newsletter on intellectual freedom

IFC ALA

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Ashcroft attacks librarians over Patriot Act

Attorney General John Ashcroft accused the American Library Association and other critics of the USA PATRIOT Act September 16 of fueling ''baseless hysteria'' about the government's ability to pry into the public's reading habits. In an unusually pointed attack as part of a speech in defense of the Bush administration's counterterrorism initiatives delivered in Memphis, Tennessee, Ashcroft mocked and condemned the ALA and other Justice Department critics for believing that the F.B.I. wants to know ''how far you have gotten on the latest Tom Clancy novel.''

''If he's coming after us so specifically, we must be having an impact,'' said Emily Sheketoff, executive director of ALA's Washington office.

Mark Corallo, a spokesman for the department, said the speech was intended not as an attack on librarians, but on groups like the American Civil Liberties Union and politicians who he said had persuaded librarians to mistrust the government. The ALA ''has been somewhat duped by those who are ideologically opposed to the Patriot Act,'' Corallo said.

Ashcroft's remarks, he said, ''should be seen as a jab at those who would mislead librarians and the general public into believing the absurd, that the F.B.I. is running around monitoring libraries instead of going after terrorists.''

ALA President Carla Hayden responded to Ashcroft in a prepared statement, which read:

"The American Library Association (ALA) has worked diligently for the past two years to increase awareness of a very complicated law—the USA PATRIOT Act—that was pushed through the legislative process at breakneck speed in the wake of a national tragedy. Because the Department of Justice has refused our requests for information about how many libraries have been visited by law enforcement officials using these new powers, we have focused on what the law allows. The PATRIOT Act gives law enforcement unprecedented powers of surveillance—including easy access to library records with minimal judicial oversight.

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ALA reaffirms core values, commitment to members

a statement from ALA President Carla Hayden

On August 23, a group of librarians and trustees representing many of ALA's committees, divisions and libraries of all types gathered to discuss how best to serve libraries and the millions of people who depend on their services in light of the recent Supreme Court ruling on the Children's Internet Protection Act (CIPA). I was proud to be a part of a process that reaffirmed our profession's fundamental values of equity of access and intellectual freedom for all.

Librarians nationwide today are working in a changed environment. We continue to oppose the use of filters that block access to constitutionally protected speech and believe filters are not the best way to ensure library users have a safe and enriching online experience. Now, however, many library staff and trustees need to make informed decisions that minimize restrictions on access to legal and useful information online in light of CIPA.

The American Library Association (ALA) has a long tradition of providing practical, real-life assistance to our members, as well as developing best practices and ideals for quality service. At the meeting, ALA representatives from across the country recommitted themselves to developing the different tools necessary to inform and assist librarians and the communities they serve.

In the coming weeks, ALA members and staff will:

- Gather current information on the cost of various technological protection measures, including software, maintenance, staffing and other costs libraries encounter when they begin a program using these measures. Because CIPA is an unfunded mandate, library boards must have the best information possible to determine financial impacts, particularly at a time when book budgets, hours of service and staff are being cut because of budget reductions. In many instances, the implementation of filters will result in cuts in other services.
- Begin developing criteria and tools for evaluating technological protection measures in such areas as transparency of the company and its blocked list, customization tools that allow for the most narrow restrictions, privacy protections and ease of disabling, to name a few. As became apparent during CIPA trial testimony, Internet filters overblock and underblock information, and any library compelled to install a filter should have the ability to minimize that harm.
- Provide those libraries that will need to comply with CIPA with accurate, up-to-date and step-by-step information on what is needed to meet implementation requirements.
- Develop a communications plan to consistently update ALA members on new resources and to educate the public about effective Internet safety. The ALA and library staff nationwide help ensure Internet safety and education, including using "white lists" like Great Web Sites for Kids (www.ala.org/greatsites), Internet classes for children and families, and Internet policies and procedures. As the National Research Council has stated, there is no "silver bullet." Parents must not be lulled into a false sense of security with filters. We must teach children to protect their privacy online and find the best the Web has to offer while avoiding illegal information.
- Work with state chapters to oppose any further efforts to mandate filters in libraries.
- Gather and share additional research on the impact of implementing filters. Equity of access is a core value of the library profession and the ALA, and we must be clear that installing filters that block access to safe and legal information deepens the digital divide between those who have Internet access at home, work or school and those who 'have not.' Public libraries are the main access point for millions of Americans who do not otherwise have access to the wide world of information available online, and we must ensure that libraries continue to serve all people equally.

The ALA and its various units are committed to their 127-year tradition of serving library staff and the millions of Americans who depend on school and public libraries. I am grateful for the time everyone took on Saturday [August 23] to think seriously and strategically together, and I look forward to sharing more information and resources as they are developed and vetted by library leaders nationwide. □

ALA seeks public input on rules for homeland security information

The American Library Association was among 75 advocacy organizations that sent a letter to Homeland Security Secretary Tom Ridge August 26 urging his department to give the public an opportunity to provide input on procedures currently being developed that may restrict access to vaguely defined "homeland security information."

The groups—which also represent journalists, scientists, environmental groups, and privacy advocates—voiced concern that the procedures restrict "sensitive but unclassified" information that may relate to the threat of terrorist activity or the ability to prevent future attacks. They also fear that the rules would subject millions of persons inside and outside of government to nondisclosure agreements and impose criminal penalties for disclosing information improperly.

Although the agency has the authority to proceed without public comment, the groups say the public should have the opportunity to address the question of "whether these procedures would preclude public access to information that community residents, parents, journalists, and others in the pub-

lic currently obtain from or with the assistance of government to make their communities safer, inform the public, or for other reasons."

The letter asks Ridge to release a draft version of the new procedures for public comment and to address public comments in writing. It expresses concern that the procedures may cut a broad swath of information out of the public domain—including such items as maps of environmental contamination—that is not classified but which may be perceived as "helpful to a terrorist or potentially helpful in responding to or preventing an unknown future attack."

The signatories are also concerned that the procedures would subject millions of persons inside and outside of government to non-disclosure agreements and impose criminal penalties for disclosing information improperly. The procedures could, moreover, cut out the ability of journalists, community groups, and others to inform the public of activities of federal, state and local governments.

The law that created the Department, the Homeland Security Act, included a provision that required the federal government to safeguard and share "homeland security information" with government officials, public health professionals, firefighters and others in order to respond to a terrorist attack. But, under the auspices of fighting terrorism, the Department is poised to write—without guarantees for public input—procedures that could sweep up otherwise publicly available information that has nothing to do with terrorism into a zone of secrecy, while subjecting millions of Americans to confidentiality agreements. ☐

California survey reveals FBI visited 16 libraries

A statewide survey conducted this summer by the California Library Association revealed that since September 11, 2001, FBI agents have formally contacted 14 libraries with requests for patron-record information. The September 22 disclosure of the survey data in the *Sacramento Bee* came four days after U.S. Attorney General John Ashcroft asserted to police officers and prosecutors in Memphis, Tennessee, that the Department of Justice has never invoked Section 215 of the PATRIOT Act to access records of patrons' library use, citing a just-released memo he had written to FBI Director Robert S. Mueller, III.

Emphasizing that "not all formal visits are Section 215 visits," Karen G. Schneider, who oversaw the survey as chair of CLA's Intellectual Freedom Committee, said that the committee nonetheless "set up the survey so respondents didn't provide personal information," thus shielding any library worker from revealing the location of a Section 215 contact; such a disclosure is a felony under the PATRIOT Act.

Conducted at the request of the *Bee*, the survey was mailed to CLA's 2,000 members and collected data from 344 libraries, of which 260 are public, 47 academic, and the other 27 school or special libraries or library schools. Respondents were also asked whether the FBI had made informal information-seeking contact with their libraries since the September 11 terrorist attacks; 16 answered yes, with six revealing that they had complied with the request. Additionally, 41% of respondents indicated that they had established new patron-confidentiality policies because of PATRIOT Act provisions. "I'm very pleased at how responsive librarians have been to PATRIOT Act issues," Schneider said of the statistics.

A September 25 Associated Press report quoted Rep. C. L. "Butch" Otter (R-Idaho) as speculating that "there may be agents out there who have asked for this information that, quite frankly, the head of the Justice Department in Washington, D.C., is unaware of." But DOJ spokesperson Mark Corallo dismissed as "laughable" the theory that "eleven federal judges that sit on the FISA court could not identify that they have not sworn out an order for library records and that the attorney general and the Justice Department had falsified reports." Reported in: *American Libraries* online, September 29. ☐

Minneapolis 12 settle hostile-workplace suit

A dozen Minneapolis Public Library workers have settled their hostile-workplace lawsuit against the library for $435,000 and an agreement by library officials to consider greater restrictions on patron access to sexually explicit online content.

"We believe the financial settlement in this case sends a strong message to libraries around the country that they must take the concerns of their employees seriously," the librarians said in a joint statement August 15.

While the library didn't admit any wrongdoing, Trustee Laurie Savran said that she had apologized to the plaintiffs "that this happened to them . . . and that we didn't address their concerns more expeditiously." Possible changes include increased penalties for Internet-use violations and adoption of a fee-based system to curb gratuitous printing of potentially offensive adult materials from the Internet.

Newly hired Director Kit Hadley's commitment to resolve the issue was one factor that led to the settlement, said Bob Halagan, the librarians' lawyer. "I think their respect for her made it easier for them to agree to the terms of the agreement," he said. Reported in: *American Libraries* online, August 25. ☐

most censored stories of 2002–03

Project Censored has announced the release of its picks for the Most Censored News Stories of the Year for 2002-2003. The news stories were selected by over 200 student researchers and faculty and represent the most important under-covered news stories of the year. Full synopsis of the 25 most censored news stories is available on line at www.projectcensored.org/publications/2004/index.html.

Project Censored's annual yearbook, *Censored 2004*, from Seven Stories Press is a comprehensive analysis of the dangers of media consolidation in the United States and full review of the most important issues involving freedom of information for the American public. In addition to the 25 Most Censored News Stories for 2002-3, *Censored 2004* includes updates regarding last year's Most Censored Stories, a review of the Junk Food News and News Abuse stories of the year, an analysis of the Big Five Media Giants by Mark Crispen Miller, and guest chapters on national media issues by Fairness and Accuracy in Reporting, (FAIR), PR Watch, and the International Index on Censorship. Commentaries on key media issues are included by Robin Andersen, Peter Phillips, Michael Parenti, Normon Soloman, Davey D, Herb Forestel, Nancy Kranich, Tom Lough, and Kenichi Asano.

"The stories this year reflect a clear danger to democracy and governmental transparency in the U.S.—and the corporate media's failure to alert the public to these important issues," Project Censored director Peter Phillips of Sonoma State University in Rohnert Park, California, said. "The magnitude of total global domination has to be the most important story we've uncovered in a quarter century."

The following are Project Censored's top ten censored or underreported stories for 2002–03:

1. The Neoconservative Plan For Global Dominance

Project Censored has decided that the incredible lack of public knowledge of the US plan for total global domination, represented by the Project for a New American Century (PNAC), stands as the media's biggest failure over the past year. The PNAC plans advocated the attacks on Iraq and Afghanistan and other current foreign policy objectives, long before the September 11 terrorist attacks.

Chillingly, one document published by the PNAC in 2000 actually describes the need for a "new Pearl Harbor" to persuade the American public to accept the acts of war and aggression the administration wants to carry out. "But most people in the country are totally unaware that the PNAC exists," said Prof. Phillips, "and that failure has aided and abetted this disaster in Iraq."

According to Project Censored authors, "In the 1970s, the United States and the Middle East were embroiled in a tug-of-war over oil. At the time, the prospect of seizing control of Arab oil fields by force was considered out of line. Still, the idea of Middle East dominance was very attractive to a group of hard-line Washington insiders that included Dick Cheney, Donald Rumsfeld, Paul Wolfowitz, Richard Perle, William Kristol and other operatives. During the Clinton years, they were active in conservative think tanks like the PNAC. When Bush was elected, they came roaring back into power.

In an update for the Project Censored Web site, *Mother Jones* writer Robert Dreyfuss notes "There was very little examination in the media of the role of oil in American policy towards Iraq and the Persian Gulf, and what coverage did exist tended to pooh-pooh or debunk the idea that the war had anything to do with it."

2. Homeland Security Threatens Civil Liberties

While the media did cover the PATRIOT Act, and the so-called PATRIOT Act II, which was leaked to the press in February 2003, there wasn't sufficient analysis of some of the truly dangerous and precedent-setting components of both acts. This goes especially for the shocking provision in PATRIOT II that would allow even US citizens to be treated as enemy combatants and held without counsel, simply on suspicion of connections to terrorism.

"Under section 501, a US citizen engaging in lawful activity can be picked off the streets or from home and taken to a secret military tribunal with no access to or notification of a lawyer, the press or family." This would be considered justified if the agent 'inferred from the conduct' suspicious intention.

Fortunately, PATRIOT I is under major duress in Congress as both parties are supporting significant revisions. Yet, President Bush, realizing that he and his unpopular Attorney General John Ashcroft are losing popular support, is threatening a veto, and has aggressively gone on the offense in favor of the repugnant PATRIOT II. Will the media probe the new legislation much more thoroughly than the first round, which received inadequate analysis post 9/11?

3. US Illegally Removes Pages from Iraq UN Report

Story three is the shockingly under-reported fact that the Bush administration removed a whopping 8,000 of 11,800 pages from the report the Iraqi government submitted to the UN Security Council and the International Atomic Energy Agency. The pages included details on how the US had actually supplied Iraq with chemical and biological weapons and the building blocks for weapons of mass destruction. The pages reportedly implicate not only Reagan and Bush administration officials but also major corporations including Bechtel, Eastman Kodak and Dupont and the US Departments of Energy and Agriculture.

In comments to Project Censored, Michael Niman, author of one of the articles cited, noted that his article was based on secondary sources, mostly from the international

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ACLU files challenge to USA PATRIOT Act

The American Civil Liberties Union filed the first legal challenge to the U.S.A. PATRIOT Act July 30. The suit was brought by plaintiffs in Portland, Oregon, and Detroit, Michigan. The act gives law enforcement agencies expanded powers to fight terrorism. But the ACLU suit claims it violates the Fourth Amendment by allowing searches without probable cause or a warrant.

The PATRIOT Act gives the FBI and other law enforcement agencies wide-ranging powers. For example, the act allows police to conduct a search without a regular warrant and without showing a local judge probable cause. Officers also don't have to notify subjects of the search, and anyone who does inform them is in breach of a gag order and subject to imprisonment. The ACLU is filing the complaint on behalf of five community groups in Michigan and one mosque in Oregon, which all believe they're being investigated.

Alaa Abunijem of the Islamic Center of Portland, said the FBI is frightening congregations at his mosque by requesting all kinds of personal records. Abunijem told a press conference that while investigating the so-called "Portland Seven," an FBI informant attended the mosque and secretly recorded conversations. He said the mosque has also had to hand over its financial records. Abunijem said he believes he's personally the subject of an investigation, but he can't be sure because under the PATRIOT Act law enforcement officers don't have to tell him.

David Fidanque, the director of the ACLU's Oregon chapter, said the ACLU is as anxious as anyone else to stop terrorism. But he said that can't be done by allowing police to secretly gather intelligence on everyone—whether or not they're suspected of a crime.

"These are secret orders, issued by a secret court," Fidanque said. "Not by Judge Jones, here in Portland, or some other federal judge that lives in our community, but by judges who meet in the basement of the Justice Department, as members of the Foreign Intelligence Surveillance Court, in Washington DC. These oders can be issued with very little oversight, by even that secret court."

Fidanque said he can't be sure what's happening, because of all the secrecy, but it appears people are being investigated for little more than the fact that they are Muslims or immigrants from Middle Eastern countries. He said the effect is that civil rights gains made in the 1960s and 70s are being lost.

The lawsuit did not come as a surprise to the Bush Administration. U.S. Attorney General John Ashcroft has been traveling around the country, especially in the West, to tout the importance of the Patriot Act to the war on terrorism.

The Justice Department claims that the act cannot be used to investigate garden-variety crimes, or even domestic terrorism and that the section in question can only be used to obtain foreign intelligence on people who are non-citizens.

Some of the more controversial powers contained in the PATRIOT Act are scheduled to sunset by the end of 2006. But Attorney General John Ashcroft and the Bush Administration are campaigning to make the act permanent. Reported in: publicbroadcasting.net. □

PATRIOT Act used to pursue crimes from drugs to swindling

The Bush administration, which calls the USA PATRIOT Act perhaps its most essential tool in fighting terrorists, has begun using the law with increasing frequency in many criminal investigations that have little or no connection to terrorism. The government is using its expanded authority under the far-reaching law to investigate suspected drug traffickers, white-collar criminals, blackmailers, child pornographers, money launderers, spies and even corrupt foreign leaders, federal officials said.

Justice Department officials say they are simply using all the tools now available to them to pursue criminals—terrorists or otherwise. But critics of the administration's antiterrorism tactics assert that such use of the law is evidence the administration is using terrorism as a guise to pursue a broader law enforcement agenda.

Justice Department officials point out that they have employed their newfound powers in many instances against suspected terrorists. With the new law breaking down the wall between intelligence and criminal investigations, the Justice Department in February was able to bring terrorism-related charges against a Florida professor, for example, and it has used its expanded surveillance powers to move against several suspected terrorist cells.

But a new Justice Department report, given to members of Congress in September also cited more than a dozen cases that are not directly related to terrorism in which federal authorities have used their expanded power to investigate individuals, initiate wiretaps and other surveillance, or seize millions in tainted assets.

For instance, the ability to secure nationwide warrants to obtain e-mail and electronic evidence "has proved invaluable in several sensitive nonterrorism investigations," including the tracking of an unidentified fugitive and an investigation into a computer hacker who stole a company's trade secrets, the report said. Justice Department officials said the cases cited in the report represent only a small sampling of the many hundreds of nonterrorism cases pursued under the law.

The authorities have also used toughened penalties under the law to press charges against a lovesick 20-year-old woman from Orange County, California, who planted threatening notes aboard a Hawaii-bound cruise ship she was traveling on with her family in May. The woman, who said she made the threats to try to return home to her boyfriend, was sentenced to two years in federal prison because of a provi-

sion in the PATRIOT Act on the threat of terrorism against mass transportation systems.

Officials also said they had used their expanded authority to track private Internet communications in order to investigate a major drug distributor, a four-time killer, an identity thief and a fugitive who fled on the eve of trial by using a fake passport.

In one case, an e-mail provider disclosed information that allowed federal authorities to apprehend two suspects who had threatened to kill executives at a foreign corporation unless they were paid a hefty ransom, officials said. Previously, they said, gray areas in the law made it difficult to get such global Internet and computer data.

The law passed by Congress just five weeks after the terror attacks of September 11, 2001, has proved a particularly powerful tool in pursuing financial crimes. Officials with the Bureau of Immigration and Customs Enforcement have seen a sharp spike in investigations as a result of their expanded powers, officials said in interviews. A senior official said investigators in the last two years had seized about $35 million at American borders in undeclared cash, checks and currency being smuggled out of the country. That was a significant increase over the past few years, the official said. While the authorities say they suspect that large amounts of the smuggled cash may have been intended to finance Middle Eastern terrorists, much of it involved drug smuggling, corporate fraud and other crimes not directly related to terrorism.

The terrorism law allows the authorities to investigate cash smuggling cases more aggressively and to seek stiffer penalties by elevating them from what had been mere reporting failures. Customs officials say they have used their expanded authority to open at least nine investigations into Latin American officials suspected of laundering money in the United States, and to seize millions of dollars from overseas bank accounts in many cases unrelated to terrorism.

In one instance, agents citing the new law seized $1.7 million from United States bank accounts that were linked to a former Illinois investor who fled to Belize after he was accused of bilking clients out of millions, federal officials said.

Publicly, Attorney General John Ashcroft and senior Justice Department officials have portrayed their expanded power almost exclusively as a means of fighting terrorists, with little or no mention of other criminal uses. “We have used these tools to prevent terrorists from unleashing more death and destruction on our soil,” Ashcroft said in an August speech in Washington, one of more than two dozen he has given in defense of the law, which has come under growing attack. “We have used these tools to save innocent American lives.”

Internally, however, Justice Department officials have emphasized a much broader mandate. A guide to a Justice Department employee seminar last year on financial crimes, for instance, said: “We all know that the USA PATRIOT Act provided weapons for the war on terrorism. But do you know how it affects the war on crime as well?”

Elliot Mincberg, legal director for People for the American Way, a liberal group that has been critical of Ashcroft, said the Justice Department’s public assertions had struck him as misleading and perhaps dishonest. “What the Justice Department has really done,” he said, “is to get things put into the law that have been on prosecutors’ wish lists for years. They’ve used terrorism as a guise to expand law enforcement powers in areas that are totally unrelated to terrorism.”

A study in January by the General Accounting Office, the investigative arm of Congress, concluded that while the number of terrorism investigations at the Justice Department soared after the September 11 attacks, 75 percent of the convictions that the department classified as “international terrorism” were wrongly labeled. Many dealt with more common crimes like document forgery.

The terrorism law has already drawn sharp opposition from those who believe it gives the government too much power to intrude on people’s privacy in pursuit of terrorists. Anthony Romero, executive director of the American Civil Liberties Union, said, “Once the American public understands that many of the powers granted to the federal government apply to much more than just terrorism, I think the opposition will gain momentum.”

Senator Patrick J. Leahy of Vermont, the ranking Democrat on the Judiciary Committee, said members of Congress expected some of the new powers granted to law enforcement to be used for nonterrorism investigations. But he said the Justice Department’s secrecy and lack of cooperation in putting the legislation into effect made him question whether “the government is taking shortcuts around the criminal laws” by invoking intelligence powers—with differing standards of evidence—to conduct surveillance operations and demand access to records.

“We did not intend for the government to shed the traditional tools of criminal investigation, such as grand jury subpoenas governed by well-established precedent and wiretaps strictly monitored” by federal judges, he said.

Justice Department officials say such criticism has not deterred them. “There are many provisions in the PATRIOT Act that can be used in the general criminal law,” Mark Corallo, a department spokesman, said. “And I think any reasonable person would agree that we have an obligation to do everything we can to protect the lives and liberties of Americans from attack, whether it’s from terrorists or garden-variety criminals.” Reported in: *New York Times*, September 28. □

Bush urges wider anti-terrorism powers

President Bush called September 10 for a significant expansion of law enforcement powers under the USA Patriot Act, using the eve of the second anniversary of the 2001 terrorist acts to say that his administration was winning the war on terrorism but that "unreasonable obstacles" in the law impeded the pursuit of terror suspects.

In a speech at the F.B.I. training academy, where he spoke to a cheering crowd of federal investigators and troops from the nearby Marine training base, Bush plunged directly into the debate over whether the Patriot Act's provisions were too far reaching. He argued that they did not reach far enough and promised, "We will never forget the servants of evil who plotted the attacks, and we will never forget those who rejoiced at our grief."

Bush proposed letting federal law enforcement agencies issue "administrative subpoenas" in terrorism cases without obtaining approvals from judges or grand juries, expanding the federal death penalty statutes to cover more terrorism-related crimes and making it harder for people suspected in terrorism-related cases to be released on bail.

Expanding subpoena powers is the most contentious of the three amendments to the act that Bush proposed. It was in the original bill passed after the September 11 attacks but was dropped in the Congressional conference committee. Bush said that those expanded powers were used in health care frauds.

"If we can use these subpoenas to catch crooked doctors," Bush said, "the Congress should allow law enforcement officials to use them in catching terrorists." In most cases now, investigators have to apply for subpoenas to a judge or the Foreign Intelligence Surveillance Court.

It is unclear how the proposals will fare in a Congress where Democrats and some Republicans have raised questions that the Patriot Act went too far.

Bush also called for expanding the death penalty to include terror-related crimes like sabotaging nuclear centers using methods that result in deaths. Bush also said Congress had to let judges deny bail for terror suspects. Judges have that power with some drug offenses.

"This disparity in the law makes no sense," Bush said. "If dangerous drug dealers can be held without bail in this way, Congress should allow for the same treatment for accused terrorists."

Attorney General John Ashcroft advocated the death penalty and bail provisions as he crisscrossed the country,

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Senate votes to repeal new media ownership rules

The Republican-controlled Senate dealt a blow to the Bush Administration September 16, voting to rescind new Federal Communications Commission rules that would allow large media companies to get even bigger. By a vote of 55 to 40, the Senate approved a resolution that would roll back the F.C.C. regulations allowing television networks to own more local stations and that would have permitted conglomerates to own newspaper, television and radio stations in a single metropolitan market.

Based on the initial reaction in the Senate to the F.C.C. rule changes, the resolution, introduced by Sen. Byron Dorgan (D-ND) had been expected to pass. Senator Trent Lott (R-MS) co-sponsored the legislation. The measure faced a tougher battle in the House of Representatives and President Bush, who has yet to veto a single piece of legislation, has threatened to veto this bill if it reaches his desk.

"We think the rules that the F.C.C. came up with more accurately reflect the changing media landscape and the current state of network station ownership, while guarding against concentration in the marketplace," Scott McClellan, Bush's Press Secretary said. He added: "And I did notice the Senate action today. I think that the vote appears to show that there would not be enough votes there to overturn a possible veto."

The commission's chairman, Michael Powell, warned that the Senate bill would "create a legal morass that will unsettle media regulation for years to come."

Earlier in September, a Federal appeals court in Philadelphia blocked the commission from imposing the new rules while it considered a challenge to them by a group of small radio stations. That court's surprise order could keep the rules from taking effect for many months.

In June, the Republican-dominated F.C.C. voted, 3–2, along party lines to ease decades-old ownership restrictions. The changes included allowing a single company to own television stations reaching nearly half the nation's viewers and combinations of newspapers and broadcast outlets in the same area.

Specifically, the new regulations would enable a company to own as many as three television stations, eight radio stations and a cable operator in one market. They also would permit a television network to own stations reaching as much as 45 percent of the nation's viewers, an increase from 35 percent.

Major media companies said the changes were needed because the old regulations, many on the books since the late 1940's, hindered their ability to grow and compete in a market altered by cable television, satellite broadcasting and the Internet.

Supporters of the Senate resolution said the new F.C.C.

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261 lawsuits filed on music sharing

The recording industry filed 261 lawsuits September 8 against people who share copyrighted music over the Internet, charging them with copyright infringement in the first broad legal action aimed at ordinary users of file-sharing networks.

The blizzard of lawsuits—which is expected to be followed by thousands more—marked a turning point for the music industry, which has sought to avoid direct conflict with its potential consumers as it battles online piracy. But industry officials said they now believe that the only way to stem the widespread file-swapping is to make people realize they will be punished for participating—even in the context of an Internet culture where many forms of information are free.

''Nobody likes playing the heavy and having to resort to litigation,'' said Cary Sherman, president of the Recording Industry Association of America. ''But when you're being victimized by illegal activity there comes a time when you have to step up and take appropriate action.''

In an effort to soften the legal attack, the record industry group offered amnesty for file sharers who turn themselves in before legal action is taken against them. Under the ''clean slate'' program unveiled by the industry, people seeking amnesty must destroy files that they have downloaded illegally and sign a notarized form pledging never to trade copyrighted works again.

Since the rise of Napster, the first popular file-sharing network, millions of people have traded copyrighted music on the Internet without paying for it. The suits filed in September are intended to change the perception of many people that they could do so with impunity. The record industry's trade group said it selected the defendants by employing simple search techniques that allow anyone using the major file-sharing services to see what files other users are making available to copy from their own computers.

The group chose to sue a sampling of people using KaZaA, iMesh, Blubster, Grokster and Gnutella, who each had placed more than 1,000 songs in a folder that allowed millions of strangers to copy them. For now, the industry is pursuing people who actively ''share'' songs, rather than those who download. In making it more risky to share, the record labels hope to upset the ecology of file-sharing networks by choosing those who make it possible for the much larger population of users—sometimes known as ''leeches''—to copy songs.

''They're hitting the networks in their Achilles' heel, which is that everybody can share but no one person has incentive to share,'' said Jonathan Zittrain, a co-director of the Berkman Center for Internet and Society at Harvard Law School. ''It's not as if people are excited about sharing, they're excited about taking.''

The legal campaign is part of a broad strategy the record industry is using to try to bolster flagging sales, including making more music available to buy online and, in some cases, lowering the price of CDs. But some critics say that the industry risks stirring widespread resentment in cracking down on an activity embraced by an estimated 60 million Americans.

''Instead of treating customers like criminals, the industry should look at what they want and find a way to offer it to them,'' said Wendy Seltzer, a staff lawyer with the Electronic Frontier Foundation. ''Instead of asking people to come to them with a signed admission of unlawful conduct they should be asking people to come to them with payment for a system for file-sharing services.''

Elan Oren, chief executive of iMesh, a file-sharing network, said that rather than filing huge lawsuits, record labels should work with file-sharing services to devise a method of compensation in exchange for legally distributing their music over the peer-to-peer networks. But record companies say creating a compensation system for file sharing—for instance, imposing a tax that could be redistributed to copyright holders—would be extremely difficult.

Several defendants in the lawsuits said they had no idea that what they—or in some cases, their children—were doing was illegal. ''How are we supposed to know it's illegal?'' said Vonnie Bassett, a bookkeeper in Redwood City, California, who said her 17-year-old son uses KaZaA. ''Half the things on the Internet must be illegal then.'' Bassett, who was informed of the lawsuit by a reporter, said she had assumed that because Napster, the company that unleashed a wave of file sharing in 2000, was shut down, the new services must be legal.

''Why don't they sue KaZaA?'' Bassett added. ''Why are they suing the people? That's the part I don't understand.''

In fact, the record companies have sued KaZaA. But a federal judge in Los Angeles ruled last spring that two other file-sharing programs, Grokster and Morpheus, were significantly different from Napster and could not be held responsible for how some people might use them to violate copyright. The record labels said the decision, which they have appealed, left them little choice but to pursue individual users of those programs.

The litigation strategy was further buoyed by surveys that showed how impervious people are to ethical entreaties. A recent study by the Pew Internet and American Life Project found that 67 percent of people downloading music did not care whether or not it was copyrighted. A separate survey by Forrester Research found that 68 percent of young file-traders would stop downloading when confronted with the threat of fines or jail time.

Traffic on file-sharing services dipped after the recording industry announced its plan to sue file sharers in June. The record labels are hoping that as college students—the largest group of file sharers—return to their campuses, news of the lawsuits will make them well aware of the potential legal penalties they face.

Under copyright law, violators can be held liable for $750 to $150,000 for each incident. For defendants who were making huge libraries of songs available to copy, that could

amount to millions of dollars. But record industry officials said that some people who contacted the record industry group after learning that they had been subpoenaed have already agreed to settlements averaging about $3,000. The settlements are expected to be slightly higher for those who are named in the lawsuits.

It was the industry's interest in settling that inspired the amnesty program, recording executives said. ''It's our version of an olive branch,'' Sherman said.

But some public interest groups warned that if people identified themselves publicly as having violated copyright law they could be sued by other copyright holders, even if the record industry granted them immunity. ''We are concerned that the R.I.A.A.'s amnesty program is an imperfect option,'' Gigi Sohn, president of Public Knowledge, a nonprofit group that describes itself as an advocate for the digital rights of consumers, said in a statement.

Fighting the lawsuit, several lawyers said, would be an uphill battle. The law prohibits distributing copyrighted works without the permission of the copyright holder, and people who have made available large numbers of files for others to download will probably be viewed as distributors. But some legal experts questioned whether the record industry might lose a larger battle over the scope of digital copyrights, even if it wins its legal cases.

''It could backfire,'' said Jane C. Ginsburg, a law professor at Columbia University. ''If you have really widespread copyright infringement, there is a great temptation to say if it's that widespread it can't be infringing anymore. The risk of suing individuals is that there will be more pressure in that direction.''

Marvin Hooker, a 39-year-old resident of San Francisco who is being sued by the record industry, offered a point of view held by millions of file sharers. Hooker, who works in a bank, said that when he heard music that appealed to him on KaZaA, he typically downloaded the song and kept it, perhaps burning it on a CD. He said he does not believe that such actions violate the law. ''To me, the way I see it, I am not taking anything from them,'' Hooker said. He compared the Internet music download to making a copy of music or a tape for friends. ''I don't see people getting sued because of that,'' he said. Reported in: *New York Times*, September 9. □

Internet censorship hits "all time high"

Internet restrictions, government secrecy and communications surveillance have reached an unprecedented level across the world. A year-long study of Internet censorship in more than fifty countries found that a sharp escalation in control of the Internet since September 2001 may have outstripped the traditional ability of the medium to repel restrictions.

The report fired a broadside at the United States and the United Kingdom for creating initiatives hostile to Internet freedom. Those countries have "led a global attack on free speech on the Internet" and "set a technological and regulatory standard for mass surveillance and control" of the Net, the report by London-based Privacy International and the GreenNet Educational Trust argued.

The 70,000 word report, *Silenced*, was released September 19 at the preparatory meeting of the World Summit on the Information Society in Geneva. Undertaken through a collaboration of more than fifty experts and advocates throughout the world and funded by a grant from the Open Society Institute, the study found that censorship of the Internet is commonplace in most regions of the world.

The report concluded: "It is clear that in most countries over the past two years there has been an acceleration of efforts to either close down or inhibit the Internet. In some countries, for example in China and Burma, the level of control is such that the Internet has relatively little value as a medium for organised free speech, and its use could well create additional dangers at a personal level for activists".

"The September 11, 2001, attacks have given numerous governments the opportunity to promulgate restrictive policies that their citizens had previously opposed. There has been an acceleration of legal authority for additional snooping, from increased email monitoring to the retention of Web logs and communications data. Simultaneously, governments have become more secretive about their own activities, reducing information that was previously available and refusing to adhere to policies on freedom of information," the study continued

In finding a substantial level of censorship in many countries, the report condemned the complicity of Western nations. "Governments of developing nations rely on Western countries to supply them with the necessary technologies of surveillance and control, such as digital wiretapping equipment, deciphering equipment, scanners, bugs, tracking equipment and computer intercept systems. The transfer of surveillance technology from first to third world is now a lucrative sideline for the arms industry. Without the aid of this technology transfer, it is unlikely that non-democratic regimes could impose the current levels of control over Internet activity."

One of the most important trends in recent years is the growth of multinational corporate censors. The report noted: "It is arguable that in the first decade of the 21st century, corporations will rival governments in threatening Internet freedoms. Aggressive protection of corporate intellectual property has resulted in substantial legal action against users, and a corresponding deterioration in trust across the Internet".

The report cited numerous instances where Internet users have been jailed by authorities for posting or hosting political material. Such countries include Egypt, China and a number of Middle Eastern countries where the Internet is tightly controlled and heavily monitored.

(continued on page 250)

censorship dateline

libraries

Fairbanks, Alaska

The Fairbanks North Star Borough Assembly approved an ordinance September 25 to put pornography filters on computers in borough public libraries. The new law says that the library director or a designee shall temporarily disable the filtering upon an adult's request.

"(The filters) would not hurt those that are doing the legitimate research," said Assemblyman Rick Solie, among the six panel members to approve the ordinance. Other assembly members who favored the measure were Cynthia Henry, Guy Sattley, Randy Frank, Bonnie Williams and Garry Hutchison. Rejecting it were Hank Bartos, Tim Beck, Victoria Foote and Eileen Cummings.

The measure was sponsored by Borough Mayor Rhonda Boyles and was adopted following months of debate on the issue and hours of testimony and discussion at the assembly's regular meeting. Upwards of fifty people were in attendance and about thirty testified. At issue was the balance between maintaining a family atmosphere at the libraries and protecting freedom of inquiry.

The Alaska Civil Liberties Union and others said the filters tend to block more than pornography. Allowing the government to decide what information adults can and cannot access is a dangerous precedent, opponents said.

Boyles and assembly members favoring the filters maintained that what information is available at the library is a collection decision, and the library does not allow pornography among its other materials. Borough residents speaking to the assembly called for either blanket filtering for all or filtering for children but maintaining unencumbered Internet access for adults. Reported in: *Fairbanks News-Miner*, September 26.

Bakersfield, California

The removal this summer of Sonya Sones's *What My Mother Doesn't Know* from the library shelves of the Rosedale Union School District in Bakersfield, California, created a new challenge for the school board: clarifying what the library materials selection and reconsideration policies are for the district.

The controversy stemmed from an objection filed by the parents of a Rosedale Middle School student about the book of coming-of-age poetry. When school officials did not comply with the complainants' request to remove *What My Mother Doesn't Know*, they took the issue to the officials' superiors, who ordered its withdrawal—despite the fact that current district policy calls for the school librarian to determine what titles are appropriate, with approval from the principal.

At their August 12 meeting, school trustees considered making themselves the ultimate authority should another reconsideration request be appealed. "I don't want to be in the censorship game, but we are an elementary-school district and we want our instructional materials to reflect the community standards of our area," trustee Ken Mettler argued, revealing his particular discomfort with Sones's poem "Ice Capades"—a teenage girl's description of how her breasts react to cold. Reported in: *American Libraries* online, August 18.

Ocala, Florida

Another book is in the cross hairs of a Marion County Public Library patron. This time, however, the topic isn't sex. Nevertheless, the subject matter is emotional and explosive, particularly for a children's book when the country is engaged in a war on terror.

On September 23, Library Director Julie Sieg, who in August took the unprecedented step of removing a book from the library's collection because of its content, briefed the county's Library Advisory Board on the most recent challenge. On September 3, Ocala resident Galina Hutcher filed a "request for reconsideration" for a book entitled *A Stone in My Hand*, located in the library's children's section.

Cathryn Clinton's October 2002 novel is geared toward middle school-aged children. It's set in Israeli-occupied Gaza City during the 1988 Palestinian uprising. The main character is an 11-year-old Palestinian girl, Malaak Abed Atieh. Her father goes into Israel to look for a job, according to online reviews, and is killed in a terrorist attack. He becomes a victim of the bloodshed when young Palestinians

fighting the Israeli army blow up the bus he was riding on. A month later, Malaak finally learns what happened to her father. She then has to deal with her older brother and his friend gravitating toward the terrorist group Islamic Jihad and participating in terrorist activities, beginning with throwing rocks at Israeli soldiers.

Hutcher acknowledged that she hadn't read the entire book. But in explaining why she objected to the book, she wrote that "I have briefly reviewed (the) book and found the subject matter to be for a mature audience and that this was written one-sidedly, specifically showing one party to be fully wrong."

Hutcher doesn't specify which side is "fully wrong." But other reviewers note that book is told from a Muslim perspective and that it can be taken to be anti-Israel. Sieg said she assigned the book for review by a three-member panel of librarians, as county policies state must happen when a book is challenged.

This was the seventh time a book has been challenged since February 2001. Then, the county was caught up in a major controversy over *It's Perfectly Normal*, a sex education book that offers frank discussions of many topics, including homosexuality and masturbation. Prior to that, Sieg said, she received one or two such complaints a year.

Sieg cited the publicity over *It's Perfectly Normal* as the cause for the up-tick in challenges. And while it's unclear whether anyone will come forward to protest her removal last month of *Eat Me*, an explicit romp through the sex-filled adventures of four Australian women, more challenges may be filed in the future. "People are just becoming more aware of what's in the library," Sieg said. Reported in: *Ocala Star-Banner*, September 24.

Libertyville, Illinois

The board of the Cook Memorial Public Library District formally censured its vice president, Jack Martin, September 16 for "censoring the library's holdings" without proper authority and for about a dozen other actions, including a possible violation of the Illinois Open Meetings Act. On August 23, Martin confiscated copies of the August 22 *Reader's Guide*, a suburban alternative newsweekly containing theater and concert listings that is distributed at the Libertyville library and other drop-off points in the community.

What prompted Martin was the 12-letter expletive in the cover headline that introduced an article about a toll-free phone number that invites callers to swear into a voice mailbox. At the meeting, Martin was also castigated for his letter in the September 3 *Arlington Heights Daily Herald* in which he criticized Library Director Fred Byergo's "permissive attitude" and cautioned parents to "watch the library materials" in Butterfield School, where trustee Linda Lucke, who had opposed his actions, serves as librarian.

"Your actions went far beyond what any trustee can or should do," board President Ed Abderholden told Martin. "We are a board. We cannot act as one individual." The board pointed out that Martin's talking to trustees about the newspaper outside a public meeting may have been in violation of the Illinois Open Meetings Act.

About 100 people attended the meeting at the Libertyville village hall. The 5–2 vote to censure Martin followed an hour of comments from audience members who were split about evenly on the issue. "I don't need him to monitor what I, my children, or my grandchildren can read," said library user Elizabeth Phillips.

Martin said that he was planning to raise the issue of whether the library should be a distribution point for the paper, rather than subscribing to it and keeping one copy available in the periodicals area. Reported in: *American Libraries* online, September 22.

McKinney, Texas

The McKinney school district topped a statewide list of schools with challenged and removed books last year. Five books were removed from individual school libraries in response to formal challenges by parents. The district also led the state in challenges, with eleven during the 2002-03 school year, according to the study by the American Civil Liberties Union of Texas.

District officials said books were removed from libraries at Scott Johnson Middle School and C.T. Eddins Elementary School. Superintendent David Anthony said the books were not removed from the entire district and are available to students at higher grade levels. He also questioned the study's use of the term "ban."

"They consider simply moving a book off of a campus a ban, and we don't," Dr. Anthony said. "We still use the books, but we moved them to a place where the students will be able to read them and use them at a more appropriate age level."

More than 1,200 districts and charter schools in the state provided data to the ACLU. The report showed 134 challenges in 71 districts, with 35 books banned. Districts in Dallas, Richardson, Plano, Allen and Frisco reported no book challenges or bans, ACLU representatives said. Arlington reported two challenges. The Vidor school district previously topped the list with six books banned from its campuses in the 2001-02 school year.

"There is never really a trend in one district or another from year to year," said Lee Leffingwell, project manager for the study, "and usually the most challenges happen in suburban districts near large metropolitan areas."

McKinney officials said they were responding to the requests of the community. "Every one of those challenges was generated by a parent, not the same parent, but a parent with a concern," Anthony said. "We have been very responsive to parent complaints about books."

Last year, Harry Potter books were challenged in 21 school districts. This year, books in the series received four challenges. McKinney district officials did not provide

specifics about who made the challenges but said they follow the procedure recommended by the Texas Association of School Boards.

Administrators from other districts said they probably get as many or more informal complaints from parents about books as McKinney. But after a conversation between the parent and an administrator—a recommended step in many districts—the parent usually decides not to take the matter further. Reported in: *Dallas Morning News*, September 26.

Round Rock, Texas

A handicapped boy loses his virginity as he copes with all the other coming of age issues that overwhelm teenage boys. The story is told in the book called *Crazy*, but one parent says what's even crazier is the fact that her twelve-year-old daughter found it in her middle school library.

Misty Ormiston recently finished reading *Crazy*, by Benjamin Lebert. Misty says, "It was talking in terms of him having sex with a girl. It was pretty vulgar; it talked about parts of the body." There was free use of the "F-word" and several "C-words." What some might consider locker-room talk, this mom called pornography.

"He talks about sex and smoking cigarettes and going to strip clubs," said Ormiston. "You don't have to look very far to find that description. It's on the back cover of the book, and yet it apparently made it past the librarian at Canyon Vista Middle School."

When Ormiston called the school to complain, she was granted a meeting with the principal. According to Round Rock representative Cathy Brandewie, the principal decided the parent was correct in being concerned about the book's availability and took it off the shelf.

Ormiston wanted the book removed from all libraries in the district. It was taken off the shelf of the other junior high library, but not from one of the Round Rock high school libraries. "We don't want to become a censorship organization. We don't want to ban books. We want to make sure different values, different attitudes, different learning styles, different levels of maturity, different interests are considered."

Brandewie said district policy advocates meetings with parents and librarians whenever necessary. If that doesn't resolve a situation, there is a more comprehensive procedure, whereby they form a committee. It's up to the committee to protect students from highly charged sexual content, being careful not to allow one parent to make a decision for all students. Reported in: www.fox7.com, September 23.

schools

Baldwin, Kansas

A decision by the Baldwin school district superintendent to pull an award-winning book from a ninth grade class has drawn criticism from a school board member. The novel, *We All Fall Down*, by Robert Cormier, includes weighty topics, such as teenage alcoholism and violence, and profane language. Many students already were well into the novel when Superintendent Jim White ordered copies of the book seized from the orientation class taught by Joyce Tallman after two complaints from parents.

White's decision, without input from the school board, drew almost immediate criticism. "It's a case where one or two parents are forcing their personal beliefs on all students in the district, and that's wrong," said board member Stacy Cohen, who wants White to reverse his decision.

White said that, after reading parts of the 1991 book, it was clear to him it wasn't fit for his own daughter or granddaughter, so he ordered the book pulled. He said the book would remain in the high school library but couldn't be used for the class.

Cohen said the superintendent likely overstepped his authority when he removed the book from a classroom. She based that conclusion on her reading of the district's policy manual. Cohen said there was no policy that would allow people to challenge the district's classroom curriculum.

"The key is we need to put the book back in the classroom and look at creating a policy," said Cohen, a former English teacher. She said the district had a policy on challenging library materials. Under those rules, challenged books must stay on the library shelf until the issue is resolved.

The original letter objecting to *We All Fall Down* was sent by Lori Krysztof, who has a daughter in the high school orientation class and teaches kindergarten in the Baldwin district. "I'm asking that the book be taken out of the curriculum for the class," Krysztof said. "I have not asked that the book be banned."

Krysztof said she found more than fifty objectionable passages while reading the 208-page work of fiction. The book's profanity and sexual content were what she found most troublesome, she said. Reported in: *Topeka Capital-Journal*, September 15.

periodicals

Kansas City, Missouri

It's OK to portray the president as a wimp, a waffle or a reckless Roman emperor. But if you're "Doonesbury" creator Garry Trudeau and you mention the M word—as in masturbation—editors will pull your strip.

Characters in a recent strip discussed a study by Australian scientists who found that men who masturbate often in their 20s are 30 percent less likely to get prostate cancer later. Some U.S. newspapers chose to run a substitute offered by Kansas City-based Universal Press Syndicate.

"We felt it was something our readers would not like, and

we did not have a good reason for running it," said Diane Bacha, assistant managing editor for features and entertainment at the *Milwaukee Journal Sentinel.* Bacha posted a query about the comic on an industry e-mail message board and received responses from 34 newspapers. Nineteen said they would not run the strip, 12 said they planned to and three did not know what they would do. "To me this boils down to a taste issue," Bacha said.

This was not the first time newspapers have refused to run "Doonesbury." 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 "Doonesbury" strips about accusations that President Clinton had sex with a White House intern.

Newspapers do not have to notify the syndicate when they pull a strip, so it would be impossible to know how many of about 1,400 subscribers decided to run the September 7 installment, said Kathie Kerr, a spokeswoman for the distributor.

Normally, Trudeau doesn't allow Universal Press Syndicate to offer substitute strips when newspapers have "editorial concerns," Kerr said. This time, however, he agreed to let the cartoon's distributor offer a substitute "Doonesbury" from September 22, 2002, she said.

In a written statement, Trudeau said the comic "isn't really about masturbation or the cancer study as such, but about the shifting nature of taboos and the inability of two adults to have a certain kind of serious conversation."

"Still," Trudeau said, "I understand that the mention of certain words per se will not be acceptable to some family newspapers." In a letter to newspaper editors, Lee Salem, editor and executive vice president of Universal Press, referred to masturbation as the "m-word." "For some papers, the use of the m-word per se, no matter how deftly it is referenced, may cross the line," Salem wrote.

Trudeau said his decision to allow the syndicate to offer an alternative strip did not signal his intention to start supplying replacements "every time there's a chance someone might be offended."

"It's a 'South Park' world now, and younger readers are unlikely to be shocked or confused by anything they find in 'Doonesbury,' " he said. "Besides our general experience is that most children don't understand "Doonesbury" in any event, and thus sensibly avoid it." Reported in: *Kansas City Star*, September 3.

Internet

Dawson City, Canada

A Yukon artist has been censored by eBay for making fun of the Bush administration. Dawson City artist John Steins was ordered off the popular auction Web site for mocking Bush and other U.S. leaders in a series of hand-painted drawings. Steins' art project is a parody of the "most wanted" deck of playing cards issued in the Iraqi war.

"George Bush is the ace of spades and (U.S. Defense Secretary Donald) Rumsfeld is the queen of spades and so far down the line," Steins said. "I think an artist has to use their talent to make a statement that they really believe in, though it might be really unpopular."

Ebay apparently banned the cards after receiving complaints from pro-Bush Americans. Steins said he also received angry emails from people who back U.S. foreign policy in Iraq.

Since being forced off eBay, Steins has found another Internet outlet for his art. He owns the domain name, "thebushadministration.com" where he's posted the images for sale. Reported in: CBC News, August 5.

art

Pilot Point, Texas

A mural containing a classical nude has become the target of police harassment in the small town of Pilot Point in Northern Texas. Wes Miller, owner of the gallery on whose wall the nude is painted, received a police notice claiming the mural is in violation of the Texas Penal Code 43.24 banning the sale, distribution and display of material harmful to minors. Miller was given the choice of modifying the mural or facing criminal charges. The mural itself, reminiscent in composition of Michelangelo's Creation of Adam fresco in the Sistine Chapel, depicts a large hand pointing at an apple and a classical female nude on the other side contemplating that same apple.

Article 43.24 of the Texas Penal Code defines material that is harmful to minors as material "whose dominant theme taken as a whole" "appeals to the prurient interest of a minor," "is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors," and "is utterly without redeeming social value for minors." What the article targets is commercial pornography, not artwork.

The U.S. Supreme Court has repeatedly declared that simple representations of nudity are a constitutionally protected form of artistic expression. Deeming all nudes "harmful to minors" would put the Vatican, as well as the streets and public squares of the U.S. capital and other big cities off-limits to minors because of the sculpted and painted nudes that can be seen there. Reported in: ncac.org, August 12.

foreign

Lahore, Pakistan

A decision by Pakistan's Punjab University to expurgate

classic English texts of so-called vulgar expressions has outraged the country's intelligentsia. They have condemned the step as a throwback to the Middle Ages. In April 2003, the university, based in the eastern Pakistani city of Lahore—which, ironically, is the country's cultural capital—directed its Department of English Language and Literature to bowdlerize the syllabi taught at the graduate and post-graduate levels.

According to university registrar Masud-ul Haq, a former army colonel, "There is indeed a move to review the English syllabi. We can't ignore complaints. In fact, one complaint referred to the inclusion of a poem by Indian writer Vikram Seth. The complainant also pointed out some other poems—including "Refugee Blues," a poem by W.H. Auden—that contained 'anti-Islamic' material."

Haq declined to disclose the identity of the complainants but said, "The directive will deprive students of some classics, including Jonathan Swift's celebrated *Gulliver's Travels*, Alexander Pope's "The Rape of the Lock," Henry Fielding's *Joseph Andrews*, John Donne's poetry, Paul Scott's *Jewel in the Crown*, and Hemingway's *The Sun Also Rises*, among others."

According to media reports, the university's management initiated the step after a complaint by professor Nausheen Jamshed, who is said to be close to Pakistani dictator Pervez Musharaf's wife, Sehba. Jamshed is the wife of a former major general. The university decided to take a hard look at the syllabi as the orders came right from the President's House. Neither the vice-chancellor, a former general, nor the registrar, a former colonel, could afford to ignore the directive.

But professor Jamshed expressed her ignorance about the move and accused the press of maligning her. "The press is unnecessarily dragging me and the First Lady into this issue. The First Lady is an educated and enlightened person. She can't order censorship of literature."

The person assigned to mark the objectionable texts was Shahbaz Arif, a lecturer. "Circumventing the authority of the department's chairperson, professor Shaista Sonnu Sirajuddin, Haq asked Arif to compile a list of objectionable texts. The list is not only ludicrous, it shows a spectacular lack of his own understanding of literature," says Waqqar Gillani of the *Daily Times*.

One of Arif's recommendations was to purge the syllabus of "The Rape of the Lock," which according to him is unsuited to Pakistan's social mores because of its very title. "There are so many vulgar words, concepts and thoughts reflected in the current curriculum of BA and MA literature that can influence our youngsters. There is a need to choose good literature to replace this bad one. Good literature relates to our cultural background. That is why words like wine, whisky, brandy, vodka and so on are objectionable," maintained Arif.

Predictably, university professors weren't happy. "This way one can easily target any piece of literature of any language," said a lecturer. She wonders whether the university dons will purge Urdu literature of classics where objectionable expressions abound.

Friday Times editor Najam Sethi was livid. "The attempt is straight out of the Middle Ages when book burning rather than book reading was the norm. It is bad enough to be ruled by cocksure generals. Now we are to be taught English language and literature by their cocky wives."

Added the foreign editor of *Daily Times*, Ejaz Haider, "An objection has been raised to the American poet Adrienne Rich not because of her poems but because she happens to swing the other way in her sexual preference. If that's the yardstick then we should also be deprived of *A Passage to India* because E.M. Forster was a homosexual."

Haidar believes the censor's heavy hand will affect Shakespeare too. "Just read the opening of *King Lear*, the conversation between Kent and Gloucester where the latter is talking about his bastard son Edmund," he said.

Columnist Masood Hasan said if the censors are obsessed about spotting vulgarity, they'll find it in profuse quantities everywhere. "'The Rape of the Lock' for instance is an obscene poem because the word rape appears in the title. Who can explain this to Arif who scoured a degree out of a British university? Perhaps burning that offending university would not be a bad idea," he added

"Seth's poem must be banned, not because it is obscene but because a character in the author's epic novel, *A Suitable Boy*, dares to state that Nehru was a greater leader than Jinnah," Hasan continued. "The First Lady should have shown some restraint before hoisting her friend on the university." Reported in: oneworld.net, August 15.

Moscow, Russia

It was provocative, as modern art often is. But few of those involved could have foreseen just how provocative it would become when the Sakharov Museum opened an exhibition of paintings and sculptures in January under the title ''Caution! Religion.'' Four days after the January 14 opening, six men from a Russian Orthodox church came to the museum's exhibition hall and sacked it, defacing many of the 45 works with spray paint and destroying others. ''Sacrilege,'' one of them scrawled on the wall.

The police came and quickly arrested the men, but their actions—described either as heroism or hooliganism—began a highly charged debate not only over the state of freedom of expression in Russia today but also over the ever-growing influence of the Orthodox Church. Priests denounced the museum—named after the Soviet-era physicist and dissident Andrei D. Sakharov. Church members began a letter-writing campaign defending the attackers.

Somewhere along the way, the tables turned on the museum, its director and the exhibition's artists. The lower house of Parliament passed a resolution condemning the museum and the exhibition's organizers. The criminal charges against four of the six men were dropped early on for

lack of evidence—even though they had been detained inside the building. Then on August 11, with several hundred Orthodox believers holding a vigil outside, a court threw out the charges against the others, Mikhail Lyukshin and Anatoly Zyakin, saying they had been unlawfully prosecuted.

The court made it clear that an investigation should continue—not against those who attacked the exhibit, but against the museum itself. ''The museum is now the enemy of the people,'' said its director, Yuri V. Samodurov.

The furor over the exhibition thrust into opposition two groups that had suffered together during seven decades of state ideology and atheism. In the twelve years since the Soviet Union collapsed, both artists and religious believers have flourished in a new Russia. In this case, though, each side accused the other of exploiting Russia's new freedom to infringe on its rights.

''This freedom opened the gates so that thick streams of dirt are flooding all around,'' the Rev. Aleksandr Shargunov, one of the church's most outspoken conservatives, said of the post-Soviet society. ''The church is a very narrow stream of clean water.''

The men who attacked the exhibit are members of his church in Moscow, St. Nikolai in Pyzhi. Some of them work there, and Father Aleksandr organized the campaign for their defense and against the museum. He compared the exhibition to a rape or a terrorist act.

''For a believer,'' he said, ''this sacrilege is equivalent to the destruction of a church, which is what happened in the near past in Russia.''

The museum, dedicated to Sakharov's legacy, regularly presents exhibitions intended to cause debate, including subjects like the Soviet legacy, human rights and the war in Chechnya. Never before has one provoked such an outcry.

The exhibition's works all addressed religion, but Samodurov said the theme was not antireligious as much as anticlerical. Some of the artists themselves are Orthodox believers, he said, and the exhibition was not meant to offend.

One sculpture, by Alina Gurevich, that offended nonetheless depicted a church made of vodka bottles, a pointed reference to the tax exemption the church received in the 1990's to sell alcohol. A poster by Aleksandr Kosolapov, a Russian-born American whose previous work has satirized symbols of the Soviet and Russian state, depicted Jesus on a Coca-Cola advertisement. ''This is my blood,'' it said in English.

Another work was a large icon covering by Alisa Zrazhevskaya, which took its title from the Second Commandment, ''Thou Shalt Not Carve Idols Unto Thee,'' and left a hole for a viewer's head, hand and Bible like a carnival placard. ''Gady,'' or ''vipers,'' was painted on it.

The works are now in the local prosecutor's office, and most of the artists have been called in for questioning. The exhibition's curator, Arutyun Zulumyan, an Armenian, has gone into hiding.

The museum's lawyers received notice the week before last that a commission of experts had been formed to decide whether the exhibit incited interethnic or interreligious hatred, which is a crime in the Russian criminal code. Samodurov said he feared that the outcome was predetermined because none of those appointed, he said, were experts in modern art. If charged and convicted, the exhibition's organizers could face $7,500 to $11,600 in fines, three years of probation or two to four years in prison.

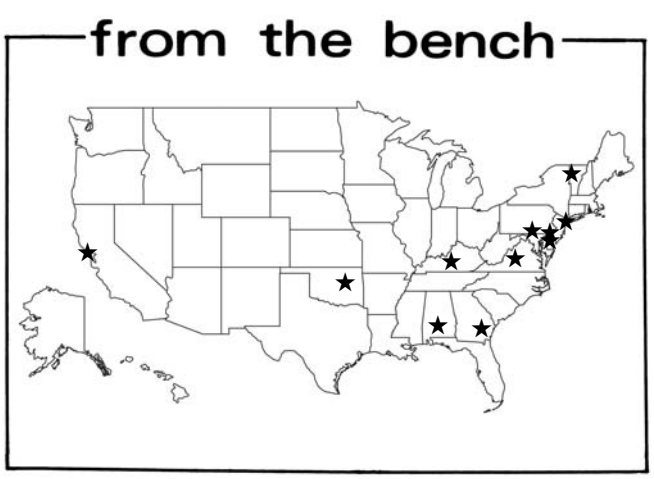
Another artist, Anna Alchuk, said in an interview that her work—an arrangement of four medallions she found while moving to a new apartment—was intended to explore the religious belief in personal salvation. She recalled that in Soviet times such a theme would have been strictly forbidden; she wonders whether it still is.

''There are many things written in the Constitution—freedom of speech, freedom of religion—but we've seen how they exist in reality,'' she said.

Aleksandr B. Chuyev, a member of Parliament and, like Sakharov, a dissident during the Soviet period, disagreed. Closely allied with the Orthodox Church, he sponsored the resolution calling on prosecutors to investigate the museum. He defended the men who destroyed the exhibition, saying they had acted within their rights to prevent a crime. Democracy, he said, necessitates respect for the beliefs of others.

''There are acceptable boundaries within which it is possible to express an opinion,'' he said, ''as long as it doesn't affect the rights of Orthodox believers.'' Reported in: *New York Times,* September 2. □

READ
BANNED
BOOKS



U.S. Supreme Court

The Bush administration has appealed to the Supreme Court to reinstate the Child Online Protection Act, which requires commercial websites to obtain proof of age before delivering material considered harmful to minors. In the appeal, filed August 11, Solicitor General Theodore Olson said children are "unprotected from the harmful effects of the enormous amount of pornography on the World Wide Web."

The law at issue now requires that operators of commercial Internet sites use credit cards or some form of adults-only screening system to ensure children cannot see material deemed harmful to them. Operators could face fines and jail time for not complying. Critics contend the law violates the rights of adults to see or buy what they want on the Internet. Olson said the main target was commercial pornographers who use sexually explicit "teasers" to lure customers.

The law has already been rejected twice by a federal appeals court in Philadelphia. Its more recent ruling, which found that the law made it too difficult for adults to access material that was protected by the First Amendment, came after the Supreme Court returned the case to the lower court, saying that it had not sufficiently examined whether the law's reliance on community standards violated free speech.

In its filing, the administration argued that the case is similar to the one involving the Children's Internet Protection Act, which the Supreme Court upheld in June. However, American Civil Liberties Union Associate Legal Director Ann Beeson said the laws are very different because COPA calls for criminal penalties for people who exercise free-speech rights.

Passed in 1998, COPA has never been enforced due to injunctions and lower-court decisions won by the ACLU on behalf of seventeen plaintiffs. The American Library Association's Freedom to Read Foundation filed an *amicus* brief for the plaintiffs in September 1999. Reported in: *American Libraries* online, August 18.

The McCain-Feingold campaign finance law came under a strong attack at the Supreme Court September 8, with lawyers for the statute's opponents warning that it would weaken the national political parties, intrude on the states' electoral systems and infringe on the free speech of corporations and labor unions.

While defenders of the law offered abundant counterarguments in the court's unusual special sitting—the first time since the Watergate tapes case in 1974 that the justices interrupted their summer recess to hear an argument—its fate appeared highly uncertain.

By the end of an intense four hours of high-level advocacy, it was far from clear that there would be five votes to uphold the major provisions of the Bipartisan Campaign Reform Act, a sweeping law that supporters describe as a last chance to curb the flood of big money into national politics.

The opponents' position that the court should strike down the law without giving it a chance to work was ''a counsel of despair,'' Seth P. Waxman, the Congressional sponsors' lawyer, told the court.

The act, commonly known as the McCain-Feingold law after its Senate sponsors, bans the large checks to the political parties known as soft money and restricts some television advertising by corporations and labor unions.

The courtroom was crowded with lawyers representing the dozens of plaintiffs, including the United States Chamber of Commerce, the American Civil Liberties Union and the National Rifle Association, which filed suit last year to have the law declared unconstitutional. The Congressional sponsors were in the courtroom audience as well. It was an attentive audience attuned to every nuance of an argument that sometimes resembled a daylong discussion of the Internal Revenue Code.

Chief Justice William H. Rehnquist, widely seen as a swing vote on a court that is closely divided in campaign regulation cases, expressed skepticism about the law throughout the argument. The morning session was devoted to the ban on the receipt and use by the national parties of soft money, including new restrictions on the ability of the national parties to coordinate spending with and transfer money to state and local affiliates.

Rehnquist at one point told Waxman that his argument suggested ''that the parties exist by the leave of Congress.'' He added, ''Surely that isn't the case.'' He also questioned whether the anticorruption rationale of the law applied as

strongly to political parties as it did to individual candidates.

Most of the afternoon session was spent on the law's provision regulating ''electioneering communications,'' which are defined as televised issue advertising by corporations or unions that refers to a ''clearly identified'' federal candidate. For 60 days before a general election and 30 days before a primary, these may not be paid for directly by corporations or labor unions under the new law. Rather, the money must come from a political action committee set up to raise money from shareholders or union members for use in politics.

Chief Justice Rehnquist joined the majority in a 1990 decision that upheld Michigan's restrictions on campaign spending by corporations. Today, he surprised many of the election lawyers in the audience by describing that decision as ''dubious'' and appearing ready to disavow it. ''I voted in the majority, but it seemed to me since then that the whole purpose of the First Amendment is to allow people who perhaps don't have much in the way of public opinion to try to change public opinion,'' he said to Deputy Solicitor General Paul D. Clement, who was arguing in defense of the issue-advertising provision and who repeatedly invoked the 1990 decision.

At another point, the chief justice commented to Laurence E. Gold, who was arguing against the provision on behalf of the A.F.L.-C.I.O., that the court's precedents had established that ''it's not up to the government to decide there is too much speech coming from one place and not enough coming from another.''

If Chief Justice Rehnquist proves as hostile to the new law as his comments suggested, the law's fate may be—as has so often been the case in recent years—in the hands of Justice Sandra Day O'Connor, who has not taken an active part in the court's election cases and who said relatively little at the hearing.

''Do you take the position that no effective regulation of electioneering communications is permissible?'' Justice O'Connor asked Floyd Abrams, who represented opponents of the provision, at the outset of his argument. Abrams replied that the statute's definition of electioneering communications was ''so overbroad'' that it could not be sustained. Under previous law, as interpreted by judicial and regulatory decisions, the only issue advertisements subject to federal regulation were those that used the ''magic words'' of express advocacy, such as exhortations to ''vote for'' or ''defeat'' a particular candidate. As a result, virtually all issue advertisements have been able to escape regulation simply by avoiding those words.

The justices who appeared favorably disposed to the new law were, as expected, John Paul Stevens, David H. Souter and Stephen G. Breyer. Justices Anthony M. Kennedy and Antonin Scalia appeared strongly opposed. Justice Clarence Thomas was the only member of the court who did not speak, but his previous opinions have made clear that he interprets the First Amendment as barring nearly all regulation of campaign finance.

Eight lawyers presented arguments, three in defense of the statute and five on behalf of ten plaintiffs or coalitions of plaintiffs who challenged the law's constitutionality. The lead case in the group is *McConnell* v. *Federal Election Commission*, named for Senator Mitch McConnell (R-KY), who was the law's chief Congressional opponent.

With the lawsuits expedited under the terms of the statute, a special three-judge federal district court heard the cases last December and issued a splintered decision in May, striking down all or part of nine of twenty challenged provisions. Thus nearly every party before the Supreme Court was appealing part of the lower court's judgment and defending another part. To avoid linguistic confusion over who was appealing and who was defending, the court called those who had filed the original lawsuits plaintiffs and those who opposed the lawsuits defendants—labels that the Supreme Court, which speaks in terms of ''petitioners'' and ''appellants,'' has hardly ever used.

The legal firepower in the courtroom was considerable. Solicitor General Theodore B. Olson, fulfilling his duty to defend acts of Congress even though his ideological allies were nearly all on the other side, argued in defense of the ban on soft money. He was joined by his immediate predecessor, Waxman, the solicitor general in the Clinton administration. Kenneth W. Starr, another former solicitor general, was on the other side, representing Senator McConnell.

Starr fashioned an argument intended to appeal to Chief Justice Rehnquist and Justice O'Connor by characterizing the law as a federal intrusion on state sovereignty. State parties were restricted in how they could pay for even ''quintessential state activity'' like get-out-the-vote efforts, he said.

The justices spent more time than many people expected exploring the federalism overtones of the case, including a long discussion of complex formulas governing how the federal and state parties are supposed to allocate contributions.

The argument had moments of passion and of humor, with Waxman, who alone among the eight lawyers had the burden of arguing in the morning and in the afternoon, providing some of each. He spoke forcefully in urging the court to look at the ''core'' rather than the ''capillaries'' of the campaign finance system. ''We have a dialectic going on here between people who want to use money to influence people in government and the institutions that need to preserve a sense of integrity and faith in the process,'' he said.

Toward the end of the four hours, Waxman said as he answered a question from Chief Justice Rehnquist, ''I will be one of the happiest people on the face of the planet when I sit down today, however you decide.'' Reported in: *New York Times*, September 9.

The Comic Book Legal Defense Fund (CBLDF) has learned that the U.S. Supreme Court denied comic book merchant Jesus Castillo's petition for writ of certiorari, bringing his three-year quest for justice to a close. Castillo is presently serving a period of unsupervised probation.

The CBLDF has been providing counsel for Castillo

since his arrest in 2000 when he was charged with two counts of obscenity for selling adult comic books to adults. The Fund's lawyers persuaded the court to try the two counts separately and waged a fierce courtroom battle that included expert testimony from Scott McCloud and Professor Susan Napier that the book in question was not obscene.

The State prosecutor did not offer contradictory testimony, but secured a guilty verdict with a closing argument stating, "I don't care what type of evidence or what type of testimony is out there, use your rationality, use your common sense. Comic books, traditionally what we think of, are for kids. This is in a store directly across from an elementary school and it is put in a medium, in a forum, to directly appeal to kids. That is why we are here, ladies and gentlemen. … We're here to get this off the shelf." Castillo was found guilty and sentenced to 180 days in jail, a year probation, and a $4,000 fine.

Immediately following the first trial, the State dropped the second obscenity count while the Fund prepared its appeal. In 2002, the Appeals court rendered a 2-1 split decision upholding the conviction. Justice Tom James, writing in dissent, would have reversed the conviction on the ground that the State did not provide sufficient evidence that Castillo had knowledge of the content and character of the offending comic book. On the strength of James' dissent, the Fund filed a Petition for Discretionary Review to the Texas Court of Criminal Appeals, which was denied. At the end of the road for Texas justice, the Fund took the case to the U.S. Supreme Court.

Fund Legal Counsel Burton Joseph said, "It is rare that the Supreme Court accepts individual criminal cases for consideration. In the Castillo case, in spite of the odds, CBLDF appealed to the Supreme Court on the chance that they would reverse what appeared to be an unjust and unconstitutional decision in the Texas courts. The principle was important, but we knew the odds were long."

"Unfortunately, fighting the right battles is not a guarantee of winning," Fund Director Charles Brownstein said. "The Fund put up a strong fight for Castillo against the rising tide of repression. We were successful in knocking out the second charge against Jesus and in getting a sentence where no actual jail time was served but, unfortunately, the higher courts would not correct the blinding injustice at the heart of this case."

Fund board member Peter David said, "When dealing with the denseness of the 'Protect the children!' censorship hysteria in Texas, coupled with the unlikelihood that the Supreme Court would hear the case, this was almost a hopeless cause from the get-go. However, oftentimes it's the hopeless causes that are the ones worth fighting. This unfortunate and spectacularly unjust outcome doesn't change that."

Joseph added, "One thing is clear, with every defeat of the First Amendment, the censors gain courage to pursue their unconstitutional ends. The Castillo case is among the most appalling cases of injustice ever to come to the attention of CBLDF. Conservative communities are quick to condemn comic book artists and publishers without an understanding that they enjoy the full panoply of First Amendment rights."

"This case bodes badly for the First Amendment," Brownstein added. "By choosing to deny Jesus' plea for justice, the Supreme Court has allowed a precedent to stand that allows a man to be convicted of obscenity charges without adequate proof being presented that the work he is convicted for selling is constitutionally obscene. All because the medium the alleged obscenity was placed in 'is for kids.'"

Fund board member Neil Gaiman said, "I think the hardest thing to believe is that Jesus was found guilty of selling an adult comic, from the adult section of the store, to an adult police officer, and convicted because the DA convinced the jury that all comics are really intended for children. I can't imagine a world in which the same argument would have worked for books or for films—and I'm afraid that highlights why comics retailers (and artists and writers and publishers) still need a Defense Fund, and still need to be defended."

"Perhaps the worst thing about the decision is the chilling effect it will have on everyone else working with comics and graphic novels," said attorney and Fund board member Louise Nemschoff, adding, "As we approach another election year, we can expect to see an increase in such attacks on free expression. Now, more than ever, we need the CBLDF to both educate the public and defend those working in the industry from further incursion on First Amendment rights. It deserves our whole-hearted support." Reported in: CBLDF Press Release, August 5.

libraries

Vidalia, Georgia

When the Ohoopee Regional Library in Vidalia set up a table in the lobby for free literature, the editor of a southeast Georgia gay rights newspaper asked if he could leave free copies of *The Gay Guardian*. Librarians gave Ronald Mangum permission to place his newspaper on the table. However, within a week, some library patrons had complained that they found the newspaper offensive. One woman even went to Vidalia City Hall to complain that her child had picked up a copy of the newspaper in the library lobby.

The library's executive director and board chairwoman then removed the table and all free publications. That March 2002 decision led to a federal First Amendment suit against the library system by the American Civil Liberties Union of Georgia on behalf of *The Gay Guardian* and Mangum, who uses the pseudonym Ronald Marcus.

A ruling in favor of the library last November by U.S.

District Court Judge B. Avant Edenfield in Georgia's Southern District prompted an appeal to the U.S. Court of Appeals for the Eleventh Circuit in Atlanta. The argument pits the bedrock principle of the First Amendment that the government may not silence speech to avoid controversy against legal precedents granting public libraries the right to control their selection of books and other material.

Judge Edenfield came down squarely on the side of the library. Because the library created an opportunity for free speech as an act "of largesse, not regulations," Edenfield concluded that "the government and the public it serves, should not have to tolerate the same range of 'outrageous' speech that they must when the government does not provide the speech opportunity."

"Why can't community libraries cater to community taste?" Edenfield asked in his opinion. "And what right does an 'unwanted-speech' speaker have to tell a librarian what to acquire and how to present it? Could swastika-bannered hate groups who had similarly exploited the Library's 'free-lit' lobby table now similarly demand the same judicial relief? How about 'swingers' or other pro-hedonism publications?"

The ACLU claims that Edenfield carved out an exception for the library that "radically alters established First Amendment principles and reverses decades of constitutional jurisprudence." According to ACLU attorneys, Edenfield's opinion invented a new legal concept, what he called a "limited, nonpublic forum" that allows greater restriction of constitutional First Amendment protections. Even the library system's own appellate attorney suggested that Edenfield's ruling may have "perhaps unwisely" implied the creation of the new category even as it argued that the library's actions were reasonable and well within the law.

ACLU attorneys also challenged Edenfield's determination that the library's removal of its "free literature" table in order to sidestep customer complaints was "not legally relevant" to the case.

Cathy Harris Helms, of Homerville, the library system's appellate attorney, described the *Guardian* case as "an important case of first impression" in the Eleventh Circuit. "Although both the United States Supreme Court and the Eleventh Circuit have stated that government has the right to close a forum . . . neither court has ever been directly confronted with such a factual situation," she wrote.

In February 2002, after placing copies of *The Guardian* in the Vidalia library, Mangum posted a sign in his restaurant in nearby Lyons advertising a *Guardian* story. That ad, read, in part, "Read about it in *The Gay Guardian* at the Vidalia library." Library personnel subsequently received inquiries—and complaints—about the newspaper. Within a week, library staff made a decision to remove the table and ban the distribution of any free materials.

According to the library brief, when Mangum learned of the decision, he became "loud and abusive" to the library's executive director, Dusty Gres, accused the library staff of stealing his newspapers, and then reported the alleged theft to the Vidalia Police Department. When police arrived at the library, Gres "informed the officer that [Mangum's] newspapers could not have been stolen because they were free, that the library had not removed any of his newspapers . . ." No criminal charges were filed.

Library attorney Helms claims in her brief that the library only permitted "occasional temporary placement of free materials on the library's lobby table when the library was not using it for a particular library display." But the library never intended to create a public forum "for indiscriminate public expression," she wrote.

According to Helms, "The library is not required to provide any access for expression by the public, much less access for distribution of materials by the public." The library preserved "its unique discretion in library content selection/removal decisions."

Forcing the library to reopen its lobby table so that Mangum might continue to distribute the *Gay Guardian* would "set an extremely dangerous precedent," Helms argued. "Currently, individuals and publications have no right to require that public libraries obtain specific materials, provide them in a particular format, or place materials in a specific location within the library." Ruling in the *Guardian's* favor, she said, "would give individuals and publications that right for the first time."

On the other side, ACLU attorneys insisted in appellate briefs that the library is misrepresenting the issue. They say the issue isn't the library's right to control its selection of content; rather, it's that the library closed a forum in order to get rid of speech it didn't like.

"The government may not close a public forum in order to silence a viewpoint or escape a controversy," ACLU attorneys wrote. No other court, outside of Edenfield's, "has permitted the closing of a designated public forum for the explicit rationale of avoiding controversial or offensive speech."

Arguments that distribution of free literature at the table was limited by the library's own use of it for displays, and that permission was required to use it were "manufactured" specifically for the appeal, ACLU attorneys charged.

Case law has established three kinds of government forums where free speech may be exercised—traditional public forums such as public parks and sidewalks; designated public forums where a government as a matter of practice or policy permits the exercise of First Amendment rights of free speech, freedom of assembly, freedom to circulate pamphlets or newspapers, and non-public forums, such as government buildings or lobbies, where limitations on the exercise of free speech are "reasonable" and not based on any particular speaker's viewpoint.

Edenfield, the attorneys argued, created a new forum he called a "limited/nonpublic forum" to characterize the "free literature" table housed in the library lobby. A forum such as the library lobby, the judge said, is open to the public only for specified purposes, such as reading and studying.

But ACLU attorneys argued that "The library allowed citizens to indiscriminately place community information on its display table." Once the library made the display table available to everyone, it must bear the consequences of any potential complications arising from that decision, ACLU attorneys argued.

The ACLU acknowledged that the *Guardian* "holds no inherent 'right' to distribution in the library, and the library is not required to keep the forum open." But the library staff's decision to bar all publications in order to bar the viewpoint of *The Gay Guardian* is unconstitutional because it is motivated "by a desire to suppress a particular point of view. . . . Every court that has reviewed the closing of a public forum to silence controversial speech has found such closing of the forum unconstitutional." Reported in: *Fulton County Daily Report*, August 8.

Logan County, Kentucky

A former Logan County Public Library worker won a First Amendment lawsuit September 2 over her April 2001 dismissal for refusing to remove her cross-pendant necklace while at work. U.S. District Court Judge Thomas Russell ruled that Kimberly Draper's wearing her necklace on the job was "neither disruptive nor controversial until the library dress code made it a source of contention."

The written dress-code policy that Judge Russell declared unconstitutional forbids LCPL staff members from sporting "religious, political, or potentially offensive decoration." Judge Russell wrote that it was "beyond credibility that an employee's personal display of a . . . minor, unobtrusive religious symbol . . . would interfere with the library's purpose." However, he dismissed as defendants Director Linda Kompanik and Assistant Director Sheryl Appling.

Frank Manion, who as senior counsel of the conservative nonprofit American Center for Law and Justice served as Draper's attorney, stated, "This decision sends an important message that employers cannot discriminate against employees who choose to express their religious beliefs in the workplace." Draper, who had not requested reinstatement, is seeking unspecified monetary damages.

Library attorney Charles "Buzz" English, Jr., who said that LCPL officials were weighing whether to appeal, characterized as "a very difficult balancing test" walking the line between free speech and the appearance of religious preference. Reported in: *American Libraries* online, September 8.

church and state

Montgomery, Alabama

Complying with a federal court order, Alabama officials August 27 removed a two-ton Ten Commandments monument from public display in the Judicial Building in Montgomery. The action put an end to defiance by Roy Moore, chief justice of the Alabama Supreme Court. Moore, who originally arranged for the monument's display in August of 2001, had vowed to defy federal court orders mandating its removal.

"This is a tremendous victory for the rule of law and respect for religious diversity," said the Rev. Barry W. Lynn, executive director of Americans United for Separation of Church and State. "Perhaps Roy Moore will soon leave the bench and move into the pulpit, which he seems better suited for.

"Roy Moore has shamelessly exploited the Ten Commandments as a platform for political grandstanding," Lynn continued. "That is a disgraceful misuse of a religious code that many people regard as sacred."

"This controversy has never been about the Ten Commandments," observed Americans United Legal Director Ayesha Khan. "It's about maintaining a court system that treats all Americans fairly, regardless of their religious beliefs. Judges have no right to impose their personal religious beliefs on others through official action.

Americans United, the American Civil Liberties Union of Alabama and the Southern Poverty Law Center sponsored litigation against Moore on behalf of state residents seeking the monument's removal.

In November of 2002, a federal court declared Moore's display unconstitutional. That decision was affirmed by the U.S. Court of Appeals for the Eleventh Circuit July 1. Moore was ordered to remove the monument, but he refused, vowing to defy the federal courts.

The eight other justices of the state high court suspended Moore, and state officials promised to follow the court ruling. In the meantime, fundamentalist Christian protestors converged on the Judicial Building, pledging to block efforts to remove the sculpture. State law enforcement officials had to remove them from the building.

AU's Lynn accused Moore of orchestrating a media circus. "Moore claims to venerate the Ten Commandments, but that didn't stop him from using them as a prop in a series of increasingly cheap stunts," said Lynn. "Moore turned this situation into a circus, and it was unnecessary. He should have obeyed the court ruling from the start."

Concluded Lynn, "As this affair draws to a close, I reiterate my call for Moore to spare the people of Alabama any further embarrassment and resign as chief justice." Reported in: American United for Separation of Church and State Press Release, August 27.

Lexington, Virginia

Group prayers before evening meals at the Virginia Military Institute, declared unconstitutional by lower courts, remained out of bounds on August 13 as a divided federal appeals court declined to rehear the case.

The vote by judges on the U.S. Court of Appeals for the Fourth Circuit, a 6-to-6 tie, let stand the previous ruling in the case. In that decision, issued in April, a three-judge panel

of the court unanimously upheld the trial-court judge and found that the prayers violated the U.S. Constitution's separation of church and state.

"The attorney general is very disappointed that the entire Fourth Circuit will not hear our appeal," said Carrie Cantrell, a spokeswoman for Virginia's attorney general, Jerry W. Kilgore, a Republican. "This is a longstanding tradition of voluntary prayer." Kilgore's office represented the military college in the lawsuit, and Cantrell said the case would be appealed to the U.S. Supreme Court.

But Ken White, VMI's communications director, said the issue was no longer "on the radar" of the college's administration. White said the institute stopped the 50-year tradition of dinnertime prayers shortly after the lawsuit was filed, in May 2001. Cadets no longer eat dinner together as one group, he said.

"It's been enough time now," he added, "that almost the majority of cadets on post aren't aware" of the lawsuit.

The Virginia chapter of the American Civil Liberties Union, which filed the lawsuit on behalf of two former cadets, had a somewhat mixed reaction. "The district court ruled in our favor, the panel court ruled in our favor. There was clearly no need for the full court to review the case," said Kent Willis, director of the Virginia chapter. "Admittedly, it was disconcerting it was a 6-6 vote."

He said he did not expect the Supreme Court to accept the appeal because VMI is a "unique situation." As a military college, "VMI is proud of its coercive atmosphere, and it places a premium on conformity," he said. "Students at other universities may not feel those coercions."

In one of three opinions against the previous rulings, Judge J. Harvie Wilkinson, III, wrote that the nondenominational prayer was "benign." He added: "It is brief and nonsectarian, and it takes place in a higher-education setting in which the dangers of coercion are minimal." Reported in: *Chronicle of Higher Education* online, August 14.

university

Shippensburg, Pennsylvania

A federal judge issued a preliminary injunction in early September that bars Shippensburg University of Pennsylvania from enforcing portions of its student-conduct policies. A free-speech advocacy group had challenged the university's code of conduct in a lawsuit that sparked debate over whether policies designed to protect students from harassment violate the First Amendment.

The Foundation for Individual Rights in Education (FIRE), the advocacy group, said that Shippensburg's code and its policies on sexual harassment and on racism and cultural diversity threatened constitutionally protected speech. The preamble of the student code of conduct, for example, states that the "university will strive to protect these freedoms [of speech] if they are not inflammatory or harmful toward others."

In his order, Judge John E. Jones, III, of the U.S. District Court in Williamsport, wrote that, although well meaning, portions of the university's policies were "likely unconstitutional."

"While we recognize that citing students under the suspect provisions has not been a common practice, in the hands of another administration these provisions could certainly be used to truncate debate and free expression by students," Judge Jones wrote.

Thor L. Halvorssen, chief executive officer of FIRE, said the ruling was "a great victory and a vital step in the struggle against the scandal of unconstitutional campus censorship at public colleges and universities."

FIRE filed the lawsuit in April on behalf of two Shippensburg students, asserting that the university's policies had exerted a chilling effect on students' expression. The university argued that such concerns were unreasonable, noting that no Shippensburg student had been punished for inappropriate speech in recent memory. But Judge Jones dismissed Shippensburg's motion to dismiss the case.

Anthony F. Ceddia, Shippensburg's president, said the university would remain "fully engaged in this ongoing legal review. We are heartened to note that after this review of our Code of Conduct and related policies, which encompasses thousands of words, the judge focused on only seven sentences that he felt were possibly problematic." Ceddia continued, "We hope that our students will, by exercising their rights to free speech, engage, debate, and discuss the many issues so important in today's society." Reported in: *Chronicle of Higher Education* online, September 8.

protest

New York, New York

A federal judge in Manhattan criticized police officials August 7 for the way demonstrators against the war in Iraq were interrogated earlier this year, and he made clear that civil liberties lawyers could seek to hold the city in contempt of court in the future if the police violate people's rights.

Judge Charles S. Haight, Jr., of the U.S. District Court, who recently eased court-ordered rules on police surveillance of political groups, made his comments after hearing evidence that the police had asked the protesters their views on the war, whether they hated President Bush, if they had traveled to Africa or the Middle East, and what might be different if Al Gore were president.

''These recent events reveal an N.Y.P.D. in some need of discipline,'' Judge Haight wrote, citing what he called a ''display of operational ignorance on the part of the N.Y.P.D.'s highest officials.''

In his ruling, Judge Haight cited comments in the news

media by the police commissioner, Raymond W. Kelly, that he and his deputy commissioner for intelligence, David Cohen, were unaware that the police were using what they called a ''debriefing form'' in the questioning. ''The two commissioners should have known,'' the judge wrote.

In February, Judge Haight agreed to modify a longstanding court order that had restricted the Police Department's ability to conduct surveillance of political groups. Police officials had said they needed greater flexibility in investigating terrorism, and the judge agreed to ease the rules, citing ''fundamental changes in the threats to public security.''

The original rules were known as the Handschu agreement, named for the first listed plaintiff in a 1971 lawsuit over harassment of political advocacy groups by the Police Department's so-called Red Squad. Judge Haight did not impose new restrictions on the police in the wake of the interrogations, which first came to light after the New York Civil Liberties Union received complaints from protesters. Nor did the judge decide the issue of whether the interrogations violated the protesters' constitutional rights.

But he said he would formally incorporate the recently eased rules into a judicial decree, to make clear that lawyers could return to court and seek to hold the city in contempt if they believed that a violation of the rules also violated an individual's constitutional rights.

''This approach gives the plaintiff class an increased protection warranted by recent events without unfairly burdening the N.Y.P.D.,'' the judge said. The ruling, he added, should not ''unduly trouble the N.Y.P.D., which I will assume is not engaged in thinking up ways to violate the Constitution.''

Jethro M. Eisenstein, a lawyer for the plaintiffs, said that the judge made clear ''that these rules are not window dressing. They're actual rules, they limit what the Police Department can do, and if the Police Department goes beyond them, they face the risk of being held in contempt,'' he said, adding that contempt power can result in swift fines and imprisonment. ''You don't have to start a lawsuit and reinvent the wheel.''

Commissioner Kelly, who said he had not read the entire ruling, noted that the judge had not altered the recent modifications for which the Police Department had petitioned, ''so it allows us to go forward.'' Reported in: *New York Times*, August 8.

broadcasting

Philadelphia, Pennsylvania

A federal appeals court issued a surprise order September 3 that prevented the Federal Communications Commission from enacting new rules that would make it easier for the nation's largest media conglomerates to add new markets and areas of business. The decision came a day before the new rules, considered among the most significant efforts at deregulation adopted during the Bush administration, were scheduled to take effect. It followed two hours of oral arguments at an emergency hearing by a three-judge panel in Philadelphia and was a sharp setback for the largest media companies and for the commission's chairman, Michael K. Powell.

Powell, the architect of the new rules, has emphasized that the commission was compelled to rewrite the old regulations because of a string of federal court decisions in cases brought in Washington by the media companies. Those decisions ordered the agency to reconsider some of the rules. But the appeals court voted unanimously to prevent media companies from moving forward with plans to take advantage of the new rules. The court also raised tough questions for the commission and its industry supporters about their efforts to reshape the regulatory landscape.

The new regulations are already facing a challenge in Congress, where legislators have taken steps to repeal some of them. The new rules have been opposed by a broad coalition of groups, ranging from Consumers Union and the National Organization for Women to the National Rifle Association and the United States Conference of Catholic Bishops. Both the House and the Senate have begun the process to repeal at least one of the new rules, the one that makes it possible for the largest television networks to buy enough stations to reach 45 percent of the nation's viewers, up from 35 percent.

The court's order, however, blocked all of the new rules from taking effect, at least until the outcome of the litigation, which could be many months away. The order also raised questions about whether the rules will ever be allowed to take effect.

The rules that were blocked by the court include one that would permit the same company to own newspapers and broadcast stations in the same city and another that would allow a company to own as many as three television stations and eight radio stations in the same market. In the meantime, the commission must use the older more restrictive rules, even though a different federal appeals court, in Washington, ordered the commission to reconsider those earlier rules after a challenge from the television networks.

Officials at the commission said they were surprised by the order. ''While we are disappointed by the decision by the court to stay the new rules, we will continue to vigorously defend them and look forward to a decision by the court on the merits,'' said David Fiske, the agency's top spokesman.

The order also came as a surprise to the critics of the new rules, including the plaintiffs in the case, who said before the hearing that their motion to stay the rules was a long shot. They said courts typically do not issue such injunctions without a finding that the plaintiffs are likely to prevail on the overall merits of a case. The chief lawyer for the critics who brought the case said, after the order, that he hoped Congress would act before the court reached a decision on the merits of the rules.

''This action gives us the opportunity to convince Congress and, if necessary, the courts, that the F.C.C.'s decision is bad for democracy, and bad for broadcast localism,'' said the lawyer, Andrew Jay Schwartzman, who persuaded the court to issue the order. ''Perhaps it will embolden Congress to overturn the new rules in their entirety. That would save everyone a lot of time and effort fighting it out in the court to obtain the same result.''

The court hedged on the overall merits of the case but strongly suggested through its actions that the critics had a good chance of succeeding.

''I think this is great news,'' said Senator Byron Dorgan (D-ND), who is helping to lead an effort to repeal the rules in Congress. ''It stops the process dead in its tracks for now. I think the court must have understood what we know: the F.C.C. embarked on these dramatic rule changes without the benefit of national hearings and thoughtful analysis.''

In a three-page order, the United States Court of Appeals for the Third Circuit initially said that it was legally obliged to consider the likelihood of success by the plaintiffs, a group of small radio stations, journalist organizations and the National Council of Churches. The group filed its lawsuit against the F.C.C., and four television networks joined the case in support of the new rules.

The judges refused to handicap the outcome of the case, but reasoned that preserving the old rules, at least for the time being, would give the judges time to consider the arguments before the industry landscape is changed. ''While it is difficult to predict the likelihood of success on the merits at this stage of the proceedings, these harms could outweigh the effect of a stay on respondent and relevant third parties,'' said the panel, which consisted of Chief Judge Anthony J. Scirica and Judges Thomas L. Ambro and Julio M. Fuentes.

''Given the magnitude of this matter and the public's interest in reaching the proper resolution, a stay is warranted pending thorough and efficient judicial review,'' the court concluded.

The groups that brought the case argued that they were likely to prevail in the end because Congress would probably overturn some of the new rules, and because the rules themselves are ''arbitrary and capricious.''

For Powell, the decision could hardly come at a worse time. Six weeks earlier, the House, by a vote of 400 to 21, approved a spending measure that would block one of the more important new rules that would permit the nation's largest television networks to own more stations. The White House has threatened to veto that measure, prompting the prospect of a highly unusual showdown between the president and the Republican-controlled Congress (see page 224).

The new rules were adopted in June by a bitterly divided commission on a party-line vote. The Republican-controlled agency relaxed many of the most significant restrictions on the ability of broadcast and newspaper conglomerates to both expand into new markets and to extend their reach in the cities where they already have a presence.

The rules would have made it easier for the largest television networks to buy enough stations to reach up to 45 percent of the nation's viewers. Two networks, Fox, a unit of the News Corporation, and CBS, a unit of Viacom, are already above the old 35 percent limit. Reported in: *New York Times*, September 4.

commercial speech

San Francisco, California

A lawsuit that was expected to produce a landmark ruling on the free speech rights of corporations ended with a whimper September 12. Nike, Inc., the athletic shoe and clothing company, agreed to pay $1.5 million to settle the case, in which it had been accused of making misleading statements about its global labor practices.

In June, despite hearing arguments and considering three dozen briefs, the Supreme Court decided not to decide the case after all. Some justices suggested that after a trial, the court might be willing to return to the case, which had reached them after only preliminary rulings from California courts.

The lawsuit was brought by Marc Kasky, a labor activist in San Francisco, who said that statements Nike had made about employee pay and working conditions violated a California law on false advertising. But the statements, in news releases and in letters to the editor of the *New York Times*, to university presidents and athletic directors, were not advertising in the usual sense.

Nike argued that its statements did not fit the United States Supreme Court's definition of commercial speech—speech that ''does no more than propose a commercial transaction''—and so should receive the constitutional protection the same statements would get if made by individuals.

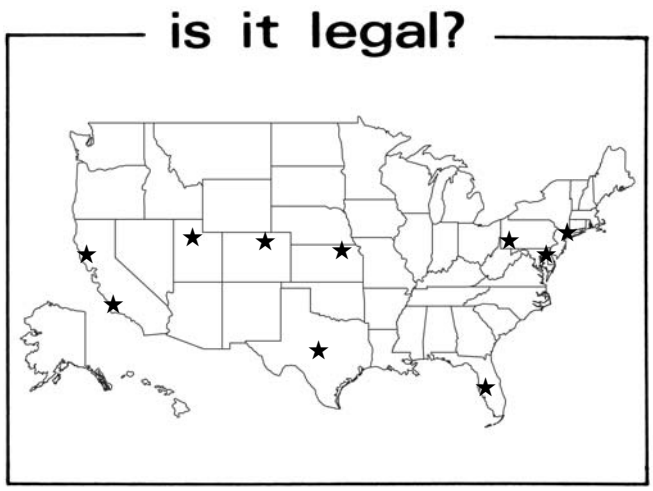
The California Supreme Court, in a 4-to-3 decision in 2002, ruled that Nike's statements were commercial speech subject to the advertising law because Nike was ''engaged in commerce'' and its statements were ''likely to influence consumers in their commercial decisions.'' Nike has not conceded that the statements were false or misleading, and no court has addressed that issue.

Under the settlement, Nike will donate $1.5 million to the Fair Labor Association, a Washington group that monitors corporate labor practices abroad and helps educate workers. In a joint statement, Kasky and Nike said supporting those programs was preferable to litigation.

Adele Simmons, the chair of the board of the association, applauded the settlement. ''This money will be used, clearly, to contribute to our work on workers' rights,'' she said.

Other terms of the settlement were not disclosed, and lawyers on both sides declined to say whether Nike had paid

(continued on page 254)



libraries

Washington, D.C.

On July 31, 2003, Senator Russ Feingold (D-WI), joined by Senators Bingaman (D-NM), Kennedy (D-MA), Cantwell (D-WA), Durbin (D-IL), Wyden (D-OR), Corzine (D-NJ), Akaka (D-HI), and Jeffords (I-VT), introduced the Library, Bookseller, and Personal Records Privacy Act. The bill would amend the USA PATRIOT Act to protect the privacy of law-abiding Americans and set reasonable limits on the federal government's access to library, bookseller, medical, and other sensitive, personal information under the Foreign Intelligence Surveillance Act and related foreign intelligence authority.

Sen. Feingold noted that "there is no question that the FBI needs ample resources and legal authority to prevent future acts of terrorism. But the PATRIOT Act went too far. . . . It is time to reconsider those provisions of the PATRIOT Act that are un-American and, frankly, un-patriotic. . . . . Section 215 of the PATRIOT Act goes too far. Americans rightfully have a reasonable expectation of privacy in their library, bookstore, medical, financial, or other records containing personal information. Prudent safeguards are needed to protect these legitimate privacy interests."

Section 1 of The Library, Bookseller, and Personal Records Privacy Act would restore a pre-PATRIOT Act requirement that the FBI make a factual, individualized showing that the records sought pertain to a suspected terrorist or spy. Under this bill, the FBI would have to articulate specific facts giving reason to believe that the named person to whom the records pertain is a suspected terrorist. The FBI could subpoena only those library records—such as borrowing records or computer sign-in logs—that pertain to the suspected terrorist. The FBI could not obtain library records concerning individuals who are not suspected terrorists.

Sen. Feingold stated, "So, under my bill, the FBI can still obtain documents that it legitimately needs, but my bill would also protect the privacy of law-abiding Americans. I might add . . . that if, as the Justice Department says, the FBI is using its PATRIOT Act powers in a responsible manner, does not seek the records of law-abiding Americans, and only seeks the records of suspected terrorists or suspected spies, then there is no reason for the Department to object to my bill."

The second part of the bill would address privacy concerns with another federal law enforcement power expanded by the PATRIOT Act—the FBI's National Security Letter authority, or what is sometimes referred to as "administrative subpoena" authority because the FBI does not need court approval to use this power. The bill would amend section 505 of the PATRIOT Act. Part of Section 505 relates to the production of records maintained by electronic communications providers. Libraries or bookstores with Internet access for customers could be deemed "electronic communication providers" and, therefore, be subject to a request by the FBI under its administrative subpoena authority.

As with the fix for Section 215, the bill would require an individualized showing by the FBI of how the records of Internet usage (including e-mail) maintained by a library or bookseller pertain to a suspected terrorist or spy. Reported in: ALA Washington Office Newsline, July 31.

Topeka, Kansas

Citing serious First Amendment violations, the American Civil Liberties Union sent a letter July 13 to the Topeka and Shawnee County Public Library asking that it reconsider its actions in forbidding one of its staff members from talking at work about the recent historic Supreme Court ruling banning sodomy laws.

"It's against the law for a public employer to prevent employees from talking about pressing social issues at work if it's not keeping them or their coworkers from doing their jobs," said Ken Choe, a staff attorney with the ACLU's Lesbian and Gay Rights Project.

The library employee, Bonnie Cuevas, was ordered on the day after the ruling to stop discussing the decision and its impact on her family. No other library staff members were placed under the same restriction.

"This was the biggest legal step forward in lesbian and gay rights in history," said Cuevas, a longtime Topeka activist and member of Parents, Families, and Friends of Lesbians and Gays (PFLAG). "A public library, of all places, should understand why I, as the mother of a gay son, took a few minutes of time to talk about it."

On June 26, the day of the *Lawrence* v. *Texas* decision, Cuevas was approached by one or two co-workers and received a few unsolicited calls from friends who wanted to share their excitement over the decision with her. Cuevas also received a brief unsolicited call from a reporter who wanted a comment on the significance of the decision for gay and lesbian people and their families. None of these conversations lasted more than a couple of minutes, Cuevas said.

The next day, Cuevas received one more short call from a friend about the decision. Not long after that, two library managers called Cuevas into a meeting where they told her that she was absolutely prohibited from ever speaking about *Lawrence* v. *Texas* at work again. To justify the censorship, the library managers told Cuevas that a co-worker had complained that Cuevas was creating a "hostile work environment." When Cuevas asked whether her talking with the press had been a concern, the managers told her it was not.

"We hope that the library will agree that issues affecting the lives of lesbian and gay people—especially something of the magnitude of the *Lawrence* v. *Texas* decision—are a compelling concern for those of us who live and work in Topeka," said Pedro Irigonegaray of Irigonegaray & Associates, who is working with the ACLU to represent Cuevas. Irigonegaray added, "I have immense respect for the professionals who operate our library, but this is a moment in our history when libraries ought to be defending freedom, not limiting it."

Since the June 27 meeting with library managers, Cuevas has complied with the restriction on her speech. Although some of her co-workers continue to discuss the decision, they have not been reprimanded.

"Libraries are the places that we most rely upon to encourage the free expression and exchange of ideas," said Dick Kurtenbach, Executive Director of the ACLU of Kansas and Western Missouri. "We hope that when the library administrators examine the silencing of Ms. Cuevas more closely, they will see that a grave mistake has been made."

In its letter, the ACLU asked that the library lift its restrictions on Cuevas's speech in compliance with the law and expressed its hope that the matter can be resolved without resorting to litigation. Reported in: ACLU Press Release, July 16.

New York, New York

The nonprofit library services organization OCLC has filed a trademark infringement complaint against a New York City hotel that uses the Dewey Decimal Classification to identify its guestrooms and market its accommodations. The Library Hotel, located on Madison Avenue near the New York Public Library, opened in 2000 and advertises that each of its floors "honors one of the ten categories of the DDC" and each guestroom offers a "collection of books and art exploring a distinctive topic within the category or floor it belongs to."

Dublin, Ohio–based OCLC acquired the rights to the DDC in 1988 when it bought Forest Press, which publishes the classification system. In announcing the legal action, OCLC stated that in the past three years it had "made three written requests to The Library Hotel asking the Hotel to acknowledge and attribute ownership of the Dewey trademarks to OCLC" but the owners refused to do so.

The complaint, filed in U.S. District Court in Columbus, Ohio, September 10, seeks triple the hotel's profits since its opening, or triple OCLC's damages, whichever is greater.

"A person who came to their website and looked at the way [the hotel] is promoted and marketed would think they were passing themselves off as connected with the owner of the Dewey Decimal Classification system," said Joseph R. Dreitler, a lawyer representing OCLC. Dreitler suggested that his client would be willing to settle with the owners, but "if they want to continue to use it, there certainly has to be some sort of a license to the Library Hotel." Reported in: *American Libraries* online, September 29.

schools

Denver, Colorado

Teachers and students in four school districts want Colorado's mandatory Pledge of Allegiance law quashed, saying patriotism should not be forced on Colorado students. Their lawsuit, filed August 12 in U.S. District Court in Denver, asked a federal judge to strike down the new law before most Colorado schools begin a new year. The measure requires every public school student to say the Pledge each school day. Students can bow out of the Pledge for religious reasons or if parents produce a written objection.

But the suit claims that the First Amendment gives students the right to dissent and turn away during the Pledge without permission from mom or dad. "Three of our clients are students who feel strongly that they have a First Amendment right to refrain from participating, whether their parents write a note or not," said Mark Silverstein, legal director for the American Civil Liberties Union, which filed the suit.

The nine students and teachers in the suit name Gov. Bill Owens, Colorado Commissioner of Education Bill Moloney, Aurora Public Schools, Cherry Creek School District, Denver Public Schools and Jefferson County Public Schools as defendants.

The defendants are violating the Constitution by making students recite the Pledge, ACLU lawyers said. "Just as the First Amendment protects the right of individuals to speak out," said University of Denver law professor Alan Chen, "it also protects their right to refrain from speaking."

George Washington High School student and plaintiff Keaty Gross said patriotism is not just wrapped around the Pledge. "I am a patriotic person, but I believe that part of our

freedom in the United States is to express our support of our country in different ways," Gross said in a statement. "There should not be only one way to express your patriotism."

The Pledge law took effect in August and year-round schools had little problem implementing it.

Owens defended the Pledge law as a needed component in public education. "The Pledge of Allegiance is a treasured and positive civic tradition," Owens said in a written statement. "This is a frivolous and gratuitous attempt by the ACLU to demean a law that is clearly constitutional. The ACLU's desire is to get publicity, and in that, it will certainly succeed." Reported in: *Denver Post*, August 13.

colleges and universities

Berkeley, California

University of California faculty leaders voted July 31 to give professors more wiggle room to express their political and personal opinions in the classroom by revising the institution's 69-year-old academic-freedom policy, which had required instructors to be impartial and to give "dispassionate presentations." The university system's Academic Assembly, meeting on the Berkeley campus, approved the policy by a 45-to-3 vote. Under the policy, faculty members will be able to reach definite conclusions in classroom discussions about politics. The policy notes, however, that "this does not mean that faculty are unprofessional," and it emphasizes that classroom discussion still "requires an open mind."

The change is an effort to bring the system's academic-freedom policy in line with those of other institutions, said Robert Post, a law professor at Berkeley who helped draft the revisions. "The old statement of principles was so outlandishly disconnected to what university teaching is now that it made no sense to think about it that way," Post said.

The old policy instructed faculty members to "give play to intellect instead of passion" and to "stick to the logic of the facts." The policy was created during an anticommunist wave of the 1930s and "was basically an agreement between the State of California and the university that the state would stay out of academics and that the university would stay out of politics," Post said.

The university's president, Richard C. Atkinson, urged faculty members to revise the policy last year, after a graduate instructor warned in a course description that "conservative thinkers are encouraged to seek other sections." The statement caused an uproar and sparked debate about how far academic freedom should go, even though the policy's restrictions had been largely ignored by professors for decades.

The new policy will allow professors to teach about politics and to teach passionately, but it will not eliminate concerns that critics, such as the National Association of Scholars, brought up in debates before the vote. The critics worried, in particular, that professors could use the policy switch to begin indoctrinating students with their political outlook. But under the policy, "responsible instruction precludes coercing the judgment of a student, or the use of instruction as a means to nonacademic ends." Reported in: *Chronicle of Higher Education* online, August 4.

San Luis Obispo, California

A student at California Polytechnic State University at San Luis Obispo sued university officials September 25 for what he and his lawyers called a violation of his First Amendment right to free speech. Steven Hinkle, a senior, said that university officials had threatened him with penalties as severe as expulsion after he tried to post a flier at Cal Poly's Multicultural Center last November over the objections of black students who were holding a Bible-study meeting at the center.

Cal Poly officials, who said Hinkle's actions violated a provision of the campus's code of conduct—"disrupting" a student event—ultimately decided that his punishment would consist solely of writing letters of apology to the offended students, but Hinkle, who is white, refused to do that. The university denies that it infringed Hinkle's free-speech rights and that he faced expulsion at any point.

The flier promoted an on-campus lecture by C. Mason Weaver, a conservative black author, and included the title of his recent book, *It's OK to Leave the Plantation: The New Underground Railroad*, in which Weaver argues that a dependence on government assistance by many African-Americans is comparable to slavery.

According to a transcript of a campus hearing in February, students at the Bible-study meeting called the campus police after Hinkle asked to "sit down and talk" about why they had found the flier offensive. Hinkle left, without posting the flier, before the police arrived.

"He was doing something that was clearly constitutionally protected," said Greg Lukianoff, director of legal and public advocacy at the Foundation for Individual Rights in Education, the group that coordinated the lawsuit. The foundation, as part of its "speech-codes litigation" project, has organized lawsuits on free speech against three other American colleges in the past year. Lukianoff said that, in the Cal Poly case, the "disruption" charge lodged against Hinkle had been used to squelch his free-speech rights.

But in two letters in July, university administrators challenged such claims, asserting that only Hinkle's conduct was at issue. "While all of us enjoy the right to freedom of speech, it does not include permission to disrupt scheduled meetings or classes while doing so—in other words, to infringe on the rights of others," Paul J. Zingg, Cal Poly's provost and vice president for academic affairs, wrote in one of the letters. A second letter, written by Cornel N. Morton, vice president for student affairs, contained similar statements.

Hinkle's lawyers said the case smacks of both censorship and a racial double standard. "I think we all know that the conduct code would not have been applied in the same way had it been black students posting a controversial flier and white students objecting," said Curt A. Levey, director of legal and public affairs for the Center for Individual Rights, a Washington-based nonprofit organization best known for representing plaintiffs in the University of Michigan affirmative-action cases that the U.S. Supreme Court ruled on in June.

The center joined Carol Sobel, a former American Civil Liberties Union lawyer, in filing the suit on Hinkle's behalf in U.S. District Court in Los Angeles. The suit seeks to have Hinkle's record expunged of the conduct violation and to bar the university from enforcing its conduct code in a way that prohibits speech. Reported in: *Chronicle of Higher Education* online, September 26.

Vancouver, Canada

Administrators at Simon Fraser University unfairly restricted David Noble's academic freedom when they rejected a proposal to hire the professor, known for his harsh criticisms of distance education, according to a report issued by the Canadian Association of University Teachers. In January 2001, a Simon Fraser faculty search committee nominated Noble, a history professor at York University, to fill a humanities chair. But university officials nixed the suggestion, and Noble argued that he was blacklisted for his outspokenness against the integration of technology into academe.

In a strongly worded report issued in September, the association's committee on academic freedom and tenure agreed with Noble. The committee chastised Simon Fraser for trying to quash Noble's right to criticize the institution, and for failing to follow its own policy for reviewing appointment proposals.

Simon Fraser administrators "imposed unreasonable requirements that concerned [Noble's] style of engaging with academics and institutions he criticized," wrote the authors of the report. They recommended that the university review some of its appointment policies and offer the position—which remains unfilled—to Noble.

The results of the inquiry were initially released only to Noble and representatives of Simon Fraser, who were reviewing the recommendations with the teachers' union. But Simon Fraser broke off the discussions when Noble decided to sue the university and the report was leaked to the media.

"It was rather unfortunate the way this happened," said David Robinson, the associate executive director of the teachers' organization.

"The university disagrees with the findings of the report," said Kathryn Aberle, Simon Fraser's director of media and public relations. Aberle said she could not comment further because of the pending legal action. But she pointed to an independent review commissioned in 2001 by Simon Fraser that found the university's appointments process to be working properly.

"We hope when the administration reads the report, they see there are some procedural problems that could be easily remedied," said Robinson. "And we hope that administrators at other institutions hear about this and re-evaluate their own policies." Reported in: *Chronicle of Higher Education* online, September 18.

Washington, D.C.

Colleges may not violate the U.S. Constitution's free-speech guarantees in an effort to bar harassment on their campuses, according to a letter sent in August by the Education Department to colleges and universities across the country. The letter states that the department's regulations "do not require or prescribe speech, conduct, or harassment codes that impair the exercise of rights protected under the First Amendment." Department officials say the document only clarifies existing policy and does not set new policy.

The Foundation for Individual Rights in Education, a national advocacy group for free speech, was one of the groups that had asked the Education Department to clarify the issue. The group's leaders see the government's memorandum as a victory in the foundation's campaign to rid colleges of what it sees as overly restrictive speech codes. The group posted a copy of the letter on its Web site.

"We really do think that this is going to make a big difference in the fight against speech codes," said Greg Lukianoff, director of legal and public advocacy for FIRE. He said that several colleges had argued that their anti-harassment policies—which FIRE contends violate free-speech rights—are required to satisfy federal law protecting students from harassment.

According to the letter, which was sent by the department's Office for Civil Rights, "Some colleges and universities have interpreted OCR's prohibition of 'harassment' as encompassing all offensive speech regarding sex, disability, race, or other classifications. Harassment, however, to be prohibited by the statutes within OCR's jurisdiction, must include something beyond the mere expression of views, words, symbols, or thoughts that some person finds offensive."

That policy is nothing new, said Susan Aspey, the department's deputy press secretary. "There is no conflict between the civil-rights laws that this office enforces and the civil liberties guaranteed by the First Amendment," she said. "There's no new information contained in this letter—it's simply a reiteration of what OCR does or does not require."

Robert O'Neil, founding director of the Thomas Jefferson Center for the Protection of Free Expression and a professor of law at the University of Virginia, said the policy stated in the letter should come as no surprise to most college officials. "I don't see it as a policy shift or a major breakthrough—it's incrementally helpful," he said. "I don't think it is likely to be seen as a source of change." Reported in: *Chronicle of Higher Education* online, August 13.

protest

Tampa, Florida

At events across the country, the Secret Service has been violating the free speech rights of anti-President Bush protesters, the ACLU has charged in the first nationwide lawsuit of its kind. When President Bush came to Neville Island, Pennsylvania, last year, protesters were herded behind a chain-link fence in a remote area while supporters were allowed to line the motorcade route.

The ACLU said it has seen a significant spike in such incidents under the Bush Administration, indicating a "pattern and practice" of discrimination against those who disagree with government policies. Local police, acting at the direction of the Secret Service, have violated the rights of protesters in two ways: First, people expressing views critical of the government were moved further away from public officials while those with pro-government views were allowed to remain closer; or, second, everyone expressing a view of any kind was herded into what is commonly known as a "protest zone," leaving those who merely observe, but express no view, to remain closer.

"The individuals we are talking about didn't pose a security threat; they posed a political threat," said Witold Walczak, Legal Director of the ACLU of Greater Pittsburgh and a member of the national ACLU legal team that filed the lawsuit.

The ACLU's legal papers listed more than a dozen examples of censorship at events around the country. The incidents described took place in Arizona, California, Connecticut, Indiana, Michigan, Missouri, New Jersey, New Mexico, Texas and Washington, among other places. All were initiated at the behest of the Secret Service and are evidence of a growing—and disturbing—trend.

The suit followed upon one filed August 6 by three protesters arrested at a Florida rally attended by President Bush when they refused to picket inside specified zones. Joe Redner, 63, Adam Elend, 26, and Jeff Marks, 31, filed suit in U.S. District Court in Tampa. They were arrested by Hillsborough County sheriff's deputies in November 2002 at a Gov. Jeb Bush campaign rally because they would not move into the Secret Service's designated "free-speech zones." The governor and president are brothers.

"These free-speech cages are an anathema to a free society," Redner said.

The three men said they attended the rally at the University of South Florida specifically to protest the zones. Redner said his sign read "Don't let these crooks fool you" on one side and a quote from a Supreme Court First Amendment decision on the other. The sign likened protest zones to "a safe haven for crackpots."

Elend, who produces documentaries with Marks, said USF arena officials ordered them to a designated zone about a half-mile away. "There were a couple hundred people there (at the protest zone), but you couldn't see it from where the event was happening," Elend said. Deputies arrested the men when they refused to move.

The suit names the Secret Service, the sheriff's office, USF and Sun Dome, Inc., which operates the public university's arena. Neither the Secret Service nor the sheriff's office returned phone calls for comment.

"We're confident that the legal process will reveal that we didn't violate anybody's rights," said Michael Reich, a spokesman for USF and Sun Dome, Inc. But Bruce Winick, a professor at the University of Miami School of Law, said he thinks the zones were too far from the rally.

Winick, who is not involved in the case, said the courts traditionally have allowed restrictions that are reasonable as to time, place and manner. For example, he said, a city could order that a protest be held a reasonable distance from a hospital if loud noise could interfere with patients' healing. But, he said, the restrictions must be applied equally to protesters and supporters.

"So the question is, 'Is the Secret Service applying this in a viewpoint-neutral way?' " he said.

Elend said the Secret Service and deputies discriminated at the Tampa rally, mostly allowing those with pro-Bush and neutral signs to stay nearby, but sending anti-Bush protesters to the zone. "They applied it totally based on the signs," he said.

Redner, a strip club owner, said he understood that the Secret Service must do its job, "But if someone wanted to kill the president, I think I'd go with a sign saying 'I love the president.' "

The three men said they've been protesting both Democrats and Republicans for years, calling their act "a freedom thing." Redner said President Clinton's Secret Service also employed protest zones. Elend encountered his first zones at the 2000 Democratic Convention in Los Angeles. "There were these giant fences around this parking lot with a line of LAPD in riot gear on every side of the zone," he said. "It was very much a prison."

The men were not the first to be arrested for violating the zones. Rep. Barney Frank, D-Mass., and ten other members of Congress have written U.S. Attorney General John Ashcroft asking that charges be dropped against a South Carolina activist arrested last October for entering a restricted space around the president. Brett Bursey has argued he was arrested because of his sign's message — "No more war for oil."

Frank said that putting protesters in specified zones is wrong and that the Secret Service sometimes "forgets that this is a democracy." "We have a free-speech zone already," Frank said. "It's called the United States of America." Reported in: ACLU Press Release, September 25; firstamendmentcenter.org, August 7

online piracy

New York, New York

As the recording industry pursues its lawsuits against those it says are digital music pirates, SBC Communications has emerged as the only major Internet service provider that

has so far refused to identify computer users whom the industry suspects of copyright infringement. Since early July, major high-speed Internet providers—including BellSouth, Comcast, EarthLink, Time Warner Cable and Verizon—have complied with more than 1,000 subpoenas from the record industry's lobbying arm, the Recording Industry Association of America, to turn over the names of their customers who are otherwise known only by the murky screen names and numeric Internet Protocol addresses used in cyberspace.

SBC, the No. 2 regional phone company and a major local telecommunications service provider in the Midwest and West, has received about 300 such subpoenas and has refused to answer any of them. It has stuck to that position even though Verizon, the biggest local phone company—which has most of its customers along the East Coast—lost a major lawsuit this year against the recording industry.

The contrast between SBC's stance and that of its peers illustrates how Internet providers have been caught in the middle of the music industry's pursuit of individual music swappers. Their range of responses underscores the complexities of the legal landscape in this new area of law, the mounting tensions between copyright enforcement and privacy, and the limits of technology in finding cyberspace pirates.

In the Verizon case, a federal judge in Washington ruled that the Digital Millennium Copyright Act of 1998 required the company to reveal the identities of its customers even though the industry's subpoenas had not been individually reviewed by a judge. Oral arguments in Verizon's appeal were heard September 16 by a federal court in Washington.

Most big Internet providers say that the original decision in the Verizon case essentially validated the subpoenas that the recording industry sent to other companies. SBC, however, has sued the recording industry group in California. ''We are going to challenge every single one of these that they file until we are told that our position is wrong as a matter of law,'' James D. Ellis, general counsel for SBC, said.

Ever since the Telecommunications Act of 1996 remade the communications industry, SBC has been considered by far the most legally aggressive of the nation's major communications companies. With about three million high-speed data customers, SBC is the nation's No. 1 provider of broadband Internet access using digital subscriber line technology.

''Clearly, there are serious legal issues here, but there are also these public policy privacy issues,'' Ellis said. ''We have unlisted numbers in this industry, and we've got a long heritage in which we have always taken a harsh and hard rule on protecting the privacy of our customers' information.''

Recording industry officials see SBC's stance not as a matter of principle over privacy but as a matter of dollars from downloading. They assert that SBC is not concerned about copyright protection because the company uses the lure of music piracy to attract high-speed Internet customers. A record industry official pointed to a past print advertisement from SBC's Pacific Bell unit that read, in part: ''Download all the music you like. And all the music you sort of, kind of, maybe even a little bit like. Go MP3 crazy. Try new music. Build a song library. Whatever.''

''Sure beats going to the record store,'' the advertisement concluded.

A spokesman for the record industry group said the ad had appeared in *The Los Angeles Times* as recently as January 2002. Matthew J. Oppenheim, the trade group's senior vice president for business and legal affairs, said the ad was important because it suggested a strong motive for SBC's position. ''SBC believes that free music drives its business,'' he said. ''That's the only explanation for why they would relitigate issues that have been resolved.''

An SBC spokesman, Selim Bingol, said the advertisement was irrelevant. ''It's ludicrous to suggest that an ad that has not appeared for many months has anything to do with today's debate,'' he said. ''We are opposing these subpoenas because under the R.I.A.A.'s interpretation, they are a threat to consumer privacy and safety.''

The wave of subpoenas that led to the lawsuits began about ten weeks after the judge in the Verizon case issued his final ruling in April. On July 7, lawyers at Internet providers received a blizzard of legal requests from the recording association. Comcast, the nation's leading provider of high-speed Internet access to homes, which it supplies through its cable system, received more than 100 subpoenas in the first two days after the July 4 holiday.

''It really was a fire drill,'' said Gerard J. Lewis, Comcast's chief privacy officer. At Comcast and other companies, the first subpoenas were dated July 3, the last day before the holiday weekend, and they required the companies to provide the information within seven days. That meant that Internet providers that thought the subpoenas were legal had only two or three days to comply.

Now, according to lawyers at several major Internet companies, the recording industry has agreed to a looser schedule: ten business days from when the Internet provider receives the subpoena. The digital copyright law does not require anyone to notify consumers that their personal information has been subpoenaed. It appears, however, that most major Internet providers—including Comcast, Time Warner Cable and Verizon—made an effort to send letters to many customers who were the subjects of subpoenas, notifying them that unless the customer signaled legal action, the information would be provided to the recording industry.

According to executives at several major Internet providers, only the barest minimum of customers took any steps to block the disclosure of their information. Of the 261 individuals sued by the industry so far, however, a number have said they never received any notice from their Internet provider.

Tracking down the numeric Internet protocol, or I.P., address employed by any given user of a file-sharing net-

work is relatively easy. In essence, the industry focused on users who appeared to be making large numbers of music files available to others on file-swapping networks like KaZaA and Morpheus. Industry investigators noted the I.P. address of the user and the exact time at which the user was making files available.

The recording investigators could then determine which Internet provider assigned the specific I.P. address. The subpoenas included both the I.P. address and the time so that the Internet provider could see which of its customers was using that address at that particular moment. With many consumer Internet services, the I.P. address for a user can change every time the computer is turned off and turned back on, so the exact time is a critical tool for matching I.P. addresses and users.

The length of time that Internet providers maintain logs of users, addresses and times varies. Comcast and Time Warner Cable, for instance, generally keep those logs for only thirty days. That means that if those companies receive a copyright subpoena with an I.P. address and time more than a month old, they may be unable to answer the request. Verizon, by contrast, generally keeps its I.P. logs indefinitely.

Oppenheim from the recording industry association said he was generally pleased with the level of cooperation his organization has received. Nonetheless, executives at several Internet providers that are cooperating with the association expressed privately some discomfort with the process.

''We fully understand that copyright protection is a legitimate goal,'' said one executive at a major Internet provider. ''That being said, it doesn't seem like the consumers' privacy interest is really being balanced out here in this process.''

In a related development, at a Senate hearing September 17 senators charged that the recording industry has too much leeway in obtaining private information about Internet users when trying to catch people who are illegally downloading music. Sen. Sam Brownback (R-KS) has filed a bill to require anyone accusing someone of violating digital-copyright laws to file a lawsuit in court. Brownback presided over a hearing by the Senate Committee on Commerce, Science, and Transportation to discuss the bill.

The legislation would change a portion of the Digital Millennium Copyright Act that allows copyright holders to obtain the names, telephone numbers, and addresses of Internet users simply by alleging copyright infringement. Copyright holders can provide an Internet service provider with an Internet Protocol number and the provider—which can include colleges—must name who is registered to use that number.

The RIAA has demanded information on users' identities from numerous colleges, including Bentley and Boston Colleges, DePaul and Northeastern Universities, Loyola University Chicago, and the Illinois Institute of Technology.

Sen. Brownback said at the hearing that there's currently not enough oversight over who can obtain private information about Internet users. He said people register their names and addresses with Internet service providers, or ISP's, expecting that information not to be shared with just anyone who asks.

"This subpoena process includes no due process for the accused ISP subscribers—none," Brownback said. "I cannot in good conscience support any tool such as the DMCA information subpoena that can be used by pornographers, and potentially even more distasteful actors, to collect the identifying information of Americans, especially our children."

He gave an example in which Titan Media, which he called a "hard-core pornographer," filed a subpoena to get the identities of 59 Internet subscribers it alleged were violating its copyright. Titan then told the subscribers that they had to buy porn or be identified publicly, Senator Brownback said.

William Barr, executive vice president and general counsel of Verizon Communications, said anybody could pay a $25 filing fee and fill out a one-page form to find the identity of somebody belonging to an Internet Protocol address. He said the recording industry has already made mistakes in subpoenaing the wrong people in its fight against illegal file sharing. Barr also said other people, including stalkers, child molesters, and abusive spouses, could use the same one-page form to find people's addresses.

"Congress hasn't given this power to law enforcement investigating terrorism," he said.

But Cary Sherman, president of the recording-industry group, said that the people it is seeking information about are violating copyright law. Plus, he added, the alleged infringers are using file-sharing software like KaZaA, which let people download computer files, possibly including personal income-tax statements and other private information. People shouldn't have any expectation of privacy at that point, he said.

"These people have opened their hard drives to the world," Sherman said. "It's hard to imagine a more fertile ground for identity theft."

Sen. Barbara Boxer (D-CA) chastised Barr for what she considered encouragement for people to use file-sharing programs. She criticized Verizon for taking a "holier than thou" stance against the recording industry's actions while not doing enough to stop illegal downloads. Without giving Barr a chance to respond, she said Verizon violates its customers' privacy by sharing their names and other information with hundreds of affiliates.

"I see just a little bit of hypocrisy," Boxer said. "It seems to me that you're trying to protect the privacy of theft."

Sen. Brownback plans to continue pushing his bill through Congress. Senators on the committee encouraged the recording industry and Verizon to negotiate an agreement in the meantime on an appropriate way to protect privacy while also catching copyright infringers. Reported in: *New York Times*, September 16; *Chronicle of Higher Education* online, September 18.

obscenity

Pittsburgh, Pennsylvania

A California couple and their company were indicted by a federal grand jury for allegedly distributing obscene materials, and federal authorities in Pennsylvania said they were planning more prosecutions after years of lax enforcement. Robert Zicari and Janet Romano, both of Los Angeles' Northridge section, and their company, Extreme Associates, were indicted for distributing three videos to a "sting" address in Pittsburgh through the mail and six images over the Internet, U.S. Attorney Mary Beth Buchanan said August 9.

"The lack of enforcement of our federal obscenity laws during the mid- to late-1990s has led to a proliferation of obscenity throughout the United States," Buchanan told a news conference. She was joined by U.S. Postal Service and Justice Department officials and Vance Proctor, captain of the Los Angeles Police Department's organized crime and vice division, all of whom participated in the investigation.

Authorities said they ordered videos and had them mailed to Pittsburgh. They also took out a Web site membership. Zicari, 29, and Romano, 26, who authorities say also use the names Rob Black and Lizzie Borden, surrendered their passports and must appear at an arraignment in Pittsburgh on August 27.

The charges carry a maximum penalty of fifty years in prison and a $2.5 million fine for Zicari and Romano, and probation and a $5 million fine for the company, Buchanan said.

"Today's indictment marks an important step in the Department of Justice's strategy for attacking the proliferation of adult obscenity," Attorney General John Ashcroft said in a statement. Bryan Sierra, a Justice Department spokesman, said the department didn't track obscenity prosecutions, but that they have been "rare over the past decade or so."

Patrick McGrath, spokesman for Morality in Media, a New York-based nonprofit religious organization, welcomed the planned crackdown. In some recent years, he said, federal obscenity prosecutions had been in the single digits, down from around 70 a year in the mid-1980s.

Joseph B. Obenberger, an adult entertainment industry and First Amendment lawyer in Chicago, said he wasn't surprised by the planned crackdown. "All of this was to make good on promises made (by the Bush administration) to elements of the fanatic moral right," he said.

Buchanan said the prosecution was not about limiting personal sexual conduct but about "banning sexually explicit materials." Authorities won't go after producers of mainstream pornography or even customers of companies such as Extreme Associates, she said. Extreme Associates hasn't been shut down during the investigation, she added, because federal laws don't allow for it. However, Buchanan said prosecutors would try to put it out of business through forfeiture actions.

The grand jury found the company's video and Internet images violated the U.S. Supreme Court's test for obscenity, Buchanan said, adding that such companies must adhere to community standards wherever their products are available. Obenberger said the case was brought in Pennsylvania because of its conservative reputation. Prosecutors "want this thing to be decided under the standards of western Pennsylvania," he said. Reported in: firstamendmentcenter.org, August 9.

privacy

Washington, D.C.

For months, President Bush's advisers have assured a skittish public that law-abiding Americans have no reason to fear the long reach of the antiterrorism law known as the USA PATRIOT Act because its most intrusive measures would require a judge's sign-off. But in a plan announced in September to expand counterterrorism powers, President Bush adopted a very different tack. In a three-point presidential plan that critics are already dubbing PATRIOT Act II, Bush seeks broad new authority to allow federal agents—without the approval of a judge or even a federal prosecutor—to demand private records and compel testimony.

Bush also wants to expand the use of the death penalty in crimes like terrorist financing, and he wants to make it tougher for defendants in such cases to be freed on bail before trial. These proposals are also sure to prompt sharp debate, even among Republicans.

Opponents say the proposal to allow federal agents to issue subpoenas without the approval of a judge or grand jury will significantly expand the law enforcement powers granted by Congress after the attacks of September 11, 2001. It also will allow the Justice Department—after months of growing friction with some judges—to limit the role of the judiciary still further in terrorism cases.

Indeed, Senator Arlen Specter (R-PA), who is sponsoring the measure to broaden the death penalty, said in an interview that he was troubled by the other elements of Bush's plan. He said he wanted to hold hearings on the president's call for strengthening the Justice Department's subpoena power "because I'm concerned that it may be too sweeping." The no-bail proposal concerns him too, the senator said, because "the Justice Department has gone too far. You have to have a reason to detain."

But administration officials defended Bush's plan. Even though the administration is confident that the United States is winning the war on terrorism, they said, they have run into legal obstacles that need to be addressed. "We don't want to tie the hands of prosecutors behind their backs," said Mark Corallo, a Justice Department spokesman, "and it's our responsibility when we find weaknesses in the law to make suggestions to Congress on how to fix them."

In announcing his plan September 13 Bush said one way

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schools

Mercedes, Texas

The South Texas Independent School District board voted unanimously September 23 to keep *Brave New World*, by Aldous Huxley, and *Stranger in a Strange Land*, by Robert Heinlein, in the summer Science Academy curriculum, while giving parents more control over their students' choices by requiring principals to automatically offer an alternative to a challenged book.

This did not please Darlene Medrano, one of the half-dozen parents who wanted the books removed from the reading list. "I don't think it's reasonable to know before a child reads the book that they are not ready for that book," Medrano said. During public comments, she argued that with the number of books assigned to students each year, parents would be hard pressed to read each one before their child does.

"Nobody is here to ban a book," her husband, Eddie Medrano, said. "We're not here to ban any book. We are here to just plead with you to say to the staff, to the administrators, to the teachers, to say to them that certain books are not appropriate to this age level. Maybe they would be appropriate when they're older, but not freshmen kids. Not these books."

Sophomore Heather Outland said she found the books to be pornographic and offensive. "I don't feel that I should be carrying them around, much less be forced to read them," Outland said. "I believe in the freedom to read. But I also believe in the freedom not to read. I don't want to be forced to read these books if they go against my values and the values of the community. This is not censorship, this is not banning. This is freedom."

Parents objected to the adult themes—sexuality, drugs and suicide—found in the books. *Stranger in a Strange Land* is a 1962 Hugo Award winner about a boy raised by Martians who returned to Earth as a true innocent without knowledge of sex or religion. *Brave New World* is a satire about a dystopia where babies are born in laboratories, people pop "happy pills" like candy and sex is a casual act.

Huxley's (book) wasn't to promote suicide, drug use or contraceptives," senior Justin Garcia said in his defense of the books. "It was a cautionary tale of a sad and lonely future, because a society decided to sacrifice physical uniqueness between people, love between people, to sacrifice great works like Shakespeare that made people passionate about life, because it would be safe. "But it is through the loves and passions of our lives that individuality and passion are defined. That was the point Huxley was trying to define, not for us to use the book as a manual for contraceptives, or to learn how to escape life by suicide. He proposed a dystopia and it is for us to question it so we do not fall into that mainstream of society."

Ben Salinas, a junior at the Academy who had been praised for his calculator-creating skills earlier in the meeting, said the books should be read in their entirety, and not as a collection of sometimes-offensive paragraphs. "Is it right to censor our future generations? Can you as parents and teachers suggest that students should not be accurately taught about the society that you have created for them?" he asked, his voice rising with the passion of his argument.

Based on the objections to the two books, he proposed a list created with the help of his fellow students of more than 30 other books that should be banned, including many of Shakespeare's works.

"Romeo and Juliet. It's sexually explicit, with a double suicide where the main characters kill themselves," he said while many of his supporters in the audience tittered. "People who censor directly block out society. Do we, South Texas ISD, the best school in Texas, want to be known as a district that prevents our students from learning about the world that surrounds them? I hope not."

He was followed to the podium by his mother, librarian Cathy Salinas. "High school students have four short years before they make the majority of their decisions independently," Salinas said. "I do not think this task is possible for teens unless they are exposed to different points of view. I think fiction, in order to say anything, must upset you and startle you at some point." She cautioned, however, that parents should not leave their children without any type of a safety harness. Instead, they should use these books to foster discussions about values and beliefs at home. "It will take time to read the books, but nobody said parenting is an easy job," she said.

The parent who brought the grievance refused comment on whether to take it to the next step—a civil lawsuit. "The books are vulgar. They are educationally unsuitable. And they should be removed," Darlene Medrano said. Reported in: *The Monitor*, September 23. □

(Senate votes to repeal . . . from page 224)

rules would lead to what they called an orgy of consolidation that would rob television viewers and newspaper readers of diversity of voices, eliminate competition in the marketplace and reduce the coverage of local issues. The legislation had provoked one of the fiercest lobbying fights of the current Congressional session. Television networks and the Newspaper Association of America lobbied to preserve the rules. Another powerful interest group, the National Association of Broadcasters, came out in the middle of the debate — favoring repealing one of the rules, which would let the biggest television networks buy more television stations and opposing efforts to repeal the other new rules.

All of the new rules were opposed by a broad coalition of liberal and conservative organizations, labor groups and civil rights organizations, ranging from the National Organization for Women and the National Writers Guild to the National Rifle Association, the Parents Television Council and the United States Conference of Catholic Bishops.

Reacting to the vote, Gene Kimmelman, senior policy director for the Consumers Union, which opposes the new rules, said the Senate "clearly re-established the principle that separate ownership of dominant local newspapers and broadcasters is essential to preserve the checks and balances against media bias that our democracy relies upon. It's now time for federal regulators to listen to Congress and the public and revamp its rules to promote more competition and diversity in local news and information." Reported in: *New York Times*, September 16. □

(Bush urges anti-terrorism powers . . . from page 224)

answering criticisms from civil liberties groups, members of both parties and 160 communities that have voted to oppose the Patriot Act. The American Civil Liberties Union and some Democratic presidential hopefuls said Bush was using the emotional moment of the second anniversary to expand federal authority.

Senator Joseph I. Lieberman (D-CT) said: "This administration's "don't ask, don't tell" approach to governance should make every American leery of handing over new authority to John Ashcroft before we know how he's using the power he already has."

The executive director of the A.C.L.U., Anthony D. Romero, said, "It is unfortunate that President Bush would use this tragic date to continue to endorse the increasingly unpopular anti-civil-liberties policies" of the Justice Department.

It remained far from clear that Bush will win the powers he seeks. A Republican strategist who is close to the White House said, "Bush is betting that he will either get the powers or get an issue he can use to club his Democratic opponent, whoever that turns out to be." The strategist said Republican polling found that support for expanded powers remained strong, especially among Bush's conservative base. Bush's press secretary, Scott McClellan, told reporters at the White House that the three provisions that Bush endorsed had been introduced by members of Congress. Under repeated questioning, however, McClellan did not rule out a broader White House agenda of further revising the Patriot Act. Reported in: *New York Times*, September 11. □

(censorship hits "all-time high" . . . from page 226)

The Internet is a fragile and easily controlled medium, the report argued. In Africa, governments in countries such as Kenya and Zimbabwe "have at times literally shut it down". The Saudi government over a period of just three months blocked access to more than 400,000 websites that were regarded as immoral.

According to the report, a wide variety of methods are used to restrict and/or regulate Internet access. These include: applying draconian laws and licenses, content filtering, tapping and surveillance, pricing and taxation policies, telecommunication markets manipulation, hardware and software manipulation and self-censorship.

The study did, however, report some positive developments. "Countries have established protections, companies have fought for the rights of privacy of individuals, technologies have sustained the ability of dissident groups to speak freely and access content privately. Differences in national laws have sheltered the speech of the oppressed. Technological developments are being implemented to protect a free Internet, but the knowledge gap between radical innovators and restrictive institutions appears to be closing".

Simon Davies, director of Privacy International and one of the report's editors, said: "It is clear that democratic nations such as the US and the UK have failed to set an acceptable benchmark for free speech. Non-democratic regimes look to the West for technologies and techniques of repression. The report sounds a warning that we must move quickly to preserve the remaining freedoms on the Internet before they are systematically extinguished". Reported in: theregister.com, September 19. □

(most censored stories . . . from page 221)

press, since the topic received an almost complete blackout in the US press. Referring to his first Project Censored nomination in 1989, in which he went into the bush in Costa Rica, he said, "With such thorough self-censorship in the US press, reading the international press is now akin to going into the remote bush."

4. Rumsfeld's Plan to Provoke Terrorists

Moscow Times columnist and CounterPunch contributor Chris Floyd developed this story off a small item in the *Los Angeles Times* in October 2002 about secret armies the Pentagon has been developing around the world. "The Proactive, Preemptive Operations Group (or "Pee-Twos') will carry out secret missions designed to 'stimulate reactions' among terrorist groups, provoking them into committing violent acts which would then expose them to 'counterattack' by US forces," Floyd wrote. "The Pee-Twos will thus come in handy whenever the Regime hankers to add a little oil-laden real estate or a new military base to the Empire's burgeoning portfolio. Just find a nest of violent malcontents, stir 'em with a stick, and presto: instant justification for whatever level of intervention-conquest-raping that you might desire."

Floyd notes that while the story received considerable play in international and alternative media, it has hardly been mentioned in the mainstream US press.

"At first glance, this decided lack of interest might seem a curious reaction, given the American media's insatiable—and profitable—obsession with terrorism," he told Project Censored. "But the media's equally intense abhorrence of moral ambiguity—especially when it involves possible American complicity in mayhem and murder—makes the silence easier to understand."

5. The Effort to Make Unions Disappear

The war on terrorism also has had the convenient side benefit for conservatives of making it easier for employers and the government to suppress organized labor in the name of national security. For example, in October 2002, President Bush was able to force striking International Longshore and Warehouse Union members back to work in the San Francisco Bay Area in the name of national safety.

Chicago journalist Lee Sustar noted that labor coverage is usually woefully inadequate in the mainstream media, even though union membership, while shrinking, still makes up a national constituency 13 million strong. "Twenty years ago every paper had a beat reporter on labor who knew what was going on," he said. "Today that's not the case. Besides a token story on Labor Day or a human-interest story here and there, you don't see coverage of labor. You only see coverage from the business side," said Sustar, although Steven Greenhouse, the labor reporter for the *New York Times*, is one obvious exception to Sustar's claim.

Ann Marie Cusac, whose story for *The Progressive* about the decimation of unions was cited, said she thinks the position of organized labor is worse than it has ever been. She combed National Labor Relations Board files for egregious examples of the lengths to which employers will go to bust unions. And she found a lot. "They had a woman with carpal tunnel syndrome pulling nails out of boards above her head, because they wanted her to go on disability so she couldn't organize," she said. "But she did it, even knowing she might disable herself. The willingness of people to sacrifice, because they know how important it is to unionize, is a sign of hope."

6. Closing Access to Information Technology

The potential closing of access to digital information is a development that could have a harmful effect on the powerful role online media plays in side stepping media gate keepers and keeping people better informed. "The FCC and Congress are currently overturning the public-interest rules that have encouraged the expansion of the Internet up until now," writes Arthur Stamoulis, whose story was published in *Dollars and Sense*.

The Internet currently provides a buffet of independent and international media sources to counter the mostly homogenous offerings of mainstream US media, especially broadcast. As the shift to broadband gains momentum, cable companies are trying hard to dominate the market, and eventually control access.

In 2002, the Federal Communications Commission (FCC) decided to allow cable networks to avoid common carrier requirements. Now the giant phone companies, who offer the competitive DSL services, want the same freedoms to control access to their lines. In the long run, instead of the thousands of small ISP services to choose from, the switch from dial-up to broadband means that users will have less and less choice over who provides their Internet access.

While the media finally woke up and gave significant coverage to the recent public rebellion against the FCC, which voted to increase media concentration even further (see page 000), there has been scant coverage to the problem that the Internet as we now know it might be lost.

7. Treaty Busting By the United States

"The US is a signatory to nine multilateral treaties that it has either blatantly violated or gradually subverted," says Project Censored. These include the Comprehensive Test Ban Treaty, the Treaty Banning Antipersonnel Mines and the Kyoto Protocol on global warming. Just as the Bush administration is crowing about the possibility of Saddam Hussein manufacturing nuclear or chemical weapons, it is violating treaties meant to curb these threats, including the nuclear Non-Proliferation Treaty and the Chemical Weapons Commission.

8. US/British Forces Continue Use of Depleted Uranium Weapons Despite Massive Evidence of Negative Health Effects

The eighth story on the list deals with another subject that victims have tried to get into the mainstream media for over a decade—the US's use of depleted uranium in Iraq, in both the recent invasion and in the Gulf War. Depleted uranium (DU) was also used in Afghanistan, Kosovo and Bosnia.

The writers cited, including the hard-core porn magazine *Hustler*, note that cancer rates have skyrocketed in Iraq since the first Gulf War, most likely because of the massive contamination of the soil with DU from the explosive, armor-piercing munitions. US soldiers are also victims of this travesty, suffering Gulf War syndrome and other ailments that many feel sure are linked to their exposure to DU.

Reese Erlich, a freelance journalist who reported on the topic for a syndicated radio broadcast and related web site report, said the federal government has dealt with the issue of DU the way the tobacco industry deals with its liability problems. "They'll fog the issue so no one can say for sure what's happening," he said. "They'll commission studies so they can say, 'There are conflicting reports,' 'We need more information.'"

He noted that while the US media is quiet about the issue, it is a hot topic in the international press. "When you get outside the US, the media is much more critical," he said. "They refer to it as a weapon of mass destruction. This will be a legacy the US has left in Iraq. Long after the electricity is repaired and the oil wells are pumping, children will be getting cancer. The US knew this would happen, it can't claim ignorance."

9. In Afghanistan: Poverty, Women's Rights and Civil Disruption Worse than Ever

Though his work isn't cited here, Erlich also reported on the topic of the ninth story on the list, the continuing poverty, civil disruption and repression of women in Afghanistan. While the country has virtually dropped off the radar screen in the US press and public consciousness, it is suffering its worst decade of poverty ever. Warlords and tribal fiefdoms continue to rule the country, and women are as repressed as ever, contrary to the feel-good images of burqa-stripping that have been broadcast in the media here.

"Reporters by and large don't go to Afghanistan to report on what they see," said Erlich, who spent several weeks reporting in the country. "They go to the state department officials, so everything is filtered through these rose-colored glasses, saying things are getting better. But they're not."

10. Africa Faces New Threat of New Colonialism

While Afghanistan is being essentially ignored, the tenth story on the list shows how African countries are getting plenty of attention from the US—but not the kind of attention they need. These stories deal with the formation in June, 2002 of the New Partnership for Africa's Development, or NEPAD, by a group of leaders from the world's eight most powerful countries (the G8) who claim to be carrying out an anti-poverty campaign for the continent. But the group doesn't include the head of a single African nation, and critics charge that the plan is more about opening the continent to international investment and looting its resources than fighting poverty.

"NEPAD is akin to Plan Colombia in its attempt to employ Western development techniques to provide economic opportunities for international investment," says Project Censored.

The remainder of Project Censored's twenty-five most censored stories of 2002–3 are: 11. U.S. implicated in Taliban massacre; 12. Bush administration behind failed military coup in Venezuela; 13. Corporate personhood challenged; 14. Unwanted refugees a global problem; 15. U.S. military's war on the earth; 16. Plan Puebla-Panama and the FTAA; 17. Clear Channel monopoly draws criticism; 18. Charter forest proposal threatens access to public lands; 19. U.S. dollar vs. the euro: another reason for the invasion of Iraq; 20. Pentagon increases private military contracts; 21. Third-world austerity policies: coming soon to a city near you; 22. Welfare reform up for reauthorization but still no safety net; 23. Argentina crisis sparks cooperative growth; 24. U.S. aid to Israel fuels repressive occupation in Palestine; 25. Convicted corporations receive perks instead of punishment. Reported in: alternet.org. □

(is it legal? . . . from page 248)

to give authorities stronger tools to fight terrorists was to let agents demand records through what are known as administrative subpoenas, in order to move more quickly without waiting for a judge. The president noted that the government already had the power to use such subpoenas without a judge's consent to catch "crooked doctors" in health care fraud cases and other investigations.

The analogy was accurate as far as it went, but what Bush did not mention, legal experts said, was that administrative subpoenas are authorized in health care investigations because they often begin as civil cases, where grand jury subpoenas cannot be issued. The Justice Department used administrative subpoenas more than 3,900 times in a variety of cases in 2001, the last year for which data was available. The subpoenas are already authorized in more than 300 kinds of investigations, Corallo said.

"It's just common sense that we should be able to use this tool against terrorists too," he said. "It's not a matter of more power. It's the fact that time is of the essence and we may need to act quickly when a judge or a grand jury may not be available."

Officials could not cite specific examples in which difficulties in obtaining a subpoena had slowed a terrorism investigation. But Corallo gave a hypothetical example in which the F.B.I. received a tip in the middle of the night that an unidentified terrorist had traveled to Boston. Under Bush's plan, the F.B.I., rather than waiting for a judicial order, could subpoena all the Boston hotels to get registries for each of their guests, then run those names against a terrorist database for a match, he said.

Attorney General John Ashcroft and other senior officials, defending the PATRIOT Act in recent speeches and interviews, have emphasized that judges must sign off on the investigative tools that have caused the most public protest, like searching library records or executing warrants without immediately notifying the target. One section of the Justice Department's new PATRIOT Act Web site, lifeand liberty.gov, for instance, says the law "allows federal agents to ask a court for an order to obtain business records in national security terrorism cases."

The administration sought to expand the use of administrative subpoenas in the original PATRIOT Act in 2001, but Democrats protested and succeeded in killing it. Civil rights lawyers, defense advocates and some former prosecutors say they see no need to broaden the Justice Department's powers so markedly. Under current law, they say, terrorism investigators can typically get a subpoena in a matter of hours or minutes by going through a judge or a grand jury.

"The fundamental issue here," Nicholas M. Gess, a former federal prosecutor and a senior aide to the former attorney general Janet Reno, said, "is that at a time of such concern over civil liberties, there's good reason to have a judge looking over the government's shoulder." Bush's proposal, he said, "means that there are no effective checks and balances. It's very worrisome." Reported in: *New York Times*, September 14.

New York, New York

While privacy worries have frustrated the Pentagon's plans for a far-reaching database to combat terrorism, a similar project is quietly taking shape with the participation of more than a dozen states—and $12 million in federal funds. The database project, created so states and local authorities can track would-be terrorists as well as criminal fugitives, is being built and housed in the offices of a private company but will be open to some federal law enforcers and perhaps even US intelligence agencies.

Dubbed Matrix, the database has been in use for a year and a half in Florida, where police praise the crime-fighting tool as nimble and exhaustive. It cross-references the state's driving records and restricted police files with billions of pieces of public and private data, including credit and property records.

But privacy advocates, officials in two states, and a competing data vendor have branded Matrix as playing fast and loose with Americans' private details. They say that Matrix houses restricted police and government files on colossal databases that sit in the offices of Seisint, Inc., a Boca Raton, Florida, company founded by a millionaire who police say flew planeloads of drugs into the country in the early 1980s.

"It's federally funded, it's guarded by state police but it's on private property? That's very interesting," said Christopher Slobogin, a University of Florida law professor and expert in privacy issues. Reported in: Associated Press, September 24.

Salt Lake City, Utah

A group of passengers has sued JetBlue Airways Corp. for passing their personal information to a Defense Department contractor. The suit followed JetBlue's acknowledgment that it had given information from about 5 million passenger records to Torch Concepts of Huntsville, Alabama. Torch produced a study, "Homeland Security: Airline Passenger Risk Assessment," that was purported to help the government improve military base security.

The class-action lawsuit alleges fraudulent misrepresentation, breach of contract and invasion of privacy. JetBlue chief executive David Neeleman said that the information contained "name, address and phone number, along with flight information, but absolutely no payment or credit card information."

Utah attorney James W. McConkie filed the lawsuit September 22 in Third District Court on behalf of five named plaintiffs and a representative class, seeking compensatory—but not punitive—damages. "We got the sense that Mr. Neeleman wanted to make this right, so we commented in our lawsuit that we wanted to pursue the matter, but not in a way that would damage the financial viability of the company. It's a good company," McConkie said. Reported in: salon.com, September 23.

libel

Denton County, Texas

Stepping into a battle over the First Amendment and political satire, the Texas Supreme Court agreed September 25 to hear the case of two Denton County officials who sued a newspaper over an article about the fictional arrest of a 6-year-old girl. The *Dallas Observer* said the article, which some readers thought was true, was satire and designed to poke fun.

The piece, published in 1999 under the headline "Stop the Madness," was a parody of the actual arrest of a 13-year-old Ponder student for reading a graphic Halloween story to

the class. The fictional story was about a girl jailed for a report on Maurice Sendak's *Where the Wild Things Are*. Denton County Judge Darlene Whitten and District Attorney Bruce Isaacks didn't think it was funny. They say the fictional story was presented as news and damaged their reputations.

Jim Hemphill, an Austin attorney representing the newspaper's publisher, New Times, Inc., writer Rose Farley and editors Julie Lyons and Patrick Williams, said the story was protected free speech.

The newspaper and its employees have tried to get the case thrown out but have twice been rejected by a lower appeals court. "They don't think they should have to answer in a courthouse what was clearly protected political speech," Hemphill said. "This is core political speech and the very heart of the First Amendment: criticism of the acts of elected public officials."

A ruling against the newspaper that allows the case to proceed would damage the media's ability to editorialize about public officials, Hemphill said.

The story was meant to poke fun at Whitten's actual decision several weeks earlier to jail a seventh-grader for five days because he read the graphic Halloween story. That case received national media coverage. Farley's piece imagined the second incident and quoted both plaintiffs. It was printed in the paper's "News" section and not labeled as satire.

Hemphill described the *Dallas Observer* as an "alternative" paper, which doesn't have a traditional opinion page. Hemphill said the story was peppered with satirical references and the newspaper expected its readers would get the joke. The judge is quoted in the parody as admonishing the girl, who wore "handcuffs and ankle shackles."

"Any implication of violence in a school situation, even if it was just contained in a first-grader's book report, is reason enough for panic and overreaction," Whitten was quoted. "It's time for you to grow up, young lady, and it's time for us to stop treating kids like children." The story also included a reference to a fictional advocacy group called God-Fearing Opponents of Freedom, or GOOF.

A Dallas radio station and the student newspaper at the University of North Texas reported the story to be true. The *Observer* also received correspondence from readers who believed the article was true. The Observer later posted a "satire" tag on the piece on its Web site. It also published a disclaimer of sorts the following week, and again several weeks later.

"It was a joke," managing editor Williams wrote in a column. "We made it up." The newspaper did not intend to mislead readers into thinking it was true, Hemphill said.

Whitten's husband, Mike Whitten, is the attorney handling the case for the judge and the district attorney. In a brief filed with the Supreme Court, he said the article is not covered by established libel protections for the media because it "held many, many facts as true though such facts were utterly false and defamatory."

Later calling the piece a joke and labeling it as satire doesn't absolve the newspaper, the plaintiffs say. "Petitioners cannot be absolved by a mere self-serving, after-the-fact expression to the effect of `we were only joking.'" Reported in: *Dallas Star-Telegram*, September 25. □

(from the bench . . . from page 240)

Kasky's legal fees or made other payments. Jim Carter, general counsel for Nike, expressed concern about the California ruling. Nike had stopped making public its annual ''corporate responsibility report,'' Carter said, and would limit its public statements.

The company chose to settle, he said, because the Supreme Court's decision not to rule ''left us with no satisfactory comfort that we could get back to the Supreme Court.'' To do so, the company would have had to go to trial under the California Supreme Court standards, lose, appeal through the state courts and then persuade the United States Supreme Court to hear the case again.

Jeff Milchen, who is the director of the antiglobalization organization ReclaimDemocracy.org said the California Supreme Court was right to place additional limits on corporate speech. ''Corporations have a legitimate role to play in society by doing business,'' Milchen said. ''But they do not have a legitimate role in influencing public policy. Corporations do not have any claim to the protection of our Bill of Rights.''

First Amendment experts said they were dismayed that the California court's decision would stand.

''This was a very troublesome decision,'' said Kevin Goering, who practices media law at Coudert Brothers in New York. ''Its sweeping definition of commercial speech, which exposed speech which plainly concerned a matter of public interest to liability without fault to an individual who hadn't even been damaged by it, now applies to all speech by corporations that reaches California.'' The law allows a resident to sue as a ''private attorney general'' without having to prove that anyone was harmed by the statements.

''The California rule genuinely frightens businesses,'' said Thomas Goldstein, one of Nike's outside lawyers, ''because even innocent mistakes made in important public debates can get you sued. And anyone breathing and in the state of California can sue.''

Patrick Coughlin, who represented Kasky, said that was as it should be. ''We think this will go a long way toward making people who want to do business in California to speak truthfully,'' he said. Reported in: *New York Times*, September 13.

Tulsa, Oklahoma

The Federal Trade Commission overstepped its authority in establishing a national do-not-call registry, according to a federal district court ruling made public September 24. The decision appeared to block, at least temporarily, the national program scheduled to begin October 1 that is aimed at preventing telemarketers from calling the fifty million phone numbers Americans have put on the list.

However, two days later, Michael Powell, chair of the Federal Communications Commission, said his agency would enforce the list.

Congressional leaders also said they would introduce legislation that would give regulators explicit authority to enforce the federal do-not-call regulation, which has proved to be immensely popular with consumers.

The ruling, issued September 23 by the United States District Court for the Western District of Oklahoma, found that Congress had not given authority to the Federal Trade Commission to establish the national registry.

Senator Charles E. Schumer of New York said the court decision misinterpreted Congress's intentions. ''This is the goofiest decision I've seen in a long time,'' he said. ''There's no question that Congress is going to correct this.'' On this issue, he said, ''Everyone has come together.''

Billy Tauzin (R-LA), the chair of the House Committee on Energy and Commerce, and John D. Dingell, (D-MI), the committee's ranking Democrat, pledged in a statement to ''take whatever legislative action is necessary to ensure consumers can stop intrusive calls from unwanted telemarketers.''

In his ruling, District Court Judge Lee R. West seemed to agree that consumers are frustrated, but he wrote that the F.T.C. is not authorized to establish a do-not-call registry under current law. ''Admittedly,'' Judge West wrote, ''the elimination of telemarketing fraud and the prohibition of deceptive and abusive telemarketing acts or practices are significant public concerns.'' But, he said, the power to regulate on this front must be grounded in a grant of authority from Congress. ''Absent such a grant of authority in this case, the court finds the do-not-call provision to be invalid.''

The Federal Trade Commission filed a motion for a stay pending appeal of the court ruling. ''This decision is clearly incorrect. We will seek every recourse to give American consumers a choice to stop unwanted telemarketing calls,'' said Timothy J. Muris, the chair of the agency.

Tim Searcy, the executive director of the American Teleservices Association, a trade group representing telemarketers, said the decision as it stands would allow phone solicitors to call without risking fines on October 1. ''It sure seems they will be able to continue to do business as normal,'' he said.

Since July, millions of Americans have signed up for the do-not-call registry. Under the rules, telemarketers who call numbers on the list risk fines of up to $11,000 per violation. The telemarketers have argued that the registry will be a huge blow to business because it will limit the phone numbers they are allowed to call. The industry said it will lose two million jobs by Christmas, but federal regulators said that figure is overblown.

Industry groups challenged the establishment and enforcement of the registry in several lawsuits. The case decided in September was brought by the Direct Marketing Association, a trade group, and several telemarketers, who argued that the F.T.C. did not have the requisite statutory authority.

The court, in agreeing with the telemarketers, found that Congress had given such authority instead to the Federal Communications Commission, a separate agency. The ruling does not affect do-not-call lists created by more than two dozen states.

Both the F.T.C. and the F.C.C. have promulgated do-not-call rules, but the trade commission has taken the lead on maintaining the registry. Despite the court ruling against the FTC, the FCC still has the power to penalize telemarketers who call listed numbers, potentially fining them as much as $120,000 depending on their industry, FCC spokesman David Fiske said.

Before the court challenges, it was uncertain whether the FCC would have a role in enforcing the list. "They don't have any prohibitions against them," FTC spokeswoman Cathy MacFarlane said. "They can go forward and do what we would have done."

FCC Chair Powell noted that, in yet another court ruling related to the list, a three-judge panel of the Denver appeals court on September 27 denied a request from telemarketers who wanted to block the FCC's role in the registry. On September 29, the telemarketers asked the Supreme Court to overturn that decision. If the Supreme Court grants the request to temporarily suspend the FCC's rules, both agencies would be blocked from enforcing the list.

The FCC joined last summer with the FTC, which operates the registry, to ensure the list applies to all industries. The FCC's do-not-call regulations mirror and expand upon those of the FTC, which have been put on hold.

Fiske said people could file directly to the FCC complaints about calls that violate the list. However, it was unclear whether the main complaint mechanisms—a Web site and phone number run by the FTC—would be allowed to take and forward comments to the second agency.

"The FCC will enforce its do-not-call rules against telemarketers that have obtained the do-not-call list from the FTC, beginning October 1, Powell said.

Adding another wrinkle to the bewildering situation, the FTC on September 28 shut down the service that allows tele-

marketers to obtain the list so they can know who not to call. So not all telemarketers have the list.

There are at least two other legal challenges to the do-not-call registry pending in federal courts. The American Teleservices Association is separately challenging the F.T.C. rules in a federal district court in Denver and is challenging the F.C.C. rules in the United States Court of Appeals for the Tenth Circuit. According to lawyers involved in the case, the statute governing F.C.C. authority requires that challenges to that agency's rules be filed in the appeals court.

Robert Corn-Revere, a lawyer for the teleservices association, said that the ruling in Oklahoma did not have a direct impact on the other two cases. Nonetheless, he said, ''This confirms the argument we've been making that the F.T.C. has been engaging in regulatory imperialism.'' He said the suits filed by his association put more emphasis on First Amendment issues raised by the national do-not-call list.

The Direct Marketing Association acknowledged that the court ruling did not solve its public relations problem. ''We're pleased the court has agreed with us. On the other hand we're concerned about consumers who think we want to make calls when they don't want to receive them,'' said Bob Wientzen, chief executive of the association. He also said the industry would like to work with the government to find a solution acceptable to telemarketers and consumers. Reported in: *New York Times*, September 25, 29.

Internet

San Francisco, California

The Supreme Court of California ruled August 25 that the First Amendment right to free speech did not mean trade secrets could be published on the Web with impunity. The ruling reversed a decision by a California appeals court. Yet the state Supreme Court's ruling was a narrow one, legal experts said, and it mostly set the stage for further legal scrutiny of the balance between rights of free speech and intellectual property at a time when digital copies of software, music and movies can be made and distributed effortlessly over the Internet.

The case, filed in 1999, pit a group of large companies against Andrew Bunner, a computer programmer in Northern California. The corporate consortium, the DVD Copy Control Association, includes Microsoft, Intel, 20th Century Fox and others. They are the licensees of the software used to encrypt DVD's, which are the most popular storage medium for movies.

The encryption software was a response from Hollywood and computer companies to the fear that digital technology would hurt the movie business by allowing a flourishing illicit market in pirated movies, just as the music industry has suffered.

In the suit, Bunner was accused of violating trade secrets laws by posting a piece of software on a Web site that cracks the encryption software on DVD. The program was designed not by Bunner, but by a Norwegian teenager, Jon Johansen, who has said he came up with it mainly to play DVD's on computers running the Linux operating system. But his program could also be used for decrypting and copying DVD's.

Each side in the case saw reason for optimism in the ruling. ''The court's decision confirms that the First Amendment is not a shield to allow thieves to distribute stolen property,'' said Robert Sugarman, a partner for the law firm of Weil Gotshal & Manges, who argued the case on behalf of the DVD Copy Control Association. ''And so it establishes an overall precedent that an injunction on the basis of trade secrets is not a violation of the First Amendment.''

But in limiting the power of free speech arguments, the California Supreme Court also sent the case back to the lower court to review the trade secrets aspects of the case. ''Our decision today is quite limited,'' the judges stated in their opinion. ''We merely hold that the preliminary injunction does not violate the free speech clauses of the United States and California Constitutions, assuming the trial court properly issued the injunction under California's trade secret law. On remand, the Court of Appeal should determine the validity of this assumption.''

The import of the California Supreme Court's decision, according to Pamela Samuelson, a law professor at the University of California at Berkeley, is that ''you don't have a First Amendment right to spill everybody's trade secrets.''

Yet Samuelson, who filed a supporting brief on behalf of Bunner, asserted that the real weakness of the suit was the trade secrets claim. Bunner, she noted, did not create the encryption-cracking program, he violated no contract with the DVD Copy Control Association, and by the time he posted the software on a Web site hundreds of others had done the same thing. ''By the time Bunner reposted it, the secret was out of the bag,'' Samuelson said.

David A. Greene, executive director of the First Amendment Project, a nonprofit group, said he was encouraged by the ruling. ''We're going to get a rigorous constitutional test of this issue of where trade secrets intersect with the First Amendment,'' said Greene, who represented Bunner before the state Supreme Court.

Greene said that his group, supported by the American Civil Liberties Union, the Electronic Frontier Foundation and a couple of computer professional associations, was striving to defend a broad principle. ''This case is about the right of people to publish publicly available information,'' he said. ''If a person finds information on the Web and posts it, he or she should not be sued by a big corporation.''

Still, the DVD Copy Control Association's suit was supported by more than large corporations. The groups filing supporting briefs on behalf of the copy control association included the Screen Actors Guild, the American Federation of Musicians, the American Society of Composers and the

Writers Guild of America, which represent artistic creators of copyrighted works who have often expressed concerns that their livelihoods may suffer if digital copying is not controlled. Reported in: *New York Times*, August 26.

Burlington, Vermont

Citing the First Amendment, a federal appeals court has ruled that a Vermont law cannot stop a nonprofit organization and the American Civil Liberties Union from publishing information about sexuality on the Internet. The U.S. Court of Appeals for the Second Circuit said in a ruling August 27 that a law signed in 2000 by Vermont Gov. Howard Dean to curb Internet crimes against children was too broadly applied, threatening speech that is protected by the Constitution. Lawyers for Vermont had argued throughout the litigation that it never intended to go after the kind of Web sites operated by the plaintiffs.

"We think it likely that the Internet will soon be seen as falling within the class of subjects that are protected from state regulation because they imperatively demand a single uniform rule," the appeals court wrote.

The ruling benefits the ACLU and the Sexual Health Network, Inc., a Connecticut-based nonprofit corporation that provides sexuality-related information for people with disabilities, illnesses and changes in their lifestyle. The ACLU Web site contains materials on subjects such as birth control, safe sex practices, gay and lesbian rights, abortion and sex education. Both organizations sought a court order to protect themselves from the effects of the new law.

Earlier, a federal judge had struck down the law, saying it violates the First Amendment because it burdens adult speech and was too broadly applied, projecting itself onto the rest of the nation. The appeals court agreed that the law was unconstitutional when it was used against Web sites such as those operated by the ACLU and the Sexual Health Network. It differed with the lower court, however, in saying that the law could be enforced otherwise.

Vermont Assistant Attorney General Joseph Leon Winn said the state was looking at the decision and deciding whether to appeal. Reported in: Associated Press, August 28.

zoning

New York, New York

New York City cannot change a zoning law to try to close a legal loophole that has allowed sex shops to stay in business, a Manhattan judge ruled September 10. Mayor Rudolph W. Giuliani proposed the amendment in 2001, a final volley in what had been his administration's campaign against New York City shops dealing in pornography. It sought to circumvent a loophole under which video stores added hundreds of nonsexual titles to their shelves to narrowly conform to the anti-pornography zoning law. Similarly, go-go bars added floor space featuring everything from sushi to Shakespeare performances.

The Giuliani administration called this a sham compliance, saying that the stores or bars still relied mostly on the sexually oriented sales. While the original 1998 law dealt only with the amount of floor space devoted to sex, the amendment sought to close the loophole by letting regulators take into account factors like a store's layout, among many other things, in order to crack down on the businesses.

In the decision, Justice Louis B. York of the State Supreme Court said that the amendment was not defensible because it sought to alter the content of free expression, which is constitutionally protected. In addition, he said, the city offered no studies or data to make clear that a revised zoning standard was needed. Judge York concluded that ''the defendants have not met their burden under the First Amendment.''

Mark Alonso, a lawyer for Ten's Cabaret, one of the more prominent plaintiffs, said that the ''decision makes sense.'' The city disagreed.

''We believe that Justice York was wrong in finding that the amended provisions of the Zoning Resolution are unconstitutional,'' said Robin Binder, the deputy chief of the Administrative Law Division at the Corporation Counsel. ''We intend to immediately appeal that decision, and we will seek quick appellate review. Unfortunately, as a consequence of Justice York's decision, the city's neighborhoods will have to wait even longer to rid themselves of the nuisances caused by adult establishments posing as nonadult businesses.''

Lawyers representing some of the X-rated businesses that brought the suit said they found the ruling gratifying. ''This was a patent effort on the part of the city to close establishments because the entertainment they provide is distasteful,'' said Herald Price Fahringer, a lawyer who represents several pornographic video stores. ''Close places based on content?'' he said. ''That is exactly what you can't do under the law.'' Reported in: *New York Times*, September 11. □

(Ashcroft attacks librarians . . . from page 217)

"Among the many changes in U.S. law and practice enabled by the act is the federal government's ability to override the historical protections of library reading records that exist in every state. States created these confidentiality laws to protect the privacy and freedoms Americans hold dear. These laws provide a clear framework for responding to national security concerns while safeguarding against random searches, fishing expeditions or invasions of privacy.

"Librarians are committed to ensuring the highest quality library service and protection of our patrons' records from random searches, fishing expeditions or other inappropriate invasions of privacy. This commitment is why we are among the most trusted members of our communities, from Maine to California. We take great pains to be educated about the federal and state laws that govern our ability to serve our communities—which is why we're so concerned.

"Over the past two years, Americans have been told that only individuals directly involved in terrorism need be concerned. This is not what the law says. The act lowers the legal standard to "simple relevance" rather than the higher standard of "probable cause" required by the Fourth Amendment.

"In March 2003, the Justice Department said that libraries had become a logical target of surveillance. Which assurance by Mark Corallo are we to believe?

"We also have been told that the law only affects non-U.S. citizens.

"This is not what the law says. In fact, the act amended the Foreign Intelligence Surveillance Act (FISA) in such a way that U.S. citizens may now be investigated under the lowered legal standards applied to foreign agents.

"And now Attorney General John Ashcroft says the FBI has no interest in Americans' reading records. While this may be true, librarians have a history with law enforcement dating back to the McCarthy era that gives us pause. For decades, and as late as the 1980s, the FBI's Library Awareness Program sought information on the reading habits of people from "hostile foreign countries," as well as U.S. citizens who held unpopular political views.

"We are deeply concerned that the Attorney General should be so openly contemptuous of those who seek to defend our Constitution. Rather than ask the nations' librarians and Americans nationwide to "just trust him," Ashcroft could allay concerns by releasing aggregate information about the number of libraries visited using the expanded powers created by the USA PATRIOT Act.

"Or, better yet, federal elected officials could vote—as several U.S. senators and representatives from across the political spectrum have proposed—to restore the historical protection of library records."

In a letter to the editor published in the *New York Times*, Rep. Bernie Sanders (I-VT), who has sponsored legislation to amend the Patriot Act to protect the confidentiality of library circulation records, said: "I find Attorney General John Ashcroft's flippant remarks about the justified concerns of America's librarians disturbing. . . . Millions of Americans are grateful to librarians and to the American Library Association for defense of their basic constitutional rights. Instead of making derisive remarks, one would hope that the country's chief law enforcement officer, who is sworn to protect the Constitution, would be working with librarians, booksellers and civil liberties groups, not against them."

The next day, in a phone call with Hayden, Ashcroft agreed to declassify data showing how often federal agents had demanded records from libraries and other institutions.

"The American Library Association welcomes this commitment from Attorney General Ashcroft," Hayden said. "We look forward to learning how the PATRIOT Act is being used in libraries. This is an important first step toward having the information needed for meaningful public oversight and accountability. We hope this symbolizes a significant commitment to ongoing reporting to the American public and the U.S. Congress. As librarians, we understand the importance of open access to information. The American public deserves no less."

Hayden indicated that the decision appeared to be a response to criticism that Ashcroft received after his speech. Sheketoff said, "I think the Justice Department was taken by surprise by the negative reaction that his attack on librarians had."

But Corallo said Ashcroft had "made light of all the criticism, but he wanted to make sure the public understands what we're actually doing. He felt it was in the public interest and the national security interest to have these numbers declassified."

Shortly after the phone call, the Justice Department released information indicating that the Patriot Act had not been used at all to obtain library records. In a memorandum to Robert S. Mueller, III, director of the F.B.I., ordering release, Ashcroft said he believed it was ''generally not in the interest of the United States'' to release such classified information. But, he added, ''to date we have not been able to counter the troubling amount of public distortion and misinformation in connection with Section 215.''

The news was welcomed by the ALA, but Hayden noted that the disclosure that no library records had been obtained under the Patriot Act seemed to contradict earlier department statements and she called upon Congress to repeal the relevant section (215) of the legislation.

"I am glad the Attorney General finally agreed to declassify this report after almost two years of seeking an open and full accounting of activity by federal agents in libraries," said Hayden. "We hope this symbolizes a significant commitment to ongoing reporting to the American public and the U.S. Congress. As librarians, we understand the importance of open access to information. The American public deserves no less.

"We were surprised to learn, however, that the Justice Department has never utilized Section 215 relating to the production of business records, particularly in light of previous statements from the Justice Department."

Last December, assistant attorney general Daniel Bryant said information had been sought from libraries on a voluntary basis and under traditional legal authorities, including possibly national security letters. In March 2003, Justice Department spokesperson Corallo said libraries had become a logical target of surveillance. In May 2003, in testimony before members of Congress, assistant attorney general Viet Dinh said federal agents had visited about fifty libraries. "In any case, we hope members of Congress will restore the historic protections of library records and pass one of the legislative proposals currently on the floor, such as the Freedom to Read Protection Act sponsored by Congressman Bernie Sanders," Hayden added.

"Legislators and the general public can be assured that traditional legal protections extended to library records are not an obstacle to ensuring national security. We hope Congress will reject any additional measures—such as H.R. 3037, which would allow federal agents to use administrative subpoenas to obtain library and business records without any judicial review—that might abridge the rights and protections afforded by our Constitution."

Ashcroft's opponents said they remained deeply concerned over the government's far-reaching powers under the legislation, and they said the Justice Department added to public fears by maintaining such tight secrecy over its activities.

''If the Justice Department had been more forthcoming with the public,'' said Sheketoff, ''this high level of suspicion wouldn't have developed. But they've been fighting for two years not to tell people what they were doing, and that left a lot of people wondering what they had to hide.''

Moreover, critics added, Ashcroft's report raised another question: If the F.B.I. has never actually used its power to demand records from libraries, bookstores and other institutions in pursuit of terrorists, why does it need the authority at all?

''Given the potential for abuse of library and bookstore records, I can see no reason why—if this authority was not needed to investigate September 11—it should stay on the books any longer,'' said Rep. John Conyers, Jr., of Michigan, ranking Democrat on the Judiciary Committee.

David Cole, a Georgetown University law professor and frequent critic of the Justice Department on civil rights issues, said that although the government did not appear to have seized any library records under the Patriot Act, the law had ''a substantial chilling effect."

In departing from his usual remarks September 16, Ashcroft dwelled much more expansively than he had in previous speeches on the government's powers under the legislation to demand access to library records in searching for terrorists. That issue has helped galvanize opposition to the act from libraries nationwide and from over 160 communities that have protested the law as too far-reaching.

Ashcroft said critics had tried to persuade the public that the F.B.I. was monitoring libraries to ''ask every person exiting the library, 'Why were you at the library? What were you reading? Did you see anything suspicious?' ''The Justice Department, Ashcroft said, ''has no interest in your reading habits.''

''Tracking reading habits would betray our high regard for the First Amendment,'' he said. ''And even if someone in government wanted to do so, it would represent an impossible workload and a waste of law enforcement resources."

In the wake of the FBI disclosure that no libraries had been visited under the act, Ashcroft seemed to intensify his rhetoric. He accused his critics of conjuring images of FBI agents in raincoats, dark suits and sunglasses "like in the X-Files" grilling in a "dull Joe Friday monotone" library users about their reading habits.

"And so the charges of the hysterics are revealed for what they are: castles in the air," Ashcroft said. "Built on misrepresentation. Supported by unfounded fear. Held aloft by hysteria."

"That's a very unfortunate choice of words, and it does not accurately portray the concerns of librarians," Hayden responded. Librarians had only described what the FBI could actually do under the act, she said, and Ashcroft could have prevented fears and speculation by releasing the report sooner.

In the wake of the controversy, Rich Lowry, editor of the conservative *National Review*, used his syndicated column to attack librarians. Paraphrasing the famous Shakespearean quote "Let's kill all the lawyers," Lowry added, "Sure—but only if we can kill all the librarians next."

Playing on librarian stereotypes ("librarians have recently let down their hair, usually wrapped in a tight bun, of course,") Lowry accused the profession of "thoughtless and unreconstructed leftism." He called librarians' ideology akin to what "you expect to find among naive college students and destitute Latin American peasants." He also castigated the ALA for "making an otherwise worthy profession seem a blight on the republic." Reported in: *New York Times*, September 16, 17, 18, 19. □

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