going to spend the money anyway, you might as well take maximum advantage, and that will certainly drive the development of RFID. So there's a real possibility, and I don't mean to overstate this, but RFID could be the next World Wide Web. I've heard relatively responsible people say that. Or it could be something even bigger.

In terms of the publishing industry and the publishing value chain, and I include here from author through publisher, printer, distributor, retailer or library, in terms of our industry, these are some of the things that might start to happen. What is the amount of information you can put on the chip so that you could fully and richly identify each individual skid of books, carton of books and the books themselves, every single one? What if it is possible to know where any individual book is along the entire supply chain, at any time and in real time, or all books all the time, individually and/or collectively? And you can slice it and dice it as you wish because it's computerized. By title, by author, by geography, by location, in the warehouse, in the store, on the truck, in someone's briefcase who hasn't paid for it, back in the store as a return, at point of sale, being checked out of a library, sitting on the library shelf, beaming that it has been misfiled as a sociology book rather than a psychology book, sitting on the bookstore shelf as the last copy and letting the retailer know to order more, the distributor knows to send more, the publisher knows to print more, the editor knows to require more and the author knows to write more.

The bottom line here is that the full implementation of RFID technology will add a huge level of efficiency to any supply chain. And this new level of efficiency will change the economics of virtually every business that embraces it, publishing and libraries included. And I think that's really a pretty big deal.

If I have another minute I want to talk a little about privacy. Wal-Mart, the big European retailers, or the Pentagon, even these very powerful forces promoting and, in some cases, demanding the use of RFID, cannot quite get beyond the issue of privacy, especially in this wonderful era of the PATRIOT Act. In a way, they brought it on a bit themselves. There was one secret pilot, which was set up in a store, making it possible to actually see customers walking from different departments in the store; they didn't tell the customers, and they didn't tell anybody, and people got a little upset. It led to strong reactions on consumer laws, and on consumer groups and legal groups.

In California, there's a lot of legislation in the works, Senator Leahy from Vermont, when he's not ducking the vituperatives from our vice president gets into the act, the Federal Trade Commission, all these folks are involved.

The smart folks at ALA and in the library community have encouraged us (and them!) to get out in front on this issue. We must reassure our patrons and our consumers and ourselves that if we're going to use this technology, it's going to be used responsibly.

So, the ALA and the Book Industry Study Group convened a task force that was quite broad, that included the whole range across the publishing value chain, as well as IBM, transportation groups, the Commissioner of Privacy in Canada and so on. Our goal has been to create a statement of general principles about protecting the privacy of the individual when RFID technology is used. Key among the ideas that we're promoting is that any and all personal information is kept separate from the transactional data recorded on or with the RFID tag. So no personal information actually gets there.

The second thing you need to protect is the data. You need to protect it against interpretation by any unauthorized and ignoble third party, as they're known. So the guy in the black Chevy with the dark glasses waves his wand as you exit the library; but even if he scans your book, all he will

get is a bunch of random numbers which only library personnel, could interpret.

I think privacy is an incredibly legitimate concern. At the same time, it's still fairly early in the game and if we do our RFID carelessly, we will put a big club in the hands of big brother. But if we do it right, I think it can be a tremendous boon for libraries and for all forms of commercial enterprise.

So let me end in praise of libraries. Libraries have long been leaders in the introduction of new technologies, whether in content forms or the delivery of content or for technology for use in the back office and inbibliographic systems. I think it is a logical extension of this historic role, for libraries to be leaders in the exploration of RFID, as well. In many ways, they make an essential and even an ideal setting in which to explore the customer or patron facing use of RFID. In this sense, libraries are absolutely unique. Wal-Mart may be as big as it is, the Department of Defense is obviously, but none of them are using RFID on a one-on-one basis the way it's starting to be used in some libraries. And in terms of privacy, I think we need to move forward with the expectation that reasonable minds and responsible hearts will prevail to the benefits of publishers, librarians and patrons and all of us. Thank you.

remarks of Douglas Carp

Douglas Carp is general manager of ID Products Group at Checkpoint Systems. He directs all aspects of Checkpoint Library and Access Control Division and oversees strategic business development and partnership for specific RFID applications. Prior to being appointed to this position, he was a senior director of RFID product development and managed the joint engineering development program with Mitsubishi material. He joined Checkpoint in 1997 after spending twelve years at Lockheed Martin, where his last position was program manager for Foreign Sales Japan. He has also held positions at General Electric and RCA. He earned his M.B.A. from Rutgers University and a B.S. in electrical engineering from the University of Rochester.

RFID is an amazing technology and I tell the story to many people. There isn't a month when I don't pick up my son's *Popular Science* and there is some article about it. Last month was my smart garage, which is going to tell me everything that's in my garage and when it's out of order. But I think we need to bring things back to technology versus solution. When we talk about all the great things that can happen, the technology could do a lot. But as consumers, we don't buy technology, libraries are buying technology; we're buying a solution to our problems, and it's how you use that technology that is really going to determine whether you have privacy issues or any other issues with it.

I think we need to keep that in mind when we talk about libraries. If you look at the circulation desk—and we're going to break these down to the various places within a library where we can use it—if you look at a circulation desk today, you're using items with a barcode, one at a time, carpal tunnel issues, very slow. How does RFID enable you to do that faster? Well, it enables you to check out or check in multiple items at the same time. Four, five, six, seven items, one easy movement and the technology in the system enables you to do that at your circulation desk.

Self-checkout. Self-checkout is absolutely the wave of the future. We're seeing it everywhere. How will RFID enable better self-checkout? It needs to be easy for your patrons to use and it needs to be accurate and effective. Well, that's what we're seeing at self-checkout. Make it easy and more people will use it, which helps your circulation problems.

From a security point of view, if people are removing items today that are not checked out, you simply get a beep. With RFID, a security gate can actually identify what the item is that is being improperly removed from the library. What does that do for you? You can approach the patron and ask them to check that item out, but even if you don't do that, you at least know that that item is no longer in your library and, therefore, you can replace it to have that available for the next patron who wants it. So you're provided more information to help you manage your collection.

The last issue is inventory. For many people, inventory is almost impossible to do if you have to do it manually, one by one, scanning with a barcode wand. The technology in an RFID system enables you to simply walk by the shelves with a reader and take inventory without having to touch anything, without having to line up the little laser to the barcode.

So, this is what I'm talking about when we talk about a system. Take the technology, put it into the system, make it solve problems. Do you need that within a library environment to solve all your problems? Maybe not, but it is a solution.

Let me give you some actual statistics to show you libraries that have implemented the technology in the system and what kind of results you can look to achieve. For example, reducing staff time on circulation. A library in Australia, before they implemented an RFID solution, 85 percent of their staff time was spent on circulating materials. They implemented an RFID solution and reduced that to 5 to 6 percent of staff time. That's just an amazing statistic for the kind of efficiency you can look to. How do we increase circulation? A couple of libraries were able to double or more their circulation without additional staff because they implemented an RFID solution. Patron checkout time. How do we get patrons in and out quickly? Well, in Grapevine they reduced it from fifteen minutes to three minutes. And inventory: 70 percent decrease in the time it takes to take an inventory.

Those numbers to me really tell the story of why everyone should be interested in RFID and what it can do

for you. So the question comes up, when is the right time to get involved in a new technology, in this case, in RFID? Certainly there are plenty of articles about the penny tag; maybe if you wait a little longer, it will be even cheaper. But the fact is right now is a great time to be involved. The technology is proven. It is stable. It's been around for fifty or sixty years. What has happened is that it's gotten cheaper, better, faster, but the core technology is stable, is reliable and is proven. Systems in libraries have been installed. It is out there. It works. The results are there.

Here are just a couple of things to think about, when you are deciding whether to implement an RFID system. The first is to define your goals and expectations. Everybody has different reasons for getting involved and the most important thing you can do to be successful is to understand up front what you really are expecting to get from your system. What are the exact problems you have and how will this system help? Develop your own model. Every library is going to have a different one. Some are more interested in doing a self check. Others are more interested in inventory. Develop the model that makes sense for you and see how the system applies to that model.

Also, involve everybody in your library in the decision process. Implementing an RFID solution will involve your IT department. It will involve your circulation staff. It will involve the back office. Everybody needs to be involved and understand and have their opinions considered in the process to make sure you get the system that you really need. Look at the requirements and understand the issues around standards and the issues around privacy because they are very important.

People talk a lot about standards today; they think there are standards and there really aren't. What we as consumers want for standards is interoperability or the ability to buy products from multiple vendors. Unfortunately, what exists in standards today are a proprietary solution that has a standard approval but it's still proprietary. Standards do not mean interoperable. That's something to understand how important in your application.

The same with privacy. Jim alluded to the guidelines that are being developed for privacy for using the technology in libraries. It's important to understand RFID has a lot of capabilities and a lot of things you could do. For example, you could put patron information in a tag but why? You don't need to. Limit what you're doing with it to meet the need and you should be okay.

Last, make sure you choose the right partner when you get involved, because it is a system that you will have for many, many years. You need to have people who have the expertise to not just provide a point solution of technology, but a complete solution, a system that can be installed and maintained and they will help you evolve as the technology does. Thank you.

remarks by Donald Leslie

Donald Leslie is the industry and government business manager for 3M Library Systems. He's been actively involved in the library industry for the past fifteen years. To support 3M's participation as a founding partner of ALA's At Your Library campaign, he helped to organize several projects and workshops with ALA divisions aimed at improving the ways in which libraries market services to their customers. In conjunction with the ALA Washington Office, he assisted in establishing the ALA Business Alliance to promote increased federal funding for libraries. He's also a member of the Association of School Libraries Alliance, the International Federation of Library Associations, Business Counsel and on the National Library Boards of Drake University and the University of North Texas. He was instrumental in the formation of the 3M AAFL Salute to Schools Grant Program, which in the past six years has provided $7 million in book security system to needy secondary schools throughout the United States. He earned his M.B.A. from the Wharton School of Business and Commerce at the University of Pennsylvania and a B.A. from Dickinson College in Carlyle, Pennsylvania.

I agree with what has been said by the two previous speakers for the most part. I will say that there are differences between RFID technology solutions and I would encourage you to find out about those differences by going to the tradeshow part of the convention and visiting the booths of the various companies that are presenting RFID today. I'm not going to talk about that part of it. I'm going to be at a higher level. The topic I'm going to discuss is adopting new disruptive technologies. The latest is RFID for libraries.

I would advocate that the library industry is one of the best, if not the best, at adopting new disruptive technology. And when adopting new technologies, the library community, for the most part, gets what it wants and needs. The newest disruptive technology, RFID for libraries, is suffering the same fate.

What do I mean by disruptive technologies? I mean technologies that, if they are going to work well, require libraries to make significant, often costly and often difficult changes in the way they operate. I'll use an example with which I am very familiar, namely, self check. Introduced globally in 1993, there are few libraries that bought into the concept from the beginning. They installed self checks and had immediate positive results. Their customers seemed to take to them right away and, more importantly, library staffs were excited because they no longer had to spend their time doing the repetitive job of checking out materials.

So how come libraries didn't buy a thousand self checks in the first year? The concept sounds really good. There are many reasons, but the underlying one is that the concept of patron self service was not understood and accepted and, therefore, not wanted by libraries. Those libraries that were

successful early adopters of self check had at least two things in common. They understood the concept and how it would benefit the library, and they successfully initiated a change management program within the library.

Today, after several years of hard work on many peoples' part, the acceptance of self check, the concept of self check and the still larger concept of self service is for most librarians no longer an issue. Now the questions librarians ask are what brands of equipment do we want and how can we improve and expand self service? It's gone from a concept that wasn't accepted to a concept that is readily accepted.

So here we are today with one of the latest disruptive technologies, RFID for libraries. I've got an exercise for everybody, I hope you don't mind standing up. You needed to stretch anyway! This is a people count, not a body count—a body count has other connotations. I have a question for you that can only be answered in one of two ways, yes or no. If your answer to my question is yes, you may sit down. The question is, with what you know today about the concept of RFID for libraries, are you convinced that it is a system that you want for your library. If it's yes, sit down. I think if I had asked that question a year ago, I'd have everybody still standing up.

For those of you who are still standing, this panel discussion is really designed for you. We hope we are providing you with the information you need to become more comfortable with the concept of RFID in libraries by taking the mystery and misconceptions out the technology and by answering questions about such things as interoperability and privacy. We want to give you the opportunity to understand and accept the concept of RFID sooner rather than later.

I referred earlier to the need for a change management program to insure the successful adoption of disruptive technology. Implementing an RFID system is not inexpensive. It needs to work the first time for your library. There are many books on managing change. I'm certainly not an expert on the subject, but having learned that it is critical from experiences of self check, I highly recommend you explore the subject if you haven't already done so. There is one source I would recommend that you might want to look at. It's called the people's network change management tool kit. It's developed by Information Management Associations, the Council for Museums, Archives and Libraries. London 2003. It was developed for libraries and it clearly states the principles of change management and has checklists and worksheets to walk you through the process. It addresses issues of change including the nature and scope of change, the main elements of successful management of change, the nature of your organization and working with people.

The most critical element of managing change and one that cannot be over-emphasized, especially for the successful adoption of disruptive technologies is building staff ownership, staff buy-in. This toolkit does a good job in detailing the process necessary to accomplish this buy-in. To date, between 300 and 350 RFID systems have been installed in libraries around the world. We have a long way to go to make RFID for libraries the technology of choice. But when it does become the technology of choice, our libraries will be more efficient, customers will have higher levels of satisfaction and library staffs will have more time and energy to develop and use new skills.

In my opening statement I said that the library industry is the best at adopting new disruptive technologies. And why is this true? It's really simple. Librarians have the most open and honest communication of any industry or profession. We talk with each other and we talk with each other and we talk with each other. We ask and answer questions at an amazing rate. That is also why librarians in the end get what they want and what they need. So keep talking and asking. It brings out the best in all of us.

In conclusion, RFID for libraries is a new disruptive technology that is right for libraries. Is it easy? No. Is it perfect? No. Does it work better for libraries than what we use today? That's a question you have to answer. I say yes. Thank you.

remarks by Karen Saunders

Karen Saunders has devoted her professional career to working in the Santa Clara City Library. Prior to her current position as Assistant City Librarian, she served as a reference librarian, cataloguer, technical services supervisor, and division manager of material access services, which is circulation, automation and technical services. During her tenure as technical services supervisor, she served on the implementation team for the Innovative Interfaces INNOPAC system. As division manager of materials access services, she was project head for the RFID implementation project. Recently, she coordinated implementation of a material sorting system in Santa Clara's new Central Park Library, which integrated products from three vendors: Innovative Interfaces, Checkpoint Systems and Tech Logic. She is a member of the American Library Association, California Library Association, Public Library Association and Innovative Interfaces User's Group. She earned her B.A. in English Literature at the University of California-Berkeley and her M.L.S. at San Jose State University.

For the last four years, the Santa Clara City Library has successfully used RFID technology for all circulation functions. In my presentation today, I would like to tell you why we chose RFID, briefly explain how we implemented Checkpoints intelligent library system, outline some of the privacy issues that were considered and highlight the positive results we've realized by implementing RFID technology in our library.

The city of Santa Clara Library is located in the heart of the Silicon Valley, California, serving a technologically

sound population of approximately 700,000 citizens. Although we are considered a medium-sized city library, we serve an expanded population of neighboring cities in the San Jose metropolitan area. Our circulation will exceed 2.5 million items this year.

In April 2004, we moved to a two story, 80,000 square foot facility, our new Central Park Library, which features innovative building systems and expanded technology. There is strong community support for our library and our city government is committed to provided quality library services for the citizens of the city. Our library's theme, honoring tradition, reflecting community and embracing the future, forms the basis for decisions we make regarding library services in our community.

In 1999, while in the midst of designing our new library, we began evaluating our existing library security system. Our legacy Checkpoint radio frequency system had served us well for fifteen years, but we had streamlined the checkout process as much as we were able. We had also investigated self-check options with the legacy system but determined that most of them were not user friendly. We had also determined that there were limited opportunities for flexibility expansion or interface with future technologies.

During this time, our circulation continued to increase while our staffing levels unfortunately had been unable to keep pace with demands for service. It was not unusual to see a line of fifty or more patrons waiting to check out materials on a busy weekend afternoon. Each individual circulation transaction took a minimum of five separate repetitive motions to complete which partly accounted for the long lines at the circulation desk. Although we were fortunate that none of the staff filed workers' compensation claims, we did start to see the tell-tale wrist bands among those staff who had spent extended hours on the circulation desk. This wasn't a healthy environment for our staff either physically or emotionally, and the long lines at checkout were very frustrating for library patrons.

As part of our evaluation of technology for the new library, we developed a list of criteria for our ideal security and self checkout system. The system had to simplify the check-in and check-out process for staff, increase efficiency and minimize repetitive motion. We needed a system that eliminated some steps involved in the check out process, as well as one that would not present ergonomic issues for staff. Our new facility would be twice the size of the old library but again, unfortunately, we were not doubling the size of our staff. We also were interested in being able to realize staff savings and to be able to utilize our circulation staff in service roles in the new building that would involve direct public contact. The self check out component had to be easy to use. Our goal was to save our patrons time at check out.

With any new technology, it's very important that a patron's first use of that technology be a success. We wanted minimal staff intervention and high patron satisfaction. Magnetic media such as videos and DVDs needed to be secure, but we wanted the checkout process to be handled in the same way as books. We had investigated other systems that required separate steps for the checkout of AV materials and found them to be a little bit confusing for patrons. A connection between item security and the bibliographic record was desirable in order to determine which item had triggered the alarm. With our legacy system, we only knew that something had set off the alarm, but not the specific item that had walked through the door.

The ability to inventory our collection without handling each individual item was highly desirable. The last inventory of our collection had occurred in 1992 when we had completed a barcode project, but it was a very labor intensive process. We wanted a more streamlined approach to collection management, preferably one which did not involve handling each individual item. And finally, the system had to be flexible, one that could be used with new and future technology.

At the time we were designing our new library, we knew we wanted to take advantage of a materials handling system. And we also knew that our Checkpoint legacy system couldn't integrate seamlessly with such a materials handling system. As we were evaluating our options in the field of library security, RFID technology was literally delivered to our doorstep in the form of a newspaper article in the *San Francisco Chronicle*. Checkpoint Systems had just announced the availability of their intelligent library system, an RFID system that combined radio frequency and microchip technology. We immediately began talking to Checkpoint and determined that their new intelligent library system met all of our established criteria.

After securing funding for an RFID system as part of our budget cycle, we began the process of designing an implementation project. In 1999, there weren't many libraries that had successfully implemented RFID technology so there weren't very many models of implementation for us to follow. We were allowed money for RFID targets and equipment, but only a small amount was allocated for staffing the conversion project. So we needed to be very creative in our approach to targeting over 310,000 items in our collection. As a result, the entire staff from shelving pages to reference librarians participated in the RFID tagging process. Staff were assigned to a specific number of hours per week to participate and assignments included programming the RFID tags using a programming station, affixing a target cover to the item and returning processed items to the shelves.

In retrospect, involving the entire staff in the project led to the success of the project. Everyone took ownership of the RFID implementation and it was no longer just a circulation project or technical service project, but an entire library project. Our circulating book collection was targeted during the first six months followed by audio/visual

materials, periodicals and reference books. The entire process took about one year to complete.

Two express checkout machines were introduced to the public. Ninety-five percent of the circulating book collection was targeted and library staff were assigned to assist at the express check machine. In reality, very little assistance was needed as the self-check machines are very user friendly. Six months after we implemented two self-checkout machines, we were able to release about sixty-eight hours of staff time from the circulation area, which allowed our library assistants to staff an information desk in the library.

For details about the specifics of the implementation process, I will refer you to our library's webpage which describes the entire process, including a list of frequently asked questions, and this link will also be provided at the end of the presentation.

When we began implementing RFID technology four years ago, privacy issues surrounding the technology were not really at the forefront of discussion. In making decisions regarding the use of this new technology, we took a common sense approach in designing policies and procedures that would be consistent with our library's missions, goals and policies. We decided that only the item barcode would be programmed onto the RFID target, since the item barcode was what we were currently using to check out materials. It was the only link that was needed between the Checkpoint security system and our innovative millennium integrated library system.

Even if read remotely, the barcode itself gives limited information about the item. We do not display barcode information in public access catalogs and this information is only accessible by our staff. RFID tags for our collection were programmed with the existing barcode number and all new acquisitions from 2001 and forward utilized pre-program barcodes with random barcode numbers.

We decided to retain our existing library patron cards, which contain a barcode only. Although it was possible to purchase an RFID patron card, we decided against it for several reasons. They were very expensive, some of them being upwards of five times the expense of our existing library patron card. Reissuing over 100,000 patron cards after a lengthy RFID implementation project was also not a popular idea for either workload or financial reasons. Finally, we felt a bit uncomfortable about the ability to read a patron card remotely even though the RFID card would only contain a patron number. Linking the two together outside the privacy and security of our library databases had the potential for creating a connection between the patron and the item in hand, which is what we wanted to avoid.

We publicized the library's use of RFID technology whenever possible. Articles were written for our local Santa Clara paper and for our city's utility bill insert, which reaches all residents of the city. Although we didn't go into great detail about the technical specifications of the system, staff explained the new technology to library patrons when they assisted them at check out and when they assisted them with the express check machine.

The library also presented a program at the innovative users group and arranged for tours during the library association meetings that were held in the area. A copy of that presentation is also available on our library's website and accessible to everyone. We've had numerous site visits from both the library and commercial sector as well as several international visitors from Japan.

The inventory wand, while portable and smaller than the average staff station reader, is primarily used to search for missing and claimed return items in the collection. A list of barcodes is gathered and uploaded into the inventory wand and then the inventory wand beeps when you locate the missing item on the shelf. The read range of the inventory wand is fairly limited and it's very obvious when the wand is being used. You can't really sneak up on anyone with this wand; they'll see you coming. We've also used this handheld device to inventory selected high use collections such as DVDs and music CDs.

A side benefit of the inventory wand came when we were having a problem with our patrons hiding DVDs throughout the library collection in an attempt to establish their own personal reservation system. We gathered a list of the DVD and barcode numbers, uploaded them into the inventory wand and found the missing DVDs in some very interesting places in the library, including underneath the metal shelving units, behind pictures in the reference collection all over the library.

Finally, we have a written privacy policy that was developed in conjunction with our city attorney's office and has been approved by our library board and city council. Although it doesn't mention RFID specifically, the content of the policy reflects our library's commitment to honoring the privacy and confidentiality of patron information. The library does not create unnecessary records, only retains records to fulfill the mission of the library, and does not engage in practices that would put any of that information on public view. California law prohibits the release of patron checkout information without a court subpoena and our line staff have been trained in privacy and confidentiality issues.

Four years after implementation our library continues to see positive results in utilizing RFID technology. The percentage of patrons utilizing express check machines had risen to almost 50 percent in the first month of use in the new library. We have expanded the number of express check machines from two to seven in our new facility, saving our patrons time at checkout. Two new service desks are in operation at our Central Park Library with a minimal overall increase in staff. This was accomplished in part due to the savings and staff time realized by RFID implementation.

Checkpoint RFID technology has successfully been combined with Innovative Millennium and the new Tech Logic materials handling system for library returns. Items are returned via conveyor belt, scanned and checked in automatically by the Checkpoint RFID reader attached to the system. Patron privacy is enhanced as items are checked in and sorted to book trucks without staff intervention.

Our positive working relationship with our vendors continues as we jointly explore future enhancements to the system. The library anticipates implementing a new audio/visual release station on the express check machine which will increase the number of items that can be checked out to include those in security cases such as the infamous DVDs and music CDs. And finally RFID technology has been positively embraced by our public and staff who enjoy the real benefits, such as ease of use, efficiency of operation and best of all, a real savings in time.

remarks by Lee Tien

Lee Tien is a senior staff attorney at the Electronic Frontier Foundation in San Francisco, specializing in free speech and privacy law. Before joining EFF, he specialized in Freedom of Information Act litigation. He received his undergraduate degree from Stanford University and his law degree from Boalt Hall School of Law at the University of California-Berkeley. Since September 11, he has focused heavily on privacy and surveillance issues. His current major policy concerns include electronic surveillance, biometrics, location tracking technologies

I am not quite as positive about RFID in libraries as some of the other speakers but I will try to explain why that is. We will just be scratching the surface and then, I confess, I am not a library expert or a person who has been involved in libraries for a long time. I am a First Amendment attorney, a privacy advocate. I have been addressing issues about RFID implementation not only in the commercial retail sphere, not only in the library sphere, but also in the general government sphere.

My role here is to look at libraries as a part of the public sector that is making decisions about a technology that has profound privacy implications and ask not only questions about the substantive privacy issues, but also the process, the accountability, the entire process of public deliberation that we go through when we make decisions that contribute to a general social infrastructure of a potentially dangerous surveillance technology.

My perspective is shaped both from watching this happening at the federal and state levels, which is pretty much people beginning to scramble towards what they see as the next big thing, but without any kind of meaningful public discussion. The DOD has not consulted anyone as Congress has not specifically authorized the Defense Department's use of RFID. These things are just happening.

And then also at the grass roots level where I am involved in the debate with regard to San Francisco Public Library over whether or not San Francisco should use RFID in its library. This was something we found out about in a very unclear manner. It was buried inside a strategic plan, some library gadfly noticed it, brought it to my attention, we began to ask questions. We found the library didn't seem to have a whole lot of answers and we started to raise a public stink about it, which has led to the point where we have a number of supervisors—even though the library commission has approved the plan—we seem to have some members of the city Board of Supervisors asking whether or not we should go ahead and do this and is it really worth it, have we really answered all the questions.

So at one level there's a big accountability policy issue, governance if you will, because I think that when an institution like the public library adopts a technology with privacy implications, it has a significant legitimating effect for the use of that technology on the rest of society—it is a way of saying that this is a technology that we should use. Now depending on your privacy practices, depending on how the technology is architected, that may well be right, but I think that that's a reason why I actually do agree with Jim that libraries are sort of a privileged side of technology deployment.

Now I think you all understand that the reason why groups like the EFF or the ACLU are concerned about RFID, is because it is promiscuous and stealthy. Promiscuous in that it will generally speak to any reader that is compatible with it. It doesn't have current price points and architectures. It doesn't have anything really in the way of information security. It doesn't have enough gates to give you anything interesting graphically. And it is stealthy because "A," it is small and "B," when it is read by a reader you have no way of knowing that a transaction is occurring. These two things fundamentally combine to create a privacy issue.

There is a sense, in which, as one friend of mine at Sun puts it, RFID is like a two year old child. They can talk but they constantly say the same thing. I'm here. I'm here. I'm here. My number is XYZ, XYZ, XYZ. And that gets to be a bit of a battle after a while. One of the things that is interesting is that a lot of people have asked me, "Well, so what? What's the big privacy deal if they get this stupid number? They may not even know what that number means. Why should we worry about that?"

Let me get to that, but add in a couple of things about why government use, including library use of RFID is, I think, a very different problem and a very different issue from that use in the retail or commercial sector. Again, I think Jim made the point that unlike a Wal-Mart tag, which can be killed at the point of sale, and Wal-Mart's inventory and supply chain problems will have already been done with as far as that, they have no reason, at least not today,

for that tag to remain alive. In the government setting, whether it's a library book that needs to be returned or a government issued driver's license or passport which has been RFID tagged so that you are expected to be ID checked when you go through an airport security checkpoint, government use is likely to be persistent.

When you look at the range of government uses that already are in development or are going to come down the pike, it will be pervasive. There are a huge number of government uses that are being looked at, from charter schools to livestock tracking to inmates to parking. Some of them are rather scary. Some of them are rather mundane and not a great concern to privacy; they're tracking lobsters, too, but we don't worry about that.

But my earlier point was we're not having a public discourse about those uses, they're just happening. So if schools and post offices and cash and public transit and libraries all use RFID then we will have a pervasive public infrastructure that is set up for tracking and other forms of surveillance.

Now let's talk a little about the privacy threat. I think that from a library community perspective, we care the most or worry the most about what I will call the preference threat. That is, that others will know what you like or believe or think about as a result of a kind of surveillance. And that's the obvious question that's presented by saying, gee, we're going to use RFID tags with our ISBN numbers and titles, blah, blah, blah. Everyone can see that this raises an issue. Even if you think that our read range is too short, you're still going to say, we shouldn't have that kind of information in the RFID tag.

Closely related to the preference threat is the hot listing threat. This is when items of interest are on some kind of a watch list. Now I hear a lot, and this happens a lot in the San Francisco discussion, nobody cares about what you read. I just have three words to say to that: library awareness program. Anyone who's old enough or knows and understands what our law enforcement community has done, has actually done, knows that the government has actually cared about what you read. And anyone who thinks that they don't is really not understanding the history of libraries and free speech.

So it is, in a sense, technologically far fetched but at the same time you do have to worry about the idea that certain books, certain materials will be considered to be on a kind of hot list, and there will be ways of getting at that information through RFID. For instance, the fact that only an excision number is used that is private to the library, is not a defense against a hot list because all you have to do is to borrow the book. Figure out what the number is. You don't need to have access to the library's full catalog to take out books you care about, if those are the ones that you are tracking. It's just a sort of an extension technologically of what they used to ask of librarians: who borrowed this book?

But then there are the other threats which are more generic to RFID. I only bring these up because I want to make sure the people in the library community don't forget that all the things that people worry about with non-book RFID still persist in the library setting. So solving those problems that are peculiar to the library doesn't necessarily address any of the others. These others are what I will call IT linkage, inventory, and location tracking.

All of these, in order to become significant threats, will require things that don't exist today. But given the expansion of RFID and the incentives that we're seeing, I expect to see them in the future. The IT linkage threat is simply that your personal identity is linked to one or more RFID tags that you carry. Now this can be at the beginning or at the end of what I will call a threat cycle. It may be that after you have checked out a book and after you have done a number of other things, you use your credit card at an ATM machine that is also able to scan RFID tags, and it is able to associate your identity because you have finally engaged on that day the ATM machine, whereas everything else you did on that day was in cash. But there is an identification card that then links you to the RFID tags that you're carrying. Or, it can be done through an internal database such as library circulation records and then we have a question of how secure these are.

The location tracking threat is that even though I don't necessarily know who you are, and I don't know what that book is—I may not even know that it is a book—but if there are checkpoints in society, e.g., airports, federal buildings, libraries, Wal-Mart, etc., where you walk through a gate and RFID tags are scanned, a particular number can be seen to have been at this place and at another place.

Here again, the fact that a library book uses a number that cannot be linked to the content or to a particular identity in a circulation record is essentially irrelevant because what they need to know is that it is the same thing and the,n if at some point, there is an identification, you have a way of tracking a person. That's why I say that the ID linkage threat can be the beginning or the end of a threat cycle because they may be able to track your movements historically through the records at different stores, different places and then finally say, ah, that was actually Lee, who left the library, got onto the bus, and went someplace else.

All of these threats are totally theoretical today. But I don't think they will remain theoretical for long. One of the things that's interesting talking to people in the RFID industry is that as a privacy advocate, we tend to think fairly long-term. I am thinking about threats ten years down the road, fifteen years, twenty years, the same way that, in 1965, when computers were coming in, sociologists of technology were thinking about what a society would be like with pervasive computers. That requires thinking fairly far ahead and even engaging in what people consider to be speculative science fiction, doomed prophets and prophe-

cies. But that's some of what privacy advocates end up having to do.

In contrast, when you listen to the industry—and I've been in enough meetings to understand this—they have a very different sense of time. When you hear the industry and privacy advocates talk about the privacy threats, we may be saying the same thing in some sense, but they see something five years off as being way off. I see something ten years off as something we should be tackling right now.

I'm going to end here and say that I think we have some serious privacy issues presented by RFID technology, that we do not yet have the kind of conversation with society that we need to have about how it will be used. I will close with this analogy. RFID is like a lot of other kinds of privacy threatening technologies. It can be thought of in terms of privacy pollution. Often, it has been shown economically that it may be rational for an individual company or firm to go ahead and pollute because they get the benefits of the activity without having to mitigate the cost, but the rest of society ends up suffering in terms of lower air or water quality. It is as the economists put it, a problem of social cost or external cost. A lot of privacy threatening technologies have that same sort of effect.

Computers make things much more efficient and a given firm or a given institution may see a really powerful efficiency interest in computerizing, but I think we have seen over the last thirty or forty years that that has not come without a social cost: the rise of identity theft, more and more people feeling that they have lost control of the personal information that is running around in huge databases out there. These are some of the things we need privacy law and privacy discourse to really attack.

I think of RFID as producing privacy pollution. It may right now be a very small amount. You may not even notice it as it mixes in with the rest of the privacy atmosphere, but as we make more and more use of RFID on more and more things, from driver's licenses to postage stamps to cash, that pollution level is going to get, I think, intolerable. We need now to start thinking very hard about what we're going to do about it. □

(FTRF report . . . from page 171)

(FCC), asking the commission to reconsider and reverse its decision to impose penalties on NBC for airing allegedly indecent comments made by the singer Bono during the 2003 Golden Globe awards. The FCC's decision reversed its original order in the matter, which did not impose penalties on the network after concluding that Bono's comment, taken in context, was not indecent or obscene. The petition further urges the FCC to set aside new rules imposing more stringent punishment on broadcasters for indecency. The petition and other documents related to this case can be found at www.fcc.gov/eb/broadcast/plead.html.

The Foundation is also involved in these ongoing lawsuits:

Ashcroft v. *American Civil Liberties Union* (formerly *ACLU* v. *Reno*): This longstanding litigation challenges the Children's Online Protection Act (COPA), a law that proposes restrictions on Internet content deemed "harmful to minors." A U.S. Supreme Court decision reversed a Third Circuit Court of Appeals ruling that struck down the law, and sent the case back to the Third Circuit for further review. After the Third Circuit once again found COPA an unconstitutional abridgment of speech, the government again sought review of the decision by the Supreme Court. FTRF joined with several other First Amendment groups to file an *amicus curiae* brief supporting First Amendment rights. The Supreme Court heard oral arguments on March 2, 2004, and a decision is expected by the end of June 2004. [The decision striking down COPA was issued on June 28 (see page 181)]

Center for Democracy and Technology v. *Fisher*: The Foundation agreed to provide a grant in support of the Center for Democracy and Technology's legal challenge to a Pennsylvania statute that allows a Pennsylvania district attorney or the Attorney General to require Internet service providers — including libraries — to block access to specified Web sites on the Internet. Before the lawsuit was filed, the state's Attorney General issued hundreds of blocking requests, forcing ISPs to bar access to both targeted and other, wholly innocent Web sites without adequate due process protections, raising serious First Amendment concerns. The federal District Court judge issued a temporary restraining order prohibiting enforcement of the law while the case is pending before the court in Philadelphia. Following a hearing, both parties filed briefs with the court and are waiting for a decision.

United States v. *Irwin Schiff, et al*.: The Foundation filed an *amicus* brief in this lawsuit after the federal government successfully sought a temporary restraining order against Irwin Schiff and his publisher, Freedom Books, forbidding them to publish Mr. Schiff's book, *The Federal Mafia: How Government Illegally Imposes and Unlawfully Collects Income Taxes*. FTRF's brief opposed the court's prior restraint of Mr. Schiff's book. After a federal judge in Las Vegas upheld the restraining order, Mr. Schiff and the ACLU of Nevada appealed the ruling to the Ninth Circuit Court of Appeals. The Ninth Circuit heard oral argument on February 9, and a decision is pending.

FTRF joined in this case to defend the principle that the First Amendment protects even fringe opinion or belief. Criminalizing advocacy that disputes the constitutionality of income taxes, or which advocates the decriminalization of drugs like medical marijuana, comes close to creating "thought crime." FTRF will continue to join with other

organizations to fight the court's order forbidding publication of Mr. Schiff's book.

Yahoo!, Inc. v. *La Ligue Contra Le Racisme et L'Antisemitisme* is an ongoing case involving criminal charges that have been filed against the CEO of Yahoo! and monetary penalties assessed in French courts against the company for allowing the sale of Internet auction items and the posting of book excerpts on its Web site that violate French law but are fully protected speech under the American First Amendment. La Ligue Contre Le Racisme et L'Antisemitisme and the French Union of Jewish Students initiated legal action against Yahoo! for hosting pages containing auctions for Nazi and racist memorabilia on U.S. servers that could be accessed by French citizens. The two groups won their initial suit and the French trial court imposed fines against Yahoo!, which the groups tried to enforce. Yahoo! filed suit in the United States to obtain a ruling on the validity of the French court's order in light of its users' First Amendment rights. The district court judge ruled that no other nation's law, no matter how valid in that nation, could serve as a basis for quashing free speech in the United States. The Foundation has filed an *amicus* brief in this case which is now under appeal and pending in the Ninth Circuit Court in California.

The issue, which the Foundation Board discussed at length at this meeting, concerns the ability of other countries in which speech is more restricted than it is in the United States to compel American courts to enforce their judgments against American citizens or companies for expressive behavior that is fully protected in this country. The case has significant implications concerning the nature and the legal implications of cross-boundary Internet traffic. It may also set precedents that could have repercussions for intellectual property rights and treaties, particularly for cases in which American entities are trying to exact protections in countries where U.S. copyright may not be recognized. For librarians committed to the rights of free expression at home and abroad as embodied in Article 19 of the Universal Declaration of Human Rights these are critical questions.

State Internet Content Laws

The Freedom to Read Foundation has participated as a plaintiff in several lawsuits challenging state laws that criminalize the distribution of materials deemed "harmful to minors" on the Internet. *Athenaco, Ltd.* v. *Cox*, challenging the recent amendment to Michigan's "harmful to minors" statute, is the newest lawsuit filed by the Foundation in partnership with other First Amendment organizations. Joining FTRF as plaintiffs are ABFFE, the Association of American Publishers, and several Michigan booksellers. Both parties filed motions for summary judgment, and the court heard oral arguments on May 17, 2004. A decision is pending.

Shipley, Inc. v. *Long* (formerly *Shipley, Inc*. v. *Huckabee*) is a First Amendment challenge to recent amendments made to the Arkansas "harmful to minors" display statute. FTRF and its fellow plaintiffs filed a motion for summary judgment on July 25, 2003, and oral arguments were heard on December 8, 2003. Subsequently, U.S. District Judge G. Thomas Eisele enjoined enforcement of the challenged provision and certified four questions of law to the Arkansas Supreme Court. The parties are waiting for a decision from that court.

FTRF is monitoring *Southeast Booksellers* v. *McMasters* (formerly *Southeast Booksellers Association* v. *Condon*), a lawsuit filed by members of the Media Coalition to overturn an amendment to the South Carolina "harmful to minors" law that sweeps in visual matter communicated via the Internet. The government filed a motion for summary judgment, which plaintiffs opposed by filing a brief. Subsequently, Judge Patrick M. Duffy announced he would delay ruling on the motion until the Supreme Court issues its decision in *Ashcroft* v. *ACLU*, the COPA lawsuit discussed previously.

ABFFE v. *Petro* (formerly *Booksellers, Inc*. v. *Taft*): The Foundation joined with several other plaintiffs to file this lawsuit to challenge Ohio's amendment to its "harmful to juveniles" law. After a federal court blocked the law, the government appealed the decision to the Sixth Circuit Court of Appeals. While the lawsuit was pending before that court, the Ohio legislature amended the law in an attempt to moot the litigation. Subsequently, the Sixth Circuit remanded the case to the trial court for further action. The plaintiffs then filed an amended complaint and a motion for summary judgment before the trial judge. The judge then issued an oral ruling finding for the plaintiffs. His written opinion is expected shortly.

PSINet v. *Chapman*: FTRF and its co-plaintiffs won this case when the Fourth Circuit Court of Appeals upheld the permanent injunction forbidding enforcement of Virginia's Internet content law. The government filed a petition asking for rehearing en banc and reargument of the case, but the Fourth Circuit rejected the petition on June 24.

ACLU v. *Goddard* (formerly *ACLU* v. *Napolitano*): Arizona amended its new "harmful to minors" statute after a federal district court struck down the law and entered a permanent injunction barring its enforcement. Subsequently, the Ninth Circuit Court of Appeals remanded the suit back to the District Court, where the parties exchanged briefs on the effect of the new statute on the lawsuit. The judge has now issued an order awarding summary judgment to FTRF and its co-plaintiffs.

ABFFE v. *Dean*: The Foundation is pleased to report that this litigation challenging Vermont's amended "harmful to minors" statute has successfully concluded with a finding by the Second Circuit Court of Appeals affirming the District Court's decision to issue a permanent injunction forbidding enforcement of the law against Internet speech.

Roll of Honor Award

This year's Roll of Honor Award is presented to June Pinnell-Stephens, a great librarian and steadfast champion of free expression and the First Amendment. Pinnell-Stephens is the Collection Services Manager for the Fairbanks-North Star Borough Library in Fairbanks, Alaska. Pinnell-Stephens first joined the FTRF Board of Trustees of the Freedom to Read Foundation in 1994 and since then has served as both President and Treasurer of the Foundation. The citation recognizing her fine work on behalf of intellectual freedom and libraries is attached to this report.

Fundraising

In addition to its litigation and work on behalf of free expression and the freedom to read, the Foundation's Board of Trustees continues to develop new methods of fundraising to support FTRF's efforts on behalf of intellectual freedom and the First Amendment. These efforts are being developed in coordination with the ALA Development Office to ensure that they do not conflict with similar initiatives being undertaken by the Association and its units and that appropriate donors can be most effectively identified and approached. □-

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(censorship dateline . . . from page 180)

Tech, which sells filtering software to Chinese messaging service providers. She said the new rules would lead to heavy demand for her company's product. "I think with the new rules the government will be expecting service providers to govern their content in a more regularized way, and this is what our system can do," she said. Reported in: *New York Times*, July 3.

Tehran, Iran

Iran's judiciary has stopped trying to impose the death penalty on Hashem Aghajari, a dissident history professor, his lawyer said June 28. Aghajari has been sentenced to death for blasphemy twice, and each time the penalty has been overturned.

Aghajari, who taught at Tarbia Modarres University, in Tehran, has been in jail since 2002 and may still serve up to five more years in prison for "insulting religious values," the lawyer, Saleh Nikbakht, said. The history professor was brought to trial for a speech in which he called for a religious reformation and said that Muslims were not "monkeys" and "should not blindly follow" the clerics who rule the country.

The courts determined that his remarks were a challenge to Ayatollah Ali Khameini, Iran's supreme leader, and initially sentenced him to death in late 2002, a decision that sparked mass protests by students. Reported in: *Chronicle of Higher Education*, online, June 30. □

(from the bench . . . page 190)

The dispute began when a court clerk mistakenly e-mailed transcripts of the closed, two-day hearing to the seven news outlets. The hearing, held June 21 and 22, concerned the admissibility of evidence about the accuser's sex life and money she had received from the state's victim-compensation program.

After learning of the mistake, Ruckriegle ordered the news organizations not to publish any information from the transcripts. The news organizations complied with the order, but immediately challenged it as an unconstitutional prior restraint on speech. Reported in: Reporters Committee for Freedom of the Press (rcfp.org), July 19.

video games

Olympia, Washington

A federal judge struck down a Washington state law designed to restrict the sale of violent video games to minors July 15, saying that such restrictions violated free speech rights. U.S. District Court Judge Robert Lasnik issued a summary judgment against the law, which was passed last year but had been suspended pending judgment in the case, which was brought against the state by the Video Software Dealers Association.

House Bill 1009 would have imposed a $500 fine on anyone, such as a store clerk, who sold a video game to minors under the age of seventeen, depicting violence against "law enforcement officers."

The plaintiffs argued, and the judge essentially agreed, that the law was too vague to enforce. "Given the fact that rights of free expression are at stake, the Court finds that the Act is unconstitutionally vague," Judge Lasnik said in his summary judgment.

Washington state Rep. Mary Lou Dickerson, the Democrat who wrote the law, said that many psychologists and other experts agree that violent video games are harmful to children. "While we may have lost this one battle in the sale of violent games against children, the war is far from over," Dickerson said, adding that there has been no decision yet on whether to appeal or propose a new law.

Dickerson is also organizing a grassroots campaign called "Game Smart" to better educate parents and other buyers of games for children about violence contained in some titles. Doug Lowenstein, president of the entertainment Software Association, which backed the plaintiffs, called the judgment "a pretty sweeping victory."

"Judge Lasnik made it that games are expressive and are protected under law," Lowenstein said. Reported in: Reuters, July 15.

shopping malls

Waterford, Connecticut

The shopping mall may be replacing the village green as a meeting space, but the state Supreme Court ruled July 19 that the suburban fortresses of capitalism need not provide the same free speech protections as a city street. In a unanimous decision, the high court ruled that managers at the Crystal Mall in Waterford legally prohibited union members from distributing literature there. Union officials argued the mall was not a completely private entity, because of its size and the government's oversight of its construction and operation.

"The size of the mall, the number of patrons it serves, and the fact that the general public is invited to enter the mall free of charge do not, even when considered together, advance the plaintiff's cause in converting private action into government action," Justice Joette Katz wrote.

The decision directly addressed a question still being worked out in courts around the country: Is the local mall the modern equivalent of history's town square, or is it just a giant bubble of private property?

Federal courts have held that the U.S. Constitution provides no public assembly rights in privately owned shopping centers. But state courts are allowed to adopt greater protection for free speech on private property.

Five states—California, Colorado, Massachusetts, New Jersey, and Washington—have held that the government may require mall owners to permit some political activity in common areas of the mall. The California and Washington decisions relied on public referendum laws, in which proposed laws can be put on the ballot if enough signatures are collected. Connecticut does not have such a law. Massachusetts allows political candidates to collect signatures in malls. New Jersey and Colorado allow people to leaflet on societal issues.

"Although the ultimate purpose of these shopping centers is commercial, their normal use is all-embracing, almost without limit, projecting a community image, serving as their own communities," the New Jersey Supreme Court held in 1994.

Connecticut's high court also sided with mall owners in a suit against Westfarms Mall in 1984, when the National Organization for Women was denied permission to solicit shoppers. The court found that no state action had been taken to interfere with free speech.

In the latest case, attorneys for Local 919 of the United Food and Commercial Workers Union argued that the mall was built with the intention of becoming the new town center and received extensive government oversight. Mall owners argued they had the right to protect their private business interests.

"Once you get into all of this other stuff, with potentially protesters, signs and placards, you're taking on a role more typically handled by state and local governments, not by private businesses," attorney Charles D. Ray said.

The court left open the possibility that the Connecticut Constitution might allow for greater protection of freedom of speech inside malls under other circumstances.

Attorney J. William Gagne, Jr., who represented the union, said it's significant that the court did not close the door on future cases. Reported in: *Newsday,* July 19.

art

Los Angeles, California

Seven years ago when Tom Forsythe, an artist and photographer, was searching for a subject for a new project, he settled on Barbie—producing seventy-eight photographic images showing the doll nude, and sometimes posed provocatively, in or around various household appliances.

"I thought the pictures needed something that really said 'crass consumerism.' And to me, that's Barbie," Forsythe said. "The doll is issued in every possible role you can imagine and comes with every possible accessory for each and every role." Forsythe began experimenting with images of the doll, and soon developed a new theme, which he called "Barbie's power as a beauty myth."

But his work was not met with universal acclaim, and his chief critic was Mattel, Inc., manufacturer of the Barbie doll since 1959. In the summer of 1999, shortly after Barbie's fortieth birthday, Mattel sued Forsythe, alleging copyright and trade infringement. After a legal tussle, which included a series of appeals, a federal judge in Los Angeles in late June ruled that artists are allowed to play with dolls.

And in a strongly worded order, U.S. District Court Judge Ronald Lew instructed Mattel to pay Forsythe's legal fees of more than $1.8 million.

"I couldn't have asked for a better result," said Forsythe, of Kanab, Utah. "This should set a new standard for the ability to critique brands that are pervasive in our culture."

Mattel can appeal the award, but would have to do so with the U.S. Court of Appeals for the Ninth Circuit, which already had instructed the district court to consider awarding attorney's fees.

When Mattel filed suit, Forsythe said he searched about, often in vain, for legal counsel before the ACLU of Southern California, and lawyers from the San Francisco firm of Howard, Rice, Nemerovski, Canady, Falk and Rabkin agreed to take his case.

In February of 2001, Mattel lost a motion for a preliminary injunction. Forsythe's lawyers then moved for summary judgment, on the grounds that his work was parody, and thus protected under the fair use provisions of the Copyright Act.

In August of 2001, the Central District Court granted summary judgment in favor of Forsythe, but did not grant him legal fees. Mattel and Forsythe appealed, the former seeking a different judgment and the latter, legal fees. Finally, in

December 2003, a three-judge panel from the Ninth Circuit upheld the decision against Mattel and sent the matter of legal fees back to Lew, with instructions to reconsider.

"Plaintiff had access to sophisticated counsel who could have determined that such a suit was objectively unreasonable and frivolous," Lew wrote in his order. "Instead it appears plaintiff forced defendant into costly litigation to discourage him from using Barbie's image in his artwork. This is just the sort of situation in which this court should award attorneys fees to deter this type of litigation which contravenes the intent of the Copyright Act."

The order also characterized Mattel's claim for trademark infringement as "groundless and unreasonable."

Jonathan Zittrain, a professor at Harvard University Law School who specializes in Internet and copyright law, said the case may set a precedent. "It's enough to give corporations . . . pause to consider whether to simply reflexively unleash the hounds the minute they see somebody doing something that relates to their brand of which they don't approve," he said. "It may send a signal that a 'take no prisoner' litigation strategy against the little guy has new risks for the plaintiff," Zittrain said. Reported in: New York Times, June 28. □

(FBI documents confirm . . . from page 165)

"A veil of secrecy has shrouded the Patriot Act for two and a half years. The fragments of information that we have managed to pry out of the Justice Department raise serious questions and provide few answers," said David Sobel, General Counsel for the Electronic Privacy Information Center. "It is time for an open public debate on this controversial law."

Among the other documents released by the FBI was an e-mail that acknowledges that Section 215 can be used to obtain physical objects, in addition to records. It states that the FBI could use Section 215 to obtain a person's apartment key. The Attorney General previously acknowledged that Section 215 can be used to obtain computer files and even genetic information.

Another document released by the FBI was an internal FBI memo, dated October 29, 2003, acknowledging that Section 215 of the Patriot Act can be used to obtain information about innocent people. The memo contradicts the government's assertion, made repeatedly on the public record, that Section 215 can be used only against suspected terrorists and spies.

The ACLU also sent one of the documents obtained through the FOIA request to the United States District Court for the Eastern District of Michigan, which is currently considering a constitutional challenge to Section 215 brought by the ACLU on behalf of a coalition of civil rights, religious, and immigration organizations. In October 2003, the government filed papers asking the Court to dismiss the challenge as "unripe" because the FBI had never applied for a Section 215 order.

"It is remarkable that the government never made any effort to inform the plaintiffs or even the Court that it has begun using Section 215," said Ann Beeson, Associate Legal Director of the ACLU. To see electronic versions of the documents, go to www.aclu.org/SafeandFree/SafeandFree.cfm?ID=15327&c=262. □

(effort to limit PATRIOT Act . . . from page 172)

Officials with the 64,000 member American Library Association said they suspected, based on anecdotal evidence, that the government had used the antiterrorism law and related powers to demand library records more frequently than it had acknowledged. But Emily Sheketoff, executive director of ALA's Washington office, said it was impossible to know because librarians served with demands for records were barred under the law from talking about it. The library association is planning a survey to get a better accounting of how often libraries have been served with demands for records.

"Libraries have always been subject to legitimate law enforcement—if the government thinks there is some specific criminal activity, they can go to a judge, show probable cause and get a court order," Ms. Sheketoff said. "There doesn't need to be all this secrecy. Librarians are good citizens like everyone else." Reported in: *New York Times*, July 9. □

(study finds film ratings . . . from page 174)

The study also found that 95 percent of the films studied depicted the use of substances like cigarettes, alcohol or drugs in some manner, and that the rating system did not consistently account for this. Additionally, the study noted that the association's ratings were often confusing, using different terms from movie to movie that made it hard to judge a film's content.

"When the rating says 'action violence,' is that less intense than just 'violence?'" Thompson asked. "What's the difference between sensuality and sexuality? They're in the ratings, but they don't have clear criteria for it." She said there was a need not only for more clarity in the system, but also for it to apply to all entertainment media. "We're seeing this media convergence issue," she said. "It's the same people, the same studios making video games and movies and Web sites. It would simplify things for everyone." Reported in: *New York Times*, July 14. □

intellectual freedom bibliography

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