newsletter on intellectual freedom

IFC ALA

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Bush moves to renew PATRIOT Act

President Bush on April 17 kicked off a concerted effort to pressure Congress to extend expiring provisions of the antiterrorism law passed after the attacks of September 11, 2001, saying that failing to keep them in force would leave the nation vulnerable. Bush used his weekly radio address to renew and amplify a demand he first made in his State of the Union address in January, calling on the House and Senate to act to extend provisions of the USA PATRIOT Act that will otherwise expire at the end of next year. The provisions include making it easier for law enforcement and intelligence agencies to share information about suspected terrorists, expanding the use of wiretaps and search warrants and allowing the government to track who is sending e-mail to or receiving it from suspected terrorists.

"To abandon the PATRIOT Act would deprive law enforcement and intelligence officers of needed tools in the war on terror, and demonstrate willful blindness to a continuing threat," Bush said. The White House's renewed focus on the issue came after weeks in which the independent commission investigating the attacks assailed the FBI and CIA—and to some degree the Bush administration—for failing to do more to identify and head off the terrorist threat. The commission focused attention on a number of shortcomings that impeded intelligence and law enforcement agencies from acting more aggressively, including a wall that hindered sharing a lot of information about suspected terrorists.

In raising the issue again, Bush hopes to emphasize to the nation the steps he took after the attacks to ensure that terrorists could never again operate so freely within the United States, administration officials said. The White House has also been considering other steps in advance of the commission's recommendations this summer, including an overhaul of the nation's intelligence agencies.

Though the PATRIOT Act passed Congress with broad bipartisan support soon after the attacks, it has subsequently become one of the most heatedly debated pieces of legislation to come out of Capitol Hill in decades. Civil libertarians in particular have fought hard to have it scaled back or repealed, asserting that it went too far in sacrificing individual rights in a rush to ensure that law enforcement had broad powers to identify and

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in this issue

targets of the censor

READ

BANNED

BOOKS

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archivist nominee stirs opposition

President Bush's surprise nomination of Allen Weinstein to be the next archivist of the United States has rankled many historians and archivists who say the White House failed to consult them before making the announcement. Groups representing those scholars said the nomination, announced quietly on April 8, violates the spirit of a 1984 law that requires the administration to solicit input from informed interest groups.

Organizations of archivists, historians, and librarians, including the American Library Association, issued a statement following the nomination saying they were concerned about it and had questions about how the White House is handling it. "The American Library Association believes that the decision by President Bush to appoint a new Archivist should be considered in accordance with both the letter and the spirit of the 1984 law," said ALA President Dr. Carla Hayden. Among the organizations questioning the nomination are the Society of American Archivists; the American Association for State and Local History; the American Historical Association; the Association for Documentary Editing; Association of Research Libraries; the Conference of Inter-Mountain Archivists; the Coordinating Council for Women in History; the Council of State Historical Records Coordinators; the National Association of Government Archives and Records Administrators; the National Humanities Alliance; and the Organization of American Historians.

"This came out of the clear blue," said Timothy L. Ericson, president of the Society of American Archivists, on Tuesday. "It was a fait accompli." In the wake of legal battles over increasing government secrecy, such as the names of the Energy Policy panel and new restrictions on presidential papers, archivists also are wary of White House motives, Ericson said. "We were blindsided by this," he added. "In the past, it's been done by having either a call put out saying they are looking for a nomination for the archivist for the United States or a call to react to possible nominees."

Weinstein, a former professor of history and international studies at Boston and Georgetown Universities and at Smith College, is best known for his 1978 book on Alger Hiss, an American lawyer and government official who, in the early years of the cold war, was accused of spying for the Soviet Union.

Weinstein, who concluded that the late Mr. Hiss was a spy, has refused to release his notes for the book, a move that has led critics to charge that he shares the Bush administration's penchant for secrecy. They warn that, as archivist, he could hold up or restrict access to important documents, including the papers of the first President Bush, due out in January.

But supporters said that Weinstein is actually a strong advocate for openness. Richard Norton Smith, executive director of the Abraham Lincoln Presidential Library and Museum, notes that Weinstein helped persuade the Church of Christ, Scientist, to release records on its founder, Mary Baker Eddy. "He made the case that if the [church's] library was going to have intellectual legitimacy, it would have to have transparency," Smith said.

This was not the first time that archivists and historians have protested the president's pick to head the National Archives and Records Administration, the organization that collects, preserves, and oversees the release of government documents. In 1995, several groups mobilized against President Bill Clinton's nominee, John W. Carlin, arguing that the former farmer and Kansas governor was unqualified for the position. This time, though, there are fewer complaints about credentials.

"Carlin was a purely political appointment," said Bruce Craig, director of the National Coalition for History, an umbrella group representing historians and archivists. "Weinstein has very solid academic credentials, but he still deserves careful consideration."

Some said Weinstein's selection may have been partly driven by politics. They suspect that President Bush is forcing out Carlin, in advance of his planned January 2005 retirement, in order to put an ally in the post. Carlin announced his resignation on December 19, but said he would remain in office until a successor was confirmed.

Supporters of the nomination said the Hiss book is proof of Weinstein's political independence. The scholar, who says he is a registered Democrat, began his research convinced of Hiss's innocence, but ultimately concluded otherwise. The about-face earned him the "enmity of many of his associates" but demonstrated his "integrity and courage," said Stephen H. Balch, president of the National Association of Scholars. "He's a man who is capable of confronting evidence honestly and changing his mind," said Balch. Reported in: *Chronicle of Higher Education* online, April 21. ☐

secret warrant requests up in 2003

The U.S. government's use of secret warrants to monitor and eavesdrop on suspects in terrorism and intelligence investigations continued to climb sharply in 2003, with more than 1,700 warrants sought, the Justice Department reported May 2. Federal authorities made a total of 1,727 applications last year before the Foreign Intelligence Surveillance Court, the secret panel that oversees the country's most delicate terrorism and espionage investigations, according to the new data. The total represents an increase of about 500 warrant applications over 2002 and a doubling of the applications since 2001, the Justice Department said in its report, which was submitted to the federal courts and to Vice President Dick Cheney, as required by law.

"This really amounts to the first statistical proof that the Justice Department has redefined its mission and has undergone a fundamental shift in the way it conducts surveillance," said David Sobel, general counsel of the Electronic Privacy Information Center, which monitors government surveillance policies. "The fact that it is now a secret court that is overseeing the majority of surveillance activity, in cases that do not require probable cause, does raise significant privacy and constitutional issues."

All but three of applications for electronic surveillance and physical searches of suspects were approved in whole or part by the court. The Justice Department said it did not appeal any of the rejections, but it noted that in two of those cases, warrants were ultimately approved against the targets after changes were made in the applications. Because of the nature of the cases heard by the foreign intelligence court, no details were provided about the investigations.

Civil liberties advocates maintain that the sharp rise in the government's use of the secret warrants, made easier by the antiterrorism law known as the USA PATRIOT Act, represents a worrisome trend because the authorities are held to a lower standard of proof in spying on suspects than they are in seeking traditional criminal warrants. But Attorney General John Ashcroft said in a statement that the new data demonstrated the Justice Department's commitment to tracking terrorism.

"We are acting judiciously and moving aggressively by seeking increased surveillance orders" from the court, Ashcroft said.

In addition to the civil liberties concerns, the increased use of the secret warrants has produced logistical problems as well. Government officials say investigators have complained of a backlog of weeks or sometimes months in warrant applications, and a staff report from the commission investigating the September 11 attacks spoke of "bottlenecks in the process," which the Justice Department is seeking to correct through increased personnel and organizational changes.

Before the attacks, there was widespread internal confusion regarding the process and standards for getting an intelligence warrant, leading to lapses in the case of Zacarias Moussaoui, now charged with conspiracy in the plot. The FBI told the commission that "there is now less hesitancy" in seeking the intelligence warrants, the report said. Nonetheless, it added, "requests for such approvals are overwhelming the ability of the system to process them and to conduct the surveillance." Reported in: *San Francisco* Chronicle, May 1; New *York Times*, May 3. □

controversial Moore film finds distributor

The independent studio Lions Gate Films agreed to distribute Michael Moore's documentary *Fahrenheit 9/11*, which has gained wide notice for its critique of President

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wary of FCC, TV and radio watch language

Reverberations from this year's fiasco of a Super Bowl half-time show are reaching every corner of the broadcasting world, and not even the viewers of *Masterpiece Theater* are immune. The producers of *Masterpiece Theater,* intent on staying in the good graces of a Federal Communications Commission (FCC) and increasingly vigilant for instances of indecency, took a step last month they never had before. They chose not to make available to PBS member stations an unexpurgated version of the critically acclaimed British series *Prime Suspect,* and instead sent out two edited versions: one with all of the salty language edited, and another with only some of the possibly offending words excised.

Taking similar cues from regulators, an Indianapolis radio station pre-empted words like "urinate," "damn," and "orgy" from going out over the air during a recent broadcast of Rush Limbaugh's talk show. And classic rock radio stations have felt compelled to prune their playlists, striking songs like Elton John's "The Bitch Is Back" and "Bitch" by the Rolling Stones.

Television and radio broadcasters say they have little choice but to practice a form of self-censorship, swinging the pendulum of what they consider acceptable in the direction of extreme caution. A series of recent decisions by the FCC, as well as bills passed in Congress, have put them on notice that even the unintentional broadcast of something that could be considered indecent or obscene could result in stiffer fines or even the revocation of their licenses.

"If you're asking if there has been overcaution on the part of broadcasters today, I think the answer is yes," said Jeff Smulyan, the chairman and chief executive of Emmis Communications, which owns 16 television stations and 27 radio stations in Chicago, Los Angeles, New York, and other cities. "Everyone is going to err on the side of caution. There is too much at stake. People are just not sure what the standards really are."

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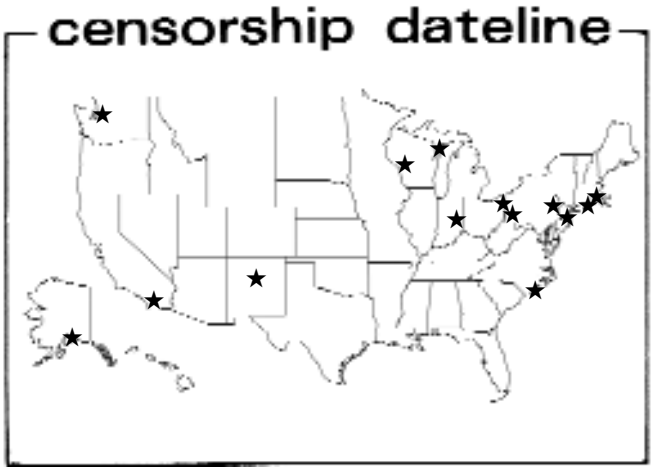


libraries

St. Laurent, Canada

Calling it a "cowardly and racist act," Canadian Prime Minister Paul Martin condemned as a hate crime the March 5 firebombing that incinerated the library of the United Talmud Torahs elementary school in the Montreal, Quebec, suburb of Saint-Laurent. A message taped to the front of the building claimed the bombing was linked to the March killing of radical Islamist Sheik Ahmed Yassin by the Israeli military in Gaza and promised more attacks.

Only one box of 25 books was salvaged from the 10,000-volume library that served some 230 students. "It's a writeoff," school librarian Dan Holobow said. "Either the books are melted or they're water-damaged beyond repair. The collection is basically gone."

The school's director, Sidney Benudiz, estimated it would take at least $300,000 ($225,700 U.S.) to rebuild the library and replace its books. Donations soon began pouring in from other schools and individuals, both Jewish and non-Jewish. Among those donating was actor Russell Crowe, who heard about the arson while in Toronto making a film. He telephoned school director Sidney Benudiz to say he was very upset "that a place of learning should be attacked that way" and that he "wanted to make sure that our students knew that he was thinking about them," school spokesperson Shelley Paris said.

Quebec Premier Jean Charest, who visited the school April 8, said the sight and smell of burned books will have a lasting effect on him, and he assured students and teachers that the provincial government will help them rebuild."

Police have made no arrests, and their investigation is hampered by the lack of surveillance cameras in the area around the library. The incident occurred when students and teachers were away on Passover holiday. Reported in: *American Libraries* online, April 9, 14, 20.

Shelbyville, Indiana

A child's question about two princes kissing in a picture book prompted his father to complain and may spur the Shelby County Library to move the book out of reach of young children. The library board in April rebuffed Dustin McCollough's suggestion that the book *King & King* is inappropriate for the library but may agree to move it to a section where his 8-year-old son wouldn't have stumbled across it.

"I'm not a big one for censorship, but it's kids we're talking about," McCollough said, adding that he'd be happy if the books were placed in a section of the library for adults.

The book, written by Dutch author Linda De Haan, tells of a young prince who forgoes his female suitors for another man, with whom he falls in love and marries. In a letter to the Shelbyville-Shelby County Public Library board, McCollough said the book should be removed or, at the very least, placed where only adults can find it.

"By him finding that book and asking why two men were kissing in it, I had to tell him about the two men being gay, which is something we disagree with and not what God wants," McCollough wrote.

After he complained to the library's director, the library moved the book from the young children's area to a section for children ages 8 to 12.

King & King had been checked out regularly since it was acquired last year and remained on loan to a patron, library director Janet Wallace said.

The library board has no intention of banning the book and aims to make all books as accessible as possible, board member B.C. Williams said. "Libraries have to tiptoe when it comes to anything that smacks of censorship," she said. "It is not the library's responsibility to censor what the children read, it is the parent's responsibility.

"Taking a book out of the library is anathema to us; we are totally behind Mrs. Wallace."

Books discussing homosexuality can be an important resource for children and teens, said Lydi Davidson, director of the Indiana Youth Group, an organization that works with gay and lesbian youths. It makes sense for libraries to have those books, she said. "I definitely think that's appropriate," she said. "We have a portion of our population that is growing up needing to understand where they fit into society at that age." Reported in: *Indianapolis Star*, April 9.

Wilmington, North Carolina

The parents of an elementary school pupil were fuming over the book their daughter brought home from the school library: a children's story about a prince whose true love turns out to be another prince. Michael Hartsell said he and his wife, Tonya, couldn't believe it when Prince Bertie, the leading character in *King & King*, waves off a bevy of eligible princesses before falling for Prince Lee. The book ends with the princes marrying and sharing a kiss.

"I was flabbergasted," Hartsell said. "My child is not old enough to understand something like that, especially when it is not in our beliefs."

The 32-page book by Linda De Haan and Stern Nijland was published in March 2002 by Tricycle Press, the children's division of Ten Speed Press of Berkeley, California. A follow-up, *King & King & Family*, was recently published. The publisher's Web site lists the books as intended for readers age 6 and up.

Barbara Hawley, librarian and media coordinator at Freeman Elementary School, said the book has been on the library's shelves since early last year. "What might be inappropriate for one family, in another family is a totally acceptable thing," said Elizabeth Miars, Freeman's principal.

Hawley said she couldn't comment on the book because she hadn't seen it. She declined to say whether she knowingly selected a book on gay marriage.

The Hartsells said they were keeping the book until they get assurances it won't be circulated. But Hawley said all county schools have a committee that reviews books after their appropriateness is questioned, and the Hartsells must make a written complaint and return the book for review. The Hartsells said they intend to file such a complaint and were considering transferring their daughter. Reported in: Associated Press, April 23.

West Salem, Wisconsin

The controversial book, *Walter the Farting Dog,* has been back on the shelves of the West Salem Elementary School library since it survived the scrutiny of the district's reconsideration committee in February. But the book, which was contested by West Salem resident Maynard Carlson and his son, Richard Carlson, could come under question once again if the complainants have their way.

Maynard Carlson said he and Richard were planning to appeal the decision of the Reconsideration Committee to keep the book on the shelves.

When he first brought the matter to the board in January, Maynard Carlson said he objected to the fact that the words "fart" or "farting" are used twenty-four times in the book's text and title. "The graphics in this thing kind of make you sick, too," Carlson told the board at its January meeting.

In a letter sent to the school district April 27, Maynard Carlson indicated his intent to appeal the decision. He said the Reconsideration Committee made too many mistakes when it evaluated the book.

"It was a biased committee and they didn't function according to the board rules," he said. "They really didn't evaluate it at all. They were totally disorganized and their decision was incomprehensible." Reported in: *Salem Coulee News*, April 29.

schools

Albuquerque, New Mexico

Bill Nevins, a New Mexico high school teacher, was fired last year and classes in poetry and the poetry club at Rio Rancho High School were permanently terminated. The Slam Team was a group of teenage poets who asked Nevins to serve as faculty adviser to their club. The teens, mostly shy youngsters, were taught to read their poetry aloud and before audiences. Rio Rancho High School gave the Slam Team access to the school's closed-circuit television once a week and the poets thrived.

In March 2003, a teenage girl named Courtney presented one of her poems before an audience at a Barnes & Noble bookstore in Albuquerque, then read the poem live on the school's closed-circuit television channel. A school military liaison and the high school principal accused the girl of being un-American because she criticized the war in Iraq and the Bush administration's failure to give substance to its "No child left behind" education policy.

The girl's mother, also a teacher, was ordered by the principal to destroy the child's poetry. The mother refused and may lose her job. Nevins was suspended for not censoring the poetry of his students. He was later fired by the principal.

After firing Nevins and terminating the teaching and reading of poetry in the school, the principal and the military liaison read a poem of their own as they raised the flag outside the school. When the principal had the flag at full staff, he applauded the action he'd taken in concert with the military liaison. Then to all students and faculty who did not share his political opinions, the principal allegedly shouted: "Shut your faces."

But more was to come. Posters done by art students were ordered torn down, even though none was termed obscene. Some were satirical, implicating a national policy that had led us into war. Art teachers who refused to rip down the posters on display in their classrooms were not given contracts to return to the school.

The teachers union has been joined in a legal action against the school by the National Writers Union, headquartered in New York City. NWU's at-large representative Samantha Clark lives and works in Albuquerque. The American Civil Liberties Union has become the legal arm of the lawsuit pending in federal court.

Meanwhile, Nevins applied for a teaching post in another school and was offered the job but he can't go to

work until Rio Rancho's principal sends the new school Nevins' credentials. The principal has refused to do so, and that adds yet another issue to the lawsuit, which is awaiting a trial date. Reported in: *Daytona Beach News-Journal*, May 15.

Federal Way, Washington

Fifteen-year-old Brandon Jerome was caught off guard by the sexual references in a book for his ninth-grade English class at Federal Way's Todd Beamer High School. "'Here, you've got to read this,'" he told his mother, Lori Bridges, one day in March.

She read a passage about a virgin having sex. Making matters worse, she said, Brandon told her that a student drew an explicit picture of a boy and girl having sex as part of a class drawing exercise on the book. The drawing was displayed with others in the classroom.

The teacher, Vince Halloran, maintains that the book had been approved and none of the drawings was explicit. But Bridges was incensed. She and five others complained to the Federal Way School Board, presenting petitions with 32 signatures to get the book removed from the district.

The complaints led to Superintendent Tom Murphy pulling it from the ninth-grade reading list and instituting major policy changes on reading material.

The book that started the flap, *Balzac and the Little Chinese Seamstress*, is a novel about censorship. Author and filmmaker Dai Sijie wrote the story about two youths who find a suitcase filled with banned books during the Cultural Revolution in China.

Beyond the content of this one 184-page novel, the Federal Way schools chief also ordered next year's reading lists for all grades to be presented to the school board for advance approval. And he ordered all secondary schools to mail required reading lists to parents in the summer for them to sign before school resumes.

The elected school board might take it one step further. President Ed Barney was drafting a policy that formally prohibits sexually explicit material from the classroom. It also says school personnel "may not be vulgar, lewd, obscene, plainly offensive or sexually explicit."

"It's not putting us in a role of censor as much as monitoring what's going on in the classroom," Barney explained. "I don't have time to read all the books, so I will rely on many parents' input." Asked how the board would determine what is sexually explicit, Barney said, "We haven't quite gotten to all of that."

Bridges said the Chinese novel isn't a bad book; it's just inappropriate for high school students. "I think it's too mature. I think it embarrasses kids." But Halloran, the English teacher, said it's now unclear whether any approved book can be retroactively banned. That "may discourage teachers from using certain texts for fear that someone somewhere might disapprove," he said.

Karen Dickinson, director of secondary curriculum and instruction, said the book won't be used at any grade level for the remainder of the school year and students won't be able to check it out at school libraries. The district will determine later whether it is appropriate for tenth- to twelfth-graders.

Murphy took his actions after overruling a committee of educators and parents that unanimously recommended keeping the book on reading lists. They had commended it for its "unique depiction of history, artistic merit, sensitive treatment of sexual content, and accessibility to teen readers."

Murphy saw it differently. "I have reservations that many students at the ninth-grade level possess the maturity and life experiences to correctly interpret the few sensitive scenes depicted in the novel," he wrote.

The board hasn't determined how many complaints would cause its members to pull a book from the reading list.

In 2002, the school board banned the showing of R-rated movies in classes after complaints about graphic scenes. R-rated movies are still shown when parents sign permission slips.

Halloran said he's confused how Murphy's removal of the book squares with his school's goal of having students consider a range of viewpoints. He used the same book in his classes last semester without incident. "The viewpoint that the book is inappropriate does not represent any kind of consensus," Halloran said.

Meanwhile, Bridges moved her son to a different English class, but she's pleased by Murphy's actions. "I think the district has handled it well," she said. "It just has to do with decency and respect." Reported in: *Tacoma News-Tribune*, May 10.

student press

New Brunswick, New Jersey

A Holocaust-themed cartoon on the cover of an alternative newspaper at Rutgers University at New Brunswick caused an uproar on the campus, with both faculty members and students demanding that the college rescind about $15,000 in financing allocated to *The Medium*, which describes itself as an "entertainment weekly." Rutgers's president, Richard L. McCormick, asked the newspaper's staff members to apologize for the cartoon, which he deemed "outrageous in its cruelty."

The cartoon, which appeared in the April 21 issue, used the university's spring fair as a backdrop and depicted a man sitting on top of an oven, as if in a carnival game, with another man throwing a ball at him. At the top of the cartoon was the headline "Holocaust Remembrance Week, Spring Fest 2004," and the caption below the drawing read:

"Knock a Jew in the oven! Three throws for a dollar! Really! No, REALLY."

According to Nathaniel S. Berke, a nineteen-year-old journalism major and the paper's managing editor, he chose the cartoon because people in *The Medium's* office thought it was funny, and he had not found anything else to use for the cover.

"I appreciated the satirical value it took towards a taboo subject," Berke said. "I thought people would just look at it and say 'that's ridiculous' and laugh at it—it wasn't meant to have any political meaning."

The cartoon was submitted anonymously to the paper by an artist with the pen name "Pancake Fiend," according to Berke. The editor, who said he is Jewish, also said that he regrets that the cartoon caused such a negative reaction.

At a University Senate meeting, McCormick reiterated his disapproval of the cartoon, and members of the senate discussed the controversy. The senate, which includes students and faculty and staff members, passed a resolution dissociating itself from the paper and the "anti-Semitic message of the issue."

According to McCormick, *The Medium* has a history of publishing offensive material. "Unfortunately, this is not the first time the editors have caused tremendous hurt among their fellow students and the larger community by their disregard for the standards of civility, diversity, and collegiality," he said in the news release. "The editors may think this is satire, but I completely disagree."

The April 7 issue of *The Medium* featured a photograph of two topless women in bunny ears and lingerie with the caption "Happy Easter, Everyone! Except you Jews. You have a happy Passover." The raunchy 12-page issue also featured articles by people identified only as "Some Good Aryan Stock" and "Big Boobs McGee."

Rutgers officials posted a "Question and Answer" news release on the campus's media-relations Web page in response to the controversy. In the release, the university explained that *The Medium* does not receive money from tuition or tax dollars, only from the student-activity fee. The document also repeatedly mentioned the university's obligation to honor the First Amendment rights of all student groups and publications.

"Speech that is extremely objectionable, including highly offensive racial slurs, may not be restrained by the university," the statement says. "It is important to remember that Rutgers does not endorse these viewpoints but is restrained from prohibiting their expression." Reported in: *Chronicle of Higher Education* online, April 26.

Pittsburgh and Scranton, Pennsylvania

April Fools' Day gag issues of student newspapers are a tradition, but the papers at two Pennsylvania colleges—Carnegie Mellon University and the University of Scranton—took the jokes a step too far this year, resulting in the suspension of both publications.

The editor in chief of *The Tartan*, the paper at Carnegie Mellon, publicly apologized following the publication of a racially charged cartoon, and the cartoonist was fired. The student editors also suspended publication of the independent paper for the remainder of the school year, and the top editor and managing editor then resigned.

The cartoon depicted one animal telling another that he has just hit a black person on a bicycle. The other animal responds, "Oh, just one." The 12-page spoof issue also included a depiction of female genitalia and poems about rape and mutilation.

About 75 people held a rally on the campus to denounce the issue, and the university's president, Jared L. Cohon, called it an "irresponsible and unconscionable act that has created harm to all of our campus."

"The entire piece is an affront to all people of conscience and diametrically opposed to the firmly held values and beliefs of this community," Cohon said. He condemned both the author of the cartoon and the editors of *The Tartan* for allowing it to run. He also announced that the university had established a commission to review the matter. The individual students may face disciplinary action as well.

At the University of Scranton, campus officials pulled the April 1 issue of its student-run newspaper, *The Aquinas*, and halted its publication after receiving a complaint that the paper had printed libelous material. Officials of the Roman Catholic university declined to comment on the specifics behind the complaint, but a local newspaper reported that the April Fools' issue contained a reference to a priest "caught fooling around with" a woman during a screening of *The Passion of the Christ*, the blockbuster movie controversial for its graphic depiction of the last hours of Jesus.

It was also reported that the student paper contained off-color jokes, a Jewish-themed musical top-five list, and a spoof of MTV's Celebrity Death Match that portrayed a boxing contest involving current and former university presidents wearing priestly collars.

"The general sense was that it was over the top," said Gerald C. Zaboski, a university official. He said that the university did not take action until after its Student Publication Board investigated the complaint. The board, whose members include students, faculty members, alumni, and news-media professionals, recommended that the university remove the April Fools' issue from circulation and suspend publication of *The Aquinas* immediately. The board also recommended that the paper's student editor be removed and that the paper develop and publish a statement of ethics before resuming publication.

Zaboski said that the April Fools' issue is a campus tradition but that he did not recall an issue's ever having been confiscated in more than 20 years. He estimated that just under half of the 4,000 to 5,000 printed copies had been removed by the university.

"The university owns the paper," he said, "and felt it was justified to take this action." Reported in: *Chronicle of Higher Education* online, April 7.

newspapers

Anchorage, Alaska; Akron, Ohio; Green Bay, Wisconsin

A few newspapers around the country edited the April 23 "Doonesbury" comic strip to remove an expletive used by a character injured while fighting in Iraq, and at least two newspapers pulled the strip altogether. In a story line that began earlier in the week, B.D., a football coach-turned-soldier, lost a leg after being reactivated in the Army at the end of 2002. In the controversial strip, his doctor explains how amputees go through a grieving process that starts with denial, followed by anger. In the final panel, B.D. curses from behind a hospital curtain, skipping the denial.

The Pulitzer Prize-winning comic strip written by Garry Trudeau appears in 1,400 newspapers nationwide. The *Anchorage Daily News* declined to run the strip, instead publishing a note saying the comic "contained an unnecessary profanity." The *Green Bay News-Chronicle* in Wisconsin edited out the expletive. "I'd have a hard time printing that phrase as a direct quote in a news story, let alone as part of a piece of fiction on the comics page in big, bold letters," editor Tom Brooker wrote. The *Beacon Journal* in Akron, Ohio, also removed the word.

"Context is everything," managing editor Mike Burbach said in an article explaining his decision. "In the *Beacon Journal*, 'Doonesbury' runs on the comics page. In that context, we decided it was best to bleep out the bad word."

The strip's distributor, Kansas City-based Universal Press Syndicate, said newspapers weren't contractually allowed to edit the strip, and the syndicate said it planned to contact those that did. "I don't know what will happen," said Kathie Kerr, a spokesman for Universal Press. "It may just be a heads up just to refresh their memory about the protocol."

Kerr said eleven newspapers had called Universal to talk about the strip. She said she knew of two papers that were not going to print the installment but declined to name them. Newspapers are not required to inform the syndicate when they pull a comic strip.

Trudeau said he started the story line to illustrate the sacrifices American soldiers are making. "We are at war, and we can't lose sight of the hardships war inflicts on individual lives," said Trudeau, who began writing "Doonesbury" in 1968 while a student at Yale University.

The strip has a history of addressing controversial topics. Just before the 2000 presidential election, at least two newspapers pulled an installment that accused George W. Bush of cocaine abuse. In February 1998, at least four newspapers refused to run strips about accusations that President Clinton had sex with a White House intern. Reported in: Associated Press, April 23.

broadcasting

Los Angeles, California

A popular Asian-American radio commentator was thrown off a Los Angeles public radio station for using a four-letter word, becoming the latest casualty in the cultural war over obscenity on the airwaves. Commentator Sandra Tsing Loh said her use of the f-word in a prerecorded segment was an editing error but KCRW-FM's general manager Ruth Seymour said that Loh made calculated use of obscenity in a politically charged time.

"It is the equivalent of the Janet Jackson performance piece and there is not a radio or TV programmer today who does not understand the seriousness involved to the station," Seymour said, referring to the now infamous breast-baring halftime show for the February 1 Super Bowl.

She rejected Loh's contention that the station had been at fault. "It her responsibility to deliver a program that is ready for broadcast," Seymour said. Nevertheless, some weeks later the station acknowledged that it had failed to edit the piece appropriately.

Loh, 42, learned from Seymour that her six-year run on KCRW-FM had abruptly ended a day after the station aired her three-minute riff on a Bette Midler concert she attended and in which her musician husband played.

"My husband, my soul mate, my ROOMMATE of 15 years—he sleeps LATE, doesn't LISTEN, moves my STUFF around. But he DOES play guitar for Bette Midler on her MASSIVE new STAGE show. There are times he STANDS within five FEET of her!," the script read. "So I guess I have to f&*k him."

Although the quirky, uneven cadence of Loh's delivery makes it appear that the segments materialize in her mind as she walks into the recording studio, they are carefully scripted, she told Reuters.

"We discussed it and (the engineer) said, 'Say it and I'll bleep it out," Loh said. The irony of the incident is that she feared Midler would be angry about her commentary and fire her husband.

She found equal irony in being mentioned with shock jocks like Howard Stern, who recently lost several stations over obscenity claims. She noted that she just completed a five-part series on knitting.

"It's shocking and I would never have toyed with saying that," Loh said. "Of course I shouldn't say that word on the air. It was never intended to be on the air." Reported in: Reuters, March 4.

New York, New York

Sinclair Broadcast Group Inc. ordered its ABC affiliates to preempt the April 30 broadcast of *Nightline,* which aired the names and photos of U.S. military personnel who have died in combat in Iraq, saying the move was politically motivated.

"Despite the denials by a spokeswoman for the show, the action appears to be motivated by a political agenda designed to undermine the efforts of the United States in Iraq," the company said in a faxed statement. Sinclair, which owns sixty-two U.S. television stations, said ABC was disguising political statements as news content.

Nightline anchor Ted Koppel read the names of the then more than 500 members of the U.S. armed forces killed in Iraq as their photos aired in pairs. Their names, ranks, branches of service, hometowns and ages were listed under the photos. The entire broadcast was devoted to reading the names.

The thirty-minute program included those soldiers certified by the Pentagon as killed in action between March 19, 2003, and the date of the broadcast. Because of the list's size, Nightline was only able to devote seconds to each casualty, executive producer Leroy Sievers said.

Sinclair owns stations affiliated with ABC, CBS, Fox, NBC, WB and UPN in thirty-nine markets. In an e-mailed statement, ABC said the broadcast was "an expression of respect which simply seeks to honor those who have laid down their lives for this country."

In a letter to Sinclair management, Sen. John McCain (R-AZ) called the move "unpatriotic."

"There is no valid reason for Sinclair to shirk its responsibility in what I assume is a very misguided attempt to prevent your viewers from completely appreciating the extraordinary sacrifices made on their behalf by Americans serving in Iraq," McCain said. "War is an awful, but sometimes necessary business. Your decision to deny your viewers an opportunity to be reminded of war's terrible costs, in all their heartbreaking detail, is a gross disservice to the public, and to the men and women of the United States Armed Forces. It is, in short, sir, unpatriotic. I hope it meets with the public opprobrium it most certainly deserves." Reported in: Bloomberg.com, April 29.

prisons

East Lyme, Connecticut

Prison officials destroyed computer files containing inmates' personal writing days after a prisoner won a national writing award, best-selling author Wally Lamb said. Lamb, who teaches a creative writing workshop at the York Correctional Facility in East Lyme, said that 15 women inmates lost up to five years of work when officials at the prison's school ordered all hard drives used for the class erased and its computer disks turned over.

"It flies in the face of the First Amendment," Lamb said.

Department of Correction Commissioner Theresa Lantz halted the writing program March 29 after learning that inmate Barbara Parsons Lane had won a $25,000 PEN American Center prize for her work on the 2003 book *Couldn't Keep It to Myself: Testimonies from Our Imprisoned Sisters*.

Lantz said miscommunication between Lamb and herself about the award led to the shutdown, but the rehabilitative program will continue after it is reorganized. The commissioner is investigating the writings being deleted, said Correction Department spokesman Brian Garnett. Reported in: *Norwich Bulletin*, April 15.

foreign

Tehran, Iran

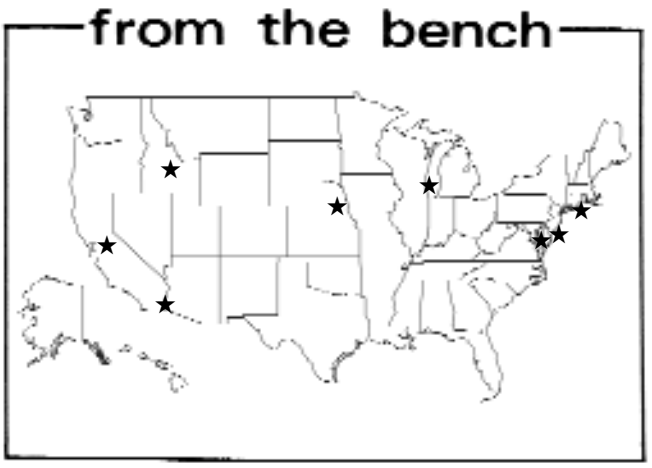
A regional court in Iran has reinstated a death sentence against a history professor who called on Iranians not to blindly follow the country's religious establishment. But Iran's Supreme Court, which had lifted an earlier death sentence, will review the case again. The original death penalty, which stemmed from charges of apostasy against Hashem Aghajari, was announced in November 2002 and sparked the nation's biggest student protests in years. Iran's supreme leader, Ayatollah Ali Khamenei, then took the rare step of ordering the judiciary to reconsider the verdict. The Supreme Court overturned the death sentence, and an appeals court later struck down other parts of the sentence.

Aghajari is serving a four-year sentence at Tehran's notorious Evin prison.

After reviewing the case, the regional court that handed down the original death sentence has reaffirmed it. "The judge has . . . maintained his original decision," said a court official. "There was nothing new in the file." The official said the case would now be returned to the Supreme Court.

Aghajari, a history professor at a teachers' college in Tehran and a war veteran who lost a leg in the 1980-88 war with Iraq, was arrested after a speech to students in Hamedan, 190 miles southwest of Tehran, that was seen as an attack on the religious establishment. He called for a "religious renewal," saying that Muslims were not "monkeys" and "should not blindly follow" the clerics.

His travails have not silenced Aghajari, who spoke out again shortly before the February 20 national elections, which gave conservatives a majority in the legislature after 2,500 mostly reformist candidates were disqualified. In an open letter from prison, he said efforts to reform Iran's cleric-dominated government had failed, and he called for "passive resistance" against the authorities. Reported in: *Chronicle of Higher Education* online, May 4. □



U.S. Supreme Court

The U.S. Supreme Court ruled 9–0 in April that the government could withhold autopsy photographs under the Freedom of Information Act to protect the privacy of a decedent's loved ones from further inquiry into the death. The case, *National Archives & Records Administration* v. *Favish*, arose when Allan Favish requested and was denied access to the crime scene photographs of Vince Foster, former deputy counsel under President Clinton, who was found dead in a public park. Favish doubted five separate government investigations that had concluded that Foster's death had been a suicide and sought the photographs to substantiate his suspicions.

Through his suit, Favish gained access to some, but not all, of the photographs. The Court accepted the case to decide whether the government had to release the most graphic of the photographs, the photographs most important to Favish. The Court concluded that the personal privacy exemption under the Freedom of Information Act protected Foster's family's privacy and that these privacy interests outweigh the public interest in disclosure of the crime scene photographs absent proof put forth by a requester "that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred." Justice Kennedy wrote the opinion for the Court. Reported in: EPIC Alert, April 8.

The Supreme Court appeared distinctly unreceptive April 20 to the Bush administration's argument that the federal courthouse doors must remain closed to the foreign detainees at the Guantánamo Bay naval base in Cuba.

In the first of three April cases on the right to judicial review of those deemed enemy combatants, most justices seemed to regard the World War II-era precedent that is the cornerstone of the administration's strategy as ambiguous, irrelevant or even counter to the administration's position. Even Solicitor General Theodore B. Olson's opening declaration, "The United States is at war," appeared to rankle rather than persuade the skeptical justices.

"Supposing the war had ended," Justice John Paul Stevens asked Olson. "Could you continue to detain these people in Guantánamo, and would there then be jurisdiction?" Olson replied, "We believe that there would not be jurisdiction." Justice Stevens then asked, "So the existence of the war is really irrelevant to the legal issue, is it not?"

True, Olson acknowledged, the government's position did not depend on the continued military conflict in Afghanistan. "But it's even more forceful and compelling" in that context, he said.

In addition to Justice Stevens, Justices Ruth Bader Ginsburg, David H. Souter, Stephen G. Breyer and Sandra Day O'Connor also appeared unpersuaded by the administration's arguments.

At issue was whether the Guantánamo detainees, some 600 men of varying nationalities seized in Afghanistan and Pakistan during operations against the Taliban, can have access to federal court to contest their detention through petitions for habeas corpus, the ancient writ by which prisoners in the English-speaking world have for centuries been able to challenge the legality of their confinement.

The federal appeals court ruled last year that the federal courts lack jurisdiction to consider habeas corpus petitions from the detainees at Guantánamo. The two cases the Supreme Court combined for argument were brought on behalf of 16 detainees, who all maintain that they were innocent noncombatants, some mistakenly picked up by bounty hunters, when they were seized.

"What's at stake in this case is the authority of the federal courts to uphold the rule of law," said John J. Gibbons, a retired federal judge who argued on behalf of the detainees. His argument was not particularly eloquent, but the fact that he was making it lent an air of authority to the detainees' cause. Gibbons, 79, was named to the federal appeals court in Philadelphia by President Richard M. Nixon. He served as chief judge before retiring in 1990 to join a major law firm in Newark. As a young Navy officer, Gibbons spent a year at Guantánamo Bay. One major issue in the case, *Rasul* v. *Bush*, is how to characterize the United States role in that Cuban outpost, which it has occupied since 1903 under a perpetual lease that gives it "complete jurisdiction and control" while preserving Cuba's "ultimate sovereignty."

"Guantánamo Navy Base, as I can attest from a year of personal experience, is under complete United States control and has been for a century," Gibbons said.

Justice Ginsburg said with a smile: "We don't need your personal experience. That's what it says in the treaty. It says 'complete jurisdiction, complete jurisdiction and control.'" Chief Justice William H. Rehnquist objected: "It also says Cuba retains sovereignty."

Gibbons replied: "Cuban law has never had any application inside that base. A stamp with Fidel Castro's picture on it wouldn't get a letter off the base." He added: "It's so totally artificial to say that because of this provision in the lease, the executive branch can create a 'no law' zone where it is not accountable to any judiciary anywhere."

A Supreme Court decision finding jurisdiction to hear the Guantánamo detainees' habeas corpus petitions would raise—but almost certainly leave to the lower courts to answer—the further question of whether those petitions should be granted. Justice Breyer suggested that the court could adopt a "protective but practical" standard for evaluating the merits of the petitions. As he told Olson, "If we go with you, it has the virtue of clarity. There is a clear rule. Not a citizen, outside the United States, we don't get your foot in the door. But against you is that same fact. It seems rather contrary to an idea of a Constitution with three branches that the executive would be free to do whatever they want, whatever they want without a check."

Justice Breyer continued: "We have the possibility of really helping you with what you're really worried about, which is undue court interference, by shaping the substantive right to deal with all those problems of the military that led you to begin your talk by reminding us of those problems. So if that's the choice, why not say, 'Sure, you get your foot in the door, prisoners in Guantánamo,' and we'll use the substantive rights to work out something that's protective but practical?"

Olson barely had a chance to respond before Justice Antonin Scalia began to make his argument for him. Addressing Olson, but clearly aiming his rebuttal at Justice Breyer, Justice Scalia said: "We can't call witnesses and see what the real problems are, can we, in creating this new substantive rule that we're going to let the courts create."

He continued: "We have only lawyers before us, we have no witnesses, we have no cross-examination, we have no investigative staff. And we should be the ones, Justice Breyer suggests, to draw up this reticulated system to preserve our military from intervention by the courts?" Reported in: *New York Times*, April 21.

The Bush administration yielded no ground before the Supreme Court April 28 in arguing that the open-ended military detention of United States citizens as enemy combatants, without criminal charges or access to lawyers, was justified both in law and as policy.

It is "remarkable that we have to confront this question when our troops are still on the ground in Afghanistan," Paul D. Clement, principal deputy solicitor general, told the justices.

A majority of the justices expressed some degree of concern over the breadth of the administration's position. Justice Sandra Day O'Connor asked Clement why "a neutral decision maker of some kind" could not be provided to determine whether a detainee is being properly held. "Is that so extreme that it should not be required?" she asked.

Clement said the potential detainees' initial screening, sorting those to be held from those who need not be, met that requirement. "For all intents and purposes, that is a neutral decision maker," he said. Clement also rebutted a suggestion by Justice Ruth Bader Ginsburg that detainees should have a forum to explain themselves. They already have one, he said, adding, "The interrogation process itself provides an opportunity for an individual to explain that this has all been a mistake."

Despite the justices' evident discomfort, it was far from clear by the end of two hours of intense and sober argument that the court would tell the administration that it had gone too far, either in the case of Yaser Esam Hamdi, an American-born Saudi who was seized in Afghanistan, or Jose Padilla, a Chicagoan taken into custody at O'Hare Airport.

In a case they heard the previous week (see above), the justices appeared sympathetic to the argument that federal courts have jurisdiction to review the open-ended detention of noncitizens at the naval base at Guantánamo Bay, Cuba. These cases appeared to raise a more difficult issue: not only whether the detainees can get into court, but how the courts are to balance the rights they claim against the needs of national security that the government asserts.

Hamdi and Padilla, now in a brig in Charleston, South Carolina, have spent two years in military custody. Several justices questioned the open-ended nature of the detention. "Doesn't the court have some business intervening at some point if it's the Hundred Years' War or something?" Justice Stephen G. Breyer asked.

Clement replied, "I'm not quite sure what you have in mind that they would intervene on."

Justice Anthony M. Kennedy, whose position appeared most in doubt, pressed Clement at one point for some sign of a concession. "I'm taking away from the argument the impression, and please correct me if I'm wrong, that you think there is a continuing role for the courts to examine the reasonableness of the period of detention," he said in a hopeful tone.

Clement was quick to correct him. "Well, I wouldn't take that away, Justice Kennedy," he said.

The outcome in both cases may well turn on how the court interprets the resolution Congress passed a week after the attacks of September 11, 2001, authorizing the president to use "all necessary and appropriate force" against organi-

zations or "persons" involved in planning the attacks or aiding the terrorists. If the detention of citizens requires Congressional authorization, Clement said, that resolution provided it.

"To read it to deny the government the authority to detain a latter-day citizen version of Mohammed Atta is to simply ignore the will of Congress," he said, comparing Padilla to a chief September 11 hijacker.

The lawyer and Justice Breyer sparred over the meaning of the phrase "necessary and appropriate." To Justice Breyer, those words provide a basis for curtailing discretion. He asked why military detention was "necessary and appropriate in a country that has its courts open, that has regular criminal proceedings, that has all the possibility of adjudicating a claim that 'I'm the wrong person.'"

He added, "Why is it a 'necessary and appropriate' thing to do once you have such a person who is a citizen in this country to proceed by other than a normal court procedure?"

To Clement, the phrase was a commitment to presidential authority rather than a limit. "I certainly wouldn't read the Authorization of Force's use of the term 'necessary and appropriate' as an invitation for judicial management of the executive's war-making power," he said, adding, "I would have viewed it as a delegation to the executive to use its traditional authority to make discretionary judgments in finding what is the necessary appropriate force."

Clement asked the court to recognize that "where the government is on a war footing, you have to trust the executive to make the kind of quintessential military judgments that are involved in things like that."

Jennifer Martinez, a Stanford Law School professor representing Padilla, and Frank W. Dunham, Jr., a federal public defender representing Hamdi, reportedly captured on an Afghan battlefield with the Taliban, vigorously disputed the meaning Clement attached to the Congressional resolution. Martinez said authorizations to use force in wartime, even broadly written, have not "traditionally been interpreted to allow the executive unlimited power over citizens."

To Justice O'Connor's comment that "it appears to allow detention of people captured," Dunham replied that the resolution spoke only of military force and "does not have the word detention anywhere in it." Dunham said if the resolution was interpreted to authorize "indefinite executive detention" at the president's discretion, "we could have people locked up all over the country tomorrow without any due process, without any opportunity to be heard." He added, "There is no indication that Congress intended any such thing."

The two cases, *Hamdi* v. *Rumsfeld*, and *Rumsfeld* v. *Padilla*, followed different routes to the court. Dunham appealed a ruling by the United States Court of Appeals for the Fourth Circuit, in Richmond. That court ruled that although Hamdi was entitled to challenge his detention by means of a petition for a writ of habeas corpus, he was not entitled to contest the government's assertion of the basis for his classification as an enemy combatant. In dismissing Hamdi's petition, the appeals court said Mobbs's statement provided all the justification the government needed.

In answer to a question from Justice John Paul Stevens, Dunham said although there was a "substantial dispute" about the validity of the government's assertions, he could not provide any details. Although he had recently been allowed to meet Hamdi for the first time, he said, "everything he has told me they tell me is classified, so I'm not allowed to convey it to the court this morning."

In the case of Padilla, said by the government to have plotted detonating a "dirty" radiological bomb, the administration brought the Supreme Court appeal. The United States Court of Appeals for the Second Circuit, in New York, ruled that the president was without authority to detain Padilla. The court cited a law Congress passed in 1971 to prohibit the detention of citizens without explicit authorization by Congress. The resolution authorizing military force after September 11 did not provide that authority, the appeals court said.

The administration is arguing that the 1971 law, known as Section 4001, does not apply at all in the military context. But in any event, Clement argued, the appeals court decision should be overturned because by the time Padilla filed his habeas corpus petition, he was in military custody in the Fourth Circuit and was outside the Second Circuit jurisdiction.

If the Supreme Court rules for the government on that basis—a distinct possibility—the decision would shed no light on the deeper issues the case raises. Reported in: *New York Times*, April 29.

The Supreme Court heard long-awaited arguments April 27 on a White House effort to keep confidential the deliberations that led to the Bush administration's energy policy.

"This is a case about the separation of powers," Solicitor General Theodore B. Olson told the court on behalf of the administration. "The Constitution explicitly commits to the president's discretion the authority to attain the opinions of subordinates and to formulate recommendations for legislation."

The Sierra Club and Judicial Watch have contended that the administration is not really so concerned about the ability of President Bush and Vice President Dick Cheney to get frank advice in confidence. Rather, the groups have said, the White House really wants to keep secret the names of the people on Vice President Dick Cheney's energy task force. The groups say that if the names were revealed it would bolster the impression that the White House had tailored its energy policy for the benefit of industry insiders—or, indeed, that it let the insiders do their own tailoring.

A lawyer for Judicial Watch, Paul Orfanedes, noted that some critics of the lawsuit had said that it was based "on nothing more than mere unsupported allegations. That is a false statement, in our view," he told the justices. A moment

later, he said, "We know that the vice president met with the chairman of Enron, Ken Lay. The vice president himself, in an interview he gave on *Nightline,* said, "We met with all kinds of folks. We met with energy groups. We met with environmental groups. We met with consumer groups."

"What does that prove?" Justice John Paul Stevens interjected. "What does that prove?"

"The point is," Orfanedes replied, "this shows the involvement of outside—"

"They talked to a lot of people," Justice Stevens broke in again. "Got a lot of advice. Does that make them de facto members of the committee?"

"Well," Orfanedes answered, "that's the question that we're seeking to answer through our discovery. The point is," he went on, "these are not mere unsupported allegations."

Whether outsiders took part in the energy-policy deliberations, thereby becoming de facto committee members, is crucial, both legally and politically. Suggestions that Kenneth Lay, the former head of Enron, and other insiders were deeply involved in formulating federal policy could be troublesome for the Bush campaign. Enron collapsed amid scandal two years ago, and several former top-level officials have been accused of wrongdoing, though Lay has not been charged with any crime.

Bush, a former Texas oilman himself, has always had close ties to the energy industry and business leaders like Lay—"Kenny Boy" to the president—who was once one of his most generous campaign donors. Both Enron and Halliburton, the oil industry service company that Cheney led immediately before accepting Bush's offer to join the 2000 presidential campaign ticket, are based in Houston.

The Bush administration, which lost in the district and appeals courts, is appealing an order permitting limited inquiry into who outside the government provided advice to Cheney's energy task force in early 2001. The organizations seeking the information maintain that the formal list of the task force's members—the vice president, six cabinet members and four other government officials—do not tell the whole story, and that energy industry officials were so closely involved with the deliberations as to have become de facto members.

Olson argued, on behalf of the administration, that the lower-court orders permitting pretrial discovery had been based on an erroneous interpretation of a 1972 federal law. But even if the 1972 law, properly interpreted, did support the pretrial discovery, Olson further asserted, the law itself is unconstitutional in authorizing "extreme interference" with the president's constitutional responsibilities.

The presentations were so highly technical at times that spicier elements of the long-running controversy were all but buried—notably, the duck-hunting trip that Justice Antonin Scalia took with his old friend Mr. Cheney shortly after the Supreme Court agreed to hear the case argued today, *Cheney* v. *U.S. District Court*.

In fact, Justice Scalia interrupted Olson with an early, pointed question, wondering whether "outsiders, nongovernment employees, were actually given a vote." Olson replied that the 1972 law did not bar "ex parte communications between the executive branch and members of the public."

Justice Scalia did not appear satisfied. Would it really be so "terrible," he asked, to compel the executive branch to specify whether anyone who voted on the energy panel's recommendations was a nongovernment employee? Reported in: *New York Times*, April 28.

PATRIOT Act

New York, New York

In a May 12 ruling, a federal judge in Manhattan widened the public's glimpse into a lawsuit by the American Civil Liberties Union challenging some terms of the antiterrorism law known as the USA PATRIOT Act, after the government sought to keep virtually every detail of the case under a court seal, or secrecy order.

The ACLU is contesting a provision of the law that allows the Federal Bureau of Investigation to require telephone, Internet, and other communications companies to provide basic information about their customers, including addresses and call records. The FBI sends an administrative subpoena, known as a national security letter, which includes an order barring the company from informing the customer of the investigation or discussing it with anyone. The FBI can acquire data on customers even if they are not suspected of terrorist activity.

In a switch that ACLU lawyers described as an awkward change from their usual practice and philosophy, they filed the suit April 6 under seal, concluding that otherwise they would be in violation of the law the case was devised to contest. The group then quickly asked the judge to lift the seal from the whole case.

The suit is brought by the civil liberties group and another plaintiff described only as a recipient of an antiterrorism letter. The ACLU said it was barred from providing any other information about the other plaintiff.

"It isn't even clear that a recipient can speak to a lawyer," said Ann Beeson, the associate legal director at the ACLU who is handling the case.

Justice Department officials have argued that the national security letters are vital in the search for terror suspects, providing information that can help trace their movements and identify where their phone calls and e-mail messages are going. The subpoenas do not allow the government to listen to phone conversations or read e-mail messages.

In his decision, Judge Victor Marrero of U.S. District Court in Manhattan declined to unseal the case, but set some guidelines for the two sides to agree on editing the case documents so that "nonsensitive information" could be released. Material in the documents that relates directly to terrorism investigations will be blacked out. Judge Marrero made it clear that his ruling had no bearing on how he might rule later on the larger issues in the case.

Almost nothing is known about the FBI's use of the subpoenas. The bureau has not said how many letters it sent or what the results were. The ACLU argues that the FBI letters are unconstitutional because they violate the due process rights of the businesses and people who receive them, and because the order prohibiting discussion of the investigation violates free expression rights. The group contends that the government should be required to seek approval from a judge before issuing a letter and recipients should have a way to question the order.

One flashpoint came after the ACLU put out a press release on April 28 describing the case in general terms and including details of the schedule set by the judge for hearing the case. The group was ordered by the government to remove the schedule information from the release on its Web site.

Meredith B. Kotler, an assistant United States attorney, told the judge that even though the scheduling information was not sensitive, it should not be published because the entire case had been officially sealed.

After the judge issued an order releasing some documents on May 7, the ACLU restored the paragraph to its press release saying that the judge would probably hear the case at the end of the summer. Reported in: *New York Times*, May 12.

church and state

Montgomery, Alabama

A specially formed Alabama Supreme Court bench unanimously rejected former Alabama Supreme Court Chief Justice Roy Moore's effort to win his seat back on the state's high court. In a unanimous ruling April 30, the special Supreme Court turned away Moore's appeal to overturn the state Court of the Judiciary's 2003 decision removing him from his position as Chief Justice. Moore had refused to obey a federal order to remove his two-and-half-ton Commandments monument from the rotunda of the Alabama Judicial Building. The Court of the Judiciary concluded that Moore's obstinacy had violated state cannons of judicial ethics.

Americans United for Separation of Church and State, one of the two public interest groups that challenged Moore's Ten Commandments monument in federal court, lauded the ruling. "It is just too bad that Moore has dragged the state of Alabama through this long, costly and embarrassing ordeal," said Americans United Executive Director Barry W. Lynn. "I'm glad it's over, and I'm sure many citizens of Alabama are glad as well. As Donald Trump might put it, 'Roy Moore, you're fired!'"

In February, Moore told an Alabama newspaper that if he lost his appeal before the state special Supreme Court that he would again look to the U.S. Supreme Court to intervene. Late last year, the Supreme Court declined to hear Moore's appeal of the U.S. Court of Appeals for the Eleventh Circuit ruling that Moore's actions to keep the Commandments on public view in the state's Judicial Building violated the First Amendment principle of church-state separation.

"Today's decision is another indicator that defiance of federal court rulings will not be tolerated in America," Lynn added. Reported in: American United Press Release, April 30.

Internet

San Francisco, California

A federal appeals court agreed April 20 that inmates have a right to receive mail containing printed material from the Internet. A unanimous three-judge panel of the U.S. Court of Appeals for the Ninth Circuit upheld U.S. District Court Judge Claudia Wilken's 2002 decision overturning the California Department of Corrections policy prohibiting the mail. That ban, which the state first imposed in 1998, wasn't justified, the Ninth Circuit ruled.

The case stemmed from a lawsuit brought by Frank Clement, a Pelican Bay State Prison inmate represented by the American Civil Liberties Union. The ACLU argued that inmates are entitled to mailed communications regardless of whether they originated from the Internet. The ACLU pointed out that a prisoner could receive a newspaper clipping of a story, but was prohibited from getting that same story if it was printed off the newspaper's Web site.

The corrections department adopted the policy on grounds that Internet-generated mail might contain coded messages, which could pose a danger in the prison.

Wilken, in the decision upheld by the appellate court, said the department "failed to articulate any reason to believe that Internet-produced materials are more likely to contain coded, criminal correspondence than photocopied or handwritten materials." Reported in: Associated Press, April 21.

Fredericksburg, Virginia

The Virginia Supreme Court, in reversing a lower court ruling, unanimously held that public officials who engage in e-mail conversations with one another are not participating

in a "meeting" and are therefore not held to the requirements of the open meetings law.

The court tackled three areas of open meetings law embodied in the Virginia Freedom of Information Act. On March 5, it held that an e-mail conversation is not a meeting because it does not involve communication with immediate comment and response. It affirmed that the open meetings law applies only to members of a public body, not members-elect. And it affirmed that a public gathering by several committee members and members-elect does not constitute a "meeting" as defined by the act.

The case originated from a lawsuit filed in circuit court in September 2002 by Gordon Shelton, former vice mayor of Fredericksburg, who alleged eighteen violations of the state freedom of information act against William Beck, Fredericksburg's mayor, as well as the current vice mayor and three Councilmen. Seventeen of the counts were thrown out.

Shelton alleged that the council members willfully excluded the public and two other councilmen in reaching a consensus via e-mail about committee assignments, a discussion that should have occurred in a public setting.

The alleged FOIA violators "e-mailed each other in a knowing, willful and deliberate attempt to hold secret meetings, avoid public scrutiny, discuss city business and decide city issues without the input of all the council members and the public," Shelton claimed.

In reversing the Circuit Court of Fredericksburg, the state's high court rejected the claim that e-mail communication is necessarily an exchange of ideas that must be conducted publicly. E-mail messages, which may sit for hours and days without a response, are not a meeting, the court held.

However, citing an attorney general's opinion on the matter, Justice Donald W. Lemons wrote for the majority that e-mail communication with immediate comment and response—such as that within an online chat room or via instant messaging—could be considered a meeting. The court left the door open for e-mail correspondence conducted rapidly over a short time span.

"While we agree with the trial court that '[it is] how the e-mail is used' . . . we disagree that this case presets circumstances constituting a 'meeting' for the purposes of FOIA," the court wrote. "Some electronic communication may constitute a 'meeting' and some may not."

In attempting to get the court to reverse Judge John Scott's December 2002 ruling on members-elect, Shelton argued that the justices have the authority to broaden the term "members" in the language of the Freedom of Information Act. The court disagreed.

"We do not believe that the legislature was inviting the judiciary, under the guise of 'liberal construction,' to rewrite the provisions of FOIA as we deem proper or advisable," Lemons wrote.

The court also rejected the argument that a July 2002 gathering—which included two city employees and three City Council members who were invited by citizens concerned about traffic safety—was a "meeting." In affirming the circuit court, the high court held that the purpose of the gathering was an "informational forum." Council members did not privately discuss public matters with any one person, the court said.

Quoting Virginia's Freedom of Information Act, the court wrote that the act "shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth." Reported in: News Media Update, March 9.

signs at demonstrations

Riverside, California

The city of Riverside must allow anti-abortion signs erected by protesters on the sidewalk outside a family planning clinic, a federal judge has ruled. Confiscating signs from sidewalk demonstrators tramples on free speech, U.S. District Court Judge Robert J. Timlin said in a late March ruling. City code enforcement officials had confiscated the signs twice, saying they violated the city's sign ordinance. Timlin granted a preliminary injunction preventing the city from enforcing the ordinance.

While city officials "have not attempted to interfere with (protesters') right to carry signs and picket on the sidewalk, (the protesters) have been cited for placing large stationary signs on a public sidewalk and the city has confiscated such signs," Timlin wrote in his decision. "There is little doubt that (the protesters') activities placing large stationary signs on public sidewalks to express their opposition to abortion are protected under the First Amendment," the judge wrote.

Anti-abortion demonstrators, most of them from Calvary Chapel in Romoland, have assembled outside the Family Planning Associates clinic in downtown Riverside each Tuesday and Friday since last summer. The city's lawyers have said confiscation of the signs had nothing to do with the group's message. Reported in: Associated Press, April 5.

signs in yards

Pewaukee, Wisconsin

The city of Pewaukee violated a resident's First Amendment rights by restricting when he could put political signs in his yard, a federal judge has ruled. U.S. District

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schools

San Jose, California

The California Supreme Court appeared inclined May 27 to overturn the felony conviction of a teenage boy whose violent poetry was deemed a criminal threat. The case of the felonious poetry received national attention, with prominent writers, including Nobel Prize winner J. M. Coetzee and Pulitzer Prize winner Michael Chabon, weighing in on behalf of the boy. He was one of several students around the country arrested for stories, poetry, or art that evoked violence following the shootings at Columbine High School in Littleton, Colorado, in 1999.

Identified in court records only as George T., the San Jose boy was 15 when he wrote poetry about taking guns to school and gave it to two classmates in his honors English course. Eleven days earlier, a boy the same age had killed two students and injured 13 others at a high school in San Diego County.

A Juvenile Court judge determined the poetry was a threat and George served ninety days in juvenile detention. A divided Court of Appeal in Santa Clara County upheld the conviction and the boy appealed to the California Supreme Court.

During a hearing, several members of the state high court questioned whether the violent imagery in the boy's poetry amounted to an unequivocal and immediate threat. "We all agree that this case presents a First Amendment issue," said Justice Joyce L. Kennard.

One of the boy's poems, titled "Faces," included the line "For I can be the next kid to bring guns to kill students at school." Kennard noted that the boy used the word "can" instead of "will."

"Doesn't that weaken the argument that the poem represented an immediate threat?" she asked.

Deputy Atty. Gen. Jeffrey Laurence replied that "can has multiple connotations." He noted that the next line in the poem said, "So parents watch your children cuz I'm BACK!!"

Chief Justice Ronald M. George said the poetry may have been in "poor taste" but expressed doubt that the boy intended his words to be taken as a threat. He noted that people utter expressions all the time that could be considered a threat if taken literally. "Some people say, 'I could kill you for that,' or, 'I could have killed you when you said that,'" the chief justice said.

Justice Carlos R. Moreno observed that the boy had made a copy of his violent poem for his poetry collection. He suggested a writer might not copy a poem for a collection if he intended it as a threat.

But Justice Marvin R. Baxter noted that the trial judge determined the boy was being untruthful on the stand. Baxter also asked whether a student has a First Amendment right to wear a T-shirt with an obscenity on it. Michael A. Kresser, the lawyer for George T., said schools may legally enforce dress codes.

Justice Janice R. Brown suggested that criminal activity could be disguised as art. She asked whether a hypothetical poem written by a bank robber—"Roses are red. Violets are blue. Give me the money or I'll shoot you"—would be protected by the First Amendment. Kresser said it would not be protected.

"Merely putting something in verse does not immunize it," the lawyer said. To determine whether someone intended words as a threat, "you have to look to all the circumstances surrounding the communication," he said.

George had been at Santa Teresa High School for just ten days when he wrote the offending poem. He approached a girl in his English class on March 16, 2001, and asked her to read it. "Is there a poetry club here?" he inquired. The girl read the poem and became so scared she fled campus. The girl notified a teacher, and police arrested George at his home two days later.

George, who had labeled his poem "Dark Poetry," denied he had meant it as a threat. The boy also had given his poem to a second girl who hadn't bothered to look at it. When she finally read it after George's arrest, she burst into tears, according to court records.

George was expelled from Santa Teresa and is now a senior at another high school in San Jose. Kresser said the boy told him he had inquired about going into the military

after graduation and was told that his conviction might make it difficult. But Kresser was optimistic after the court hearing. "I thought the arguments went pretty well for our side," Kresser said.

Siding with the boy were the American Civil Liberties Union of Northern California; PEN USA, a writers group; and the First Amendment Project. Reported in: *Los Angeles Times*, May 28.

student press

West Perry, Pennsylvania

When they weren't satisfied with their sex education classes, high-school newspaper staff members in West Perry decided to publish a piece about contraceptives. "It made the administration nervous," admits student adviser Celia Elmes, "but, under the guidelines, there was nothing" to stop students from moving forward. When the paper came out, Principal Larry Redding "was actually impressed the kids were so responsible with it," Elmes says. "They didn't promote sex, they just presented the facts."

But stories that make administrators nervous could be easier to boot out of a school paper if the state board of education alters Pennsylvania's student expression regulations, she said. The guidelines listed in the Pennsylvania Code have been the same since 1984, and advocates for state newspaper organizations say they shouldn't change.

"One of the primary responsibilities of the school is to create an atmosphere where students can express themselves. When schools exert control, it interferes with the learning process and does a real disservice to the students," said Teri Henning, the Pennsylvania Newspaper Association's media law counsel. The current regulations "strike an appropriate balance between student free expression and an administrator's need to protect the learning environment."

But Jim Buckheit, executive director of the state board of education, said new wording is necessary because "the world has changed a great deal since 1984. We didn't have the violence we have now," he adds. The regulations prohibit any form of student expression that could cause "immediate harm," but the board wants to change it to say "immediate or serious harm."

Henning says the change could lead not only to confusion, but to litigation. "When you add 'serious' to that sentence, it gives the administrators greater discretion and permits censorship in additional circumstances," she says.

Buckheit counters, "Students who threaten harm that may not be immediate should not be protected" by student expression regulations any more than students who threaten immediate harm.

Another change in the regulations would define student expression based on more recent, tougher Supreme Court rulings regarding student expression, instead of *Tinker* v. *Des Moines Community School District*. That 1969 decision would be trumped by the more restrictive 1988 *Hazelwood School District* v. *Kuhlmeier* and *Bethel School District* v. *Fraser,* which was decided in 1986.

The cases "tend to give school administrators a little bit more leeway in student expression," says Tim Allwine of the Pennsylvania School Boards Association, which supports the change. He adds, "Administrators need to be able to act on a threat."

Buckheit said the changes are being blown out of proportion. "The board views this change as a relatively minor change and any reasonable person would view it that way," he says. He says no specific incidents prompted the changes, but rather they are part of the board's review of the entire school code. He added, "We have no intent whatsoever to change the rights of students to publish or speak as they have already."

Still, newspaper advocates said the regulations already in place protect from threats, and additions will only hurt their freedom to express themselves. The proposed changes are set to go before state legislators and the attorney general for final review. Reported in: *The Sentinel* online, May 16.

universities

San Luis Obispo, California

California Polytechnic State University at San Luis Obispo has settled a lawsuit filed by a student who said the university had violated his First Amendment right to free speech. The ten-month legal battle ended May 6 when the university announced it would pay Steven Hinkle $40,000 to cover his legal fees and would clear his disciplinary record.

The university issued a brief statement explaining the terms of the settlement. The statement began with the assertion that both Cal Poly and the California State University System "deny any claims of wrongdoing or violation of the law." The statement also specified that the $40,000 was a partial reimbursement of the $70,000 that Hinkle had requested.

According to Greg Lukianoff, a spokesman for the Foundation for Individual Rights in Education, Hinkle will not have to pay the remaining $30,000 in legal fees because the rights group provided the student's legal representation pro bono. Still, Lukianoff said, the settlement was "ultimately a vindication for free speech," although he expressed disappointment at the duration of the conflict.

"When this case first came to me, I thought it would be over in a week," said Lukianoff. "It looked largely like a misunderstanding, but I think the university was just too stubborn to admit they had made an error."

Settlement discussions began several months ago, according to university spokeswoman Teresa M. Hendrix.

Hendrix said that before those discussions, Hinkle's terms were unreasonable. Furthermore, she added, the final terms had to be approved by several university administrators.

According to a transcript of a university judiciary hearing, the controversy began in November 2002, when Hinkle attempted to post a flier in a campus building while a group of black students was holding a Bible-study meeting there. The black students told Hinkle, who is white, that they thought his flier—promoting a speech by the conservative black author C. Mason Weaver—was offensive.

Hinkle offered to discuss the flier with the students, but they called the police. Although he did not post the flier and left before the police arrived, the students complained to the university. After a seven-hour judiciary hearing, the university concluded that Hinkle had violated the campus's code of conduct by disrupting the Bible-study meeting, and it ordered him to draft a letter of apology to the student group. Hinkle refused to do so and filed suit.

In the lawsuit, Hinkle's lawyers asserted that the university had used the charge of disruption to violate Hinkle's free-speech rights.

Despite Cal Poly's retraction of Hinkle's punishment, the university issued an additional statement saying that it would not alter the definition of disruption in its code of conduct. The university also said that the settlement was a "reaffirmation of the standard that existed before the case."

Asked about that assertion, Lukianoff said, "If they're claiming the definition they had in the first place was correct, then this never should have happened." Reported in: *Chronicle of Higher Education* online, May 7.

newspapers

Jefferson City, Missouri

The Missouri House voted to raise taxes on the state's two largest newspapers after an editorial in the *St. Louis Post-Dispatch* branded the Republican-led chamber the "House of Hypocrites." Democratic lawmakers decried the tax proposal as retaliation. But the Republican sponsor insisted he was simply "closing corporate tax loopholes."

Legislators in many states over the years have considered taxes on newspaper publishing, but the actions of the Missouri House could be cause for alarm, Paul McMasters, ombudsman at the Arlington, Virginia-based First Amendment Center, said.

"The newspaper associations usually manage to use the Constitution—and common sense—to fight off such proposals," McMasters said. "But it is a very troubling situation if indeed the effort is linked to trying to punish newspapers who have expressed criticism of the Legislature."

On April 11, the *Post-Dispatch* devoted an entire editorial page to criticism of the House of Representatives as the "House of Hypocrites." It included photos of sixty House Republicans who receive state-sponsored health insurance yet voted to approve legislation that would eliminate health coverage for thousands of poor Missourians on Medicaid.

While the House debated a tax-credit bill on April 14, Republican state Rep. Richard Byrd of suburban St. Louis offered an amendment repealing a sales-tax exemption for the state's two largest newspapers, the *Post-Dispatch* and *The Kansas City Star*. It passed 74–72.

House Democratic Leader Rick Johnson, also of suburban St. Louis, accused Byrd of trying to punish the *Post-Dispatch*. "What we have here is a retaliatory tax increase . . . for revenge," Johnson said. "The other side of the aisle had some unfavorable press that was written about them over the weekend."

House Speaker Catherine Hanaway, another suburban St. Louis Republican, denied any vengeful motives, stressing that Byrd approached her about the amendment before the editorial ran. But Hanaway said that she could not recall whether the idea came up before or after the *Post-Dispatch* had contacted the House seeking information on lawmakers' health-insurance plans.

Missouri law exempts all newspapers from state and local sales taxes on newsprint, ink, computers and other equipment. Byrd's amendment would remove the exemption for papers with at least $250 million in annual operating revenue and a Missouri-based average daily circulation of 200,000.

He said the law had allowed the *Post-Dispatch*, which is owned by Pulitzer, Inc., and *The Star*, owned by Knight-Ridder, Inc., to avoid $7 million in state sales taxes and $4 million in local sales taxes over the past decade.

The House gave the bill first-round approval on April 14. It needs another vote to advance to the Senate, where Majority Leader Michael Gibbons, a suburban St. Louis Republican, said its fate was uncertain. "You wouldn't expect it to catch fire, but it could," he said. Reported in: Associated Press, April 16.

church and state

Hamtramck, Michigan

To hear people in this blue-collar city tell it, things were fine until the al-Islah Islamic Center petitioned to broadcast its call to prayer, or azan, over an outdoor loudspeaker. Masud Khan, the mosque's secretary, sat on the carpeted floor and reflected on what he had learned about some of his neighbors in the last few months. "How much they hate us," he said softly.

Jackie Rutherford, a librarian and youth-care worker, sat on her front stoop watching three men in Islamic shirt-dresses and tupi caps at the house across the street. "I don't know what's going to happen to our little town," said

Rutherford. "I used to say I wasn't prejudiced against anyone, but then I realized I had a problem with them putting Allah above everyone else," she said, of the plan to amplify the call to prayer, which mosques announce five times a day. "It's throwing salt in a wound. I feel they've come to our country, infiltrated it, and they sit there looking at us, laughing, calling us fools."

For the population of Hamtramck, a city of 23,000 surrounded by Detroit, the battle of the loudspeaker, which the City Council approved May 4 has revealed a crossfire of religious, ethnic and lifestyle grievances, aggravated by the lingering memories of September 11, 2001, which left many Muslims here feeling they were under suspicion.

Once an enclave of Polish immigrants, Hamtramck has since the 1990s become a haven for immigrants from Bangladesh, Yemen, Pakistan, Bosnia and other countries, including a large Muslim population. In the 2000 census, 41 percent of the city's population was born outside the United States. On spring afternoons, the sidewalks of Joseph Campau Avenue echo snatches of Polish, Bengali, Arabic and hip hop, punctuated by the sound of bells from several Catholic churches. Three mosques have opened in the last few years, increasing in size while the congregations at neighboring Roman Catholic churches dwindle.

Yet for all this churn, the ethnic populations coexisted with little overt friction. "Even after 9/11 we had no problems," said Abdul Motlib, the president of the al-Islah mosque, which serves a mostly Bangladeshi membership (the other two mosques are primarily Bosnian or Yemeni). Then last year, Mr. Motlib applied for approval to amplify the call to prayer, a sonorous invocation in Arabic that lasts up to two minutes.

For some longtime residents, like Joanne Golen, 68, who described herself as a born-again Christian, the request crossed a line. Golen said she had always gotten along well with the Bangladeshi families in her neighborhood. She noted that at Easter one of her new neighbors brought her a turkey that he had gotten at work. But she said the call to prayer was too much.

"My main objection is simple," she said. "I don't want to be told that Allah is the true and only God five times a day, 365 days a year. It's against my constitutional rights to have to listen to another religion evangelize in my ear."

At City Hall before the final vote on the loudspeaker, a crowd of more than 100 crammed into a room, with dozens more listening or arguing in the hallway outside. Chuck Schultz, 49, a computer programmer from nearby Grosse Point, spoke against the measure. "Everyone talks about their rights," Schultz said. "The rights of Christians have been stripped from them. Last week. there were Muslims praying downstairs, in a public building. If Christians tried to do that, the ACLU would shut us down."

Some residents complained about the potential noise. Others, like Veronica Wojtowicz, 81, reminded neighbors of a time when life in Hamtramck was simpler. "My parents came to this country and worked hard," Wojtowicz said. "I think the grace belongs on the other side. The intolerance doesn't come from the people who object, it comes from the other side. We all lived in peace and had no problems. You moved too fast."

In response, Abdul Latef, the imam at Masjid Al-Falah, a mosque in Detroit, asked the community to be patient. "You can make history," Al-Falah said. "This is part of our religion. If it is too noisy, then you can complain, and they will stop it forever."

Council members emphasized that there was nothing technically preventing the mosque from amplifying its call to prayer, even without amending the city's noise ordinance, and compared the amplification to the chiming of church bells. The amendment just gave government officials leverage to limit the volume and hours of the broadcasts, said Councilman Scott Klein.

Motlib said the mosque applied for approval "because we want to be good neighbors."

Paradoxically, the call to prayer is one that even most of the Muslims at al-Islah mosque cannot understand, because they speak Bengali rather than Arabic, Khan said. Yet for many Muslims in town, the dispute seemed less about noise or the content of the azan than about insecurities of an older immigrant population feeling threatened by a newer one.

"They see we are coming more and more, and they think we are taking their city," said Abusayed Mahfuz, 34, the editor of *Bangla Amar*, a local Bengali magazine and Web site. "It's not really a religious problem. It's about migration, which is a reality."

Musad, who moved to Hamtramck from New York in 1999, said he understood the insecurity. "It's human nature," he said. "You feel an invasion. It could happen to me also." Like others in his mosque, Musad said, he was drawn to the Muslim community here not for its engagement with the rest of America, but for its distance.

"What attracted me was seeing school girls with veils and burkhas," he said. "It's more authentic here than in New York, more roots. There's village life."

His regret was that Muslims were not even more isolated from the other cultures around them. "Parents feel they need to force their kids to follow their religion, or they're going to lose their kids," Musad said.

For the Polish community of Hamtramck, the clash of immigrant cultures was nothing new, said Greg Kowalski, chairman of the town historical commission. When the first waves of Polish immigrants began to outnumber their German-American predecessors after World War I, the fissures were even more profound, he said. "The Germans looked at these Eastern Europeans and thought they were all communists," Kowalski said. "There was a lot of fear. So we're really repeating history."

Opponents of the City Council decision on the loudspeaker said they would try to reverse it, either through the courts or by a voter referendum.

Bashar Imam, a Muslim who runs three medical centers in Hamtramck, smarted at the venom the conflict had brought out. "These people get treated in my medical clinics, and that's what they think of us?" Imam said. But he added, "This is healthy. This is how we get to know each other." Reported in: *New York Times*, May 5.

protest

LaCrosse, Wisconsin

A group of La Crosse-area residents who protested against President Bush during his recent campaign bus visit there filed a formal complaint with local police May 19, alleging a string of First Amendment and other violations during the events. Among the allegations was that the La Crosse Police Department was acting at the behest of Republican operatives to thwart a planned protest at the north end of Copeland Park, near the president's May 7 rally at a ballpark.

Calling themselves the Coulee Region Concerned Citizens, the protesters also complained that Army Reserve units at the speech were improperly used as political props; and alleged that police chaplains were used improperly to perform police functions.

"It definitely was an intimidation process," said Barb Frank, a local Sierra Club organizer, referring to police activity that day.

The protests ultimately went on, but, Bush opponent Maureen Freedland said, "It was clearly under fear and under threat of prosecution for what we were doing." Freedland, a lawyer, is a member of the La Crosse Police and Fire Commission, which could hold hearings on the allegations.

Jennifer Millerwise, a spokeswoman for the Bush campaign, said that the Secret Service determined the security conditions for a presidential event, working "hand in hand" with local police.

La Crosse Mayor John Medinger, a former Democratic legislator and onetime aide to U.S. Sen. Russ Feingold (D-WI), said he would soon submit a bill for the police and city overtime that were the result of the rally, saying, "We shouldn't pay for a campaign event." As for the First Amendment claims, Medinger said that he couldn't comment on the city response to the event because he was left "out of the loop" in the process.

"I'm trying to get answers to these questions," he said. "I don't know who was calling the shots, the Secret Service or the Republican Party."

Medinger said the protesters, with whom he met before they held a news conference, "were good outstanding citizens . . . They may be rabble-rousers, but they're not kooks."

A reporter at the May 7 event witnessed the chaplains, wearing the badges of reserve officers, who don't have police powers, standing by while instructions were given by police officials to protesters. Another member of the protest group, and a local Democratic leader, Hank Zumach, said he was alarmed at the presence of Army Reserve soldiers, whom he said he saw at the Bush event in formation and wearing T-shirts announcing their military affiliation.

"No one has ever questioned the fact that the military has no involvement in partisan political activity," said Zumach, a Marine Corps veteran. "That's how coups come about."

Millerwise said she could not immediately confirm the presence of elements of the unit, reported as the 367th Engineer Battalion, but said there was nothing wrong with members of the military showing up at rallies to support Bush. Reported in: *Milwaukee Journal-Sentinel*, May 20.

broadcasting

New York, New York

Charging that a politically tinged campaign against indecency is having a chilling effect on television and radio programming, a group representing twenty-four media organizations and individual performers filed a petition April 19 asking the Federal Communications Commission (FCC) to reconsider its ruling against NBC for violating decency standards. NBC filed a separate petition seeking to overturn the decision, which found that the network had run afoul of federal decency standards by broadcasting a single vulgarity by the singer Bono during a live awards program. The actions were mere formalities for a court challenge. In neither case do the petitioners, who include Viacom, the News Corporation and the American Civil Liberties Union, hold out much hope that the FCC will reverse the decision, although it must review it. But as the case is expected to be appealed in court on First Amendment grounds, the court cannot be brought in until the reconsideration is decided.

The case involves a comment by Bono after winning a Golden Globe Award in 2003, when he used a vulgarity as an adjective to express his elation. Initially, the FCC ruled that this was not a violation, but that decision outraged some viewers who flooded the commission with letters of protest. In March, the FCC reversed course—and only rejected ordering a fine be levied against NBC by the margin of one vote. Executives involved in the petitions claimed that the "political climate" was responsible for what they labeled a broad and hopelessly vague standard for decency in programming, which has driven broadcasters to take drastic steps to limit the content of programs they broadcast. Awards programs, including the Academy Awards, have been put on delays; some songs long played

on the radio, like "Who Are You" by the Who, have been removed because they contain vulgarities.

Robert C. Wright, the chairman of NBC, said that his goal in challenging the FCC decision was "to get some people thinking about this issue." He noted that in its seventy-five years, NBC has never been fined for any reason. F. William LeBeau, the senior regulatory counsel for NBC, called the change signaled by the FCC decision in this case "sweeping and unprecedented in the annals of First Amendment law."

The groups taking part in the separate petition include the biggest union representing television performers, the three Hollywood guilds representing actors, directors and writers, and even individual entertainers like the comedian Margaret Cho and the magicians Penn and Teller.

Robert Corn-Revere, the lawyer who filed the petition on behalf of the non-NBC groups, said the decision had moved the policing of offensive speech away from what previous court decisions had intended. "It was meant to be cautious; now it's become expansive and draconian." He said the decision left open the possibility that any live news event, like a war protest at one of the political conventions this year where someone utters a vulgarity, or any live sports event where fans hold up signs containing objectionable words, could leave a broadcaster subject to serious fines. Corn-Revere said the decision also made it possible for a politically motivated government "to go after a speaker they don't like." Reported in: *New York Times*, April 20.

Internet

Boise, Idaho

Not long after the terrorist attacks of September 11, 2001, a group of Muslim students led by a Saudi Arabian doctoral candidate held a candlelight vigil in the small college town of Moscow, Idaho, and condemned the attacks as an affront to Islam. Now that graduate student, Sami Omar al-Hussayen, is on trial in a heavily guarded courtroom in Boise, accused of plotting to aid and to maintain Islamic Web sites that promote jihad.

As a Web master to several Islamic organizations, Hussayen helped to maintain Internet sites with links to groups that praised suicide bombings in Chechnya and in Israel. But he himself does not hold those views, his lawyers said. His role was like that of a technical editor, they said, arguing that he cannot be held criminally liable for what others wrote.

Civil libertarians say the case poses a landmark test of what people can do or whom they can associate with in the age of terror alerts. It is one of the few times anyone has been prosecuted under language in the antiterrorism law known as the USA PATRIOT Act, which makes it a crime to provide "expert guidance or assistance" to groups deemed terrorist.

"Somebody who fixes a fax machine that is owned by a group that may advocate terrorism could be liable," said David Cole, a Georgetown University law professor who argued against the expert guidance part of the antiterrorism law this year, in a case where it was struck down by a federal judge.

Hussayen, 34, a father of three who was pursuing a doctorate in computer sciences at the University of Idaho, is charged with three counts of conspiracy to support terrorism and eleven counts of visa and immigration fraud. His trial opened on April 14 and was expected to last until June.

The trial offers conflicting views of Hussayen, a son of the Saudi middle class. Defense lawyers have portrayed him as a loving family man who embraces Western values while holding to his Islamic faith; the prosecution team has presented him as a secret conspirator, aiding the cause of terrorism through his computer skills.

Earlier this year, Judge Audrey B. Collins of the U.S. District Court in Los Angeles, struck down a part of the antiterrorism law being used in this trial, ruling that it was overly broad and vague. But Judge Collins did not extend her ruling beyond the one case in California.

Hussayen's lead lawyer, David Nevin, is best known for his defense in 1993 of Kevin Harris, who was involved in a standoff with government agents at a cabin in Ruby Ridge, Idaho, along with Randall C. Weaver. That case, in which Weaver's wife and teenage son were shot and killed by government agents, is a cause célebre among mainly right-leaning civil libertarians. Some of Hussayen's supporters say they see a similar kind of government abuse in his trial.

"It's an illustration of how much power the government can bring against somebody," said John Dickinson, a retired professor of computer sciences who was Hussayen's doctoral adviser at the University of Idaho. "It should scare anybody."

Dickinson said he was interviewed by the FBI for several hours after Hussayen's arrest in February 2003. "They kept saying his Ph.D. program was a front and that the person I knew was only the tip of this monstrous iceberg," he said. "But I've yet to hear one thing the government has said since then that has made me question his innocence."

In the indictment, the government charged that Hussayen provided "computer advice and assistance, communications facilities, and financial instruments and services that assisted in the creation and maintenance of Internet Web sites and other Internet medium intended to recruit and raise funds for violent jihad, particularly in Palestine and Chechnya." And they have argued that Hussayen's technical assistance, even if he did not share the beliefs of the groups he helped, was like providing a gun to an armed robber.

Most of the facts are not in dispute. Hussayen's lawyers said that he gave money to legitimate Islamic charities and that his Web site work was protected by the First Amendment. The Web sites he maintained also posted views opposing jihad, they said. The government has argued that Hussayen does not have all the protections of an American citizen. They said he abused his privilege as a student by working for computer sites that advocate terror. His friends in the Idaho college town may have known one side of him, the prosecutor, Kim Lindquist, said in his opening remarks to the jury, but they seldom saw "the private face of extreme jihad."

Both sides in this case are looking to appeals that will probably turn on the part of the antiterrorism law thrown out by Judge Collins in January. In that case, the judge ruled on behalf of several humanitarian groups that wanted to provide support to the nonviolent arms of two organizations designated as terrorist in Turkey and Sri Lanka. Judge Collins wrote that "a woman who buys cookies at a bake sale outside her grocery store to support displaced Kurdish refugees to find new homes could be held liable" if the sale was sponsored by a group designated terrorist.

The American Civil Liberties Union, which is trying to overturn the antiterrorism law in court, tried to join the Idaho case, but was rebuffed by Judge Lodge. "We very much wanted to be involved in this case because it is by far the most radical prosecution we've seen under the Patriot Act," said Ann Beeson, associate legal director of the national ACLU. "You shouldn't be held liable for what somebody else said. Under this theory, you could charge the electrician who services the wrong client." Reported in: *New York Times*, April 27.

copyright

Washington, D.C.

Under two bills that legislators are quietly pushing through Congress, those who swap music online in violation of copyright law—including college students—would have to worry about being sued by the Justice Department, not just the Recording Industry Association of America.

One of the bills, dubbed the Pirate Act, would prod the Justice Department to bring civil charges against suspected copyright violators and to seek fines typically reserved for criminal wrongdoing. The Justice Department, which usually devotes its resources to criminal matters, would get $2-million for the antipiracy effort.

The bill—formally called the Protecting Intellectual Rights Against Theft and Expropriation Act of 2004, S 2237—passed the Senate Judiciary Committee in April and almost reached the Senate floor for a vote in April. Sen. Orrin G. Hatch, a Utah Republican who is chairman of the Judiciary Committee, and Sen. Patrick Leahy of Vermont, the ranking Democrat on the committee, are pressing to have the Senate pass the bill before the body adjourns this year.

The legislation is supported by the recording industry, which has blamed flagging compact-disk sales on illegal file sharing. Movie-industry executives, too, are worried that pirated movies could become more widely available online.

"I commend Senators Leahy and Hatch for this common-sense proposal," said Mitch Bainwol, chairman and chief executive officer of the Recording Industry Association of America, in a written statement. "The music community appreciates their tremendous leadership."

But lobbyists for file-sharing networks complain that the Department of Justice should be focused on more-serious issues. "This is a special relief bill that will turn the Department of Justice into the entertainment industry's lawyers and prosecutors," said Adam M. Eisgrau, executive director of P2P United, a trade group for file-sharing networks.

The other piece of legislation, in the U.S. House of Representatives, would lower the threshold for prosecuting suspected file sharers as criminals, and would allow jail sentences of up to three years for people convicted of file-sharing violations.

Under the bill—the Piracy Deterrence and Education Act of 2004, HR 4077—those who make 1,000 or more copyrighted songs available on a file-sharing network in "reckless disregard" of the law could be found guilty of criminal copyright infringement. Prosecutors currently have to show that suspects acted "willfully," intending either to profit from their actions or to share music worth more than $1,000, to prove them guilty of crimes. The bill passed the House Judiciary Committee's Subcommittee on Courts, the Internet, and Intellectual Property in March.

Opponents of the two bills are particularly troubled that legislators are quietly and quickly shepherding the legislation through Congress without holding public hearings, an approach that is highly unusual for controversial measures. The Senate leadership attempted to bring the Pirate Act up for a vote in April under a procedure that would have limited or barred debate before a vote was taken. However, one senator, who has remained anonymous, put an informal "hold" on the bill, effectively blocking the vote.

Sheldon E. Steinbach, vice president and general counsel of the American Council on Education, said the bills "send a dramatic shot across the bow of parents and their sons and daughters who are unlawfully downloading CDs and motion pictures." But even if one of the bills became law, he said, he is skeptical that the Justice Department would actually prosecute college students for music piracy. Reported in: *Chronicle of Higher Education* online, June 1.

privacy

Washington, D.C.

In the days after the September 11 terrorist attacks in 2001, the nation's largest airlines, including American, United, and Northwest, turned over millions of passenger records to the Federal Bureau of Investigation, airline and law enforcement officials acknowledged April 30. A senior official with the FBI said the airlines cooperated willingly. Some, like Northwest, provided as much as a year's worth of passenger records, which typically include names, addresses, travel destinations and credit card numbers.

"There was no reluctance on the part of anybody," added the senior FBI official, who said that bureau rules required him to speak anonymously. The official said the requests were made under the bureau's general legal authority to investigate crimes and that the requests were accompanied by subpoenas, not because that was required by law or because the bureau expected resistance from the airlines, but as a "course of business" to ensure that all proper procedures were followed.

Airline industry officials said they could not remember another such sweeping request. In the past, airlines have routinely provided data to the FBI, but typically requests concerned the passengers on a single flight, or the travel patterns of an individual passenger. "It was an extraordinary event," the bureau official said. "People wanted to cooperate with the FBI because of the events that had just occurred—and particularly the airlines, because airplanes were the tool by which the attacks were carried out."

The FBI official said that the purpose of the data dragnet was to detect attacks in the making through patterns in the travel records. "They developed a model of what these hijackers were doing," he said, "and went back and looked, based on that model, to see if we could find associates, conspirators, or other groups out there, particularly in the time immediately following 9/11."

There is no indication that the passenger data produced any significant evidence about the plot or the hijackers, the official said.

The sharing of airline passenger data with the government has sparked some of the most contentious conflicts underlying the uneasy balance between privacy and security in the post-September 11 world. Three airlines, Northwest, American, and JetBlue, have acknowledged sharing weeks or months' worth of data with government researchers or contractors as part of an effort to help develop new methods to spot terrorists.

But the disclosure that airlines had handed over such an enormous trove of data directly to government criminal investigators, 6,000 CD-ROMs full of digital records from Northwest alone, raised red flags among privacy advocates, who played a role in uncovering the information transfer.

"It certainly takes the airline privacy issue to a new level, because it's much more material than we've ever seen disclosed," said David Sobel, the general counsel of the Electronic Privacy Information Center, a high-tech policy and advocacy group in Washington.

The group discovered that airlines had handed over personal information through the results of a Freedom of Information Act request on a related matter. "The FBI has adopted a vacuum cleaner approach to investigations involving information on the lawful activities of millions of citizens," Sobel said.

But a former privacy official for the Clinton administration, Peter Swire, said the request and the cooperation should be viewed in the context of the terror attacks and might qualify as the kind of "hot pursuit" of criminals that temporarily gives law enforcement greater leeway. "This is probably the tip of the iceberg of what companies gave the government right after September 11," said Swire, who is now a law professor at Ohio State University.

Tim Wagner, a spokesman for American Airlines, said the company "cooperated fully" with the FBI in the days and weeks after the attacks, in which it lost two planes. Northwest said the release of data was justified. "Northwest Airlines cooperated fully with the FBI in its investigation, including the provision of passenger name records for a twelve-month period leading up to September 2001, as requested by the FBI," the statement said. "Northwest acted appropriately and consistently with its own privacy policy and all applicable federal laws."

United Airlines also responded to inquiries with a statement. "United, committed to assisting the FBI with its criminal investigation into the 9/11 terrorist attacks, complied with the government's subpoenas for information following the events of 9/11. United provided the FBI with information in a manner that is consistent with our corporate policy on privacy."

The first hint of the large-scale data handover came in January during hearings of the 9/11 commission. Andrew Studdert, the former chief operating officer of United Airlines, testified that United set up extensive facilities for FBI agents in its headquarters near Chicago and had made available "thousands of pages of records."

But that disclosure was overlooked because of dramatic testimony the same day from Gerard J. Arpey, American's chief executive, who played a tape of a call from a flight attendant, Betty Ong, to a reservations center from aboard the hijacked Flight 11.

Some records, including financial information and health records, have strong privacy protection under federal and state laws, but the data in passenger records do not fall under the protected areas, the FBI said. The FBI has not destroyed or returned the records and cannot legally do so, in case they fall under a legal discovery order in a criminal

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libraries

Evanston, Illinois

A children's book depicting a masked burglar pointing a gun at a woman will remain in Evanston Public Library despite complaints that the image is too violent for young readers. "A good library collection should have something to offend everyone," said Jan Bojda, head of children's services at the library. "If they don't, they are not doing their job."

Mary Beth Schaye and other Evanston residents asked the Evanston Public Library Board to remove *Pinkerton, Behave*!, a 1979 picture book about a Great Dane named Pinkerton who saves the family from the burglar.

Schaye said she was reading the book to her three-year-old daughter when she saw images of the burglar and decided to put the book down. "I stopped reading and told my daughter we couldn't read any further," Schaye said. "I couldn't believe that was in a children's book." Schaye and seven others, including friends and teachers at her daughter's preschool, submitted a written request to the library board seeking to have the book removed.

Eileen Sufrin, who teaches Schaye's daughter at Beth Emet preschool in Evanston, said she asked for a re-evaluation of the book because children could be alarmed or scared by images of the armed burglar. But the library board voted 6–0 May 19 not to remove the twenty-nine-page book, which was written and illustrated by Steven Kellogg.

Several board members said they shared Schaye's concern but said removing the book could be more controversial than leaving it in circulation. "I don't think we should ever restrict books. I happily voted to keep it on the shelf," said Library Board President John Sagan. "We are not, based on this book, going to start censoring books we believe are inappropriate for our community."

Paul Gottschalk, the library's administrative services manager, said the book is recommended for ages four to eight. Gottschalk said this was the first time in at least twenty-five years that the library has dealt with a request to remove a book. Several years ago, a resident complained about a Wagner opera video in the library's collection that depicted Nazis but didn't request a hearing.

Schaye said she was disappointed with the decision. "I feel there were mistakes made with this book. Maybe it's the suggested age range or the imagery," Schaye said after the hearing.

Staff members told the board they will try to make sure that parents understand what the book's illustrations depict. Reported in: *Chicago Tribune*, May 21.

Helena, Montana

Public Schools Superintendent Bruce Messinger has backed the recommendations of a materials-review committee that the book *Horses*, by Juliet Clutton-Brock, remain on the shelves of the Smith Elementary School. The reconsideration was the result of objections filed by Helena parent Roxanne Cleasby to the content of two of the book's ninety-two pages. Cleasby challenged the author's treatment of evolution as a scientific fact instead of a theory. "I just want my daughter to be able to question and have the freedom to make her own choices," she said.

Cleasby may still appeal the decision to the full school board. Should she do so, Messinger has indicated that the board has "several other options" besides removing or retaining the book. "It doesn't have to always be one or the other," he said. The complainant has already discussed with officials the possibility of including books that present the creationist viewpoint in school-library collections. Reported in: *American Libraries* online, April 2.

privacy

Washington, D.C.

In a reversal, Justice Department lawyers defending the new federal law that bans a type of abortion voluntarily withdrew a subpoena for abortion records from a Manhattan hospital April 26. The move resolved the last outstanding question about whether the government should have access to confidential medical records, even in redacted form, at civil trials under way in New York, San Francisco, and Lincoln, Nebraska.

The hospital, New York-Presbyterian, had fought the release of patient files for months in the lawsuit, which the National Abortion Federation filed against Attorney General John Ashcroft. The hospital was declared in contempt of court and fined for not producing the records. New York-Presbyterian had appealed its case to the United States Court of Appeals for the Second Circuit, which heard oral argument on the issue about two weeks after the filing.

But a government lawyer, Sheila M. Gowan, told the federal judge presiding over the trial, Richard Conway Casey of the Southern District of New York, that the subpoena would be withdrawn in the interest of a prompt completion of the trial.

"The government has believed from Day 1 that the medical records were relevant," Gowan said. "We believe that." But she added, referring to the continuing trial: "The government would like resolution of the important issue before Your Honor as quickly as possible. To that end, over the last few days, we have determined to voluntarily withdraw the subpoena to New York-Presbyterian Hospital."

Gowan said she also was going to seek dismissal of the appeal and asked the court to vacate the $500 contempt fine.

In defense of the law, the Partial-Birth Abortion Ban Act, which is being challenged in lawsuits in three states, Bush administration lawyers had argued in pretrial hearings that the medical records were needed to prove that the procedure was never medically necessary. The subpoenas to six hospitals around the country drew national attention to the issue of patient privacy rights.

In cases outside New York, the release of records was prohibited either by an appellate court or a district judge, though some files were surrendered in the Nebraska trial. But in New York, Judge Casey had ordered the medical records released in redacted form. He called the government's move "an interesting change in position" and added, "I don't know if I agree."

Speaking on behalf of New York-Presbyterian, Myrna Manners said, "Whatever the government's reasons were for serving the subpoena or for withdrawing it, we are pleased."

Some abortion rights advocates considered the records request a tactical move, meant to intimidate challengers of the ban. But since issuing the subpoenas in November, the government consistently argued that the records were needed as evidence. Reported in: *New York Times*, April 27. ☐

(wary of FCC . . . from page 136)

The uncertainty over standards, Smulyan said, has convinced station executives to hire at least two paralegals whose responsibilities will include deleting potentially offensive material on live broadcasts before those words can be heard by the audience, using technology that delays the airing of those programs by an interval of several seconds.

Michael J. Copps, an FCC commissioner who has been one of the strongest critics of media companies, acknowledged that some broadcasters appeared to be overreacting. But, he said, "I applaud the effort at self policing." He also disputed the notion that the commission's standards on indecency were too vague. "I think most of the things we're dealing with right now are pretty clear, from the standpoint of being indecent," he said. "There's enough stuff out there that shouldn't be on."

Still, Copps said that the broadcasters themselves could resolve any ambiguities they perceive by drafting and adopting what he described as a "voluntary code of broadcaster conduct."

Two recent rulings by the FCC have had a particularly chilling effect on broadcasters. In April, the agency proposed levying nearly $500,000 in fines on six radio stations owned by Clear Channel Communications for broadcasting a twenty-minute snippet of Howard Stern's program dealing mostly with sexual talk. (Clear Channel has since stopped carrying Stern's program.)

And in March, the commission overturned an earlier ruling and found that NBC had violated decency standards by broadcasting a single vulgarity uttered by Bono, the lead singer of U2, during the Golden Globes in 2003.

Meanwhile, the House passed a bill in March that would increase fines on transgressing broadcasters to $500,000 a violation, up to a maximum of $3 million, from $27,500 a violation.

In a petition filed with the FCC protesting the Bono decision, PBS and its stations argued that the process of determining what might run afoul of the FCC was both costly and time-consuming. For example, on an internal Web site used by PBS executives, a station manager posed the question of whether WGBH, the public television station in Boston, should edit an episode of *Antiques Road Show.* The station manager was worried about displaying a photograph of a nude celebrity—in this case, Marilyn Monroe, as depicted a half-century ago. It was only after reviewing and debating the footage that the show decided to let the image remain.

But in the case of *Prime Suspect,* the mystery series with Helen Mirren on PBS, the producers of *Masterpiece Theater* believed that more extreme action was warranted. In the past, *Masterpiece Theater* has occasionally sent stations two versions of an episode—one as it appeared on British television, and another that deleted a particularly

strong expletive, said Rebecca Eaton, executive producer of *Masterpiece Theater*.

But in response to the recent commission rulings, Eaton said, the producers decided to create a version of the episode that was more heavily edited for profanity than any in the past, as well as a version that received some lighter editing.

In a petition filed with the FCC, a group representing other media organizations objected to a portion of the Bono decision in which the commission said it would now consider any use of the vulgarity in question to have a sexual connotation, regardless of the context. (Bono used that graphic expletive as an adjective in accepting an award.) That directive, the petitioners wrote, had sent radio stations scurrying to remove or edit songs with profanities that involve "neither sexual nor excretory references."

A similar scouring has been going on at WABC Radio in New York, home to a stable of politically conservative talk-show hosts—including Limbaugh and Sean Hannity. Phil Boyce, the station's program director, recently posted a sign on the control room door that urged his technicians not to resist the urge to press the so-called "dump" button, in which a host's words are pre-empted on tape delay before the audience ever hears them.

"You will never be criticized for dumping something that may not have needed to be dumped. But God forbid we miss one and let it slip up," Boyce wrote. A WABC technician heeding that warning used the "dump" button to prevent the word "parachute" from being heard. The technician did so because a host had tripped over the second half of the word in a way that made it sound as if he had stepped in something offensive, Boyce said.

A similarly vigilant technician had his finger on the dump button at WIBC-AM, an Emmis station in Indianapolis, during its broadcast of Limbaugh's syndicated program March 3—one day after Emmis informed its employees that the broadcast of material it deemed offensive could result in their suspension or firing. In an e-mail message to the station's program director, the assistant program director wrote that the delay was used eleven times that day for Limbaugh's program. "I can only guess we are erring on the side of safety given that I don't know of any instance a licensee has ever been fined or cited for airing Rush unedited," the assistant program director wrote, "but we'll continue to do these cuts until we're directed otherwise." Reported in: *New York Times*, May 10. □

(is it legal? . . . from page 156)

case. "We didn't want to retain the data ourselves," the FBI official said, adding that the data is not being used "for any other investigative purpose."

Last September, a privacy advocate uncovered evidence that JetBlue shared more than five million passenger records with a Pentagon contractor one year earlier. This year, Northwest acknowledged that it had given three months' worth of 2001 passenger data to NASA's Ames Research Center for a research project into passenger profiling. On April 9, American admitted that it, too, had quietly passed along passenger data to government contractors, as well.

Stewart Baker, an expert in privacy issues who was general counsel for the National Security Agency, said that the incident, because of the vast scale of the information given to the government, "is clearly something that is going to be, at minimum, a public embarrassment." But unless the companies directly violated their own privacy policies, he said, legal action against them by customers is unlikely to succeed. Most airline policies include a provision explaining that they have the right to comply with law enforcement requests without violating any privacy restrictions. Reported in: *New York Times*, May 1.

Washington, D.C.

A federal advisory committee says Congress should pass laws to protect the civil liberties of Americans when the government sifts through computer records and data files for information about terrorists.

"The Department of Defense should safeguard the privacy of U.S. persons when using data mining to fight terrorism," the panel said in a report to Defense Secretary Donald H. Rumsfeld. The report said privacy laws lag far behind advances in information and communications technology.

The eight-member panel, which includes former officials with decades of high-level government experience, found that the Defense Department and many other agencies were collecting and using "personally identifiable information on U.S. persons for national security and law enforcement purposes." Some of these activities, it said, resemble the Pentagon program initially known as Total Information Awareness, which was intended to catch terrorists before they struck, by monitoring e-mail messages and databases of financial, medical and travel information.

The Pentagon program, later renamed Terrorism Information Awareness, was flawed from the start, though its goal was worthwhile, the panel said. "Our nation should use information technology and the power to search digital data to fight terrorism, but should protect privacy while doing so," it concluded. "In developing and using data mining tools, the government can and must protect privacy."

Data mining is defined in the report to mean "searches of one or more electronic databases of information

concerning U.S. persons, by or on behalf of an agency or employee of the government." The panel, the Technology and Privacy Advisory Committee, said the Pentagon program was "not the tip of the iceberg, but rather one small specimen in a sea of icebergs."

Although the panel was created by Rumsfeld to scrutinize Pentagon programs, it offers sweeping recommendations for privacy safeguards throughout the government. "The privacy issues presented by data mining cannot be resolved by the Department of Defense alone," the panel said. "Action by Congress, the president and the courts is necessary as well."

One of the panel's most important recommendations is to involve the courts in deciding when the government can search electronic databases. In general, it said, the Defense Department and other federal agencies should be required to obtain approval from a special federal court "before engaging in data mining with personally identifiable information concerning U.S. persons."

To obtain such approval, the government would have to show that it needed the information to prevent or respond to terrorism. In an emergency, the government would not have to get approval in advance, but would need to seek a court order within 48 hours of beginning the search.

Senator Ron Wyden, the Oregon Democrat who led opposition to the Pentagon program, said that he had not seen the report but that it sounded like "a very constructive step."

"This confirms what I've been saying as a member of the Senate Intelligence Committee," Wyden said. "It's possible to fight terrorism ferociously without gutting civil liberties. The challenge in striking that balance is to have ground rules. I've introduced a bill to set rules for data mining by the federal government. I suspect that federal agencies are doing an immense amount of data mining."

The panel said existing laws on information privacy were so disjointed and out of date that they threatened "efforts to fight terrorism and the constitutionally protected rights of U.S. persons," defined as citizens and permanent resident aliens.

"Government access to personal data can threaten individual liberty and invade constitutionally protected informational privacy rights," the panel said, and these risks will grow as the government amasses data on United States citizens who have done nothing to warrant suspicion.

Under the panel's recommendations, a federal agency could search an electronic database of publicly available information without a court order. But the head of the agency would still have to certify in writing that the data mining was necessary and appropriate for a lawful purpose. This requirement would apply to electronic databases of "information that is routinely available without charge or subscription to the public—on the Internet, in telephone directories or in public records."

The panel, headed by Newton N. Minow, a former chairman of the Federal Communications Commission, acknowledged that its proposals would "impose additional burdens on government officials." But, it said, the requirements would enhance personal privacy and national security by clarifying the rules.

"Good privacy protection in the context of data mining is often consistent with more efficient investigation," the panel said. The greatest risk of data mining by the government is that it "chills individual behavior," so people become more likely to follow social norms and less likely to dissent, the panel said.

One member of the panel, William T. Coleman, Jr., who was transportation secretary in the Ford administration, filed a lengthy dissent, asserting that the proposed restrictions could cripple the fight against terrorism. The proposals, he said, go far beyond what is required by the Constitution, federal laws or Supreme Court decisions.

But the panel insisted its proposals would not interfere with searches based on "particularized suspicion about a specific individual, including searches to identify or locate a suspected terrorist." Federal agents could still review passenger lists for airlines and cruise ships without new regulatory requirements.

Rumsfeld appointed the panel in February 2003 to quell a political uproar over the Pentagon data mining program, headed by John M. Poindexter, a retired rear admiral. Congress cut off money for the program in September 2003, with certain exceptions described in a "classified annex" to the 2004 military spending law.

Members of the panel, besides Minow and Coleman, were Floyd Abrams, a leading First Amendment lawyer; Zoe Baird, president of the Markle Foundation, which focuses on information technology; Griffin B. Bell, who was attorney general under President Jimmy Carter; Gerhard Casper, former president of Stanford University; Lloyd N. Cutler, who was White House counsel under Carter and President Bill Clinton; and John O. Marsh Jr., an aide to President Gerald R. Ford who later served as secretary of the Army. Reported in: *New York Times*, May 17.

Washington, D.C.

One day in January 2003, an entrepreneur from Florida named Hank Asher walked into the Roosevelt Room of the White House to demonstrate a counterterrorism tool he invented after the September 11, 2001, attacks. Soon to be called Matrix, it was a computer program capable of examining records of billions of people in seconds.

Accompanied by Florida Gov. Jeb Bush and the state's top police official, Asher showed his creation to Vice President Cheney, FBI Director Robert S. Mueller III and Tom Ridge, who was about to be sworn in as secretary of the new Department of Homeland Security, according to people at the meeting.

The demonstration startled everyone in the room who had not seen it before. Almost as quickly as questions could be asked, the system generated long reports on a projection screen: names, addresses, driver license photos, links to associates, even ethnicity. At one point, an Asher associate recalled, Ridge turned toward Cheney and nudged him with an elbow, apparently to underscore his amazement at the power of what they were seeing. A few months later, Ridge approved an $8 million "cooperative agreement" from his department to help states link to the computer system.

On May 20, the American Civil Liberties Union asked the Homeland Security Department's chief privacy officer, Nuala O'Connor Kelly, to investigate the ties between the department and Matrix. The group said documents show that the federal government's involvement is deeper than previously known. The ACLU said the documents, obtained under the Freedom of Information Act, appear to show that the department helped manage the system, a role the ACLU said raises new questions about whether personal information is being used appropriately by law enforcement and intelligence officials.

"We were surprised to learn that DHS is playing a central role not only in funding this program, but also in managing it," said Barry Steinhardt, Director of the ACLU's Technology and Liberty Program. "The federal government's involvement is eerily reminiscent of the Pentagon's 'Total Information Awareness' data-mining program, which was based on the same concept of sorting through everyone's data in an attempt to identify terrorists. Congress shut down TIA, and it should shut down the Matrix as well."

One document, reported by the Associated Press, showed that Asher and his colleagues had created a list of 120,000 individuals with personal attributes that gave them a "high terrorist factor" score deemed worthy of extra attention from authorities.

"When the Department deeply involves itself in a program as fraught with significant privacy problems as the Matrix, your office must investigate," Steinhardt and a colleague wrote in a letter to Kelly.

Kelly said in an interview that she would be "happy to review the documents and the scope of the relationship. We try to be supportive of state and local homeland security efforts," she said, "but only with appropriate safeguards."

A continuing debate over the proper balance between privacy and security intensified when details of the Matrix system became public last summer. Matrix organizers, including intelligence officials in the Florida Department of Law Enforcement, said the system greatly enhanced the speed of investigations by combining government data with 20 billion commercial records about people.

Though they acknowledged at the time that the system could be abused, supporters said it enabled police, using data they had always had access to, to find patterns and links among people in seconds instead of months.

In the hours after the September 11 attacks, Asher created a prototype at Seisint, Inc., the Boca Raton, Florida, information service he founded. It generated the names of thousands of people he thought might be worth the attention of authorities. The tool, called "high terrorist factor," which relied on intelligence and profiling, was later withdrawn from the system, Asher said.

The Florida Department of Law Enforcement soon became the lead agency in expanding Matrix and the Justice Department pledged $4 million to improve the system and widen its reach. Initially, 16 states agreed to contribute and draw information from Matrix, but 11 did not follow through or dropped out, citing civil liberties concerns or cost. Currently participating are Florida, Michigan, Ohio, Pennsylvania and Connecticut.

Organizers intend to ask other data services for proposals to create other Matrix-like systems later this year, in part to create competition, said Mark Zadra of the Florida department. Currently, Matrix operates under a sole-source contract with Florida.

Questions about Asher's past created controversy when the program became public last year. Confidential Florida police documents said he had been involved in drug smuggling in the early 1980s. Asher confirmed that he had limited involvement as a pilot for a few months, but police reports said he was never arrested or charged.

The ACLU and other critics say Matrix gives the government too much power to examine the lives of individuals through a process called data mining. Steinhardt said the government should not be deeply involved without a thorough examination of the implications. "It's a very dangerous marriage," he said.

Asher spent millions of his own money to refine the Matrix system. Asher said he wanted to find accomplices of the 9/11 hijackers and help authorities prevent terrorist attacks before they occur. He said Matrix does what authorities have repeatedly said needs to be done: connect the dots between suspects. "I did this because I thought we were in the middle of a world war," he said. "That it has drawn so much criticism makes me believe the country does not have its eye on the ball."

The White House meeting was a key moment for Matrix. Asher's work had already drawn the attention of senior authorities from the Justice Department, FBI, Secret Service and intelligence agencies by using Matrix to generate thousands of potential suspects, many of them Muslims. Not long after the September 11 attacks, Asher generated a list of 120,000 names, most of which he said had nothing to do with terrorism. Asher said he then cut it to about 1,200 names, something known as the "1 percent list," which provided leads in scores of investigations, some of which led to arrests.

Unknown to Asher at the time, he said, five of the names he generated were hijackers on the planes. Reported in: *Washington Post*, May 20. □

(from the bench. . . from page 148)

Court Judge Charles Clevert, Jr., ruled aldermen should not have blocked Walter Fiedorowicz from erecting signs that urged a referendum on whether the City and Village of Pewaukee should merge in May 2002. The city ordinance prohibits campaign signs unless it is within forty-five days of an election.

Clevert said the city or its insurance company would have to pay the legal bill of the American Civil Liberties Union, which took on Fiedorowicz's case. That could cost up to $40,000, said Madison attorney James Friedman, who was hired by the ACLU to file the lawsuit in August 2002.

Fiedorowicz said he was thrilled to have prevailed, but it was too late to dust off the twenty yard signs that sat in his garage while he watched the merger issue get shelved without a voter referendum. "I was very disappointed in how local government could try to push me under the carpet and essentially violate my First Amendment rights," he said.

Mayor Jeff Nowak said the city was reviewing its sign ordinances, which date to 1978, and planned to make changes in the next two months. Reported in: *Duluth News-Tribune*, April 13.

vulgar language

Boise, Idaho

A divided Idaho Supreme Court ruled March 2 that an individual's right to freedom of speech outweighs the state's desire to keep children from hearing bad language. The 3–2 majority opinion by Justice Daniel Eismann declared that a portion of Idaho's law against disturbing the peace, which prohibits "any vulgar, profane or indecent language within the presence or hearing of children," is unconstitutionally overbroad. But despite the majority's decision on the law itself, it still upheld the conviction of the appellant, a Kootenai County man accused of swearing in front of a thirteen-year-old boy and his mother.

The charge stemmed from comments Joseph Poe allegedly made on September 7, 1999, to a boy who had come with his mother to Poe's home to pick up another child.

The dissenting opinion written by Justice Gerald Schroeder said, "Within hearing distance of the child, Mr. Poe made a comment to the effect that the child's father 'needed to add a couple of inches to his penis.'" Schroeder said Poe also yelled that he was going to come after the boy and his father, and also referred to the child as a "Jew bastard." Poe was convicted of disturbing the peace. His attorney appealed, contending the state law was unconstitutionally overbroad.

The majority, including Justices Wayne Kidwell and Roger Burdick, broke down the one-sentence law into three parts. They found that the last part of the sentence, which relates to indecent language in front of a child, regulates speech too tightly. "The United States Supreme Court has repeatedly held that pure speech is protected by the First Amendment except for certain well-defined and narrowly limited classes of speech," Eismann wrote.

But the majority also decided that Poe's legal defense failed to argue that the Idaho law was unconstitutional as it applied to Poe's conduct during the incident. "He challenged his conviction under the statute solely upon the ground that it was overbroad on its face and not on the ground that his conviction under the statute violated his right of free speech," Eismann wrote.

So, the high court would not reverse Poe's conviction based solely upon his challenge that the statute is facially overbroad, he wrote.

In his dissent, Schroeder, joined by Chief Justice Linda Copple Trout, said that the majority's "abstract analysis of the case fails to adequately address the events that occurred in the case. Those events are not pleasant, but they are necessary to understand why Mr. Poe could properly be found guilty" under previous case law.

Lori Fleming of the Idaho Attorney General's Office, who argued the state's case before the high court, said the decision was a victory because Poe's conviction will stand. But she acknowledged that it also strikes down part of the law.

"From now on, prosecutors can't rely on this part of the statute as a vehicle to prosecute this type of conduct," Fleming said. "The court indicated that the Legislature can draw a more narrowly tailored kind of statute to get at that kind of conduct," she said. Reported in: Associated Press, March 5. ☐

(Bush moves to renew PATRIOT Act . . . from page 133)

track potential terrorists. But even some Republicans who support the White House's desire for robust legal powers for the fight against terrorism said the law needed to be reviewed carefully, and neither the House nor the Senate is scheduled to consider extending the expiring provisions anytime soon.

But Bush suggested that opponents of the bill were deluding themselves about the degree of the terrorist threat and risked leaving law enforcement and intelligence officials handcuffed in their ability to thwart terrorists. "Key elements of the PATRIOT Act are set to expire next year," Bush said. "Some politicians in Washington act as if the threat to America will also expire on that schedule."

Among those members of Congress critical of the act has been Senator John Kerry of Massachusetts, Bush's Democratic rival in the presidential race. While supporting some of the act's main provisions, including those allowing

greater sharing of intelligence and law enforcement information, Kerry has criticized Bush and Attorney General John Ashcroft as using the legislation to limit civil liberties.

In a statement issued after Bush's remarks, Kerry said, "The radio address glosses over the fact that there has been more than sufficient legal authority for intelligence sharing." He added, "Senior Bush administration officials simply failed to exercise leadership and make certain that their agencies actually did cooperate with each other."

Anthony Romero, executive director of the American Civil Liberties Union, a leading opponent of the legislation, said he believed the White House was trying to distract voters from the counterterrorism failings raised in recent weeks by the commission hearings.

"President Bush is clearly fighting a defensive battle for the PATRIOT Act," Romero said. "This comes on the heels of the 9/11 commission and on the heels of progress seen in Congress by Republicans and Democrats who say that the PATRIOT Act went too far."

On Capitol Hill, even some Republicans want to proceed cautiously. "I think it's important to re-enact the PATRIOT Act, but there has to be more balance between enforcement power and civil rights," Senator Arlen Specter, the Pennsylvania Republican who sits on the judiciary committee, said. Specter said an area of deep concern was a section of the act that gives the FBI greater power to demand records from businesses and institutions like libraries.

"There has to be refinement on access to library records" before he would support the legislation's renewal, he said. "If you're talking about someone getting access to books on bomb-making, that's O.K. But I don't think they should have carte blanche on library books."

The issue puts several Republicans in the peculiar position of defending Sen. Kerry. "Kerry isn't a supporter of terrorism any more than I am, just because we both raised some questions about whether some things in the PATRIOT Act go too far," said former Rep. Bob Barr, a Georgia Republican who thinks aspects of the law violate personal privacy.

"The Fourth Amendment is a nuisance to the administration, but the amendment protects citizens and legal immigrants from the government's monitoring them whenever it wants, without good cause—and if that happens, it's the end of personal liberty," Barr said.

At a private gathering, former Reagan administration Attorney General Edwin I. Meese III, long a hero to many in his party, defended the act against a battery of critics that included such conservative stalwarts as former Virginia Gov. James S. Gilmore, III, Barr and American Conservative Union Chairman David A. Keene.

Meese heatedly challenged them to come up with a single example of unlawful search and seizure and invasion of privacy by the government under the act.

"I don't care if there were no examples so far," Barr is said to have countered. "We can't say we'll let government have these unconstitutional powers in the PATRIOT Act because they will never use them. Besides, who knows how many times the government has used them? They're secret searches." Reported in: *New York Times*, April 18; *Washington Times*, April 5. ☐

(controversial Moore film . . . from page 136)

Bush and was spurned for distribution by the Walt Disney Company. IFC Entertainment is putting up 25 percent of the theatrical distribution costs, which could range from $8 million to $10 million, said executives involved in the deal. Showtime, which already has a deal in place with Lions Gate, will show the film on pay cable.

Harvey and Bob Weinstein, co-chairmen of Miramax, privately acquired the film from Disney after Disney instructed them not to distribute the film because of its political nature. The film is critical of Bush's decision to go to war in Iraq and details the Bush family's ties to powerful Saudi families like the bin Ladens. The film won the top prize at the Cannes Film Festival in May.

Big studios like Warner Brothers and Paramount shied away from distributing the film, according to several people close to the negotiations. Focus Features, the Universal studio owned by General Electric, was heavily involved in the bidding, but Robert C. Wright, General Electric's vice chairman, was called to ensure there would not be a conflict, they said.

Ultimately, the Weinsteins struck a deal with Lions Gate, a studio based in Canada that has distributed Miramax movies that have proved controversial in the past.

Jon Feltheimer, the chief executive of Lions Gate, said: "We're distributing this movie because we think it's a good movie, and a good piece of business. We don't shy away from those kinds of controversies, but we're certainly sensitive to it."

Moore said he was surprised it had taken this long to find a distributor, even after winning the Palme d'Or at Cannes. "I thought we'd have a distributor within a week," he said.

Because of Disney's rejection of the film, Harvey Weinstein wanted as many companies involved in distributing the film as possible, according to people involved with negotiating the distribution deal.

Disney's refusal to distribute the film had prompted charges of censorship and Sen. Frank Lautenberg (D-NJ) had threatened to hold Congressional hearings on the issue. Reported in: *New York Times*, June 2. ☐

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