newsletter on intellectual freedom

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# "Barry Trotter done gone": perils of publishing parody

*Following are edited speeches from the program "Barry Trotter Done Gone: The Perils of Publishing Parody," which was held at the 2002 ALA Annual Conference, in Atlanta, Georgia, on June 17.*

**introductory remarks by Margo Crist**

Good afternoon, and welcome to our program "Barry Trotter Done Gone: The Perils of Publishing Parody." I am Margo Crist, chair of the ALA's Intellectual Freedom Committee. We are pleased to present this program in conjunction with the Association of American Publishers and the American Booksellers Foundation For Free Expression. I'd like to take a moment to introduce our co-sponsors. Judith Platt is Director of AAP's Freedom to Read Program and Chris Finan is President of the American Booksellers Foundation for Free Experssion.

Our distinguished panel this afternoon is made up of Michael Gerber, Bruce Rich, and Wendy Strothman, who will discuss the art of parody, the legal issues and publishing decisions involved in publishing parody, and how the publication—and challenge to—*The Wind Done Gone* have affected the publishing environment.

Michael Gerber, author of *Barry Trotter and the Unauthorized Parody*, will begin by providing a history and framework for our discussion. Michael is a life-long humorist and has been widely published with commentaries and humor appearing in *The New Yorker, The Atlantic Monthly, Esquire, The Wall Street Journal*, and numerous other publications. He also has written for PBS, NPR and *Saturday Night Live*. While at Yale University, where he graduated in 1991 in history, Michael resurrected *The Yale Record*, America's oldest college humor magazine. Michael currently serves as President of the *Record*'s Alumni Board.

Second, we will hear from R. Bruce Rich, a nationally recognized expert in intellectual property law, who specializes on the problems of communications industry clients, including book, magazine and newspaper publishers, broadcasters, cable television entities, and their trade associations. His areas of concentration include the First Amendment, music licensing, copyright, trademark and anti-trust.

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*Published by the ALA Intellectual Freedom Committee, Margo Crist, Chairperson*

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## targets of the censor






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## most censored stories of 2001–2002

The media research group Project Censored at Sonoma State University on August 28 announced its list of the most under-covered "censored" news stories of 2001-2002. The censored news stories are published in the annual book *Censored 2003* from Seven Stories Press. The Sonoma State University research group is composed of nearly 200 faculty, students, and community experts who reviewed over 900 nominations for the 2003 awards. The top 25 stories were ranked by the Project's national judges including: Michael Parenti, Robert McChesney, Robin Andersen, Norman Solomon, Carl Jensen, Lenore Foerstel and some twenty other national journalists, scholars, and writers.

"We define censorship as any interference with the free flow of information in American Society," stated Peter Phillips, Director of the Project. "Corporate media in the United States is interested primarily in entertainment news to feed their bottom-line priorities. Very important news stories that should reach the American public often fall on the cutting room floor to be replaced by sex-scandals and celebrity updates."

Project Censored has moved to a new cycle for the release of their annual censored stories. The Censored 2003 book was released in September to bookstores nationwide. The annual Project Censored awards ceremony was held at Sonoma State University September 28.

The Project Censored list serves as a fascinating chronicle of recent political history. The stories the students and faculty put forward certainly have the ring of familiarity—media ownership concentration, the privatization of water, death squads in Colombia, the Bush family and bin Laden, inhumane sanctions in Iraq, the return of nukes, the privatization of education, the negative effects of NAFTA, the housing crisis in the U.S. and CIA shenanigans in Macedonia.

A striking feature of this year's lineup is that several of the inclusions come from British sources, including the London *Guardian*, and the *Ecologist*. Over the years, but particularly since 9/11, many domestic media mavens know that they can't get a full picture of international news without regularly reading the *Guardian*, the *Independent*, and checking in with BBC radio and TV.

One story that virtually never gets any coverage is the massive concentration of media ownership and the effect that media lobbyists, the National Association of Broadcasters (NAB), have on the Federal Communications Commission (FCC) and, by extension, what consumers of U.S. media read, watch and listen to.

When President Bush appointed Michael Powell to be head of the FCC, broadcasters must have thought they died and went to heaven. Powell, the son of Secretary of State Colin Powell, seems intent on deregulating the media system as much as humanly possible. This is the theme of Project Censored's **No. 1 story, corporate takeover of the airwaves**.

Certainly given the stakes and the media's inability to cover itself, one can't quarrel with the choice. Media ownership and deregulation could rank as the No. 1 ignored story every year.

Project Censored focused its beam on the narrow issue of the radio spectrum, the subject of Jeremy Rifkin's story in the London *Guardian*. Brendan Koerner's *Mother Jones* story was a comprehensive overview of the entire picture of media deregulation and San Francisco's feisty Media Alliance publication *Media File* also weighed in on the subject.

Jeffrey Chester, director of the Center for Digital Democracy and arguably the nation's most knowledgeable person on media reform, commends Project Censored for putting communications policy at the top of its list, but still suggests that the public would be better served with a sense of the bigger picture.

"It's not just the proposed privatization of radio (wireless) spectrum," Chester says. "The FCC is now engaged in several inter-related efforts that will harm communities and our democracy. They include new proposed policies that extend the monopoly power of cable and telephone companies onto the Internet itself. Soon the Net will be operated like any cable system, with the pipe owner determining every Web site's digital destiny. Proposals to commercially annex wireless spectra are a part of a corporate strategy to monopolize as much of the digital age as possible." *Sources: Jeremy Rifkin, London Guardian, April 28, 2001; Brendan Koerner, Mother Jones, September 2001; Dorothy Kidd, Media File, May 2001.*

**2. GATS' For-Profit Model Threatens to Gobble Up World's Water**

The world is under attack, and not in the most conventional modes. A little-known agreement called the General Agreement on Trade in Services, or GATS, a byproduct of the World Trade Organization (WTO) threatens to open the world's public services to corporate takeover. That means community services such as water, health care, education, libraries, museums and much more, turn into lucrative investments in the hands of global corporations.

Think it can't happen? It already has. In the spring of 2000, the Bolivian government sold off the city of Cochabamba's public water system to San Francisco-based Bechtel "in the name of economic efficiency," writes author Maude Barlow. Several furious protests ensued until finally the government agreed to return the water supply to public control.

If you think the U.S. is immune to such episodes, you're mistaken. In New Orleans, negotiations are underway to privatize the city's water supply. The billion dollar deal would be the largest private water contract in U.S. history.

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## book groups protest secrecy on bookstore, library subpoenas

Groups representing authors, book publishers, and booksellers have criticized the Justice Department for refusing to reveal publicly how many times it has used its power under the USA PATRIOT Act to force bookstores, libraries and newspapers to reveal confidential records, including the titles of books an individual has purchased or borrowed. The House Judiciary Committee had requested this information in June in an effort to determine how the Justice Department is exercising the greatly expanded investigatory powers it received under the PATRIOT Act.

However, in a letter to the Judiciary Committee dated July 26, Assistant Attorney General Daniel J. Bryant said that the number of bookstore and library subpoenas, and much of the other information that the Committee had sought in its effort to exercise oversight of the implementation of the PATRIOT Act, is confidential and will be turned over only to the House Intelligence Committee (which does not have oversight responsibility for the act). The contents of the letter were reported by *The New York Times* on August 15.

PEN American Center, the Association of American Publishers and the American Booksellers Foundation for Free Expression expressed deep concern over the Justice Department's decision. In a letter sent August 19 to House Judiciary Committee Chair James Sensenbrenner and Rep. John Conyers, the Committee's ranking Democrat, the book groups said that Section 215 of the PATRIOT Act could have a chilling effect on the First Amendment and urged the Committee to pursue its efforts to ensure that the Justice Department does not abuse its new power. "The secrecy surrounding the issuance of search warrants pursuant to Section 215 and the lack of any adversarial proceeding are an open invitation to abuse of governmental power in the absence of proper oversight," they said. ABFFE President Chris Finan said he was deeply disturbed by the Justice Department's refusal. "The PATRIOT Act has a potentially chilling effect on the First Amendment rights of bookstore customers because it gives the FBI the power to investigate what people are reading," he said. "The refusal of the Justice Department to tell us how many times it has used this power is even more unsettling because it naturally leads to the suspicion that it is using it a lot."

Larry Siems, director of the Freedom to Write Program at PEN American Center, agreed, calling the refusal to turn over the information "another disturbing episode in an ongoing struggle to retain access to information on administration actions and policies."

Judith Platt, who directs the Association of American Publishers' Freedom to Read Program, stressed that "an individual's right to read without the government looking over his shoulder is the most basic right in a free society. If we allow this freedom to be abridged in the interest of law enforcement, we have a right to demand the most stringent standards of judicial and Congressional oversight." Reported in: AAP, ABFFE, PEN press release, August 19. □

## school library book challenges on rise in Texas

There were 218 challenges to remove 134 books from school libraries across Texas last year, according to an annual report by the American Civil Liberties Union of Texas and the Texas Library Association. The Harry Potter series of books about a boy wizard topped most of the lists. The Harry Potter books were challenged 71 times in 21 different school districts. All the challenges, however, were rejected.

Of the 218 challenges, 38 books were banned; 57 had their use or access restricted; 22 remained, but students could choose alternatives; 16 were awaiting final decision on their status; and 85 were retained without restriction.

"What we find alarming is that we are finding an increase of challenges and an even more intensified increase of certain types of challenges," said Will Harrell, executive director of the ACLU of Texas, which prepared the report titled "Free People Read Freely." Challenges also were made to the Bible and Webster's Dictionary. Other works challenged included Harper Lee's *To Kill a Mockingbird*, William Shakespeare's *A Midsummer Night's Dream* and Mark Twain's *The Adventures of Huckleberry Finn*.

Harrell said the highest number of challenges were based on mystical and pagan references in books. A third of all challenges were based on those concerns. "That suggests to us a movement that is religiously based that is targeting schools to influence."

While the number of challenges increased 50% last year, compared to 141 in the 1997–98 school year, the first year of the survey, the percentage of books banned dropped, Harrell said. Fifty-five books were banned from school libraries in 1997–98 compared to 38 in 2001–02. The single most banned book last year was *Taming the Star Runner*, by S.E. Hinton, a Tulsa, Oklahoma, writer known for her books about young adults. The book was banned at the Lamar, Ector County (Odessa) and Cherokee school districts for its use of profanity or inappropriate language. The Ector County school district reported the most challenges among school districts with ten. Vidor Independent School District topped the list for banning the most books among school districts in the state. Books by well-known authors such as Stephen King, Tom Clancy and Judy Blume also were banned in some school districts. Three of King's books and two of Blume's books made this year's banned list.

At the Fort Bend Independent School District in Sugar Land, four books were challenged at the George H. Bush High School library because their subject matter dealt with homosexuality. All were retained without restriction.

Harrell said state education officials should implement a uniform system for the process of challenging and removal of books in school libraries. Currently, the banning of books is at the discretion of individual school districts.

Debbie Graves Ratcliffe of the Texas Education Agency said state education officials in the mid-'90s moved toward giving local school districts greater control and that there currently were no plans to set state guidelines for the removal of books.

For the past six years, the ACLU of Texas has submitted open-records requests to all school districts and charter schools in the state for the number of challenges and books banned. Reported in: *Houston Chronicle*, September 20. □

## AAUP to review impact of 9/11 on academic freedom

The American Association of University Professors, disturbed by an array of recent events that may limit academic freedom, has created a committee to review and analyze incidents in the wake of the attacks on September 11 of last year.

Immediately after September 11, there appeared to be little effect on academic freedom, but in recent months, that has changed, Jonathan Knight, associate secretary of the AAUP, said September 10. Areas the committee will study include responses by academic leaders and politicians to controversial speech and teaching; restrictions proposed by the federal government on university research that is considered sensitive but not classified, particularly in microbiology and bioterrorism; renewed concerns about conducting classified research at universities; and restrictions on foreign scholars and students.

Individual cases that have caused concern to the AAUP include the controversy over the study of a book about the Koran at the University of North Carolina at Chapel Hill; the denunciation by some students and religious leaders of two Colorado colleges for inviting the Palestinian activist and scholar Hanan Ashrawi to speak on their campuses; and altercations between pro-Palestinian supporters and a group supporting Israel at San Francisco State University.

In addition, federal rules being promulgated by the Office of Management and Budget about the release of sensitive, but unclassified, information that might present issues of national security are of concern to many university researchers, Knight said.

Robert M. O'Neil, director of the Thomas Jefferson Center for the Protection of Free Expression and former president of the Universities of Virginia and Wisconsin, will lead the special committee. "In part, we need to launch such an inquiry because we don't as yet have a complete database" of the events, O'Neil said. "My expectation a year ago was that we would have seen more conflict and greater tension than has occurred. But it may simply be more subtle than we suspect."

He emphasized that while the AAUP's focus is primarily the impact on faculty members, the committee also will look at how events have affected students, staff members, and other academic organizations, since no one else appears to be looking at those groups. The committee is expected to issue a report at the end of its study, but has not set a timetable for doing so. Reported in: *Chronicle of Higher Education* online, September 11. □

## does the First Amendment go too far?

The First Amendment Center in Nashville, Tennessee, conducts an annual survey of Americans' attitudes toward the First Amendment. This year, the Center joined with the *American Journalism Review* to take a closer look at how the nation sees the First Amendment after the terrorist attacks, particularly when it comes to the role of a free press and access to public information.

Among the key findings:

- For the first time in the polling, almost half of those surveyed said they think the First Amendment goes too far in the rights it guarantees. About 49 percent said it gives us too much freedom, up from 39 percent last year and 22 percent in the year 2000.
- The least popular First Amendment right is freedom of the press, with 42 percent saying the press in America has too much freedom, roughly the same level as last year.

In the past, the results have been fairly consistent, if a bit disquieting. Each year, a majority of Americans have said they would restrict public remarks that might offend people of other faiths or races. About half of those surveyed have said they would restrict the public display of potentially offensive art. Almost four Americans in ten have said they would limit the public performance of music that might offend others.

The five-year period in which the Center for Survey Research and Analysis at the University of Connecticut has conducted the study for the First Amendment Center has seen growing support for limiting expression when it insults others, the codification of political correctness. It appears that the land of the free is now the home of the easily offended.

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## terror war eroding web freedom

Several Western democracies have become "predators of digital freedoms," using the fight against terrorism to increase surveillance on the Internet, an international media-rights group said September 5. Reporters Without Borders criticized not only authoritarian states such as China that tightly police Internet use, but also Western governments including the United States, Britain, France, Germany, Spain, Italy and Denmark and the European Parliament.

"A year after the tragic events in New York and Washington, the Internet can be included on the list of 'collateral damage,'" the Paris-based group said in a report. "Cyber-liberty has been undermined and fundamental digital freedoms have been amputated."

The report accused China, Vietnam and other countries hostile to dissent of using the international counterterrorism campaign "to strengthen their police mechanisms and legal frameworks relating to the Web and to increase pressure on cyber-dissidents." Among cases cited was that of Li Dawei, a former policeman sentenced in July to eleven years in prison on charges of using the Internet to subvert the Chinese government.

But even among Western democracies, "many countries have adopted laws, measures and actions that are poised to put the Internet under the tutelage of security services," Reporters Without Borders said. It said measures to record information about Web sites visited and e-mails sent and received risk turning Internet providers and telecommunications firms "into potential branches of the police."

Since September 11, many governments have sought to respond to concerns that terrorists can use the speed, ease of communication and relative anonymity of the Internet to plan attacks, swap information, transfer funds and publicize their ideas. Critics fear the measures will erode users' privacy and freedom of speech, cause them to trust the Internet less and ultimately hurt the Internet's value as a new communications medium.

Reporters Without Borders cited dozens of measures adopted or proposed by governments to expand police powers on the Web, including a Canadian anti-terrorist law adopted last December which "clearly undermines the confidentiality of exchanges of electronic mail." "Magic Lantern" technology being developed by the FBI will allow investigators to secretly install over the Internet powerful eavesdropping software to record every keystroke on a person's computer. A new French law requires Internet providers to keep records of e-mail exchanges for one year and makes it easier for authorities to decode messages protected by encryption software. Reported in: *Washington Post*, September 4. □

## Muslim Council offers educational materials to public libraries

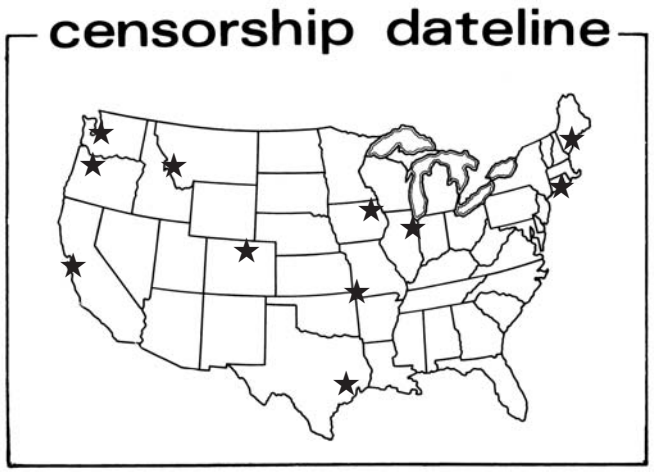
In what it calls a first-of-its-kind library project, the Council on American-Islamic Relations (CAIR) has begun a national initiative to counter anti-Muslim bigotry by distributing educational materials about Islam to all 16,000 public libraries in the United States. The program was launched September 9 at the National Press Club in Washington, D.C.

Called "Explore Islamic Civilization and Culture," the year-long campaign will involve community-sponsored distribution of books, videos, and audiocassettes in library packages containing materials such as the PBS documentary *Islam: Empire of Faith*, a copy of the Koran, and children's books on Ramadan and mosque architecture. CAIR will help libraries identify sponsors who are willing to pay for the library packages, which will cost from $37 to $150.

"Americans do not have adequate access to accurate information about Islam and Muslims," said CAIR Executive Director Nihad Awad. "This lack of objective information leaves ordinary Americans vulnerable to the rising tide of anti-Muslim rhetoric. Our library project seeks to challenge bigotry through education." Publishers and book retailers have reported an exponential increase in demand for materials about Islam, he noted, and increased demand is putting a strain on our nation's public libraries.

CAIR is a Washington-based, Islamic, civil-rights and advocacy group. A pilot program by CAIR's Los Angeles office has already placed more than 2,500 books and videos in 166 Southern California libraries, said Hassan. Reported in: *American Libraries Online*, September 9. □

**support the freedom to read**




## libraries

**San Francisco, California**

The hate crime was not book burning, it was book slashing—607 books, to be exact. For nearly a year, someone lurked in the stacks at San Francisco's Main Library and the Chinatown branch, vandalizing books. Almost always they were volumes on gay and lesbian subjects, some of them out of print and hard to replace. Some books had cat eyes cut into the covers or pages. Others were defaced, then stuffed with Christian religious material. Sometimes, the attacker would insert the torn-off covers of romance novels.

"It was really kind of insane," said Rachel MacLachlan, head of library security. "It was hard to try to figure out who was behind this." Finally, a librarian who had staked out the stacks on her day off caught

John Perkyns just as he was returning a freshly slashed gay history book to the reference shelves at the Main Library. On September 18, Perkyns pleaded no contest in San Francisco Superior Court to one count of felony vandalism with a hate-crime enhancement. He was placed on five years' probation, will undergo counseling, must stay away from all city libraries and will pay $9,600 in restitution to the library system.

Just why the 48-year-old Perkyns, a security guard at an apartment building, did what he did isn't known. By all accounts Perkyns is a mild-mannered man, and he had no criminal record until now.

Library employees first noticed the slashings during the summer of 2000. About two hundred of the damaged volumes were in the Hormel Center, a collection of works of gay and lesbian literature that opened in 1996, thanks to a gift by philanthropist James Hormel. Not all the vandalism consisted of slashings. Sometimes the culprit would hide books in the compartment at the base of the shelves, MacLachlan said. Among the volumes stashed from view were books on the Catholic Church's position on homosexuality.

Other literature was found stuffed into books, she said, including torn-up Catholic missals and copies of the gay newspaper the *Bay Area Reporter*. The vandal's antipathy toward things gay didn't stop at homosexuality. He damaged books by Gay Talese and the historian Peter Gay, and he even defaced a book of poetry by Mark Levine titled *Enola Gay*, after the plane that dropped the atomic bomb on Hiroshima. The vandal also damaged seemingly unrelated books on such subjects as weddings.

"He was all over our collection," MacLachlan said. "He hit a fun photo book for adults on pigs." The book, *The Complete Pig*, was meticulously cut up, with the behinds of the pigs snipped from the photos on the cover. "It was very difficult to figure out what was going on in his head," MacLachlan said.

Perkyns was caught in April 2001 by a librarian who saw him stashing a pink-colored volume titled *Becoming Visible: An Illustrated History of Lesbian and Gay Life in Twentieth-Century America* underneath a shelf. He had a razor blade in his jacket pocket and the ripped pages from a book about lesbianism, as well as the torn-off pink cover of a romance novel, *The Tarnished Lady*. A police search of his apartment last October turned up evidence from vandalized books. Religious writings were tacked on the walls.

Outside court Perkyns declined to comment. His attorney, Stephen Naratil, said his client is a deeply religious man. "We reached a favorable agreement for both sides," Naratil said. "He risked going to prison. There was some evidence against him, obviously."

After leaving court, Perkyns wrote out a $2,000 check, the first installment of his restitution. Police Inspector Milanda Moore, who worked the case for two years, brought it to the library. "They were so happy," she said. "They were kissing the check."

James Mason, materials manager for the hard-hit general collections section on the Main Library's third floor, said some of the damaged volumes might not be replaced because they were single copies of out-of-print books. "It's a loss," Mason said. "My opinion is the $9,600 wouldn't cover the replacement of 600 books." Reported in: *San Francisco Chronicle*, September 19.

**Dyersville, Iowa**

The James Kennedy Public Library Board of Trustees rethought its action in July to ban a teen advice book, but

voted again August 7 to keep the book off the library's shelves. Board member Betty Anne Scherrman said the board did not consider it censorship when it voted to send *Sari Says: The Real Dirt on Everything from Sex to School* back to the vendor. She said the board did not believe they banned the book. "We didn't buy a book—that's all it is," she said.

Scherrman told those attending the board meeting that the book's content is "inappropriate" and does not meet the board's criteria for the library. About thirty community members filled the library's community room for the board's regular monthly meeting. For more than an hour, board members and Dyersville residents voiced their opinions on the book by teen advice columnist Sari Locker.

In her book, Locker tackles such questions as: How do I tell my parents I got a tattoo? Should I get together with someone I met online? Can I get birth control without my parents' permission?

At its June 26 meeting, the board voted 7-0, with two abstentions, to return the book to the vendor. The book already had been purchased by the library. Board members who voted against *Sari Says* cited its sexually explicit content. Board member Kori Mahoney made a motion to rescind the earlier decision at the August 7 meeting. "I believe our decision was fundamentally flawed because it was not based on enough information," Mahoney told the board. She said she was concerned because some members had not read the book when they voted and there was confusion about the status of the book.

"I believe by rescinding our decision and moving this book to our newly appointed review committee we will be able to alleviate any question regarding the process taken in the reconsideration of the book *Sari Says*," she added.

The board voted 6-3 against Mahoney's motion. Board secretary Dan Boice and President Wayne Hermsen voted in favor of the motion. The book was selected by the children and young adults librarian, and critiqued and approved for inclusion in the collection by library director Shirley Vonderhaar. Dyersville resident Dan Sogaard called the board's June 26 decision censorship.

"Censorship is ignorance—we cannot censor any books," he told the board. Lisa Klostermann of Dyersville brought to the podium a stack of books she said are worse than *Sari Says* found in the James Kennedy Library. "I just think we pulled something off that might help somebody," she said.

Other Dyersville residents said they found the book's content "disgusting." "I really feel it is inappropriate for our library and should be kept off the shelves," said Deb Biermann. Reported in: freedomforum.org, August 8.

**Webb City, Missouri**

Since Webb City's school library banned three books in the award-winning Alice series by Phyllis Reynolds Naylor, patrons can't find them on the public library's shelves either. That's because the decision to ban the books, which deal with an adolescent girl's development, only made them popular with readers in this southwest Missouri town.

"It's been on the hold list since the challenge," said Sue Oliveira, the public librarian. "The surest way to get everyone to read a book is to ban it."

Some critics contend that the series, in which the main character befriends a girl being bullied in the restroom, promotes homosexuality. Others say some issues discussed in the books—such as menstruation, puberty and sex—are best left to parents.

At a school board meeting August 13, one man called relationships in the books "an abomination." The board responded by voting to remove three of the books, which had been available for checkout by fifth and sixth graders. Three other titles were restricted to sixth graders with parents' permission.

The titles removed were *Achingly Alice, Alice in Lace* and *The Grooming of Alice*. Joey Davis, state director of Concerned Women of America, said she had not read the books but supported parents' efforts to control what their children read.

"It's not about banning books; it's about choosing what's best for our children," Davis said. "If they are teaching tolerance or acceptance of behaviors that are harmful, then it's wrong."

Those who seek to ban books "miss the point so much," said Naylor. "I get letters from kids about book banning that say, 'Our parents have no idea what we think about. They still look at me as an innocent little girl or an innocent little guy.' " Naylor said she tries to incorporate children's concerns into the books. "I believe in honesty and telling kids what they need to know (about) what they ask," she said. "I'm going to keep on doing that."

The Alice series ranked seventh on the list of most-challenged books in 2001, according to the American Library Association. Oliveira had said that if the Alice books were checked back into the Webb City Public Library in time, she would use them in a display for Banned Books Week, which ran from September 21 through 28. The annual event is spearheaded by the ALA. This year's theme was "Let Freedom Read: Read a Banned Book." Reported in: freedomforum.org, September 24.

**Conroe, Texas**

A children's sex-education book that has sold more than 650,000 copies in seventeen languages around the world during the past eight years got a possible kiss-of-death review August 26 from critics on Montgomery County Commissioners Court. The commissioners agreed to ban *It's Perfectly Normal*, by children's writer Robie Harris, a widely distributed, juvenile-oriented work about human sexuality, from the Montgomery County library system because, in part, it condones homosexuality.

However, County Judge Alan Sadler and Library Director Jerilynn Williams later agreed that the ban would be contingent on the outcome of an official review process that involves both librarians and a citizen book-selection panel designed to handle just such cases.

County officials were reacting to complaints from about a dozen self-described Christians, mainly from the Cut and Shoot community, who showed up unexpectedly before Commissioners Court to get the book pulled off library shelves. The residents, while not organized into a group, reported that they had been alerted to the book's availability in the library system by the local Republican Leadership Council, a conservative organization.

Montgomery County's online library catalog shows the book is located in the adult section of libraries in Conroe, The Woodlands, at the Tullis Branch in New Caney and the Meador Branch in New Caney. "It's not sex education," said Frances Brown of Cut and Shoot. "It's pornography. It's horrible."

Monte Lane, a GOP state delegate also from Cut and Shoot, said the person responsible for the purchase of the library system's four volumes of *It's Perfectly Normal* should be fired. Retired elementary school teacher Wynne Harris, also from Cut and Shoot, called the work "vulgar."

Those gripes resonated with Sadler, who vowed to "do everything in our power to ensure that book is taken out of the library immediately." Commissioners concurred although no vote was taken. Williams, present to discuss the county's $10 million bond plan for library improvements that goes to voters in November, said the uproar at court "completely blind-sided me. I had no idea."

But after talking with the complainants after the meeting and then with Sadler in a closed-door session late in the day, she was more upbeat. She said everyone agreed that the county would follow its established book-removal process in deciding the book's fate. That process requires a citizen to file a complaint, which is reviewed by a panel of librarians from the county system. The panel makes a recommendation to the system director which in turn, makes a final decision. If complainants are unhappy with the outcome, they can appeal to the county-appointed Library Advisory Board, Williams said. She added that the citizens unhappy about *It's Perfectly Normal* told her they were not aware of the county's process.

Sadler said he was irked to learn that the book, as he put it, "tries to minimize or even negate that homosexuality is a problem." Williams declined to characterize the book's views about homosexuality but said it does deal frankly with a wide variety of sexual issues, including same-sex relations, that youngsters from age 10 up would be curious about. She said the book intentionally is kept in the library system's "young adult" stacks so younger readers won't see it.

She said the book originally became part of the county's collection because of highly favorable reviews from, among others, the *School Library Journal*, which named it "book of the year" in its category in 1994. *It's Perfectly Normal* has been a persistent, if modest, lightning rod for conservative criticism around the nation since its publication eight years ago, according to representatives of both the publisher and the Houston Public Library.

Sadler told Commissioners Court Monday that he would propose Montgomery County resign from the American Library Association because "it's a very liberal organization," but that proposal also appeared delayed by the judge after the meeting with the librarian.

The book has drawn no fire in nearby Houston over the past half-dozen years. The Houston library system has about forty copies of the book at various locations, and the title moves briskly wherever it's stocked. The Harris County library system also has copies of the work in its system. Reported in: *Houston Chronicle*, August 27.

## schools

**Cromwell, Connecticut**

Two Cromwell residents want a pair of Newbery Medal-winning novels removed from the Cromwell middle school's curriculum. The pair allege that the books, *The Witch of Blackbird Pond*, by Elizabeth George Speare, and *Bridge to Terabithia*, by Katherine Paterson, promote witchcraft and violence and have filed a petition asking school officials to remove them.

*The Witch of Blackbird Pond* is set in 1687 and tells the story of a young girl, Kit, who is forced to leave the Caribbean for a colony in Connecticut. There, in a stern Puritan community, Kit feels like a caged bird. She befriends an old Quaker woman known as the Witch of Blackbird Pond and, as a result, is accused of witchcraft.

*Bridge to Terabithia* is the story of the friendship between two fifth-graders, a boy and a girl, Jess Aarons and Leslie Burke. Together, the two create an imaginary kingdom named Terabithia in the woods, where they rule as king and queen, and where the only limit is their imaginations. Though *Bridge to Terabithia* has been banned many times in the past (it is ninth on the ALA list of 100 books most commonly banned between the years 1990 - 2000), in this particular case, author Katherine Paterson does not know why residents Bridget Flanagan and Andrea Eigner want the book removed.

"Initially, it was challenged because it deals with a boy who lives in rural Virginia, and he uses the word 'Lord' a lot, and it's not in prayer," Paterson explained. "Then there are more complicated reasons. The children build an imaginary kingdom, and there was the feeling that I was promoting the religion of secular humanism, and then New Age religion." Paterson thinks the latter complaints are

ironic since her parents were Christian missionaries, and she is married to a Presbyterian minister.

Flanagan's and Eigner's petition urged the school board to ". . . eliminate the study of materials containing information about witchcraft, magic, evil spells, or related material, now and forever. . . . We believe this material is satanic, a danger to our children, is being studied excessively and has no place in our schools." Reported in: Bookselling This Week, July 29.

**Hamilton, Montana**

One Hamilton bookstore can't keep the book on the shelf. But several community members and parents are asking the Hamilton School District to remove the book from its required reading list for freshman English. Maya Angelou's *I Know Why the Caged Bird Sings* has drawn criticism nationwide, and recently, objections to the book's use in curriculum have hit Hamilton High School.

About 150 freshmen just finished the book—an autobiographical account of growing up as a African-American girl in the Depression-era South. Three students were given alternative assignments because their parents objected to material in the book. Cary Monaco's daughter was one of those students who didn't finish the book. She was offended by depictions in the book, and when her father read those scenes, he took the issue to school district officials. His daughter was allowed to do an alternate assignment, but he wants the book out of the school's curriculum.

Monaco, who is a pastor at Big Sky Baptist Church, wasn't the only parent objecting to the book's use, but his vocal opposition brought the issue to the forefront. School board trustees have the final say on whether the book will be read by future classes and at what grade level, according to the school district's policy.

At issue are scenes in the book in which the author explores her sexuality through intercourse as a teenager and the depiction of a rape and molestation of an 8-year-old girl. Homosexuality is another theme explored in the book that has drawn criticism.

"It's rather alarming that this book is being offered to these young people," Monaco said. "Those things are not for the classroom. They are for the parents in the home. The teachers are usurping the authority of the parents."

"I understand their concerns," Hamilton Superintendent Duane Lyons said. "I do have questions about whether the book is being read at the right grade level." When Monaco and another parent objected to freshmen reading *I Know Why the Caged Bird Sings*, Lyons said he agreed that maybe the book's themes could be learned without reading one of the controversial chapters depicting the author having sex as a juvenile. But after reading the book and learning of the discussions it prompted in the classroom, Lyons decided to leave the book in the classroom, and students were allowed to complete an alternative assignment.

Lyons and high school Principal Kevin Conwell, who both have freshmen at Hamilton High School, read the entire book after parents questioned its appropriateness. Conwell is responsible for convening an expanded curriculum committee to review the book and specific objections raised. Although Lyons has seen objections to other reading material, he said this was the biggest controversy he has encountered in 22 years as a school superintendent.

Lyons said he would recommend that trustees follow the policy and guidelines established for review of learning materials. The curriculum committee was to make the next decision on the book's future at Hamilton, and if appealed, the decision will then go to the board. District policy says the board "encourages and supports the concept of academic freedom, recognizing it as a necessary condition to aid in maintaining an environment conducive to learning and the free exchange of ideas and information." The board will take into account the maturity of students and community standards, morals and values when deciding on controversial issues, according to the policy. Reported in: Montanaforum.com, October 3.

**Salem, Oregon**

Ellie Poujade is an avid reader. So when her eighth-grade English teacher at Parrish Middle School assigned her class last week to read *The Epic of Gilgamesh*, often considered a difficult high school- or college-level book, she wasn't fazed. In fact, Ellie already had read the book on her own. But when her teacher took the book a few days later to black out portions of the text, Ellie was surprised. Ellie's mother, Marijo, was more than surprised—she was flaming mad. She immediately wrote an e-mail of complaint to her daughter's teacher.

"As a parent, I want my kid coming out of school willing to think," she said. "I think the damage is done to the kids' thinking processes."

The controversy started when Ellie's teacher, Frankie Osborne, assigned N.K. Sandars' translation of *The Epic of Gilgamesh* to her advanced literature class to expose the students to ancient writings. The epic poetry in the book, which was written by an anonymous Babylonian several thousand years ago and predates Homer's *Iliad*, tells the story of a king and his many adventures. When a parent complained about certain sexually explicit passages, Osborne consulted with Johnson, and the decision was made to mark through the section in question.

The passage talks of the character Enkidu laying down with a harlot and includes phrases like "stripped naked" and "she made herself naked and welcomed his eagerness."

In an e-mail Osborne sent to Poujade explaining the incident, she said she felt the version of the epic she gave to her students was less graphic than other versions. "I felt that my choice to delete passages that were considered offensive to some was far less intrusive into the process of teaching

this class than removing the book altogether," she wrote in the e-mail.

Marylou McDowell, library media program assistant for the Salem-Keizer School District, said the district rarely gets official complaints from parents about books. But in the *Gilgamesh* case, neither teacher nor principal contacted the two district officials who normally are advised of such complaints, raising the question of whether there may be other cases of censorship that administrators don't know about.

"I wish they would've given someone a call," McDowell said. "That is not a recommendation I would have made to black portions out." The district has a policy about how it handles official complaints to administrators about books. If a parent files a complaint to the district, a committee of teachers, parents and administrators is convened. That committee reviews the book and the complaint and then makes a recommendation to the school board about whether to retain the book as is, keep the book but make restrictions, or remove the book completely. If parents object to a book their children are assigned to read, they can also ask for a different assignment.

According to McDowell, the board usually rules to keep the book without restrictions. Students like Ellie Poujade also have problems with censorship, especially because she and her friends have read "stuff that's worse than this. "They're books," Ellie said. "You shouldn't blot it out because other people might want to read it." Reported in: *Salem Statesman-Journal*, September 27.

## student press

**University Park, Illinois**

Margaret L. Hosty and Jeni S. Porche wanted to bring a more investigative edge to Governors State University's student newspaper, *The Innovator*, when they took over as editors two years ago. The two women, graduate students in English, wrote several scathing articles, attacking the classroom performance of professors, by name, and characterizing administrators as antagonistic to student concerns. The students said university administrators moved quickly to silence them.

A series of minor acts were intended as harassment, they charge. According to the students' version of events, officials had the locks on the newspaper office changed, for instance, and didn't give Hosty and Porche the keys. Campus-security officers had to let the editors in when they wanted to work on the paper. And someone from the university read the newspaper's e-mail messages and deleted some of them.

Then—in what the students say was clearly an illegal attempt to violate their freedom of speech—a university dean telephoned the paper's printer and asked that an administrator be notified when the paper arrived, so that officials could review copies before each press run. The dean, Patricia A. Carter, also ordered the printer not to print the paper until an administrator signed off on it. The printer refused the request, and notified the students instead.

Soon afterward, the students filed a lawsuit in federal court that is being closely watched by student-press and professional-journalism organizations, which say that a ruling against Hosty and Porche could subject college newspapers to the same restraints faced by high-school papers.

"We told [university administrators] they were breaking the law, and they did not care," said Hosty, who served as the newspaper's managing editor from May 2000 until her term ended last April. "The Constitution means something to us. . . . People have given their lives for these rights, and the thing that really [bothers] me is that the university violated the Constitution."

Governors State officials said that they've done nothing illegal, and that they were only trying to make sure that the newspaper was operating in a fair and ethical manner. University officials apparently changed the locks after a reported break-in of the newspaper office, and they deny any tampering with e-mail messages, according to court documents. Dean Carter has said she did call the printer, but she denied that she wanted to approve each issue's content. She said she wanted an adviser to check for journalistic quality, including grammar and spelling, according to court documents. Administrators have also accused the student editors of failing to follow journalistic standards for fairness and good grammar.

Chief among the concerns of student-press and professional-journalism groups: The university appears to be making the argument that it has the legal right to review the newspaper before publication—even for content. A recent brief on behalf of the university by the Illinois attorney general, James E. Ryan, argues that Governors State can review the paper, invoking the 1988 U.S. Supreme Court decision in *Hazelwood School District* v. *Kuhlmeier*. *Hazelwood* granted wide latitude to high-school administrators to review and censor school papers, and college-press groups have long feared that courts might begin applying that standard to college publications, which have traditionally enjoyed greater freedoms than their high-school counterparts.

"That could have a devastating impact on the future of the First Amendment on college campuses," said Mark Goodman, director of the Student Press Law Center, a nonprofit group that provides student journalists with legal assistance. "In essence, it is saying that college and university students have no greater First Amendment rights than high-school students do."

It doesn't help, Goodman added, that the Governors State students are now representing themselves in court

because they cannot afford a lawyer. The Student Press Law Center filed an *amicus* brief in support of the students' case, but Goodman said his group can't afford to pay their legal expenses either. Goodman said the group's brief is also being signed by twenty-five journalism groups or institutions, including seven college journalism schools, the American Society of Newspaper Editors, the Association of Schools of Journalism and Mass Communication, and the Community College Journalism Association.

While journalism groups are backing the students' legal case, not all journalists approve of all of the conduct of the student editors. An independent review of the case conducted by the Illinois College Press Association found fault with both the students and the administration. It criticized the editors for unethical conduct, such as serving on the student government while also writing articles about its activities. But it also said the administration was overzealous in its response and probably broke the law by what amounted to prior review of the paper.

In an open letter to students and faculty members in November 2000, Governors State's president, Stuart I. Fagan, characterized *The Innovator*'s content as "an angry barrage of unsubstantiated allegations that essentially—and unfairly—excoriated some members of the university faculty and administration (myself included)." He added that the students were one-sided in their reporting and "took on the role of judge, jury, and executioner."

The Illinois College Press Association's review of the controversy found "several ethical lapses." For instance: "There appears to be a conflict of interest with the editors writing investigative stories about an English-department coordinator who also is one of their teachers," wrote Jim Killam, who conducted the review for the association. He is the adviser at the *Northern Star*, Northern Illinois University's student newspaper. "While the story may indeed be legitimate news, it would be best to assign it to a reporter with no perceived conflicts."

The students defend their actions, however, and say they did their best to provide balance. They said a shortage of volunteers at the newspaper forced them to write some articles they might have assigned to others. "We had a column devoted to what happened on the Student Senate, which was supposed to be written by a different senator every" issue, said Hosty, who was then the Senate's vice president. Because no one else was interested in writing the columns, she said, she wrote most of them herself. The feature was not labeled as opinion, and it made no indication that Hosty served on the Student Senate.

The paper's adviser at the time was Geoffroy de Laforcade, then a lecturer of history and integrative studies. He defended the students' ethics, though he admits that the editors had a lot to learn about putting out a newspaper. But that learning process is part of the role for a student paper, he said. "It was not the best student paper in the history of higher education," opined Laforcade, "but it was on the way to becoming a very good one."

Laforcade said he felt pressure from administrators to get the students to tone down their articles, though he said no one ever told him to do so directly. "They expressed hope that I would 'reel in' the editors when controversial material was published, but I never complied with that suggestion," he said. "My understanding of the role of the adviser was that I should be the professional conscience of the paper. . . . My job is not to censor content."

Laforcade left the university about seven months after the students started working on the paper. He stayed on as adviser to *The Innovator* for several months, but administrators eventually found someone else for that role.

Regardless of the paper's level of quality, Laforcade and others charged that administrators overreacted in their approach to dealing with the student editors. Killam spoke harshly of administrators' behavior in his review for the Illinois College Press Association. "We believe administrators have acted inappropriately, and probably illegally, with blatant disregard for the students' First Amendment rights," he wrote.

Alexis Kennedy, general counsel for the university, answered many questions about the case by saying only, "We don't discuss litigation." But she did state that the university was not trying to silence the editors. And about the key issue in the court case—the dean's phone call to the printer? Dean Carter "did call the printer," said Kennedy, but "she did not say, 'Do not print the paper,' or 'Don't print it till I come down there.'"

According to legal documents filed on behalf of the university, Carter called the printer "because she was concerned that the students might submit the paper to the printer without having the adviser review it beforehand." The call came soon after Laforcade had left the university, according to court documents, and Carter wanted to make sure someone from Governors State could review the paper in his stead if he was unable to do so. Laforcade said he usually looked over the paper before it was printed and made suggestions—often encouraging the students to write shorter articles—but that it was up to the students whether they followed his advice or not.

U.S. District Court Judge Suzanne B. Conlon threw out most of the students' lawsuit in November 2001. But she did agree to consider whether Dean Carter acted unconstitutionally in calling the printer. "Dean Carter was not constitutionally permitted to take adverse action against the newspaper because of its content or because of poor grammar or spelling," Judge Conlon wrote, in explaining why the case against that administrator should go forward.

The university has appealed that decision to the U.S. Court of Appeals for the Seventh Circuit, which is set to consider the appeal this fall.

The aspect of the case that most frustrates student-press

organizations is that Governors State seems to be arguing that it has the legal right to review the newspaper's content. "It's kind of a very familiar argument that we thought we had beaten back as college media" at state colleges, said Killam. "State employees should not be reviewing students' work before it goes to press, or it kind of ceases to be a student newspaper."

David Hudson, a lawyer with the Freedom Forum's First Amendment Center, said the university does appear to be arguing that *Hazelwood* should apply to a college newspaper, a notion that has been not been upheld in any other court. "If you go back and look at *Hazelwood*, the standard is that they can basically censor student expression, as long as their reason for doing so is part of a reasonable pedagogical concern," Hudson said.

*The Innovator* is no longer publishing. The students charged that the administration essentially shut them down before their term as editors ended, because the printer is now reluctant to work with the newspaper. The university has formed a committee of students and faculty members to search for new editors for the student newspaper. Hosty and Porche are now focusing their efforts on their lawsuit, rather than on editing and writing. Reported in: *Chronicle of Higher Education*, August 9.

## universities

**Montreal, Canada**

Montreal's Concordia University banned all campus activities related to the Middle East after a violent demonstration September 9 that forced the cancellation of a speech by Benjamin Netanyahu, the former prime minister of Israel. Netanyahu canceled after pro-Palestinian protesters smashed windows in the campus building where he was to speak, and harassed people trying to attend the event.

"They pushed us, and we pushed back," said Patrick Amar, a member of the campus chapter of Hillel, which invited Netanyahu to speak. The protesters eventually entered the building, and Montreal police officers used tear gas to disperse them. Afterward, broken furniture and shattered windows littered the scene. Five protesters were arrested, but they have not been charged. Neither the university nor the police could confirm whether they were students.

Inside the building, some five hundred people were waiting in a lecture hall for Netanyahu when police officials decided they could not guarantee his safety. The protesters never reached the lecture hall.

In the days leading up to the event, Concordia officials had rejected requests by some employee unions that staff members be allowed to stay home for safety reasons. Concordia's rector, Frederick Lowy, called the incident shameful and distressing.

"What is needed now is a period of restraint," he said in a statement on the university's Web site. "A moratorium on the use of the university space for events related to the Middle East conflict will be instituted immediately and until further notice. This includes a moratorium on public speeches, rallies, exhibits, and information tables."

The first casualty was the cancellation of a planned visit by Norman Finkelstein, a professor of political science at DePaul University and a critic of Israel's policy on the Palestinians. He was invited by the Concordia Student Union, which represents undergraduate students.

The incident was the worst in a string of others on the campus. Concordia, a public, English-language university, has endured turmoil between its Zionist and anti-Zionist students over the past year. The campus is richly diverse, with a significant Arab student body.

Gil Troy, a professor of American history at neighboring McGill University, called Concordia's ban on Middle East activities "draconian." "Concordia's way of responding to the tension is by saying, We're not going to talk about the Middle East," he said. In March, Troy wrote a column in a Montreal newspaper blaming Concordia's faculty for not doing more to quell tensions. "The innocent bystanders are not so innocent. Professors and students have to stand up and say this is not acceptable. There has to be a real push for civility.

"If this can't happen 6,000 miles away from the Middle East, here in Canada, the capital of niceness," he asked, "then where can it happen?" Reported in: *Chronicle of Higher Education* online, September 12.

**Boulder and Colorado Springs, Colorado**

Politicians, religious leaders, and some students denounced two Colorado colleges for inviting a Palestinian activist and scholar to speak in the week of the anniversary of the September 11 terrorist attacks. But officials at Colorado College and the University of Colorado at Boulder declined to cancel the events, which they said are consistent with the mission of colleges in promoting the free exchange of ideas.

As part of a symposium, Colorado College invited Hanan Ashrawi, a Palestinian writer, educator, and political activist, to offer a keynote address. Ashrawi's speech was followed by a second keynote address by Gideon Doron, a professor of political science at Tel Aviv University and former adviser to Yitzhak Rabin, the late prime minister of Israel.

The three-day symposium, titled "September 11: One Year Later, Responding to Global Challenges," featured more than a dozen speakers in a variety of panels. "Our hope and expectation with this symposium from the beginning was to spark a vigorous discussion about a range of issues concerning all of us in a post-September 11 world,"

said Lisa Ellis, a spokeswoman for the college, located in Colorado Springs. "We want it to be an occasion to ask how we move forward and move ahead, particularly in areas of great controversy and complexity."

After Colorado College invited Ashrawi to its campus, the cultural-events board at the University of Colorado at Boulder extended a similar invitation. After the two institutions announced their plans, the criticism was intense. State Sen. John Andrews and State Reps. Lola Spradley and Debbie Stafford sent a letter to Richard F. Celeste, the president of Colorado College, calling Ashrawi's speaking engagement a "totally inappropriate slap in the face to the memory of all who died and have suffered as a result of 9/11." On a talk-radio show, Colorado Gov. Bill Owens, a Republican, called the decision "outrageous," saying Ashrawi "has done so much to divide the Middle East and has applauded terrorism."

In an editorial published in the *Rocky Mountain News*, Celeste defended the university's decision, declaring that such invitations are "intended to provoke critical and engaged thought," which is "the heart of our liberal arts and sciences educational mission." He also dismissed the criticism of Ashrawi as "guilt by association."

Ashrawi, who received a doctorate in medieval and comparative literature from the University of Virginia, was the minister of higher education for the Palestinian Authority under Yasir Arafat from 1996 to 1998. She resigned that post in 1998 and founded the Palestinian Initiative for the Promotion of Global Dialogue and Democracy, where she currently serves as secretary general. According to the organization's mission statement, its objectives include working for "democratic practice, the rule of law, and respect for human rights" in Palestine, and for achieving that through "sustained dialogue with Israeli counterparts and institutions." She is also an elected member of the Palestinian Legislative Council in the district of Jerusalem.

In response to the flood of criticism, Ashrawi said she had no intention of canceling her appearances in Colorado. "I've survived many things, including assassination attempts and interrogations and beatings, and I won't be terrorized by people who think they have a monopoly on people's consciousness," she said. "One has to stand up for the truth."

Ashrawi has spoken at several American colleges in the past, including George Mason University, the University of Michigan at Ann Arbor, and the University of Pennsylvania. She has also held a chair in international studies at Beloit College.

At Boulder, Ashrawi's visit upset several members of the university system's Board of Regents, according to Tom Lucero, one regent. "I don't disagree with her right to say what she wants and to say it on our campus. I just think it's a very solemn time for our country this week, so I think the timing is distasteful," he said.

The Boulder cultural-events board extended an open invitation to a speaker sponsored by Hillel, a Jewish student group, according to a university official. "We consider Dr. Ashrawi to be part one of a two-part series," the official said. Reported in: *Chronicle of Higher Education*, September 10.

**Portland, Maine**

Some faculty members at the University of Southern Maine are furious about a faculty committee's proposal to require that videotapes and other materials for distance-education courses be reviewed by the university before the materials are used in class. The four-member faculty committee was formed in April after a distance-education student was offended by a tenured professor's remarks in a videotaped lecture. John Broida, a professor of psychology, is known by his colleagues to be a provocative lecturer. In the videotaped lecture, made while teaching students about intelligence tests, he said: "Do you know that on average blacks have a lower IQ than whites? Yes, have you noticed that? It's true" (see page 281).

After a student complained about Broida's remarks, the university administration set up the committee to study diversity issues related to distance learning and make recommendations. Among the recommendations in the faculty committee's report, issued in June, was the assertion that statements on course tapes "reflect the quality and integrity of the individual making the statements and the institution issuing the statements." The report urges the university's distance-education committee to "examine whether a procedure should be developed for assessing the accuracy and integrity of such statements prior to their release to the public."

"The idea of having a committee censor a videotape that's used in distance ed is the most contentious piece of this committee," said Donald F. Anspach, an associate professor of sociology who is co-president of the faculty union. "We believe that's clearly a violation of academic freedom, because that's about telling us what we can teach."

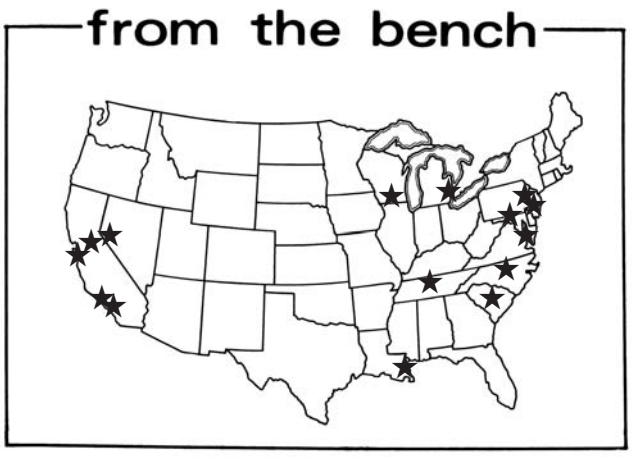
A spokesman for the university, Bob Caswell, said that administrators would meet with faculty members in the fall to review the recommendations. He said that administrators haven't discussed in detail the recommendation to screen the tapes. "We will maintain a commitment to academic freedom," he declared. Reported in: *Chronicle of Higher Education*, August 9.

## periodicals

**Seattle, Washington**

The Seattle Times Co., which handles advertising for the *Seattle Times* and *Seattle Post-Intelligencer*, declined to

*(continued on page 292)*




## war on terrorism

**Washington, D.C.**

Two weeks after a federal judge ordered the Justice Department to reveal the names of hundreds of people detained in the investigation of the September 11 terror attacks, the same judge ruled August 15 that the names did not have to be made public immediately.

In a victory for the Bush administration's effort to keep the names secret, the judge, Gladys Kessler, of the U.S. District Court in Washington, issued a stay of her original order and said the names need not be disclosed before an appeals court ruled on the issue, which could take weeks or months.

Under Judge Kessler's original August 2 order, the Justice Department was required to produce the names of the detainees and their lawyers within fifteen days. In her August 15 ruling, Judge Kessler said she agreed to the delay after assurances from the Justice Department that it would seek an "expedited" appeal in the case.

Her original ruling, which was hailed by immigration and civil liberties groups, found that the Bush administration had no right to conceal the identities of the detainees. She rejected the Justice Department's argument that disclosure would impede its investigation of terrorists.

Judge Kessler said that while the executive branch's obligation was to ensure the physical safety of American citizens, "the first priority of the judicial branch must be to ensure that our government always operates within the statutory and constitutional constraints which distinguish a democracy from a dictatorship."

Robert McCallum, assistant attorney general for the Justice Department's civil division, said that in appealing the August 2 order, the department "continues its efforts to prevent terrorists from developing a road map to our ongoing terrorism investigation, to decrease the risk of a future attack on the American people and to protect the privacy interests of those who were detained."

Spokesmen for civil liberties groups that had challenged the administration's policy of secret detentions said they were disappointed but not surprised by Judge Kessler's decision to delay her order. A representative of one group, David L. Sobel of the Electronic Privacy Information Center, said that the ruling would probably postpone the release of the names for months.

The Justice Department has argued that releasing the names could open the United States to further terrorist attacks by letting terrorist organizations know which of their members were in custody. The department has been unwilling to say how many people are being detained as a result of the September 11 attacks.

The suit asking for the disclosure of the names was brought by 22 groups, including the Center for National Security Studies, the American Civil Liberties Union, the Reporters Committee for Freedom of the Press, the American-Arab Anti-Discrimination Committee and People for the American Way. Reported in: *New York Times*, August 16.

**Washington, D.C.**

The nation's secret intelligence court has identified more than 75 cases in which it says it was misled by the Federal Bureau of Investigation in documents in which the bureau attempted to justify its need for wiretaps and other electronic surveillance, according to the first of the court's rulings to be released publicly.

The opinion by the Foreign Intelligence Surveillance Court, which was issued in May but made public August 23 by Congress, was stinging in its criticism of the F.B.I. and the Justice Department, which the court suggested had tried to defy the will of Congress by allowing intelligence material to be shared freely with criminal investigators.

In its opinion, the court rejected a secret request made by the Justice Department this year to allow broader cooperation and evidence-sharing between counterintelligence investigators and criminal prosecutors. The court found that the request was "not reasonably designed" to safeguard the privacy of Americans. The court generally operates in secret and is responsible for approving warrants to eavesdrop on people suspected of espionage or terrorism.

The opinion may be important in documenting why the F.B.I. was hesitant last summer to seek court authority to search the computer and other belongings of Zacarias

Moussaoui, the only person charged in the September 11 attacks.

Moussaoui was arrested in Minnesota last August, and F.B.I. officials have acknowledged that their failure to investigate him more fully was among the mistakes that allowed the September 11 hijackers to operate in the United States undetected in the weeks before the attacks. Officials have previously acknowledged that at the time of Moussaoui's arrest, the F.B.I. was wary of making any surveillance requests to the special court after its judges had complained bitterly the year before that they were being seriously misled by the bureau in F.B.I. affidavits requesting surveillance of Hamas, the militant Palestinian group.

As a result of the complaints, the Justice Department opened an internal investigation of the conduct of senior F.B.I. and Justice Department officials. Department officials said the inquiry was still under way and could result in disciplinary action. Justice Department officials noted that the criticism of the department in the opinion referred mostly to actions by the department and the F.B.I. in the Clinton administration.

The department said that it intended to appeal the court's decision not to grant its request for broader authority to share intelligence information with criminal investigators, and that secret appeal papers were filed with a special three-judge panel that oversees the surveillance court.

"We believe this decision unnecessarily narrowed the Patriot Act and limits our ability to fully utilize the authority that Congress provided us," said Barbara Comstock, the Justice Department spokeswoman, referring to the USA Patriot Act, the broad antiterrorism law that Congress passed after September 11. The act makes it easier for prosecutors to use information gathered from intelligence wiretaps.

At a forum in April at the University of Texas, Judge Royce C. Lamberth, who recently stepped down as the court's presiding judge, praised Attorney General John Ashcroft and his staff for ending abuses of the system for requesting wiretap authority. The F.B.I. had no separate comment on the ruling and referred calls to the Justice Department.

In its opinion, the court, which is based in Washington, documented the "alarming number of instances" during the Clinton administration in which the F.B.I. might have acted improperly. The opinion was part of a package of material presented by the court to the Senate Judiciary Committee, which is reviewing requests by the Justice Department for even broader investigative powers in the aftermath of September 11. The committee released the documents, along with a statement from the panel's chairman, Senator Patrick J. Leahy (D-VT), who said, "this ray of sunshine from the judicial branch is a remarkable step forward for constructive oversight."

In weighing eavesdrop requests, the special court, which was created by the 1978 Foreign Intelligence Surveillance Act and was recently expanded to 11 members from 7, is responsible for enforcing provisions of the law that limit the sharing of electronic surveillance from intelligence or terrorism cases with criminal investigators; the limitations are intended to uphold the Fourth Amendment, which prohibits unreasonable search and seizure.

Because the standards of evidence required for electronic surveillance are much lower in many intelligence investigations than in criminal investigations, the authors of the law wanted to prevent the dissemination of intelligence information to criminal investigators or prosecutors. But in a number of cases, the court said, the F.B.I. and the Justice Department had made "erroneous statements" in eavesdropping applications about "the separation of the overlapping intelligence and criminal investigators and the unauthorized sharing of FISA information with F.B.I. criminal investigators and assistant U.S. attorneys."

"How these misrepresentations occurred remains unexplained to the court," the opinion said.

In essence, the court said the F.B.I. and the Justice Department were violating the law by allowing information gathered from intelligence eavesdrops to be used freely in bringing criminal charges, without court review, and criminal investigators were improperly directing the use of counterintelligence wiretaps. The opinion said that in September 2000, "the government came forward to confess errors in 75 FISA applications related to major terrorist attacks directed against the United States—the errors related to misstatements and omissions of material facts."

In one case, it said, the error appeared in a statement issued by the office of Louis J. Freeh, then the F.B.I. director, in which the bureau said that a target of an intelligence eavesdropping request "was not under criminal investigation." In March of 2001, the court said, "the government reported similar misstatements in another series of FISA applications in which there was supposed to be a `wall' between separate intelligence and criminal squads in F.B.I. field offices to screen FISA intercepts, when in fact all of the F.B.I. agents were on the same squad and all of the screening was done by the one supervisor overseeing both investigations." The location of the squad and the nature of the inquiry were not described.

Gregory T. Nojeim, associate director of the national office of the American Civil Liberties Union in Washington, said the opinion was "astounding" in demonstrating that the F.B.I. and the Justice Department have tried an "end run around the Fourth Amendment protections against unreasonable searches."

"These disclosures couldn't have come at a worse time for the Department of Justice," Nojeim said. "They've just been given vast new intelligence powers and are seeking more." Reported in: *New York Times*, August 23.

**Detroit, Michigan**

In a unanimous decision August 26, a federal appeals court struck down the government's blanket policy of conducting secret deportation hearings in post-September 11 cases as a violation of the First Amendment. It was the first such decision by a federal appellate court anywhere in the country.

"We applaud this decision for recognizing the importance of the right of the press and the public to know what's going on in our courts," said Kary Moss, ACLU of Michigan executive director. "As Judge Keith said, writing for the court, 'Democracies die behind closed doors,' and the court sent a clear message that this administration can't run a secret government."

Under the challenged policy, the press and public (including family members) were automatically excluded from any deportation hearing designated by the Justice Department as a "special interest case." In declaring that policy unconstitutional, the United States Court of Appeals for the Sixth Circuit emphasized the value of open proceedings and stressed that any legitimate security concerns must be addressed on a case-by-case basis and not through a categorical closure order.

According to the Court opinion, "The only safeguard on this extraordinary governmental power is the public, deputizing the press as the guardians of their liberty....the Executive Branch seeks to take this safeguard away from the public by placing its actions beyond public scrutiny. Against non-citizens, it seeks the power to secretly deport a class if it unilaterally calls them 'special interest' cases. The Executive Branch seeks to uproot people's lives, outside the public eye, and behind a closed door."

Lee Gelernt, Senior Staff Counsel with the National ACLU Immigrants Rights Project, who argued the case before the Appeals Court said, "The court's opinion makes clear that blanket closure orders are unconstitutional and that the government may not simply unilaterally declare that an entire category of cases will be conducted behind closed doors without any public scrutiny."

The lawsuit, *Detroit News, Inc., et al* v. *Ashcroft, et al*, was filed by the national and state offices of the ACLU on behalf of Representative John Conyers, Jr., the *Detroit News*, and the *Metro Times*, an alternative weekly, after the public and the press were turned away from the deportation hearings in the case of Rabih Haddad. Reported in: ACLU press release, August 26.

## schools

**Sacramento, California**

A high school student cannot be prosecuted for making a criminal threat simply because he painted a picture of himself shooting the campus police officer who had busted him for drug possession. A panel of the Sacramento-based Third District Court of Appeal unanimously overturned the 15-year-old's conviction for threatening the officer, concluding that the boy's expression of his anger through an art class project was too ambiguous to convey criminal intent.

"Without question, it was intemperate and demonstrated extremely poor judgment," Presiding Justice Arthur Scotland wrote. "But the criminal law does not, and can not, implement a zero-tolerance policy concerning the expressive depiction of violence."

The minor, identified in court papers only as Ryan D., had been cited by officer Lori MacPhail for possession of marijuana after she found him off-campus during school hours and conducted a pat-down search. A month after that incident, Ryan turned in a project for a painting class he was taking at school. His painting depicted a person wearing a green hooded sweatshirt discharging a hand gun at the back of the head of a female peace officer wearing a uniform with badge No. 67—the same number worn by MacPhail. The officer had blood on her hair and pieces of her flesh and face were being blown away and the shooter bore a resemblance to Ryan.

When the art teacher saw the painting—after instructing the students they could not paint violent imagery—she decided it was "scary" and "disturbing" and alerted school administrators, who, in turn, alerted police. In juvenile court, the boy testified that the painting was simply an expression of his feelings and that he did not expect MacPhail to see it. Ryan was nonetheless found guilty of making a threat by Butte County Superior Court Judge Ann H. Rutherford and placed on home probation. The appellate panel said school administrators were right to be concerned about the painting but concluded that the circumstances surrounding the entire episode did not merit criminal prosecution.

The fact that the boy took a month to produce the painting and then turned it in for credit and the fact that neither school authorities nor police took immediate steps to arrest him all factored into the appellate court's conclusion that Ryan's actions did not constitute an immediate and specific threat as required by Penal Code Section 422. Scotland was joined by Justices Coleman Blease and Richard Sims. Deputy Attorney General Harry Colombo, representing Butte County prosecutors, said he was not surprised by Tuesday's ruling because the evidence was, "frankly, very thin at best." "I think it was a bit of a stretch to say that a painting could constitute a terrorist threat under the circumstances of that particular case," he said, adding that he did not plan a further appeal. Ryan's appointed defense attorney, James W. Webster of Sonora, expressed delight with the outcome. "A winner," he said of the case. "They don't come very often." Reported in: *San Francisco Daily Journal*, July 31.

**Bethlehem, Pennsylvania**

The Bethlehem Area School District did not violate a student's First Amendment rights under the U.S. Constitution when it expelled him for creating a derogatory Web site, the Pennsylvania Supreme Court has ruled. Although the court determined that the student's list of reasons why one of his teachers should die did not constitute a "true threat," the high court said the school district still had the right to punish the student.

The high court in *J.S.* v. *Bethlehem Area School District*, led by Justice Ralph J. Cappy, also created a standard in which speech "aimed at a specific school and/or its personnel is brought onto the school campus or accessed at school by its originator . . . will be considered on-campus speech."

The pronouncement from the high court was significant in today's technologically advanced society, where it is common for school-aged children to design Web sites. Cappy also found that J.S.'s Web site created a significant enough disturbance at the school—including physical and emotional problems suffered by the targeted teacher—that the student's expulsion was warranted punishment.

"In sum, the Web site created disorder and significantly and adversely impacted the delivery of instruction," Cappy wrote. "Indeed, it was specifically aimed at this particular school district and seemed designed to create precisely this sort of upheaval. . . . Based upon these facts, we are satisfied that the school district has demonstrated that J.S.'s Web site created an actual and substantial interference with the work of the school to a magnitude that satisfies the requirements of *Tinker*."

The U.S. Supreme Court's 1973 decision in *Tinker* v. *Des Moines Independent Community School District* is the seminal case dealing with students' freedom of speech. In *Tinker*, students were disciplined for wearing black arm bands to protest the Vietnam War. *Tinker* established that students enjoy First Amendment rights even while in school and cannot be disciplined unless their speech "disrupted" the operation of the school.

The U.S. High Court has also upheld limits on student speech in *Bethel School District No. 403* v. *Fraser*, where a student gave an official address at a school assembly that included sexual innuendo.

In May 1998, when J.S. was an eighth-grade student at Nitschmann Middle School, he designed a Web site from his home computer called "Teacher Sux." The site consisted of several Web pages targeting an algebra teacher at the school, Kathleen Fulmer, and the school's principal. The Web site contained a list of reasons "Why Fulmer Should be Fired," including that "she shows off her fat f-ing legs" and "she's a bitch." Another page regarding Fulmer asked, "Why Should She Die?" The student then asked visitors to contribute $20 to help "pay for a hitman." The site also contained a picture of Fulmer with her head cut off and blood dripping from her neck and a picture of Fulmer's face "morphing into [Adolf] Hitler."

J.S. attended classes during the investigation and continued to participate in extra-curricular activities. After school officials became aware of the site, J.S. voluntarily removed it from the Internet.

J.S. was notified on July 30, 1998, that he was to be suspended for three days, which was then extended to ten days. The school district then held expulsion hearings. At this point, J.S.'s parents enrolled him in an out-of-state school for the 1998-99 school year. J.S. currently attends school out-of-state.

The school district also indicated that Fulmer suffered emotional stress from viewing the site, had to take Xanax as an anti-anxiety/anti-depressant medication and did not return to school in 1998. She also applied for a medical sabbatical for the 1998-99 school year. The Web site had a "demoralizing impact on the school community," the district argued, and because substitute teachers had to be brought in, there was a disruption to the educational process.

After the hearings, the school district chose to permanently expel J.S. The boy and his parents appealed to the Northampton County trial court, which affirmed the school district's decision. The student and his parents appealed to the Commonwealth Court, which ruled that J.S.'s constitutional rights were not violated by the expulsion.

Cappy said the case mandated the court to take a "cautious approach that considers and balances both the constitutional rights of the student with the preservation of order and a proper educational environment."

On appeal to the supreme court, J.S. argued that the school district failed to meet its burden in "establishing a sufficient disruption of the school environment to limit J.S.'s off-campus speech." J.S. also argued that the Web site did not constitute a "true threat." The school district countered that J.S.'s expulsion did not violate the student's constitutional rights because the Web site constituted on-campus speech that caused a material disruption at the school. The district also argued that the Web site constituted a "true threat."

The high court noted that if speech constitutes a "true threat," it has no constitutional protection. "A true threat may be criminally punished and the majority of case law that considers whether certain speech constitutes a true threat arises in the context of a conviction for the violation of a criminal statute that prohibits such threats," Cappy wrote. But, since J.S.'s conduct was not the basis of criminal prosecution, the court separately examined the extent of the student's statements to determine whether they constituted a threat.

The court looked to other cases dealing with a similar issue and said that a "true threat" was one in which the communication was a "serious expression of intent to inflict harm." The high court said, looking at the totality of the circumstances, the Web site did not constitute an actual threat.

"We believe that the Web site, taken as a whole, was a sophomoric, crude, highly offensive and perhaps misguided attempt at humor or parody," Cappy said. "However, it did not reflect a serious expression of intent to inflict harm."

The court said the Web site focused predominantly on Fulmer's physical appearance and disposition rather than an actual intent to inflict harm. Cappy noted, however, that the court's inquiry did not stop there. After reviewing all the pertinent case law, Cappy noted that the U.S. Supreme Court has yet to decide a case with a similar fact-pattern to J.S.'s case. Cappy also said that the "advent of the Internet" has complicated legal analyses of restrictions on speech. However, he said there are certain considerations to take into account when dealing with the freedom of speech of a student's personal expression.

He said the threshold issue in such cases is determining the location of the speech, particularly whether it occurred on-campus or off-campus. Then, if the speech is deemed on-campus, Cappy said, a court must consider the form of speech, the effect of the speech, the setting in which the speech is communicated and whether the speech is part of a school-sponsored expressive activity.

Turning to the threshold issue of location, the court deemed J.S.'s speech to be on-campus speech, regardless of the fact that the student designed the Web site out of school. "We find there is a sufficient nexus between the Web site and the school campus to consider the speech as occurring on-campus," the court wrote. "While there is no dispute that the Web site was created off-campus, the record clearly reflects that the off-campus Web site was accessed by J.S. at school and was shown to a fellow student."

The court next examined the actual speech—the content of the Web site—and whether it caused a substantial disruption at school. The court sided with the school district. "The Web site posed by J.S. in this case disrupted the entire school community—teachers, students and parents," Cappy wrote. "The most significant disruption caused by the posting of the Web site to the school environment was direct and indirect impact of the emotional and physical injuries to Mrs. Fulmer."

The court said the school environment was also adversely impacted. Cappy concluded that the disruption was substantial under the mandates of, and, therefore, J.S. was constitutionally punished.

Chief Justice Stephen A. Zappala filed a separate decision concurring in the majority's result, which Justice Russell M. Nigro joined. Justice Ronald D. Castille also filed a separate concurring opinion.

Zappala wrote separately to disagree with the majority's conclusion that J.S.'s speech did not constitute a "true threat." He also said the majority's pronouncement defining on-campus speech was "overly broad" and unnecessary to the conclusion of the case. "The fact that a Web site is merely accessed at school by its originator is an insufficient basis upon which to base a characterization of the speech as on-campus speech," Zappala wrote.

In his concurrence, Castille said the true threat issue was a close call and ultimately was persuaded by the majority's analysis. Reported in: Law.com, September 27.

## universities

**Santa Barbara, California**

The University of California at Santa Barbara did not violate the constitutional rights of a graduate student when it rejected his master's thesis because its "disacknowledgments" section used profane language to harshly criticize university officials, the U.S. Court of Appeals for the Ninth Circuit ruled August 12. Upholding a lower court's ruling, a three-judge panel said that colleges have the right to require students to adhere to certain academic standards.

Christopher T. Brown, a former master's student in materials sciences at Santa Barbara, sued the university in June 2000, alleging that his free-speech rights had been violated because members of his thesis committee withdrew their approval of his paper based on the content of a caustic "disacknowledgments" section that Brown added without their knowledge after they approved the thesis.

In the two-page section, Brown lambasted the faculty and staff of the graduate school and library, and referred to a former California governor, Pete Wilson, as a "supreme government jerk." When university officials found out about Brown's additions, they rescinded their approval of the thesis and asked Brown to tone down the profanity and resubmit the paper. Although Brown made revisions, his thesis committee decided that the "disacknowledgments" section still fell short of the standards of professional publication in the field, and refused to let the thesis be submitted to the library. Because library submission is required to receive a degree, Brown was not granted his degree until a year later, when university officials made an exception to award it to him without filing his paper in the library.

The appeals court's decision, which upheld a lower court's 2001 ruling, was primarily based on the precedent set in a 1988 U.S. Supreme Court case, *Hazelwood School District* v. *Kuhlmeier*. In that case, the justices concluded that the First Amendment rights of students at a Missouri high school had not been violated when officials at the school prohibited the student newspaper from publishing material that administrators opposed.

In the Santa Barbara case, Judge Susan P. Graber wrote that university officials did not violate Brown's First Amendment rights because they have the right to require that students follow academic standards. "In this case, the thesis committee was entitled to require that the acknowledgments section . . . recognize those who made a positive

contribution to the plaintiff's education. Such requirements are part of the teachers' curricular mission to encourage critical thinking . . . and to conform to professional norms."

One of the three judges on the panel, Stephen Reinhardt, concurred in part with the majority opinion but also wrote a lengthy dissent challenging his colleagues' views. Noting that the other two judges had differing views on why Santa Barbara had not violated Brown's First Amendment rights, he wrote: "Thus, there is no majority opinion and no binding precedent with respect to any First Amendment principles."

Brown's lawyer, Paul L. Hoffman, said he hoped to capitalize on that disagreement by asking a fuller set of judges on the Ninth Circuit to review the decision of the three-judge panel. Reported in: *Chronicle of Higher Education* online, August 15.

**Trenton, New Jersey**

A New Jersey appeals court on August 2 found that Rutgers University had violated the protected free speech of an alumni group when the state institution refused to publish the group's advertisement in the university's alumni magazine. The three-judge panel unanimously upheld a March 2001 decision in state Superior Court against the university in a suit that was brought by an activist group seeking to reorganize and de-emphasize the institution's intercollegiate athletics programs. The appellate panel's ruling was narrower than that of the lower court, both parties held, yet it concurred that the university had violated the First Amendment rights of the group, known as the Rutgers 1000 Alumni Council.

"The court has ruled that the state university has to consider all points of view, including those of people who disagree with the current administration," said Grayson Barber, a lawyer who represented the alumni group on behalf of the American Civil Liberties Union.

The controversy began in 1998, when the Rutgers 1000 group attempted to place in the university's alumni magazine an advertisement urging Rutgers to "withdraw from 'professionalized' college athletics, resume competition at a genuinely collegiate level, and return to its values as an old and distinguished university." The advertisement quoted Milton Friedman, an alumnus and Nobel-winning economist, as saying that "universities exist to transmit knowledge and understanding of ideas and values to students, not to provide entertainment for spectators or employment for athletes."

*Rutgers Magazine* rejected the council's proposed advertisement, arguing that the publication's policies disallowed issue-oriented or advocacy ads. Such a ban is legal if fairly applied, yet Rutgers violated its own policy, the courts ruled. The university, for example, had sold an advertisement that promoted ticket sales to a Big East basketball tournament. Though the ad did not explicitly take a position on the proper role of sports at Rutgers, in the context of the ongoing debate, it could be construed as favoring the institution's athletics program, the appellate decision said. The magazine had earlier become an active forum for the debate when it took on the issue in an article that included comments from members of Rutgers 1000, the decision noted.

Chiding the judges for that interpretation, David R. Scott, the university's counsel, said in a written statement that "the appeals court apparently faults the magazine for not recognizing that an otherwise issue-neutral 'Big East' ticket ad it ran somehow became issue-oriented simply because the magazine had tried to be fair to the Rutgers 1000 in an earlier article. . . . To my mind, that is at worst a failure of perception or, as the court elsewhere calls it, a 'lapse of sensitivity'—not constitutional viewpoint discrimination."

Barber and Scott agreed that Rutgers achieved much of what it wanted in its appeal, including affirmation of the university's right to create and enforce a policy of refusing issue-oriented advocacy ads and raising the bar for invalidating that policy. "Had the trial court's decision been left undisturbed, it could have meant that any time a controversial subject is raised in the magazine's editorial section it would have become fair game for issue-oriented advocacy in the advertising section," Scott said.

Barber noted that the ruling, though it would have no impact on commercial publishing, was important in the realm of public higher education. "The whole issue of a state university's priorities is really worthy of debate," she said. "Should a state university spend money on a football team versus a library? It is a great issue and worthy of debating." Reported in: *Chronicle of Higher Education* online, August 5.

**Chapel Hill, North Carolina**

A federal judge on August 15 refused to grant a temporary restraining order to block a requirement that incoming freshmen and transfer students at the University of North Carolina at Chapel Hill read and discuss a book about the Koran. U.S. District Court Judge N. Carlton Tilley, Jr., ruled against a Virginia-based Christian group that had argued that assigning the book—*Approaching the Qur'an: The Early Revelations* (White Cloud Press, 1999), by Michael Sells, a professor of religion at Haverford College—violated the church-state separation required by the U.S. Constitution.

"We are ecstatic," said James Moeser, chancellor of the Chapel Hill campus. "The judge strongly and articulately affirmed the purpose of the reading program and understood that this [assignment] was about intellectual engagement and critical thinking."

All freshmen and transfer students were told in May to read the book over the summer in preparation for a two-

hour discussion session that was scheduled to take place on the Chapel Hill campus before the start of classes. Students were also asked to complete a one-page assignment based on the reading. Students were not graded on the assignment, however, and they were permitted to opt out of the discussion by writing a one-page essay explaining their objections to the assignment.

Two members of the Family Policy Network, the Christian group, were listed as plaintiffs in the lawsuit, along with three anonymous freshmen at Chapel Hill—John Doe No. 1, an evangelical Christian; John Doe No. 2, a Catholic; and Jane Roe, a Jew. The students alleged in their lawsuit that the book was "carefully selected to create a favorable opinion of Islam," and that students who opted out of the reading would be "ostracized as dissenters."

"Academic freedom is safe at North Carolina," said James C. Moeser, the university's chancellor, who described the assignment as "yeast for the bread of discussion." "We're doing the right thing," he said. "We're asking the right questions."

"I'm embarrassed for the state of North Carolina, because I worry that opposition to the book has made us look like a bunch of bigots," said Matt Campbell, a freshman from Charlotte. "By assigning this book, UNC isn't telling us how to think. It's not like we're going to be praying to Mecca every day now."

R. Joseph Glover, president of the Family Policy Network, said he was "upset" with the decision, calling the university's actions "Islamic indoctrination." He said that he didn't mind students' talking about Islam, but that his group objects to the university's choice of books on the topic, saying that Sells's book glosses over parts of the Koran that preach violence against nonbelievers.

"There's a double standard with regard to religious indoctrination," said Glover. "If it's Jewish or Christian, it's not allowed, but if it's a skewed, whitewashed presentation of Islam, it's just dandy, because it's enlightenment."

UNC faculty leaders blasted the university system's Board of Governors for failing to pass a resolution defending academic freedom. Following a vote August 9 by the Appropriations Committee of the North Carolina House of Representatives to deny public funds to the university's reading program unless all other religions were added in an "equal or incremental way," Ray S. Farris, a member of the board, proposed a resolution defending academic freedom. Although the vote was 18 for and 10 against, the measure failed because of a rule requiring a two-thirds majority for resolutions that do not originate in a board committee. J. Bradley Wilson, the board's chairman, said at the time that most of the members who voted against the resolution did so because the measure had not gone through the "procedural politics" of the committee process.

Three days after student discussions of the book began, a committee of the Board of Governors unanimously passed a resolution affirming academic freedom. The full board approved the resolution at its September 13 meeting.

In its resolution, the board's Educational Planning, Policies, and Programs Committee cited a longstanding statement in the Board of Governors' code, which reads, "The university . . . supports and encourages freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors." The resolution did not specifically mention the book at the center of the controversy. Reported in: *Chronicle of Higher Education* online, August 16, 20, 23.

**Madison, Wisconsin**

A federal appeals court ruled October 1 that the University of Wisconsin System had developed a largely "viewpoint neutral" way of distributing funds from mandatory student fees to student groups on the Madison campus. The decision reversed most of a 2001 federal district court decision that had struck down the fee system as an unconstitutional infringement of the First Amendment rights of students who object to supporting certain groups.

In the ruling, the U.S. Court of Appeals for the Seventh Circuit said the university had revised its previous system for distributing money collected from mandatory student fees in ways that "sufficiently limit the university's discretion so as to satisfy the requirements of the First Amendment." The appeals court said the fee system, which was revised during 2000 and 2001, includes criteria for giving out the money to student groups, and a process for appealing financing decisions, that are "narrowly drawn and reasonable."

The university revised its student-fee procedures after the U.S. Supreme Court ruled in March 2000 that the university could use mandatory fees to help finance groups whose views some students opposed as long as it distributed fee revenues to campus groups in a manner that was "viewpoint neutral" and gave all groups equal access to the funds.

The Supreme Court directed lower federal courts to determine whether the university's system was viewpoint neutral. In December 2000, and then again in March 2001, U.S. District Court Judge John C. Shabaz ruled that the university's revisions to its process for distributing fees still gave student-government leaders too much discretion in allocating student-fee dollars to campus groups. The judge prohibited the university from forcing students who were against financing groups that they opposed to pay the mandatory fees.

The appeals-court decision lifted most of that prohibition. However, it continues to restrict the university from using mandatory student fees collected from objecting stu-

dents to pay for travel expenses of student groups that engage in political, religious, or ideological activities or speech until specific standards are put in place to govern how to allocate such money. In addition, the appeals court said that the university could not use as criteria for distributing funds the length of time a student group had existed or the amount of funds a group had received in the past. Those facts, the court said, are not viewpoint neutral since they are based on past university policies that were not viewpoint neutral.

Officials at the University of Wisconsin system applauded the decision and said they would make changes in the fee system to satisfy the court's concerns and make the procedures for distributing money fully viewpoint neutral.

"This is good news for our students and for our beliefs that public universities are, and should be, marketplaces for the robust exchange of ideas," said Erik Christianson, spokesman for the university system. Reported in: *Chronicle of Higher Education*, October 3.

## church and state

**New Orleans, Louisiana**

Citing misuse of taxpayer dollars, a federal district court July 25 blocked the state of Louisiana from funding religious activities in the Governor's Program on Abstinence. "We are pleased that the court has recognized that using public money to promote religious beliefs violates the basic principle of religious liberty," said Catherine Weiss, Director of the ACLU Reproductive Freedom Project. "Unfortunately, abstinence-only programs have a long history of crossing the line between the religious and the secular. Today's decision should stand as a wake-up call that this practice is unacceptable."

The Louisiana Governor's Program on Abstinence (GPA), which runs on federal and state dollars, has habitually funded abstinence-only programs that, among other things, present theater skits with Jesus as a character, feature a chastity curriculum entitled "God's Gift of Life," and minister to teens about the "scriptural, spiritual, and practical foundation for combating the issues of premarital sex."

"The Governor's Program has shamelessly been spending taxpayer money to proselytize," said Joe Cook, Executive Director of the ACLU of Louisiana. "It's time for our public officials to get out of the church house, go back to the state house, and start spending tax dollars legally."

In the decision, the court ordered the state to take appropriate steps to ensure that taxpayer dollars are not being used to advance religious beliefs. "As evidenced by both Monthly Reporting Forms and by grant proposals, GPA funds are being used to convey religious messages and advance religion," the court noted in the decision. "The GPA office is ordered to cease and desist from disbursing GPA funds to organizations or individuals that convey religious messages or otherwise advance religion in any way in the course of any event supported in whole or in part by GPA funds."

The case was the first challenge brought against a program funded through the federal abstinence-only money made available in the 1996 federal welfare reform legislation, which is up for reauthorization this year. The House of Representatives passed legislation earlier this year maintaining current funding levels for abstinence-only education within welfare reform; the Senate was expected to consider this issue within the next few months. Reported in: ACLU press release, July 25.

**Nashville, Tennessee**

A government body in Tennessee can legally issue bonds to support facilities at Lipscomb University, a religious institution run by the Churches of Christ, the U.S. Court of Appeals for the Sixth Circuit ruled August 14. The 2-to-1 ruling by a three-judge panel declared that, even though Lipscomb is a "pervasively sectarian institution," the Industrial Development Board, in Nashville, did not violate the First Amendment clause against the "establishment" of religion by issuing $15-million in tax-exempt bonds for the college because the state's function was limited to that of a "mere conduit."

The court noted that no state or local government tax revenues have been or will be spent as a result of the issuance of the bonds. A group of Nashville-area taxpayers had sued to challenge the bond issue. They argued that the religious college would illegally be the recipient of public money. A federal district-court judge ruled in favor of the plaintiffs in October 2000.

In overturning that decision, however, the appeals court noted that the bonds are purchased by private investors and merely managed by the public board. "It is without question that a religious organization may receive 'general government benefits' consistent with the Establishment Clause," Judge Edmund A. Sargus, Jr., wrote in the appeals court's decision.

In a dissent, Judge Eric L. Clay argued that Lipscomb received a "direct economic benefit" through the bond deal because the savings from the low-interest loan—estimated at $300,000 a year—allowed the college to advance its religious mission, with a resulting "excessive government entanglement" in that mission. Judge Clay wrote that the university's daily Bible-class requirement means that "every Lipscomb graduate unofficially majors in the Bible." He also noted that the institution's faculty handbook calls the Bible the ultimate standard, "excluding all human systems and opinions and all innovations, inventions, and devices of men."

One of the plaintiffs, Harmon L. Wray, called the deci-

sion "a sad day for the Bill of Rights" and added, "It's not direct aid? So I guess it's OK if you launder it. That's what they're saying. It's OK to use taxpayer money for a religious college as long as they do it indirectly rather than directly. That's not the Constitution I know."

Bradley A. MacLean, the university's lawyer, called the plaintiffs' arguments "bogus" and said that such financial dealings with private colleges were "very, very common," citing recent examples at Belmont, Fisk, and Vanderbilt Universities. "In Tennessee," MacLean added, "the majority of private colleges and universities, at one time or another, have received this kind of money. [The plaintiffs] just singled out Lipscomb and attacked it."

An official of Americans United for Separation of Church and State, G. Robert Boston, said he was not surprised by the decision and attributed it to the prominence of conservative judges appointed by former Presidents Ronald Reagan and George H.W. Bush. Conservative-leaning courts "haven't totally come out against the separation of church and state," Boston said, "but on funding issues—like vouchers and this kind of fiction of a third party with bonds—we've been losing those cases since the early 1980s." Boston cited as an example a similar ruling in favor of Regent University, in Virginia, in 1998. He conceded, however, that, because bond money is raised by private investors, "the taxpayer is not left holding the bag."

The lawyer representing the plaintiffs, Joseph H. Johnston, said he was certain that the legal wrangling would continue on another appeal, although he was unsure of that appeal's direction. "We've been working on this case for over ten years," he said. "We're not about to stop now." Reported in: *Chronicle of Higher Education* online, August 15.

## periodicals

**San Francisco, California**

The government may ban the sale of sexually explicit magazines and videos on military bases, a three-judge panel of a federal appeals court in San Francisco ruled. The panel, of the United States Court of Appeals for the Ninth Circuit, unanimously upheld the Military Honor and Decency Act, enacted in 1996, which requires the Department of Defense to ban such materials.

"The act is reasonable in light of the Supreme Court's longstanding deference to military regulations in the First Amendment context, and because the act seeks to restrict the sale of materials at odds with the military's image of honor, professionalism and proper decorum," Judge Michael Daly Hawkins wrote for the panel.

The law was challenged by three magazine wholesalers and a number of individuals, including military personnel, dependents and civilian employees of the military. They said the law violated their First Amendment right to buy these materials at military commissaries and exchanges. The law does not prohibit possession of such materials on military bases or buying them by mail or elsewhere.

Gerald H. Goldstein, who represented the plaintiffs, said: "The Taliban would have been proud of this decision. It's a shame that the kids willing to lay down their lives for this country are not able to enjoy the freedoms they are fighting for."

The law created an eight-member Defense Department committee known as the Resale Activities Board of Review. It determines whether given magazines and videotapes are, on the whole, "designed to elicit a sexual response." The board has prohibited *Penthouse*, *Hustler*, *Playgirl*, *Naughty Neighbors* and *Mature Nympho*. It has allowed *Playboy*, *Esquire*, *Cosmopolitan* and *Celebrity Skin*.

Goldstein said that many of the banned magazines were commonly sold elsewhere and deserved the court's protection. "We're talking about what you see at airports from one end of the country to the other," he said. He added that military personnel stationed abroad often had no other ready access to such materials.

The Ninth Circuit affirmed a 1999 decision by Judge Jeremy Fogel of the U.S. District Court in San Jose. "While plaintiffs clearly have a constitutional right to engage in or listen to non-obscene speech," Judge Fogel wrote, "they have no constitutional right to compel the government to facilitate or participate in the making or communication of such speech." Reported in: *New York Times*, September 17.

## Internet

**Garden Grove, California**

A California judge issued a temporary restraining order in early August preventing the city of Garden Grove from enforcing a new ordinance that restricts cybercafes. Orange County Superior Court Judge Dennis S. Choate delayed implementation of the ordinance amid concerns it might violate free-speech rights and harm the cafes financially. He also set a hearing so both sides could try to arrive at a compromise.

Garden Grove in January approved an ordinance that required minors to leave cybercafes by 8 p.m. and mandated the installation of extra security measures. The ordinance was prompted by the deaths of two teens who were killed in separate incidents after leaving cafes. However, five cybercafe owners asked the judge to reconsider the restrictions, saying they were being unfairly blamed for a shooting and a stabbing that were due to gang violence, not the cafes.

Crackdowns on cybercafes are on the rise, as the Internet drop-in spots have become popular meeting places

for teens looking to go online or engage in multiplayer video games. Several other cities are considering similar restrictions and are closely watching the Garden Grove case. Internationally, countries such as Vietnam and China have attempted to shutter cybercafes in an attempt to control their citizens' exposure to information, fearing that access to Web material from the other countries might incite rebellion or expose minors to offensive content. Reported in: CNET News.com, August 9.

**Harrisburg, Pennsylvania**

WorldCom, the bankrupt long-distance voice and data services company, was ordered by a judge to deny access to five child pornography sites to its Pennsylvania customers, the state Attorney General said September 17. Montgomery County Judge Lawrence Brown gave WorldCom five business days to comply with the order, which was the first court action taken under a new state law to protect children from exploitation by blocking access to sites with child pornography.

Since the law went into effect on April 22, 2002, Internet service providers have blocked access to more than two hundred websites containing child pornography, Pennsylvania Attorney General Mike Fisher said. Fisher's office said it notified WorldCom in July that child pornography could be accessed through the company's network. The attorney general filed an application on September 17 seeking a court order requiring WorldCom to comply with state law. Reported in: Wired News, September 18.

## parody and copyright

**San Francisco, California**

Barbie just lost a big case in court. No, she wasn't suing Ken. In fact, it was Mattel, the parent company for the Barbie doll, that sued MCA Records, for releasing "Barbie Girl," a 1997 hit song by the Danish band Aqua.

Mattel contended that MCA violated Mattel's trademark on Barbie by using the doll's name in the title and content of the song. They alleged that Barbie fans would be confused and believe that the song was an authorized product. MCA argued that the song would not confuse consumers and that it was satire protected by the First Amendment.

It's not unusual for a trademark owner to aggressively protect his property. It is a bit unusual, however, to have a 12-inch plastic doll at the heart of a federal appellate decision. Having a plastic plaintiff appears to have tickled U.S. Court of Appeals for the Ninth Circuit Judge Alex Kozinski, who wrote the majority opinion.

"Barbie was born in Germany in the 1950s as an adult collector's item," Kozinski wrote. "She has survived attacks both psychic (from feminists critical of her fictitious figure) and physical (more than 500 professional makeovers)." Kozinski concluded that "Barbie Girl" was in fact a parody, protected by the First Amendment. Consumers were unlikely to believe the song was a Mattel product with lyrics like "I'm a blond bimbo girl in a fantasy world/Dress me up, make it tight, I'm your dolly."

Nor was the "Barbie Girl" title a violation of Mattel's trademark, Kozinski wrote. "If we see a painting titled 'Campbell's Chicken Noodle Soup,' we're unlikely to believe that Campbell's has branched into the art business," the judge wrote.

Although the opinion was lighthearted, the court's decision in favor of MCA was an important First Amendment victory. Increasingly trademark and copyright law are used to silence free speech, particularly when it involves commercial products. Most common are threatening letters from movie and television studios telling young people they need to shut down Web sites about favorite shows or films.

Last year, the same federal appellate court that ruled on Barbie weighed the publicity rights of actor Dustin Hoffman against the free-press rights of *Los Angeles* magazine. For a special Hollywood issue, the magazine published "Grand Illusions," taking scenes from classic movies and digitally superimposing new designer clothing. This high-tech fashion spread showed Hoffman in a scene from the 1982 film "Tootsie," captioned "Dustin Hoffman isn't a drag in a butter-colored silk gown by Richard Tyler and Ralph Lauren heels."

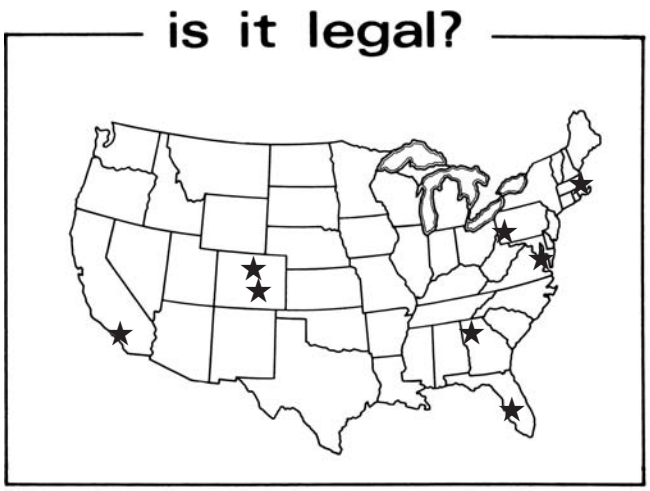
Hoffman sued, charging that the photo spread violated his right to publicity. The court ruled in favor of *Los Angeles*, saying it had a First Amendment right to lampoon films and celebrities.

It's probably not surprising that the battle over Barbie led to yet another lawsuit. A Mattel representative had criticized MCA's disclaimer that the song was a social commentary and "not created or approved by the makers of the doll."

"It's akin to a bank robber handing a note of apology to a teller during a heist," the Mattel spokesman said. That comment—and other somewhat intemperate words—led MCA to file its own suit against Mattel for defamation.

Kozinski once again ruled for free speech and concluded that in this context the public wouldn't take seriously words like "heist" and "theft." The irony is that Mattel tried to infringe on MCA's First Amendment rights to distribute a song, and MCA tried to infringe on Mattel's First Amendment rights to free speech. Demonstrating both a sense of justice and a sense of humor, the judge distilled his opinion in just six words: "The parties are advised to chill." Reported in: freedomforum.org, August 11.

*(continued on page 295)*




## war on terrorism

**Washington, D.C.**

In a development bordering on what the American Civil Liberties Union called "surreal," the on-line magazine Salon.com on August 6 revealed that the Department of Justice was forwarding incoming Operation TIPS calls to the Fox-owned "America's Most Wanted" television series.

"This is like retaining Arthur Andersen to do all of the SEC's accounting," said Rachel King, an ACLU Legislative Counsel. "It's a completely inappropriate and frightening intermingling of government power and the private sector. What's next—the government hires Candid Camera to do its video surveillance?"

The author of the Salon article, David Lindorff, reportedly signed up for TIPS but heard nothing for more than a month and followed up with a phone call to the Department of Justice, the agency responsible for overseeing the proposed program. The department gave Lindorff another phone number, which it said had been set up by the FBI. When he dialed that number, Lindorff was greeted by a receptionist for "America's Most Wanted," which features reenactments of unsolved crimes and then asks the public to phone in leads and tips.

Shocked that the number did not connect to the FBI, Lindorff was told, "We've been asked to take the FBI's TIPS calls for them." The ACLU said that, not only does the Operation TIPS program on its own pose serious threats to the American ideal that neighbors not be expected to inform on neighbors, but the program, when coupled with the power and profit incentives of television, could enhance its resemblance to Big Brother through sensationalism and the thirst for advertising revenue.

Even before its partnering with Fox Television, the Operation TIPS program had come under a barrage of criticism from both the left and the right. House Majority Leader Richard Armey (R-TX), one of the most powerful and conservative members of Congress, introduced a measure in his chamber's version of the Homeland Security legislation that would prohibit the implementation of TIPS and other similar measures. Sen. Patrick Leahy (D-VT), chair of the Senate Judiciary Committee, also opposed the proposal, saying "We could be vigilant, but we don't want to be vigilantes."

"Why stop with America's Most Wanted?" King added. "If a sensational story is what it was looking for, the Department of Justice should have just hired Jerry Springer as its public information officer." Reported in: ACLU Press Release, August 6.

## schools

**Cobb County, Georgia**

A new Cobb County school board policy is intended to allow religious lessons in science classes in violation of the Constitution, according to Americans United for Separation of Church and State. AU's executive director, the Rev. Barry W. Lynn, criticized the policy, adopted September 26 as a thinly veiled effort to advance religion in public schools and undermine church-state separation.

"This policy is clearly intended to allow teachers to circumvent the law and promote religion in science classes," said Lynn. "Sunday School lessons masquerading as science have no place in public school classrooms. Cobb County board members have made the wrong call. Unfortunately, this is not an isolated incident. From coast to coast, Religious Right activists have launched a crusade to undermine school neutrality on religion. These fights do nothing but distract attention from the goal of providing students the best education possible."

The newly approved Cobb County policy allows discussion of "disputed views of academic subjects," including human origins. It was passed at the behest of Religious Right activists who have claimed the new policy will allow science teachers to teach creationism, a religious account of life's origins based on a fundamentalist reading of the Book of Genesis.

On August 23, the board voted to study the issue for thirty days. Since then, over a hundred university professors from across Georgia have contacted board members to oppose the policy. The National Academy of Sciences, the nation's most respected institution of scientific research and chartered by Congress to advise the federal government of scientific matters, also urged the board to reject the proposal.

Board members, however, were not persuaded by scientists

and legal experts and instead succumbed to political pressure from groups such as local affiliates of the Christian Coalition and the American Family Association (AFA), both of which lobbied aggressively on behalf of the anti-evolution proposal. In fact, an "action alert" sent by the AFA boldly acknowledged the religious motivation behind the Cobb County proposal. The alert noted that the policy "would allow for scientific classroom discussion on creation as described in the Biblical account of the book of Genesis."

This directly contradicts the public comments of the proposals' supporters, who have argued that teaching various concepts about human origins will help shape a "balanced education."

Lynn said the new policy is part of an effort to undermine quality science, religious liberty and religious neutrality in public schools. "To protect the religious liberty of a diverse student population, public schools are required by law to remain neutral on matters of faith," Lynn said. "This policy is a religiously motivated attack on the science curriculum, suggesting a scientific controversy exists where it does not.

"For everyone's benefit, the public schools should stick to the three Rs—reading, writing and 'rithmetic—and leave religious lessons to parents and religious leaders," concluded Lynn. Reported in: Americans United press release, September 27.

**Pittsburgh, Pennsylvania**

A substitute teacher who said he was surrounded by armed guards, detained for an hour and suspended over remarks perceived as supportive of Osama bin Laden is suing the school district. In the federal lawsuit filed October 2, John B. Gardner, 52, said his free speech rights were violated after school officials found notes about bin Laden he had scrawled on a newspaper.

Gardner said the notes were related to a book he was writing about how to overcome adversity. "Osama bin Laden did us a favor," the notes read. "He vulcanized us, awakened us and strengthened our resolve." According to the lawsuit, Gardner threw the paper in a wastebasket in the teachers' lounge. He was then allegedly surrounded by armed school guards and detained for an hour in front of Arthur J. Rooney Middle School. He was suspended and later reinstated. Gardner is seeking damages of more than $50,000. Reported in: ABCNews.com, October 3.

## colleges and universities

**Colorado Springs, Colorado**

After a four-year court battle, Pikes Peak Community College has settled a lawsuit brought by Katherine S. Sturdevant, a professor who was stripped of her role as head of the history department after defending a colleague who had penned a parody titled "Gringo American Studies." The college agreed to reinstate Sturdevant as department chair and to award her $75,000 and a raise.

Sturdevant, who began teaching at Pikes Peak in 1986, sued the college in federal court in May 1998. The defendants included the college's president at the time, Marijane A. Paulsen, now retired, and Jane Abbot, dean of the division of communications, humanities and social sciences, which houses the history department. The lawsuit against the college was dismissed this year because the institution was deemed to have immunity under the Eleventh Amendment to the U.S. Constitution, but all the individuals remained as defendants.

Sturdevant claimed that college officials had retaliated against her for her activities as president of the Pikes Peak Community College Faculty Association. In that capacity, she spearheaded a survey-style evaluation of top administrators at the college. She also claimed they had retaliated against her for supporting a colleague who satirized ethnic-studies programs.

Luis Chavez, a fellow member of the faculty association, had created a mock proposal for a "Gringo American Studies" program. When Chavez was disciplined and suspended for his actions, Sturdevant testified on his behalf at a successful appeals hearing at the college in 1997, saying it was legitimate political satire.

In her lawsuit, Sturdevant contended that in direct retaliation, the administration stripped her of her chairmanship of the history department, took away her office on the college's new campus, reassigned her to the older campus, removed her from various college committees, denied her merit raises, and gave her a negative evaluation after twelve years of positive performance reviews.

The college denied in court filings that officials had retaliated against the professor. Both parties agreed to a settlement, signed August 9, which prevents either side from discussing its terms. The agreement reinstates Sturdevant as the history department's chair and guarantees her three years of employment as such and as a faculty mentor, a position that carries a $500 stipend per semester. The college also agreed to give her a lump-sum payment of $75,000 and a merit raise of $1,371 a year, and to let her teach two extra courses for pay beyond the usual load. Pikes Peak also agreed to finance Sturdevant's attendance at a retreat for heads of academic departments in California next year. Reported in: *Chronicle of Higher Education* online, September 5.

**Washington, D.C.**

White House officials met with university representatives August 22 to discuss new guidelines being drafted to limit the publication of some federal research and other

government-owned data that would be classified as "sensitive homeland security information."

Acting on a request by Tom Ridge, President Bush's homeland-security adviser, the Office of Management and Budget will draft new rules for the discussion and publication of information that could prove sensitive to national security, said Kathryn M. Harrington, a spokeswoman for the White House Office of Science and Technology Policy. This new type of information would be considered different from classified research—a term generally referring to military or national-security research—but would not be open to the public. It could include information useful to terrorists in conventional or biological warfare.

Sensitive information could include scientific data collected at the National Institutes of Health or one of the federal government's national laboratories, said people who attended the meeting. It was unclear, however, whether it would extend to research developed through a collaboration between a federal entity and a university researcher.

Management and Budget officials emphasized that federally financed research, conducted by university researchers on their own campuses, would not be included in the new category, said George L. Leventhal, senior federal-relations officer at the Association of American Universities, who attended the meeting. The association represents research universities in the United States and Canada.

Academic representatives who attended the meeting urged the White House to model its regulations on similar rules in place for research at the Centers for Disease Control and Prevention for the handling of select agents. Those rules should not cover basic science, and applied research should not come under the new category, the representatives urged, Leventhal said.

The new category of information is not only limited to scientific research, Leventhal said, but could also include military operations. The new category could enable the federal government to share data with outside parties under certain guidelines, which have not yet been developed, said Ronald M. Atlas, a professor of biology and dean of the graduate school at the University of Louisville and president of the American Society for Microbiology, who attended the meeting.

"I came away from the meeting feeling like [the administration] made a good-faith effort to involve us early in the process," Leventhal said. Since the conversation was limited to information that was generated and owned by the government, and not university research, Mr. Atlas said, there was no cause for concern. "As long as that distinction holds, I don't think the alarms will go off." Reported in: *Chronicle of Higher Education* online, August 23.

**Tampa, Florida**

The Board of Trustees of the University of South Florida on August 21 accused Sami Al-Arian, a tenured professor who is an outspoken defender of the Palestinian cause, of links to terrorism and asked a Florida court to rule on whether firing him would violate his constitutional rights. Al-Arian had been investigated by federal prosecutors and university officials, but had never been charged with a crime. The move by the board, which voted last December to recommend the firing of Al-Arian, stunned the university's faculty members, who had been expecting the university's president, Judy L. Genshaft, to announce that he had been terminated.

Genshaft had announced her intention to do so in December, but the university delayed firing the professor following an outcry from academic organizations and leaders, who said the decision would be a blow to academic freedom. The American Association of University Professors had said it would censure the university if it fired Al-Arian. Genshaft's announcement of the board's decision to sue Al-Arian in state court, as a means of obtaining the ruling, not only took faculty members at South Florida and elsewhere by surprise; it also frightened some to think that a faculty member who had not yet been fired would have to defend himself in court.

"I've been active in defending academic freedom for 28 years, and I've never heard of a university suing a professor for something like this," said Roy Weatherford, president of the South Florida chapter of United Faculty of Florida and a philosophy professor at the university.

Just settling the question of whether firing Al-Arian violates his constitutional rights will not settle the question of the professor's contractual rights or his academic freedom, he said. And a court battle will force Al-Arian to spend huge sums of money defending himself, which would bankrupt many professors, Weatherford said.

Robert McKee, Al-Arian's lawyer, said in a statement that he and his client were disappointed but not surprised by the board's decision. "These 'new' charges ... are without merit," the statement said. "We are confident that we will prevail in the grievance we will file, with the assistance and support of the United Faculty of Florida, if and when the termination is carried out."

"This is an issue of the ability of a professor to speak his mind without being threatened because of his political views," Al-Arian told the Associated Press. "It's still a case of academic freedom."

Al-Arian, who would be the first academic to be fired since September 11 because of something he said, is a Palestinian refugee who was born in Kuwait in 1958. He has been in the United States since 1975 and has been at South Florida, where he is a tenured professor of computer science, for sixteen years. He has been on paid leave since January. His recent troubles began last September, following an appearance he made on The O'Reilly Factor, a national television talk show. The program's host, Bill O'Reilly, accused Al-Arian of associating with terrorists and quoted

a speech he gave in Arabic more than ten years ago in which he said "death to Israel." Al-Arian has since said that he meant death to the Israeli occupation, not death to Jews, and that he would never support the killing of innocent civilians. He has made speeches in the Tampa area condemning the acts of September 11.

But a torrent of criticism was unleashed in Tampa following his television appearance. The university received vitriolic messages and telephone calls about Al-Arian, and one caller threatened to kill him—a threat that was retracted that same day. Many alumni complained, and Genshaft said she received questions from national organizations that make grants to colleges questioning Al-Arian's presence at the university.

Genshaft had contended this year that, while she was concerned about academic freedom, her first concern was the disruption of the campus and the safety of the students and faculty members. The board's discussions in December of dismissing Al-Arian stopped short of accusing him of supporting terrorism. However, Genshaft said in a statement that she believes Al-Arian "has abused his position at the university and is using academic freedom as a shield to cover improper activities."

After reading the statement, Genshaft declined to answer questions, referring them to the university's lawyers. Richard Beard, chair of the university's Board of Trustees, said he believes that Al-Arian has been associated with terrorists for many years. "It's time we take action and effectively cut this cancer out," he said at a news conference.

The university's court filings against Al-Arian include as reasons for his termination his "support of the entry of terrorists into the United States," "fund raising for a terrorist organization," and activities "directed to inciting or producing imminent lawless action."

In the mid-1990s, a federal grand jury for more than two years looked into his ties to two organizations: the World Islamic Studies Enterprise, a group that was formed to establish a dialogue between Western and Muslim intellectuals; and the Islamic Committee for Palestine, which Al-Arian says was founded to represent the Palestinian cause in the United States. No charges were ever filed, and in a separate inquiry, the university's lawyer found no evidence of wrongdoing by Al-Arian.

In the lawsuit filed by the university, no supporting evidence of terrorist activities was offered, and university officials declined to release any. However, court documents do say that new information has become available since the earlier investigations.

William W. Van Alstyne, a professor of law at Duke University and noted First Amendment expert who is chairman of the AAUP committee that investigated the case, said he was disappointed, both personally and for higher education, by the decision. The complaint, he said, "alleges nothing about Mr. Al-Arian's misuse of his position as a professor." That the complaint makes factual allegations about criminal activities, he said, is "uniquely inappropriate and totally gratuitous."

One reason cited by South Florida for its lawsuit was the likelihood that the AAUP would censure the institution if Al-Arian were fired. South Florida wants to protect itself from that action, which is taken seriously by academics and would damage the reputation of the growing university, potentially making it difficult for it to hire top-notch professors.

But legal experts pointed out that the court's ruling will in no way affect what the AAUP will ultimately decide concerning censure. That, they said, will be based on the group's own theory of academic due process, which recommends that a committee of faculty members should first decide whether the actions of another professor warrant dismissal. The university has acted without consultation with faculty members, they said. In fact, after the decision by university officials to terminate Al-Arian, the Faculty Senate voted overwhelmingly not to support that decision.

"We've respected her desire to move carefully in this case," Mary Burgan, general secretary of the AAUP, said of Genshaft's decision. "But the strategy of avoiding the issue by suing a professor before he's even fired . . . is astonishing and very ominous." She said that the AAUP would probably file a brief on behalf of the professor.

Some faculty members questioned whether the university was trying to pass the responsibility on to the court and thus dodge criticism that it is not supporting academic freedom.

"No," responded Thomas M. Gonzalez, a lawyer for the university. "We're not trying to pass the buck. We're trying to address the concerns of the faculty and those outside the university. . . . We want to know whether academic freedom has the force of law and whether it protects the same conduct as the First Amendment," he said. Reported in: *Chronicle of Higher Education* online, August 22.

**Boston, Massachusetts**

Boston University's chancellor, John R. Silber, has ordered a secondary school that the university operates to disband a support group for gay and lesbian students. Kevin Carleton, a university spokesman, said Silber does not believe that there is a need for the support group or that it is appropriate for the school, the Boston University Academy, which includes the 8th through the 12th grades. "We're not running a program in sex education. . . . They can go to public school and learn to put a condom over a banana," Silber was reported to have said.

A Massachusetts state senator, Cheryl Jacques, who is an advocate for gay and lesbian civil rights, criticized Silber's decision. "Gay-straight alliances are important organizations that help teach tolerance and prevent tragedies," Senator Jacques, a Democrat, said.

According to Carleton, the academy was designed to provide a nurturing environment for bright students who might have felt out of place in other schools. That eliminated the need for a support group for gay and lesbian students, he said. "If we are successful as we intend at the academy, there should be no reason for an isolated safe haven" for gay and lesbian students, he said. "The entire academy experience should provide that."

Moreover, Carleton said, a support group could provide "endorsement and encouragement of the exploration of sexuality in a way that we feel is inappropriate in a secondary school that includes children as young as 13."

Founded in 1993, the academy is located on the Boston University campus. Students start taking college courses from the university in their junior year of high school and can graduate with as many as 48 credits from the university. Reported in: *Chronicle of Higher Education*, September 9.

## film

**Los Angeles, California**

After months of watching a gradual proliferation of companies offering sanitized versions of Hollywood hits to sensitive or politically conservative consumers, movie studios and filmmakers have decided it is time to get a handle on this phenomenon. "This is very dangerous, what's happening here," said Jay D. Roth, national executive director of the Directors Guild of America. "This is not about an artist getting upset because someone dares to tamper with their masterpiece. This is fundamentally about artistic and creative rights and whether someone has the right to take an artist's work, change it and then sell it."

The issue goes well beyond this small, growing market in cleaned-up movies, whether it's taking the violence out of *Saving Private Ryan* or the nude scenes from *Titanic*. As the entertainment industry moves into the digital age, and as more movies and other entertainment forms are reduced to easily malleable electronic bits, the capability will grow for enterprising entrepreneurs to duplicate, mutate or otherwise alter them.

"We're just beginning to understand that this is part of a wider issue," said Marshall Herskovitz, the veteran writer, director and producer. "As long as something exists as digital information, it can be changed. So as a society we have to come to grips with what the meaning of intellectual property will be in the future."

To filmmakers, who point to a federal law that prohibits anyone from altering a creative work and then reselling it with the original title and artist's name attached, it is a simple question of artistic rights. "If people can take out stuff and do what they want with it and then sell it, it just completely debases the coinage," director Michael Apted said. "You don't know what version of a film you're buying. Frankly, I think it's ridiculous." To the studios, the implications concern both copyright and branding. "This is all new to us," said Alan Horn, president of Warner Brothers. "We're all trying to understand it. But it doesn't sit well with me, frankly, because these people could go the other way, too, with more sex and more violence."

To the companies involved in selling these altered versions—or software that does the altering for you—the question is one of consumer choice. "We leave it entirely up to consumers where their comfort level lies," said Breck Rice, a founder of the Utah company Trilogy Studios, whose MovieMask software can filter out potentially offensive passages. "People get to choose for themselves."

At issue is a string of companies, based largely in Utah and Colorado, that offer edited videotapes and DVD's or software that allows users to play any DVD with the offensive passages automatically blocked. One of the earliest to enter this field, a Utah company called CleanFlicks, has a chain of rental stores that offer sanitized versions of more than a hundred Hollywood films, like *The Godfather* and *Mulholland Drive*. Video II offers what it calls E-rated films (cleaned up versions of box-office hits) at several dozen Albertson's retail stores in Utah.

MovieMask has a different approach. Its software can be downloaded onto home computers and will shortly be available embedded into laptops and DVD players that can be connected directly to televisions. The software allows the consumer to watch more than three dozen possible versions of a movie, including the original one shown in theaters. It works only on films, about 75 so far, that have been watched and tagged by MovieMask editors.

Both the numbers of such companies and their reach have expanded in just the last few months. One company, ClearPlay, already offers its software embedded into a $699 DVD player. Another, Family Shield Technologies, offers a set-top box for $239.99 it calls MovieShield that offers its own array of filters, including making the screen go blank during offensive moments.

Although CleanFlicks has been operating for more than two years, it was not until MovieMask executives made a series of presentations around Hollywood in March that the issue came to the fore. "We came to show them what our technology was capable of doing, purely to grab their attention," Rice said. "It certainly did that."

The directors were not pleased by what they saw. A sword fight from *The Princess Bride* (1987) was altered so it looked like the characters were using "Star Wars" light sabers. The scene from *Titanic* (1997) of Leonardo DiCaprio sketching a nude Kate Winslet has been altered by covering her with a digital corset. These are currently available from MovieMask but were intended to show the software's potential, Rice said. What it did, however, was to mobilize the directors and their organization to find a way to put a stop to this.

In August, the owner of several CleanFlicks stores in Colorado filed suit against sixteen top Hollywood directors, including Steven Spielberg, asking the court to declare that what CleanFlicks was doing was perfectly legal. The company argues that anyone who buys a work of art is free to alter it, and that CleanFlicks is only providing a service to those who have already purchased copies of the film or become members of its rental club. Jeff Aldous, a lawyer for the company, said it had no knowledge of the Colorado lawsuit before it was filed and did not support it. "We realize there's going to be an issue at some point in time that we've got to discuss," he said.

Exactly why the studios have not joined the fray is not entirely clear. But several people involved in the talks between the studios and the directors and writers guilds said the problem was a difference of opinion among the studios about the whole issue. They said some felt that the proliferation of these companies showed that a market existed for sanitized products, so perhaps the studios themselves should get into that business. Others felt that the market was too small to be worth the costs, especially since some video chains had indicated they would stock only one version of a film to conserve precious shelf space. And still others were more worried about protecting their brands.

"If you're a studio that's spent a lot of money developing a 'Spider-Man' brand, do you want to dilute it by having a 'Spider-Man Lite' on the market competing with it?" asked an executive involved in the talks.

Officials for the clean-movie companies point out that Hollywood already does release sanitized versions of movies to airlines and some television networks. But directors respond that those versions are made with input from the filmmakers. "That's exactly what we're trying to do here," said Rice of Trilogy Studios. "We want them to be a part of our process, too. We believe that the technology is available today where everyone can win."

And if the directors are upset about what they have seen so far, they probably will not like to hear that MovieMask has signed a contract with a product-placement company to insert products into existing films, perhaps even region by region. "The law as it stands now is just not sophisticated enough," Herskovitz said. "I think there won't be a satisfying solution until the laws are all rewritten." Reported in: *New York Times*, September 19.

## recordings

**Washington, D.C.**

The recording industry and the nation's largest telephone company are crossing legal swords in what could be a test case of how far big record labels can go to track down computer users who swap music online. The industry is seeking to force Verizon Communications Corp., which also provides customers with high-speed Internet access, to turn over the name of one of its users who the record labels claim has made copyrighted music available for download by others. The Recording Industry Association of America also demanded that Verizon block access to the user's music files.

The industry contends that it is losing millions of dollars in music sales because potential customers are instead downloading digital copies from others in violation of copyright law. The battle with Verizon is part of an aggressive campaign by the record labels on Capitol Hill, at the Justice Department and in the courts to crack down on the practice. Among other tactics, the industry is using automated software agents—called "bots," short for "robots"—to patrol the Internet and identify computers with music available for download through a popular technology known as file sharing.

Although the bot can detect the presence of music files available for download, it can identify only an Internet address code and the service provider, not the identity of the user. The music industry sent a subpoena to Verizon for the name of one user but was rebuffed. It then went to the U.S. District Court in Washington, asking the court to enforce the subpoena.

Verizon and a coalition of Internet advocacy groups argue that if the recording industry prevails, the constitutional right to privacy of millions of Internet users would be compromised. "RIAA proposes a dazzlingly broad subpoena power that would allow any person, without filing a complaint, to invoke the coercive power of a federal court to force disclosure of the identity of any user of the Internet, based on a mere assertion . . . that the user is engaged in infringing activity," Verizon's legal filing said.

Verizon does not defend piracy of copyrighted works, but Sarah Deutsch, Verizon's associate general counsel, said the record industry is seeking a legally "creative" way to require the Internet provider to violate its customer's privacy. She added that because the music files reside on the user's computer, not on Verizon's network, the only way to block access to them would be to terminate the user's Internet account.

Verizon argues that under the terms of the 1998 Digital Millennium Copyright Act, the provider of a user's Internet connection is not responsible for any action taken by that user. Deutsch said that the law was passed before file-sharing technology was even contemplated and that the record labels are now trying to retrofit it, in effect, to be applied to file sharing.

The record industry takes a broader view of the federal law, arguing that its terms obligate owners of networks to comply with subpoenas in cases of copyright infringement. RIAA President Cary Sherman said Verizon is trying to have it both ways: The telecommunications company says it is not responsible for policing file sharing, but it won't

*(continued on page 296)*


## libraries

**Greeley, Colorado**

Weld Library Board members upheld the district's anti-censorship policy September 16 when they rejected two requests to block access to movies in the library collection. The board voted 7-0 in favor of keeping a sexually explicit film adaptation of Gustave Flaubert's *Madame Bovary* in the video collection. Library board members also declined Greeley resident Tracy Selanders' request to create a screening system that would block her children from checking out R-rated movies.

Selanders made her request after she watched *Training Day*, a popular but violent movie her 11-year-old son checked out from the Centennial Park Branch. Library officials declined to identify who asked that the British Broadcasting Corp. adaptation of *Madame Bovary* be banned from the video collection. The movie, which is unrated, contains some brief nudity and sex scenes. Still, library board members said censoring the materials or limiting access based on age would go against core principles that public libraries in America hold dear.

"This is a slippery slope," said Margery Curtiss, a member of the two-person subcommittee that researched the two censorship requests. "If you start sliding down one side or another, where can you stop?"

Subcommittee member Rosalie Martinez said that, as a mother of five, she "fully understands" Selanders' concern, which is why she encourages parents to monitor their kids' library selections. But Martinez and Curtiss said to put librarians in a position of blocking access to materials would violate the *Library Bill of Rights*, which the American Library Association adopted in 1948. Even so, library board members agreed to explore the idea of issuing family membership cards that would give parents access to information about materials their children have checked out. Under the system of issuing single-patron memberships, it is illegal in most cases for librarians to give out that information.

But board member Nomie Ketterling questioned whether family membership cards respect the spirit of privacy rules. The board instructed the library staff to research the issue and come back with a recommendation.

In the meantime, the library is creating brochures on how parents can help guide their children's library selections. As for the request to ban the *Madame Bovary* video, the board deemed the request contrary to the "Freedom to View" doctrine that is endorsed by the ALA. The doctrine says broad public access to filmed works is essential to ensuring constitutionally guaranteed freedom of expression.

In their report to the board, Martinez and Curtiss wrote that "in a free society, there is no place for censorship of any medium of expression." Reported in: *Greeley Tribune*, September 17.

**Kent, Washington**

The city of Kent has paid more than $30,000 to the King County Library System to settle a lawsuit sparked when Kent police detectives illegally seized two library computers while investigating child pornography. Detectives said someone used public computers at the downtown library to view child porn. In July, Wayne Himple, a detective with the Kent Police Department, seized two computers to protect what he viewed as evidence in a criminal investigation. He did not obtain a search warrant to take the computers. Later, a Kent municipal court judge ordered a warrant to allow police to search the computers.

That prompted the lawsuit, which contended a search would violate the First and Fourth Amendment rights of library patrons. Last month, U.S. District Court Judge Marsha Pechman ordered police to return the computers, but said the library system must preserve them as potential evidence.

"We expect we would have the library's attorneys challenging everything we try to do," police representative Paul Petersen said. "Besides, our computer forensic folks have told us that, with the way the library manages its software, we may not be able to find the information we need." Detectives have since closed the case.

The city paid $30,000 toward the library system's attorney fees and $670 to cover costs incurred by the library system as a result of the lawsuit. Reported in: *Tacoma News-Tribune*, September 11.

## schools

**Grandville, Michigan**

John Steinbeck's classic novel *Of Mice and Men* has won acclaim for its depiction of the struggles of farm laborers and the plight of those who are mentally challenged. In fact, it is on the required reading list for tenth grade students at Grandville High School. But its status was challenged by a district parent, who hopes to get it removed from the curriculum.

In a letter to school board members this summer, Grandville area resident Tom Mouw outlined his objections. "The book is full of racism, profanity, and foul language," he said. Mouw and his wife complied a list of over two hundred instances of profanity in the book. According to the list, the word "damn" is used 58 times, and "hell" 70 times. There are also 13 racial slurs against blacks, and usage of the names of God and Jesus "in vain" 33 times.

"It is full of racism, contains offensive language on 76 out of 107 pages, and ends in an execution-style shooting of a mentally handicapped man," he said. "I would hope students at our high school are not allowed to call a black student a (racial slur) or a mentally slow student a nuisance' or a dumb bastard.' These phrases are typical throughout the book."

In his letter, Mouw referred to the official school handbook, which, on page 25, prohibits "Use of obscene or profane language or gestures; distribution or posting of offensive materials." According to the handbook, violators are subject to "Confiscation of written or printed materials, notification of parents, possible suspension or recommendation for expulsion."

Mouw said the district is operating under a double standard. "If it is against our school policy to allow our students to use this kind of foul language, then why in the world would we have them read it?"

Two years ago, Mouw's daughter, then in tenth grade, was assigned the book for English class. The students followed along in their own copies while listening to the book read aloud on tape, and also watched a movie based on the novel. Mouw said he and his wife did not realize what she was being exposed to, as they were not required to sign a permission form. He said his daughter was upset about the language of the book, but did not tell her parents until later, after she had finished the course.

Even though their oldest daughter is now homeschooled, Mouw said he wants the book removed from the curriculum, especially as his younger two children still attend Grandville Public Schools. Last March, Mouw submitted a "Citizen's Request for Reconsideration of Educational Material" to the district. About three months later, he received a response. A committee composed of teachers, parents, High School Principal Randy Morris, and library media specialist Susan Tamm had reached a decision to continue to include the book as part of the high school curriculum.

In the letter, Tamm cited several reasons for denying Mouw's request. She said the book had previously been approved by the Curriculum Committee and the Board of Education, and it had been taught in the high school for more than 25 years and was taught at numerous high schools across the country. According to Tamm, the teachers prepared students extensively before reading the book, and discussed the reason for the use of inappropriate language and racially offensive words. She also said the book had wide student appeal, and that it discussed important themes including relationships, responsibility, respect for old age, and the evils of oppression and abuse.

Any student or parent who objects to the assignment is permitted to read an alternative book, Tamm said. The letter told Mouw he could "appeal to the Board of Education" if he was not satisfied with the response. After Mouw wrote to the board in June, however, he said he received no response until he got a phone call from curriculum director Denise Seiler, telling him his appeal was denied.

"It's finished. It's done," Mouw said. Mouw said he and his wife plan to excuse their other two children from reading the book when they reach tenth grade. Still, he said, they are not happy that the novel will continue to be taught to others. "There are so many good books out there for our children to read," he said. "It is time to get this one out of our schools." Reported in: *Grand Valley News*, October 1.

**Kanawha County, West Virginia**

The American Civil Liberties Union of West Virginia and Americans United for Separation of Church and State applauded the decision of the Kanawha County School Board to end a policy that permitted school-sponsored prayer at graduation ceremonies. U.S. District Judge John T. Copenhaver, Jr., approved a settlement between the parties August 14.

"The resolution of this lawsuit guarantees the religious liberty of every family in the community," said Ayesha Khan, legal director of Americans United. "Thankfully, the new policy will strike the right balance. Students will be free to pray if they wish during graduation, but to protect everyone's rights, worship will no longer be an official part of the ceremony."

The lawsuit was filed on behalf of Tyler Deveny on May 29, 2002. Deveny, an atheist, objected to the prayer at his graduation at St. Albans High School which he called an exercise in ostracism. The ACLU and Americans United successfully won a temporary restraining order blocking the prayer the next day.

The Superintendent of the Kanawha County Schools, Ron Duerring, agreed in the settlement to immediately abolish the district-wide policy that permitted schools like St. Albans to have student-led prayer at their graduation. Duerring said in a statement, that "such an outcome is best

for the school community and pays proper respect to constitutional requirements."

Shortly after the May 30 graduation ceremony took place, Deveny was assaulted allegedly because of his participation in the case. The ACLU, AU and the superintendent strongly condemned this assault. "Mr. Deveny was exercising an important constitutional right to seek redress for alleged violations of the Constitution," Duerring said in his statement. "Mr. Deveny's actions have served to educate Kanawha County Schools and the community as a whole about constitutional requirements."

In connection with the settlement, Duerring will review Kanawha County curriculum and professional staff development programs to ensure adequate education and training on First Amendment issues, particularly the separation of church and state and freedom of religion. Reported in: Americans United press release, August 14.

## university

**Portland, Maine**

The University of Southern Maine has settled a complaint brought by a professor who was accused in February of making offensive remarks in a videotaped lecture. As part of the settlement, which includes an undisclosed payment to the professor, the university's provost personally apologized for calling the professor's videotaped comments "stupid and offensive."

John Broida, a professor of psychology known by colleagues to be a provocative lecturer, was teaching a distance-education class last winter. In one of his videotaped lectures, Broida said, "Do you know that on average blacks have a lower IQ than whites? Yes, have you noticed that? It's true." Rachel Morales, then a third-year student in Broida's class, said the comments offended her, and filed a complaint with the university.

After Morales filed the complaint, the university formed a four-person committee to increase awareness about diversity on the campus. Once the student's complaints became public, the provost, Joseph Wood, sent a memorandum to all faculty members in which he called Broida's comments in the video "stupid and offensive."

The university canceled two of Broida's courses in the summer and the fall, which deprived him of stipends that the university pays to professors who teach distance-education courses. Broida filed a complaint against the provost and the university with the faculty union, the Associated Faculties of the University of Maine.

As part of the settlement, the university agreed to pay Broida an undisclosed amount, which the union's lawyer, Howard Reben, said ensures that Broida will have suffered "no economic harm" from the incident. Also made public as part of the settlement was a letter of apology that Wood, the provost, wrote to Broida. In it, he said: "I apologize if my opinion about the statements drawn from your videotaped lecture offended you personally."

Broida said he was "fine" with the apology. "I felt it was the best he could do," he said. A spokesman for Southern Maine, Bob Caswell, said that the university viewed Mr. Wood's apology as "personal." "It shouldn't be interpreted as an admission of guilt or wrongdoing on his part or the university's," he said. "It is what it is."

The committee the university formed in the wake of the incident involving Broida recommended this summer that the university review videotapes made for online courses before they are used (see page 262). That policy of "prior review" has angered many professors. The faculty union and administrators at Southern Maine are now debating that policy, among others, as part of a collective-bargaining negotiation. Reported in: *Chronicle of Higher Education* online, October 2.

## church and state

**Ringgold, Georgia**

A Georgia town has taken down religious symbols from its city hall in an attempt to settle a lawsuit brought by civil liberties groups. The Ringgold City Council removed framed copies of the Ten Commandments and the Lord's Prayer from city hall in August. An empty frame that council members said was for "those who believe in nothing" was also removed.

The city government was sued in June of this year by Americans United for Separation of Church and State and the Georgia affiliate of the American Civil Liberties Union. The groups charged that the display, posted in October, violated the constitutional separation of church and state. Two local residents served as plaintiffs in the case.

Said Americans United Legal Director Ayesha Khan, "We're delighted that Ringgold officials have decided to obey the Constitution. Americans from all religious perspectives will now feel welcome in city hall. The council clearly intended to send a message of religious favoritism when it put up the religious symbols," continued Khan. "By taking them down, they've now sent a message that no particular faith will get special treatment."

Upon unveiling the religious display last fall, Ringgold Councilman Bill McMillon said the empty frame was included in the display "for those who believe in nothing," and those who took issue with the display of the Ten Commandments and Lord's Prayer "can go stand in front of it and believe anything they want to." He added that he was unconcerned about non-Christians or Muslims being offended by the display "because we don't have any of them here."

Now that the religious symbols have been taken down in Ringgold City Hall, Americans United officials were optimistic that the lawsuit pending in U.S. District Court for the Northern District of Georgia would be settled. Reported in: Americans United press release, August 15.

## government secrecy

**Washington, D.C.**

An official State Department history of U.S. relations with Greece that was printed more than two years ago and then suppressed at the insistence of the Central Intelligence Agency was finally published August 15. The publication of *Foreign Relations of the United States (FRUS), 1964-1968, vol. XVI: Cyprus; Greece; Turkey* was repeatedly deferred under pressure from the CIA, which reportedly contended that the volume's four decade-old revelations about CIA covert actions could trigger a violent response in Greece. State Department officials and scholars on the State Department Historical Advisory Committee viewed that claim as improbable and considered it a self-serving effort to evade historical accountability.

Officials were reluctant to discuss how or why the dispute over publication was resolved, but the decision to permit publication may reflect the recent arrests of numerous members of the November 17 urban guerrilla group in Greece. "Obviously, recent events have made release a little more comfortable for some," said one informed source. "But the whole screw-up really caused the HO [State Department Office of the Historian] huge problems with the CIA. I think those problems are resolved, but confidence-building remains to be done," the source said. Reported in: *Secrecy News*, August 7. □

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*("Barry Trotter done gone" . . . from page 249)*

Bruce actively writes and lectures in his field. His recent focus has been on the implications of the new media on traditional views of the First Amendment and intellectual property rights. He is Adjunct Professor at New York University's Law School's Media Law Institute.

Following Bruce will be Wendy Strothman, Executive Vice President of Houghton Mifflin, who will tell us about Houghton Mifflin's successful defense of the publication of *The Wind Done Gone*. In 2001, the Margaret Mitchell estate sued to halt the publication of the *Gone with the Wind* parody. The book has since gone on to be a bestseller. Wendy leads Houghton Mifflin's Trade & Reference Books division, which publishes from *Curious George* to Philip Roth with some cookbooks and the American Heritage dictionaries in between. Thanks to her leadership, Houghton Mifflin has won two National Book Awards, two Pulitzer prizes in fiction, two Caldecott medals and a Newbery Award.

Before joining Houghton Mifflin, Wendy was director of Beacon Press in Boston, where she produced two characteristically influential bestsellers—Marian Wright Edelman's *The Measure of our Success* and Cornel West's *Race Matters*—as well as Beacon's first National Book Award winner, Mary Oliver's *New and Selected Poems*. In 1993, her fellow publishers named her "Woman of the Year" for her courage in speaking out during several First Amendment controversies.

**Remarks by Michael Gerber**

It's said that the greatest compliment any writer can receive is to have readers care deeply about something he has written. To that I say, "Ha! You never got hate mail from 10-year-olds." The smattering of Barry-haters out there never believe this, but I am a big Harry Potter fan, and thank God—preparing to write this book was like cramming for the Harry Potter SATs. You have to know something intimately to parody it well, and while I never became as obsessive about Harry as your average fourth grader, I grew to enjoy and admire J.K. Rowling's books a great deal. Most fans see this immediately, and that is why the reaction to *Barry Trotter* has been overwhelmingly positive.

Still, parodists have a bad reputation: Ernest Hemingway said that "parody is the last refuge of the frustrated writer," and most of my pre-teen hate mailers agree. Last week, one even suggested that I "go back to whatever it was that [I] was doing before I wrote *Barry Trotter*, because [I] must be able to do that better." Not necessarily, I replied.

Another recent correspondent simply yelled—I assume that's what all-caps means—"STOP MAKING FUN OF THINGS." And another particularly aggrieved ex-reader remarked in genuine horror that "[I didn't] seem to be taking this book seriously."

So, it's with those warnings in mind that you ought to frame my remarks.

I've been asked to talk about the history of American literary parody. Along the way, I might inadvertently—oh, let's be honest, extremely vertently—plug my book. Actually, this isn't as craven as it appears—my book was created with an eye towards what had been done before, using techniques from the past, reworked for a new era. I'm simply not smart enough to reinvent the wheel, and I didn't.

The trend of American pop culture meant that a parody of Harry Potter, the biggest publishing phenomenon of our age, was inevitable. I was determined to create a spoof that was worthy of the original books, and one that fit into the canon of American literary humor as well. And I hope that, just like Harry Potter has famously inspired children to develop the habit of reading, *Barry Trotter* encourages its readers to investigate written humor.

As I said, *Barry Trotter* doesn't break new ground. Everything I did, from aping the cover illustration to slightly changing the names, to self-consciously reminding the reader that they really had better things to spend their money on than this book, has been done many times before. What was new is that these techniques were considered possible grounds for a lawsuit. I believe that this is because our business, the publishing business, is unfamiliar with the history of parody in America. Most editors I dealt with were fuzzy on what the word "parody" even means. My friend (and fellow parodist) Sean Kelly says that whenever you see the word "parody" on a book jacket, all it really means is "please don't sue us."

One can't blame them for their concerns—terra incognita makes anybody skittish—but I couldn't let my book die, either, so I self-published *Barry Trotter* last December, hoping not to get my pants sued off by Warner Brothers. As you can see, I am still fully clothed, and so a new edition of *Barry* has just appeared courtesy of the courageous folks at Simon and Schuster.

So my parody has appeared and—miracle of miracles—Harry Potter, Inc., continues to roll on. I won't deny that parody can be a sleazy way to take advantage of somebody else's brand identity, but in the right hands, it's a powerful tool to express ideas, especially ones opposed to the status quo. And do it in a way that readers will not only tolerate, but enjoy. Satire closes on Saturday night, but parody breaks box office records. It is subversive, and popular. That's why it's important, and that's why I took the risk.

Actually, I took the risk because, to be frank, I had nothing for anybody to take. The worst thing that could happen to me was that my cats would become jointly-owned by Scholastic and Warner Brothers. Big deal—let them clean the litterbox.

So for Barry and I, everything worked out okay. But it was a close thing, much closer than it should've been, and so I'd like to talk on the following points: what "parody" is; why it's so popular; the recent history of print parody in America; where we are today; and why print parody should be celebrated, and supported.

*What is parody*? Parody is a precise technique where the structure and salient facts of an original work are used by a secondary work to comment on that original. The comment can be decoded by what is changed, and the relationship of those changes to the original. Parody isn't synonomous with "humor," or "satire." Parodies are most often satirical, but can have almost any flavor. *Barry Trotter* has elements of satire, nonsense, pastiche, whimsy, and bathroom humor. Parody is a structure, a set of ground rules that the parodist agrees to accept. What a parodist does within those rules is up to him or her.

*The Wind Done Gone* recasts elements of *Gone With the Wind*, to make important points about American race relations. *Barry Trotter* parodies the Harry Potter series to make slightly less important points about merchandising, Hollywood, and the comedic value of a well-calibrated swear word. Anything goes, as long as the structure of the parody mimics the original sufficiently, and the established counter-logic of the parody remains clear.

In *Barry Trotter*, the counter-logic is founded on two things. The first is, Barry is much older than Harry—he uses magic to make adult-style mischief. The second is, Barry's world is much more petty and disappointing, much more messy and emotional, than Rowling's original. If you're thinking, "In other words, more like Reality," you're right.

A parody depends on the audience's knowledge of the original to give it meaning. For example, in my book, Headmaster Albus Dumbledore is called Alpo Bumblemore. The change communicates that my character is not the wise, all-knowing, comforting father figure of Rowling's series, but a bumbler who may or may not have a jones for dog food. We are all experts at this sort of decoding, and do it almost without thinking. Every element of a parody is presumed to be judged in light of the original. Without an original, parody cannot exist.

This is why the normal rules of intellectual property do not apply. It is also why parodies make risk-averse corporate lawyers break out in hives.

The perception that parodies are legally risky is common, but vastly overstated. Very few parodies get sued, and fewer still lose. Sued parodies become famous parodies, and in the absence of an extraordinary circumstance, suing a parody only strengthens it.

Like it or not, parody is in tune with our recombinant, postmodern age. It is not a question of whether parody will exist—it will—but whether the publishing industry will do it responsibly and well, and make buckets of money in the bargain.

*Why is parody so popular?* Parody is such a natural reaction to authority that it jockeys with slapstick as the comedy of the playground. Americans, at least, are natural born parodists. Kids enjoy it because it is intrinsically anti-authoritarian; I think adults enjoy parody because it is an antidote to "spin." We are constantly bombarded with messages trying to create one perception or another in our heads. We know that it's malarkey, mostly, so with every message, another grain of skeptical irritation forms. The first time you see a commercial for a new movie, it may look cool. But by the tenth, you're annoyed, and are probably making fun of it yourself. Omnipresence is an extremely powerful form of authority, and parodies attack that authority in a particularly satisfying way.

Parodies have appeal from the production side, as well. These days, when creations of the media are often all we have in common, parody is incredibly efficient. If I say, "This book's a parody of *Star Trek*," not only do you already know all of the characters, their dominant traits, and the setting, you also probably know whether you are interested in reading it or not. This is a huge advantage to the parodist, the publisher, and everybody else—including the

owners of the property being parodied. Indirect publicity is still publicity, and parodies helped turn *Star Trek* from a short-lived TV show to a huge cash cow for Paramount. As far as I can tell, the widespread fear of litigation is a recent development in the history of print parody in this country, and a warning that our intellectual freedom may not be as secure as it has been, or should be.

Contemporary literary parody—which I define as self-contained parodies that subvert the graphic elements of an original as well as the words—was invented by Robert Benchley at the *Harvard Lampoon* in 1911. Benchley and his cohorts created a stand-alone parody of *Life*, a popular humor magazine that later became Luce's photo weekly.

College humor magazines were the primary stomping ground for parody for the next 60 years. Hundreds of American colleges had a student-produced humor magazine, and no technique was more loved by these fledgling humorists or their readers, than parody. This made perfect sense; college students, while adults in many ways, remain in the rigid hierarchy in which they have moved since kindergarten. There is a safety in this arrangement, but it also means that students are always aware of the power of authority, and always testing themselves against it. The early years of collegiate America were filled with petty rebellions like breaking the President's windows; by the 1870s, this impulse had been sublimated into lampooning his latest speech in the pages of the college humor magazine. I call that Progress.

The step that Benchley took was to create a self-contained parody of a magazine, which could be mistaken for the original—not permanently, but for a short while, until the realization hit the hapless reader like a two-by-four. Ever since, the success of any parody has been inextricably linked to how closely it mimics the original graphically.

It became customary for college humor magazines to make the majority of their annual budget from parodies—either of the college newspaper, or, in the case of the biggies at Harvard, Yale, Stanford and the like, of national magazines, distributed on newsstands regionally. Any magazine that a collegiate audience would know and love (or know and hate), was parodied. This cottage industry netted organizations like *The Yale Record*—which I edited 'way back when—thousands of dollars a year, back when a dollar was real money. Parodies built buildings, and launched careers. Most of *The New Yorker's* greatest humorists and cartoonists—people like Thurber, Perelman, and Peter Arno—cut their teeth doing magazine parodies at places like *The Brown Jug* or the *Ohio State Sundial*. Were most of these parodies forgettable juvenalia? Sure. But they remain a subterranean spring which fed American letters for most of the last century.

Around World War II, however, two things began to change: one, college students were becoming more worldly; and two, professional magazines were switching their emphasis from illustration to photography. This meant that doing magazine parodies became a much more difficult proposition, not only creatively, but financially, as well. By 1960, the only college humor magazine that had the expertise and the cash to carry on doing full-blown magazine parodies was the *Harvard Lampoon*.

In July 1961, a staff led by Christopher Cerf created an authorized, nationally-distributed parody of *Mademoiselle*. It was a success, and led to two more parodies the following two summers. In 1964, a parody of James Bond called "Alligator," translated the *Lampoon's* winning formula into paperback form. From 1965 to 68, the *Harvard Lampoon* did a magazine parody a year. Each was nationally-distributed, and sold hundreds of thousands of copies, turning the *Lampoon* from a moribund preppy relic, to an organization with millions of bucks in the bank.

The *Lampoon* formula was simple, and remains the key to crafting popular parodies even today. One, pick something with a big audience of young people. Two, keep the same format as the original—if the original is a magazine, so's the parody. Three, mimic the graphic environment exactly, and make it contain jokes as well. And four, fill the parody full of sharp writing with a subversive, satirical edge. A little sex in there somewhere doesn't hurt, but it shouldn't be too lurid. After all, we're talking about parodies, not pornography.

The greatest *Harvard Lampoon* parody is probably *Bored of the Rings*, a Tolkein spoof published in 1969. Thirty years and millions of copies later, *Bored* is obviously the most direct precursor to *Barry Trotter*. I've been told that when *Bored's* authors, Doug Kenney and Henry Beard, sent their drug- and sex-filled parody to Mr. Tolkein, the author replied, "I don't understand it, but I don't think that's a reason to suppress it." Thus, Bilbo Baggins became Dildo Bugger.

The massive success of all these collegiate parodies convinced Kenney and Beard to start *National Lampoon*, which debuted in April 1970. *National Lampoon's* goal, as far as it ever admitted to one, was to show that the Emperor had no clothes—while surrounding him with busty ladies not wearing any, either. A lot of money got made, but the Lampoon's skintastic windowdressing reinforced the mistaken idea that parodies are intrinsically sleazy in nature, and from sleazy, it is a short conceptual slide to obscene, thus actionable. A *Harvard Lampoon* parody was considered a compliment; a *National Lampoon* parody was more of a threat.

Still, during its five-year golden age, *National Lampoon* carried print parody to new heights. In 1974, it released the *1964 High School Yearbook Parody*, which sold millions of copies, and is still talked about with real affection by those who read it; you'll be lucky to find one on eBay for under 50 bucks.

After the magazine's founders left, pockets bulging, in 1975, *National Lampoon* increasingly branched into other

media. This reflected the shift of the culture at large. Parody is the ultimate audience-follower, and if young people were reading less, and watching TV more, it was inevitable that the targets of parodies would switch, too.

Even so, a lot of people had noticed how much money the *Harvard* and *National Lampoon* parodies had made, and so for the next decade, lots of ad hoc groups did parodies in an attempt to cash in. Many succeeded: a parody of the *National Enquirer* sold 600,000 copies; 1978's *Not The New York Times* sold over a million; and two separate editions of *Off the Wall Street Journal*, in 1983 and '84, each tallied in the hundreds of thousands. There were many others that came and went, but what is also worth mentioning is that, to my knowledge, none of these parodies were sued, successfully or otherwise. Even parody books thrived: as of 1983, Alfred Gingold's spoof of the LL Bean catalog boasted over 800,000 copies in print.

At the same time as this explosion of parody, publishers like Workman were pumping out zeitgeist-riding humor by the truckload. This timing gave rise to a lot of the misconceptions that still exist in the book business. *The Preppy Handbook*, while a very funny piece of lay sociology, is not a parody. And making fun of something—Gilligan's Island, for example—is not the same as parodying it.

Between 1975 and 1985, American print parody shifted from the precise, classic form that I have been discussing to the much more cynical, careless form it frequently takes today. When a book like *101 Uses for a Dead Cat* spawns *101 Uses for a Dead Yuppie* and then *1000 and One-Half Uses for a Dead Extraterrestrial*, things are getting a little obnoxious. But as the earlier style receded into memory, such deriative, anything-for-a-buck stuff became what both publishers and readers understood to be "parody." And predictably, the golden goose swiftly died.

But saturating the market with schlock wasn't the only problem. All the good targets had been done ad nauseam, and the new ones worth parodying were increasingly found outside print. (When I was in college, for example, the *Harvard Lampoon* attempted to parody MTV.) The truth was—and remains—that people were now getting their comedy, parodies included, from television and movies. And TV and movies were where the best young comedic talent was going; writing a spec script or sitcom made a lot more sense, financial and otherwise, than slaving for hours over another parody of *The New Yorker*.

So, since about 1985, most print parodies have been lousy, when they're true parodies at all. Occasionally a quality one sneaks through—like Tom Connor's *Is Martha Stuart Living?*, published in 1997. But most are forgettable, and get lost among the quickie books and cartoon collections that glut the Humor sections of your local super stores. Readers, even those who remember *National Lampoon's* parodies with awe, have learned not to buy them. That's where we stand today.

Everybody's favorite demon, media conglomeration, has played its part, of course. The small- to medium-sized publishers that had been willing to gamble on a parody are gone, replaced by a few big companies with lots of assets to protect, and future joint-ventures to consider. Several editors passed on my book sight unseen because they knew their company was already enmeshed in Harry Potter, Inc.

The coup de grace for print parodies—as if they needed one—has been the idiotic idea that parodies have to be negative towards the original, and that the buyers of a parody are fundamentally motivated by dislike. This is appallingly stupid; parodies depend on knowledge of the original, and people who hate something will avoid it, not study it. Seeking out something you despise is the kind of behavior commonly associated with Presidential assassins and serial killers, not parody-lovers. The most successful parodies—*Bored of the Rings*, the *1964 High School Yearbook Parody*, *Off the Wall Street Journal*—praise and bury Caesar at the same time.

So, partly through the decline of print, partly through cynical sloppiness, and partly through ignorance, quality print parody is an endangered species. The obvious exception to this trend is *The Onion*, the University of Wisconsin's college humor magazine turned national parody newspaper. I have nothing but good things to say about *The Onion*, but I would like to point out that it is fundamentally different than the classic parodies I've been talking about. *The Onion* uses the form of a McPaper as an organizing device for a group of parody stories. It is not closely parodying *USA Today*. If anything, it's parodying life as we know it—or at least the idea that some things are newsworthy and other things are not.

So for *The Onion*, we are the original being parodied. This is breakthrough stuff, at least the first thirty times you read it. And here's the beauty part: with *The Onion*, there's no copyright holder to annoy. By combining the two tried and true moneymakers of the college humor magazine—the parody issue of the newspaper and the self-contained parody magazine—*The Onion* has hit on something remarkable.

But there is also a strange passivity, a nihilism to *The Onion* which, in my opinion, is beneath its incredibly skilled staff. It sells parody short. *The Onion* offers no redemption to the parade of screw-ups, self-delusion, and inchoate anger that is so accurately reflected in its stories. Only when it demonstrates a positive moral sense, as with its issue after September 11, does *The Onion* fulfill its potential.

That's where the power of parody is, in its ability to take the very things that make life onerous and unfulfilling—or even baldly terrifying—and by undermining them, give readers the courage to think of alternatives, of solutions. At its best, parody can knock a big, powerful entity down to a human scale, so that it can be seen for what it is, and dealt

with sensibly and humanely. This is why parody is powerful, and feared, and protected by the First Amendment, and also why we in print should champion it.

Most of what passes for parody today, in print and every other medium, subverts with no greater purpose. That is fine as far as entertainment goes, but parody at its best—parody that aspires to something better as it cracks wise—is a great, uniquely American, art.

We should always remember that protected speech is not always welcome speech, or the type that passes easily through the mechanism of American publishing. For many reasons, parody sticks in the gears. But I believe that its benefits—and its popularity—insist that we make every effort to see that carefully crafted, smart parody remains in the marketplace.

Whether somebody suppresses a parody with an injunction, or the possibility of a lawsuit, or the fear that somebody else will get the rights to the desk calendar, we are all the poorer for it—readers, publishers, and even the owners of the original. Their "victory"—and I put that word in quotes—restricts everyone a bit more, and makes print a little bit less relevant.

But I'm a parodist—so of course I would say that. Speaking for the other side, Hemingway wrote, "The step *up* from writing parodies is writing on the wall above the urinal." To which I say: perhaps, but people read that stuff, so parodists ought to scrawl fearlessly, and as well as they are able, where many a man has gone before.

You know, if this speech had gone poorly, I was prepared to claim that I wasn't really Michael Gerber, but an elaborate parody of him designed to satirize his terrible public speaking. The real Michael Gerber, you'll be surprised to know, is taller, has more hair, and bears a striking resemblance to Cary Grant. Thank you.

**Remarks by Wendy Strothman**

Thank you. I am going to take it from the general to the specific. I would, first, like to thank the American Library Association for inviting me to be here today. I think it's rather brave of me to speak to all of you about freedom of expression because you are on the front lines of these issues every day. Publishers are only there every once in a while. In fact, after we were sued by the Mitchell trust, one of the first people I called was Judith Krug because I knew she would be able to marshal support very quickly. I would also like to thank our attorney for this case, Joe Beck, who is sitting in the audience. We had excellent legal representation for this lawsuit.

I thought a lot about this case over the past couple of years and especially after 9-11 and wondered if it was still relevant to talk about *The Wind Done Gone*. But of course parody is such an essential form of criticism and often the only form available to the dispossessed. I think, for that reason, it is more important than ever that parody survive as an art form. I want to tell you a little bit about why Houghton Miflin decided to publish *The Wind Done Gone*, why we fought so hard for our right to publish the book, and how we eventually won the case.

Houghton Miflin, as many of you know, was until recently, the oldest independent publisher in America. We were founded in 1832 and have a very strong tradition of publishing books that are brave. We started with Henry David Thoreau in the nineteenth century, Rachel Carson's *Silent Spring*—which must have been an incredibly terrifying book for any publisher to publish when you think about the resources of the chemical industry that were brought to bear against Rachel Carson. And more recently, James Carroll's *Constantine's Sword* which took on the Catholic church. We look for groundbreaking work, and we look for a certain kind of literary approach to a work. So, our approach to publishing *The Wind Done Gone* was not to be looking for a humorous book, but to be looking for a book that said something important.

This book came to us not from an agent but because Alice Randall had known the editor Anton Mueller for many years. When she first proposed the book to us, we were skeptical because we did not want to publish a slapstick approach to *Gone With the Wind*. We were not interested in that. We didn't know if she could pull off her task effectively. But Anton was convinced that Alice was an extremely brilliant woman and he was right. She really wanted to take on *Gone With the Wind* in a critical way because she found it a deeply problematic work. It's a book that has been very painful for African-Americans. It is a deeply racist book, I believe, and she felt that a parody was the only appropriate rejoinder. When we signed Alice's book, the contract described it as a parody of *Gone With the Wind*. We felt, after getting a legal read—which we routinely get—that we were on solid ground legally because every bit of *Gone With the Wind* that Alice had used in *The Wind Done Gone*, was used for a reason. She had transformed it. Again, as I said, we decided to publish *The Wind Done Gone* as a serious work.

Our *American Heritage Dictionary* defines parody as a literary or artistic work that imitates the characteristic style of an author or a work for comic effect or ridicule; we were clearly going for ridicule. We published this as a literary work; we didn't want it to look like a humor book. We didn't want people to be thinking about that wonderful Carol Burnett parody of *Gone With the Wind*. For those of you who don't recall, she made a dress out of the curtains and forgot to take the curtain rod out. That was a great moment in television but we were after something else. We announced a modest first printing of about 25,000 copies last spring and sent out initial advance readers copies. One of the early publicity breaks we got before the book was published was that the author, Alice Randall, was invited to speak at the Margaret Mitchell house in Atlanta. We

thought that was terrific. Just a few days after that, a lawsuit was filed in Atlanta to stop publication of the book.

Although I am intimidated by the lawyers in the room, I do want to talk a bit about why we were sued for copyright infringement and also for something called violation of the Lanham Act, which accused us of riding on the commercial coat tails of *Gone With the Wind*. Copyright in this country traces its roots back to England. The Statute of Queen Anne was passed to destroy booksellers' monopoly of the book trade and to set some parameters as to how long a creative artist can control their work. The Eleventh Circuit said the goal of the law was to encourage creativity and ensure that the public would have access to information because the booksellers themselves had been acting as censors. Copyright, of course, has been used to promote learning, the idea being that you should be encouraged to write and get paid for your labor. And it promotes public access to knowledge for the same reason: that it is an incentive for writers to get their books published because they will be paid for them. Without some limited monopoly on your work as a writer, there is really no incentive.

As a publisher, I believe deeply in both copyright and the First Amendment. I believe in freedom of expression and I believe in copyright. I think the publishing industry would not survive without copyright and freedom of expression, nor would the creative writing process in the United States. I say that so you put again into context our thinking on this book. We knew that copyright could not protect an idea but only the expression of the idea. So when we were sued for copyright infringement and accused publicly of whole scale theft and piracy, we were pretty shocked. This is something that has never happened to us before.

Alice Randall's book, which is told in the form of a diary, is 214 pages long; it is a very personal approach to the topic and *Gone With the Wind* is an 1100-page behemoth. The Margaret Mitchell Trust claimed that Alice plagiarized *Gone With the Wind*, that she had lifted scenes verbatim, that she had appropriated too many scenes and character(s) and—this one really got me—that she was actually just being lazy. If she really wanted to write a book about slavery, they said, she should have just gone ahead and written a new book about slavery rather than copying *Gone With the Wind*. They obviously completely missed the point of why she wrote this book. They also claimed that Alice had ruined the market for sequels because the public would mistake Alice's book for a sequel and, furthermore, she had let Scarlet O'Hara die.

I do need to ask how many of you have read *The Wind Done Gone*? How many have read *Gone With the Wind* or seen the film? Well, in *The Wind Done Gone*, the characters in *Gone With the Wind* are all turned on their heads. The main character, Cynara, does not exist in *Gone With the Wind*. She is a mulatto slave, the half sister of somebody called Other, who is the analog to Scarlet O'Hara. There is somebody named Planter who owns the plantation. One of the interesting things about *Gone With the Wind* is that there is absolutely no intermixing of the races at all, and in *The Wind Done Gone*, practically everybody is mixed race.

The scenes in *Gone With the Wind* are also turned upside down. You all may remember in *Gone With the Wind*, Gerald O'Hara wins the plantation in a poker match. In *The Wind Done Gone*, the slave Garlic, not Pork, manipulates the poker match and is really the guy in charge. In *Gone With the Wind*, Rhett Butler leaves Scarlett O'Hara and in Alice's book, Cynara leaves her lover "R."

Every detail in *Wind Done Gone* had a point. In court, the Mitchell Trust again said that we had lifted passages verbatim, and in an amazingly disingenuous moment they said even the last sentences of the two books were the same. Now I think you all remember the last sentence of *Gone With the Wind*—"Tomorrow is another day." In Alice's book, the last sentence is, "For all those we love, for whom tomorrow will not be another day, we send this sweet resting prayer of peace." Anybody who could confuse those two sentences really isn't reading closely.

We came to trial here in Atlanta. I have to say as a white woman from Boston, I never thought I would be sitting at a defendant's table next to an African-American woman. I am very glad we hired Atlanta lawyers who helped us understand the racial scene in the new south. It is something that I think people in the north are remarkably naïve about. We did a lot of preparation, of course. It was very lonely in the beginning but we had excellent outside support for what we were doing. I had a publishing first one morning. This probably has never happened to another publisher in the history of twentieth century publishing. Both Kitty Kelly and Toni Morrison called me the same day offering to help. Harper Lee wrote us a letter of support which made some of us cry. Skip Gates wrote a powerful affidavit and Pat Conroy, whom many people in Atlanta know, and you all know as the author of *Prince of Tides*, had been negotiating with the Mitchell Trust years ago to do an authorized sequel of *Gone With the Wind*. He called me from a cruise ship off the coast of Turkey and said, "Hi, this is Pat Conroy calling from Turkey. I never said that before." He proceeded to send a three page, single-spaced, no capitalization, or punctuation affidavit which we submitted to the court. I think this made the judge really mad.

I do have to read you a bit of this because it makes clear the Estate never would have licensed to us the right to do this book. They have been very controlling—as they have the right to be—about authorized sequels of the book. [Conroy] was negotiating to write an authorized sequel to *Gone With the Wind* and his agent called him one day and said, "'You are not going to like this but the Estate will require you to sign a pledge that says you will, under no circumstances, write anything about miscegenation or homo-

sexuality.' Julian, I said, that is the stupidest thing I ever heard. I'd never signed anything like that nor would any self respecting novelist. In fact, tell them, 'here is the first line of my sequel.' His agent said, 'Pat, just say no.' Pat replies, 'No! Tell them my first line is this: after Rhett Butler made love to Ashley Wilkes, he lit a cigarette and said, 'Ashley, did I ever tell you my grandmother was black?'"

He goes on to recognize the absolute wonderful humor about Alice's book which is there but is subtle. He talks about laughing out loud at the diversions and talking about how important it is for somebody to have answered *Gone With the Wind* in this way. He says, "The portrait of slavery done by Margaret Mitchell is one of the most smiley-faced and happy-darkies in the field we have in American literature. I know very few blacks who don't shutter with revulsion at GWTW's portrait of slavery." And then he talks about Alice's book. "Scarlett is black and Ashley is gay and Bell Watling is running a house of ill-repute filled with lesbians. This is funny stuff your honor and far, far funnier than it is being held up in court." I think he got it.

The judge in the district court, unfortunately, didn't get it. He looked up once from the bench and said, "But you killed Miss Scarlett." At the second hearing, Martin Garbus, who is well known sometimes as the First Amendment supporter on the other side, tried to compare what Alice had done to how we would feel if somebody took our other author, Philip Roth, and tried to rewrite his novels from the woman's point of view. I am Philip Roth's editor and I would not allow that. There is a very important distinction to be made because, again, as a publisher, I don't believe people should have the right to appropriate someone else's characters to retell a book from someone else's view just for the sake of telling it from someone else's point of view. The point for us was that parody has to be transformative. It has to turn the original on its head. It has to be ridiculing the original. That is why it is so important that it [parody] is protected. It is a really important form of criticism.

Nevertheless, as you all know, we lost at the District Court level. There was an injunction issued and we stopped all promotion. This is a heartbreaking experience for a publisher. Some of you may have been forced to take books off the shelves and fought it. But we had to do everything. We had to shut down our Web site, stop sending out promotion copies, stop all publicity. Of course, the genie was out of the bottle and within a few days, the advanced readers copies were going for $400 to $500 on eBay which just shows how hard it is to suppress speech in this country.

We did appeal to the Eleventh Circuit, of course. We wanted two things from them: we wanted them to lift the injunction and we hoped that they would weigh in on the merits of the case. After those first two really painful hearings in Atlanta, the Eleventh Circuit hearing was one of those grand courtroom days where our lawyers each argued briefly and then the lead judge said, "Just a minute please, everyone stay seated." AThen they ruled from the bench, lifting the injunction.

Of course, the courtroom erupted just as you see on television—everyone hugging each other. It was a grand moment for the publishing community. The Eleventh Circuit also talked about fair use and looked at the four factors that are used to define fair use in this country. One asks if the use is for educational or commercial interest. Of course, *The Wind Done Gone* was published for commercial interests. But the Court also recognized it as "principally and purposefully a critical statement that seeks to rebut and destroy the perspective judgments and mythology of *Gone With the Wind*."

I want to apologize to you who may love this book. One of the things that struck us as we were involved in this case was how much more powerful and hateful the book is from the film. I think that is what Alice Randall and many African-Americans respond to in *Gone With the Wind*. The film portrays a too-sweet portrayal of slavery but the book is filled with really hateful language. I am going to read you a couple of lines from *Gone With the Wind*, and I apologize. Joe Beck did this in court here and I think it was a very brave move. These are the words of the narrator in *Gone With the Wind*,

"How stupid Negroes were. They never thought of anything unless they were told and the Yankees wanted to free them." "Then Mammy was in the room. Mammy with shoulders dragged down by two heavy wooden buckets. Her kind black face, sad with the uncomprehending sadness of a monkey's face." "The faint niggery smell which crept from the cabin increased her nausea. And without the strength to combat it, she kept on retching miserably while the cabins and trees revolved swiftly around her." And one more, " These Negroes sat in the legislature where they've spent most of their time eating goobers and easing their unaccustomed feet into and out of new shoes."

You can still love *Gone With the Wind* and the story if you like, but I hope you can respect that people have the right to take that book on as a book and criticize it. I think that is exactly what Alice was trying to do with *The Wind Done Gone*.

To get back to the legal issues, the case also asked, did she take to much? The legal precedent we relied on was the 2 Live Crew case, which some of you may remember. 2 Live Crew took the entire Roy Orbison song "Pretty Woman" to do a parody; they needed the entire song to make their point. Alice did not take all of *Gone With the Wind* to make her point but she took as much as she needed. Can you argue that *The Wind Done Gone* has hurt sales of *Gone With the Wind* because it is so highly critical? Of course, in this country, criticism is fine and it doesn't matter if it hurts the original. It's okay to write a bad theatre review that closes the show the next day. Or, certainly, but

unfortunately, it's okay to publish a book review in the *New York Times* that kills the book. We don't like that much but it does happen all the time.

The Estate claimed quite disingenuously that Alice's book could be seen as a sequel to or a substitute to sequels they have under license and it could be seen as a market substitution for the original. They also claimed that people could confuse these two packages in a bookstore. You all probably recognize this type. The confederate flag is still on the spine of *Gone With the Wind* in current printing. *The Wind Done Gone* was packaged with a burst that says, "An Unauthorized Parody." I think that probably helped the sales more than it hurt it but we very carefully packaged the book to look nothing like *Gone With the Wind*. We were not trying to ride on anyone's coattails. Of course, we prevailed on that point as well.

The aftermath is that we decided together to settle the suit. I think it was be the best solution for both parties. But I think it was important to realize why we defended the case and the aftermath of it. I think the legal issues are important and, as a publisher, I think we have to be balancing First Amendment and copyright issues all the time. I think as a publisher the most principled decisions make good business sense. Houghton Mifflin has had a reputation for being an author-friendly house and we thought our author had a right to publish this book. We supported her as much as we could. We didn't set out as publishers to take on *Gone With the Wind*. That was the author's task. Our task was really to support our author and we came to understand why she had written what she had.

Certainly, we were vindicated legally and again, if you try to suppress speech in this country, it often backfires. A book that would have sold maybe 15,000 copies, sold 160,000 hardcovers and about 40 or 50,000 paperbacks. I think this book will go down in history as an important literary work. Ironically, it is now being taught alongside *Gone With the Wind* in many many courses, so it may be in fact helping the sales of *Gone With the Wind*. It really is important to read the books side-by-side. It was an interesting ride and for us, it had a happy ending.

**Remarks by R. Bruce Rich**

Good afternoon. Two very hard acts to follow here! I have been observing the First Amendment scene, particularly wearing my AAP First Amendment counsel hat, for almost thirty years now—an amazing thought for me! What is fascinating is trying to understand the tensions that are working in any particular area. What is the debate about? What is really causing the difficulties in an area that make them fascinating from the legal standpoint, so challenging from the publishing and authorial standpoint—as indicated by the recent parody episode and Michael's difficulties getting what sounds like a wonderfully creative and clever work published by a serious publishing house?

What I want to do is touch on two aspects of parody to give you a bit of insight on how the courts seem to be grappling with this issue. One is staying in the copyright vein that we have been talking about. A second is to talk a little about the interplay of parody and defamation or libel—injury to reputation—where there is some body of law as well.

In the copyright field, you have a balancing of interests: first, the interest of rewarding authors for their creativity, to stimulate, getting creative expression out to the public. In addition, everybody in our society is encouraged to build on this great well of knowledge and information. It is hard to be totally creative and totally novel. Everything builds on everything else and there is a great social good associated with that. You want to give a fair amount of latitude to new authors to build on what came before them.

In that fertile soil has grown something called the fair use doctrine—which is very much at the heart of the *Wind Done Gone* litigation. The fair use doctrine is sort of a little place or cubby hole in copyright—not so small a cubby hole—where First Amendment interests are generally viewed to be thrashed out in the context of a copyright setting. When you think about this area of tension in the First Amendment, you often have people who devoutly believe in the First Amendment on both sides of the dispute. You have large conglomerates who are themselves great beneficiaries of the First Amendment and of disseminating expression relying on copyright to protect their intellectual property against those who would encroach upon it, you have a subtler kind of thing going on in some of these cases. It is not always black and white and, indeed, people are on both sides of these issues depending on where their ox may be gored at any particular time.

The leading case in this area is one that Wendy mentioned—the U.S. Supreme Court case dating back to 1994 involving 2 Live Crew. They are a rap music group. They did a commercial parody of Roy Orbison's famous "Oh Pretty Woman" song. They called theirs "Pretty Woman." They basically did a take off on the lyrics with a message that they believed was an important message. They also took the opening base riff or musical phrase—the famous one from "Oh Pretty Woman"—and that appears prominently at the beginning of their work as well. Interestingly, in the beginning, they tried to get consent of the music publishing company. They were very up front. They said, "We want to do it. Here it is. We will pay you for it." The publishing company said, "Thanks, but no thanks." And they went and did it anyway.

That spawned what came to be a fairly celebrated piece of litigation. But what did the Supreme Court have to say about the concept of parody? They said a number of things that came to be of importance in the *Wind Done Gone* litigation, although from two very different perspectives from the two courts that looked at it.

Importantly, the High Court said, "Look, there is no question that parody provides an important social benefit"—implicitly, the kinds of benefits that Michael so eloquently spoke about. "Therefore, in some circumstances, we will allow a parody to claim the benefits of the copyright fair use doctrine." Meaning, even without the consent of the copyright owner, we will allow some taking of protected copyright expression under a fair use doctrine. This only begins inquiry, which is, in what circumstances and how much?

Now, the second obvious point the Court made was, in order for parody to accomplish its purpose, you have to allow the parodist to take some of the original work as part of it. That is absolutely necessary to achieve the purposes of parody. In the words of the Supreme Court, "Parody needs to mimic an original to make its point and so has some claim to use the creation of its victim's imagination." This still sort of begs the question, which is, in what circumstances, and how much?

The Court said a lot of people will come in and wave the First Amendment flag and say, "So long as I have published what I believe to be a parody, I am safe. It is a fair use. The presumption is, I can do it." The Court said, Not so fast. It's a balance. It's a hard call to make and we have to look case by case.

The Court then recognized something that a lot of courts claim to recognize but honor more in the breach than in the practice. How much of a judgement should a court make about how good or bad, how effective or not that parody is? Is it good or is it schlock? Well, the Supreme Court, recognizing what other courts have said, stated that this is terrain that judges are ill-equipped to put their toe into. We shouldn't get involved in those kinds of judgments. We shouldn't be the arbiters of the quality of parody. All that the Court should do is confine its examination to the issue of whether the work has, as a general matter, or at least parts of it have, a parodic character. And once you make that decision, you shouldn't weigh the thumbs on the scale depending on any particular judge's view on whether the parody has been effective or not. They quoted Judge Leval saying, "First Amendment protections do not apply only to those who speak clearly, whose jokes are funny, and whose parodies succeed." Which is very nice and apt. But again, in the experience of many of us, more honored in the breach in terms of judges delving into this terrain than not.

The Court interestingly said parodies do not have to be labeled. There is no reason to require parody to state the obvious or even the reasonably perceived. You do not have to brand it with the label "parody," notwithstanding that people will do this in practice.

"Copying isn't excessive," said the Supreme Court, simply because it takes "the heart of the expression." Compare this to a case that many of us in the publishing industry and the copyright field remember from some years ago, Gerald Ford's memoirs, published by Harper and Row, a celebrated copyright fair use case. This also went to the United States Supreme Court. Harper and Row won that case because 320 words were taken by the *Nation* magazine about the Nixon pardon, pre-publication, for two reasons. It co-opted first publication of the work by Harper, but also, the Court found the *Nation* "took the heart of the book." It went right to the most important aspects of the book.

Interestingly, in the area of parody, the Supreme Court is saying we're not so concerned about whether or not a parody goes into the heart. Indeed, it is the heart of parody to go to the heart of the expression and we are not going to take away the power and the force of parody automatically by saying, just because it strikes its target, it's in excess, it's beyond fair use. that is very important indeed, a central concept. It is the heart at which parody takes aim, says the Supreme Court. But, as Wendy indicated, the parodist needs to do more. You can't just show that you cleverly took and co-opted or adapted some of the plot lines or ridiculed them. You have got to do something transformative with the work. You have to make it something more. You have to make this a cut above give it its social benefit. And that is, of course, something very hard to do.

The Court in the 2 Live Crew case, by the way, didn't resolve any of this. They did what the Supreme Court and other courts sometimes do. They sent it back to lower courts to sort it all out, given all of these first principles which they enunciated. And then they mentioned something which Wendy mentioned, which is important namely, that this kind of work of parody isn't as likely to substitute for, or take away from sales of the original work, as other classic kinds of copyright infringement which supersede the demand for the original. Because of the nature of parody, they typically are going to appeal to different markets.

Now, what happened in the *Wind Done Gone*? It spawned two very serious and thoughtful opinions that were diametrically opposed: the original trial court opinion and then the reversal of that opinion by the Eleventh Circuit. My reading is that the opinons didn't reflect so much a different view of the legal principles—these were both intelligent opinions that cited all the right cases—so much as to me a different appreciation for the literary merit and, indeed, the purpose of the *Wind Done Gone*. At the end of the day, when you read the Eleventh Circuit opinion, the opinion that prohibited the injunction from being issued against the book being published, and found that there was likely a fair use, the Court ultimately believed in the social utility of Ms. Randall's work and said there has to be room in some combination of the fair use doctrine and the First Amendment to allow a work to breathe and certainly not be enjoined before it gets out in the marketplace. Let's let the American public—at any cost—have access to this work. And if someday it's proven that there is an infringement, there are damages which can be rendered to make the Estate

whole. We are not going to put a prior restraint on the dissemination of a work with such arguably important social utility to it.

But that is making quite a judgment about literary merit. It is very much stepping into the terrain and making a judgment about how serious, how good or bad, how effective this parody is. I am not sure there is a way to avoid it to get to a result like this but I would suggest the court is doing what the Supreme Court suggests the court should avoid doing. But I think that when it reaches a result we tend to agree with, we say hooray!

There were many points and counterpoints in the two opinions that I will not burden you with. I will read a couple to you just to make the point. This is what the district court had to say about its evaluation of the quality of the parody and what the Eleventh Circuit had to say. The district court said, Yup, there are some qualities of a parody—no question about it! But mainly we see this as a sequel. Indeed, we see this as an act of piracy because it takes so much so closely associated with *Gone With the Wind*. Ms. Mitchell's vision is but one fictional encapsulation of that time. Ms. Randall is, of course, free to create her own. Instead, she copied Ms. Mitchell's vision, retold the *Gone With the Wind* story, and then provided a second sequel.

Here is what the Eleventh Circuit had to say, "Principally and purposefully, *The Wind Done Gone* is a critical statement that seeks to rebut and destroy the perspective, judgments and mythology of *Gone With the Wind*." Two very different views of the literary purpose, and ultimately the success of achieving that purpose, of those two works. And you can do the same juxtaposing with different elements of the fair use doctrine. But what you had at the end of the day were very divergent opinions and very divergent views.

One issue separate from copyright infringement that caught everybody's attention was, in a hard case like this, is an injunction the appropriate remedy, at least before the case is over? The Eleventh Circuit, in as strong language is I've seen in any court, said, in this kind of case, it's just the wrong medicine even if you find that there might have been a violation.

Let me quickly jump into another area where there is tremendous tension between parody and other social interests. What happens if parody cuts at individual reputation(s) that the libel laws, laws of defamation, tend to protect? I want to give one example to show you how I think judges can here, too, really go off the deep end. This is a very recent opinion coming out of a middle level state appeals court in Texas. It is an opinion from May 2 of this year, and it is fascinating. It is called *New Times* v. *Isaacs*.

Here was a case in which the county district attorney and the county judge sued a local newsweekly called the *Dallas Observer* over an article published in the news section. The relevant background is this was published shortly after the tragic Columbine shooting. Some weeks after Columbine, in this Texas community, a seventh grader was detained by the judge who brought this libel suit in a juvenile facility after writing a very graphic Halloween horror story which depicted the murder of a teacher and two students. It was plainly a work of fiction. But this student was detained in a juvenile facility while it was determined if juvenile delinquency charges should be brought. The student was eventually released and nothing happened.

Two weeks after that, the *Dallas Observer* published an article called "Stop the Madness." I'll describe how the court itself describes this article. It says it's a report that "in the second homework-related arrest in as many weeks, a Denton county juvenile court judge jailed a Ponder student for suspicion of making a terrorist threat." The November 11 article, authored by staff writer, Rose Farley, reported that Cindy Bradley, "a diminutive 6 year old" was arrested during "storytime" in her class at Ponder elementary school for a book report she had written about an award winning children's classic *Where the Wild Things Are*, by Maurice Sendak.

According to the article, Judge Witten ordered Cindy detained for ten days at the Denton County Juvenile detention center while prosecutors decided whether to file charges. The *Dallas Observer* article describes Cindy as appearing subdued when she stood before Judge Witten "dressed in blue jeans, a pokemon T-shirt, handcuffs, and ankle-shackles." Judge Witten was quoted as chastising Cindy from the bench, "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. It is time for you to grow up young lady and time for us to stop treating kids like children."

The article further related that Denton County District Attorney Bruce Isaacs stated that he had not decided whether to prosecute Cindy. Isaacs was quoted saying, "We have considered having her certified to stand trial as an adult. But even in Texas there is some limits." This is the judge saying this, the judge ruling against this article writing this!

The article also reported sources saying that courthouse security officers ordered shackles for Cindy after they reviewed her school record, which included "reprimands for spraying a boy with pineapple juice and sitting on her feet." A bailiff was also quoted in the article as stating, "It is not easy finding cuffs that small. Fortunately, we ordered a special set last week after that other kid got busted."

And then, last but not least, there is a quote from then governor George W. Bush inserted into the article stating, "Parents must understand that zero-tolerance means just that. We won't tolerate anything." That shows some things don't change. That may have made it the most believable of all.

Here is this piece and what does the court say in that situation? The court said that because of certain factors, this

article could have been construed as being factually accurate and intending to convey that the judge and district attorney acted as portrayed and made the statements they are credited with.

The factors included the article's timeliness, its closeness t something real, and because it was timely. Its physical placement in a section of a newspaper entitled "News." There was no attempt "to make the article obviously ludicrous."

The believability of third party quotes such as from Governor Bush. There was no disclaimer that it was either satiric or parodic in nature. Because a bunch of gullible readers literally wrote letters and e-mails back as this appeared on-line saying, "These are terrible people, this judge and this DA." Under the gullibility test, it meant that surely this was to be viewed as real.

On that basis, that case was not dismissed in its early stages. The court basically said there was a cause of action and even the potential of what is called actual malice might be established which, as some of you may know, has a very high threshold for a libel plaintiff to recover, requiring knowing falsity. And in this situation we have a court that I don't think gets it at all. But it shows you that parody has many outflows in terms of legal implications. ☐

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*(First Amendment . . . from page 253)*

But now the stakes have risen. In the wake of September 11, Americans are afraid of more than just being offended. The results of the 2002 survey suggest that many Americans view these fundamental freedoms as possible obstacles in the war on terrorism.

That's not to suggest a monolithic response to these core First Amendment values. In truth, Americans are of multiple minds about the 45 words drafted by James Madison. While a majority of respondents say they respect the First Amendment, a significant percentage seems inclined to rewrite it:

- More than 40 percent of those polled said newspapers should not be allowed to freely criticize the U.S. military's strategy and performance.
- Roughly half of those surveyed said the American press has been too aggressive in asking government officials for information about the war on terrorism.
- More than four in ten said they would limit the academic freedom of professors and bar criticism of government military policy.
- About half of those surveyed said government should be able to monitor religious groups in the interest of national security, even if that means infringing upon religious freedom.
- More than four in ten said the government should have greater power to monitor the activities of Muslims living in the United States than it does other religious groups.

Clearly, the terrorist attacks have taken a toll. Principles that sound good in the abstract are a little less appealing when your greatest fear is getting on an airplane.

It's not entirely surprising that many Americans have second thoughts about the First Amendment, particularly during a time of crisis. After all, it was designed to protect minority viewpoints and faiths. That can be difficult to remember when there's an overwhelming public call for unity. Some have little patience with dissent.

Still, there are signs that Americans do appreciate the fruits of First Amendment freedoms, particularly access to information. At a time of great national unease, we all want to know more about the threats we face. Information is the best antidote for anxiety.

About forty percent of those surveyed said they have too little access to information about the government's war on terrorism, compared with just 16 percent who believe there's too much. Forty-eight percent of those surveyed believe there's too little access to government records, compared with just eight 8 percent who believe there's too much.

While many Americans believe that we have too much freedom under the First Amendment and that the nation's news media have too many privileges, they understand and appreciate the value of news and information.

The challenge for all Americans—today more than ever—is to truly embrace the freedoms of the First Amendment and show just how strong we really are. ☐

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*(censorship dateline . . . from page 262)*

run ads for the Spanish-language film "Sex & Lucia" in either paper, despite its honors at the Seattle International Film Festival this year. The decision was made in August after advertising representatives viewed a trailer provided by the film's distributors and a submitted print ad. Neither fit the newspaper's advertising guidelines for "adult-influenced entertainment," according to Times representative Kerry Coughlin. The decision did not affect the editorial decisions of both newspapers, which ran reviews of the film.

"It is a shame that these two newspapers are trying to block ads that will bring this wonderful film to the attention of the diverse readership in Seattle," Chris Blackwell, founder of the film's U.S. distributor, Palm Pictures, said in a statement.

The film, directed by Julio Medem, veers between fantasy and reality as a young waitress (Paz Vega) flees to an island after the loss of her boyfriend, where she meets other

strangers with a connection to him. The print ad was headlined by a critics' quote in large type as "One of the most erotic movies ever made!" with "And one of the best movies of the year" under it in smaller type. It also contained a box prominently saying: "This film is not rated but contains strong sexual content and language. No one under 18 is admitted."

"This is about the advertising content of the newspaper in general circulation," Coughlin said. "We put this newspaper in classrooms. It's really about having standards for advertising content. It's not a judgment on whether the film should be made or viewed. This is no way judgment or censorship on the film itself."

In the past, The Seattle Times Co. has refused to run ads for last year's NC-17 rated drama "L.I.E.," the unrated 2000 Oscar-nominated "Requiem for a Dream" and the unrated 1999 French film "Romance." Coughlin said there are no advertising bans on unrated or NC-17 films strictly because of rating. In April it ran ads for the unrated Spanish film "Y Tu Mama Tambien," which dealt with two sex-obsessed teenage boys. Landmark Theatres, which submitted the ad for "Sex & Lucia," did not contest the decision.

"I disagree, but I do not see the value of making a protest," said Ray Price, vice president of marketing. "Because a) I don't think the paper is going to change its philosophy, and b) it caricatures the film. I don't want people thinking it's salacious and have people coming looking for a salacious film."

"Although most of 'Sex and Lucia' is no more than American adult audiences are used to, there are moments that go further," said Kenneth Turan of the *Los Angeles Times*. "The film doesn't hesitate to feature brief shots of erections." Turan added that Medem refused to cut these scenes, which is why the film went unrated rather than receive an NC-17. Reported in: *Seattle Post-Intelligencer*, August 16.

## foreign

**Beijing, China**

Yahoo! defended its decision August 12 to sign off on voluntary content limitations in China, a move that critics charged opens the door to online censorship by the Web portal.

The agreement, called the "Public Pledge on Self-Discipline for the China Internet Industry," essentially ensures that Internet companies in China will abide by the country's pre-existing regulations. Although these regulations are controversial, including requirements that companies monitor and restrict information deemed "harmful," the pledge does not broaden existing laws, according to Yahoo!.

"The restrictions on content contained in the pledge impose no greater obligation than already exists in laws in China," said Greg Wrenn, associate general counsel at Yahoo!. "If this called for a form of self-censorship beyond laws that exist in China, we would have serious questions." Wrenn added that Yahoo! will conform to local laws in countries where it operates. The pledge was signed in March by Yahoo's wholly owned subsidiary based in Hong Kong and Chinese software company Founder, which operates Yahoo China. Founder in 1999 licensed the Yahoo brand to operate the site and agreed to share revenue with the Web portal.

This was not the first time that Yahoo! has yielded to the laws of another land. Yahoo! was embroiled in a legal dispute in France two years ago after human rights groups sued the company for the sale of Nazi memorabilia on its site. A French judge sided with the groups and ordered Yahoo! to block French citizens from accessing the material or face steep fines. A U.S. court later declared the French law unenforceable in the United States.

Still, some critics claim that Yahoo!'s public pledge could undermine its credibility as a leader in the Internet industry. Human Rights Watch, an organization critical of the Chinese Government's restrictions on free speech and expression, issued a public statement condemning Yahoo!'s signing of the pledge. The organization claimed that by signing the pledge, Yahoo was supporting a government known for its censorship of online information.

"Why take a public endorsement?" said Meg Davis, an official of Human Rights Watch. "There doesn't seem to be a clear reason for them to be signing this pledge. The pledge is clearly in contradiction to international rights and to freedom of expression." Davis added that, to her knowledge, no other Western company signed on to the pledge. Reported in: CNET News.com, August 13.

**Gansu Province, China**

A Chinese court sentenced a former police officer to eleven years in prison for downloading articles from the Internet, a human rights group announced August 5. Li Dawei, a former police officer from Gansu province in northern China, was arrested in April 2001 and later charged with using the Internet to overthrow the Chinese government, according to the Hong Kong-based Information Center for Human Rights and Democracy.

Li was accused of downloading five hundred "reactionary" articles from the Internet and publishing them in ten books. He was also accused of communicating with overseas "reactionaries" by phone and e-mail.

The Center said that on July 24, the Tianshui Intermediate Court sentenced Li to eleven years in prison. A court in Gansu had reportedly accepted an appeal from Li but had not set a hearing date.

To date, at least 26 individuals are being detained by China for using the Internet for political or religious purposes. Many Chinese officials view the Internet not only as a valuable tool for communication and commerce. According to reports from the China Internet Network Information Center, the number of Internet users in the country grew to 45.8 million users by July 2002. Many studies indicate that the number of Net users in China is roughly doubling every year or two. Even if these studies exaggerate the number of users, there are clear indications of rapid Internet growth in China. Such growth concerns officials, who also view the Internet as a potential threat to social stability. Many overseas sites—over 500,000, according to one report—are banned for their "subversive" content. Reported in: Digital Freedom Network, August 6.

**Shanghai, China**

China's government began blocking access to two widely used Internet search engines, Google and AltaVista, intensifying its effort to control the flow of information while at the same time embracing the profit-making potential of the global computer network. On September 12 Google's site was again accessible, with no explanation. But some content linked to the site remained blocked—for example, Tibetan independence sites. AltaVista still appeared to be blocked.

The government began blocking Google in early September and AltaVista a week later. More than 45 million Chinese use the Internet. The government often blocks access to Western news sites such as the *New York Times*, the *Washington Post* and the British Broadcasting Corp. But China traditionally has not interfered with search engines, the most widely used tools for finding information on the Web.

Recently, however, the government discovered that the search sites amount to a gap in its armor. China's Internet users have been able to link through Google to sites operated by the Falun Gong religious group, which the government has banned as a cult, as well as those run by advocates for Tibetan independence. Google is a particularly effective bridge to such content because it has an excellent Chinese-language search capacity.

At a news conference in Beijing, an official with China's Ministry of Foreign Affairs, Kong Quan, declined to comment specifically on the Google case, but he acknowledged that the government was concerned about "harmful things on the Internet" and said that "this information should not be allowed to pass freely."

A Google, Inc., spokesman said the company was notified by its users that its site was being blocked. "We are currently working with Chinese authorities to resolve this issue," Google said in a statement.

AltaVista Co. representative Joanne Hartzell said the company was not sure its site was being blocked. "We haven't received any official notification from the Chinese government," she said. AltaVista contacted the Chinese consulate in San Francisco but had not heard back. The company has been directing users in China to an alternate address for its search service, Raging.com, which is still accessible.

According to sources with knowledge of the decision, China's leaders opted to block Google indefinitely after discovering that a search using the name of China's president, Jiang Zemin, yields a trove of articles from Chinese-language newspapers in Taiwan, Hong Kong, Australia and the United States that are not allowed to circulate.

"The amount of information that was available via Google was shocking to the leadership," one source said.

David Chen, 34, was born in China and has studied and worked in Australia, the United States, Hong Kong and Taiwan. He is the president of Harcourt Cos., a Shanghai-based holding company that has invested about $20 million in telecommunications, software and Internet ventures here over the past two years. Chen complained that the lack of access to Google is impeding his ability to find new investments.

"This kind of thing should not happen," he said. "Information is so important in today's business. We believe in China's economic growth, and that's why we're still here, but it's very important for us to be able to access good information."

When China started blocking Google, typing in the site's address generally produced an error message, as if the page did not exist. Then China's censors implemented a new technique: Those seeking Google's page were diverted—"hijacked," in the parlance of the World Wide Web—to different search sites based in China.

In Beijing and Shanghai, some Google seekers were diverted to a search site run by Beijing University, which posted a message denying responsibility. Others were taken to Baidu.com, a Chinese-language Google competitor backed by International Data Group, the media giant. The hijacking fueled speculation that traditional concerns about banning sensitive material were being creatively employed as a lever in a modern-day competition for market share. The extra traffic on the Chinese search engines will boost ad revenue. Baidu's marketing director, Bi Sheng, said traffic to his site increased noticeably, though he said the company had no knowledge of how the redirection from Google occurred.

In the past two years, China's methods of combatting unwanted content have grown markedly more sophisticated, experts said. Much like Carnivore, the controversial FBI program that sifts through millions of e-mails to search for key words, China has been implementing new programs that can block articles that mention "Tibet" or "Falun Gong" but allow access to the rest of the site that holds

them. The government appeared to use that approach to Google's site. Such programs also can monitor e-mail.

Experts said these systems employ routers made by Cisco Systems, Inc., and a range of software, some purchased off the shelf from major Western companies and some developed in China. Reported in: *Washington Post*, September 12. □

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*(from the bench . . . from page 272)*

## secrecy

**Columbia, South Carolina**

South Carolina's ten active federal trial judges have unanimously voted to ban secret legal settlements, saying such agreements have made the courts complicit in hiding the truth about hazardous products, inept doctors and sexually abusive priests.

"Here is a rare opportunity for our court to do the right thing," Chief Judge Joseph F. Anderson, Jr., of United States District Court wrote to his colleagues, "and take the lead nationally in a time when the Arthur Andersen/Enron/Catholic priest controversies are undermining public confidence in our institutions and causing a growing suspicion of things that are kept secret by public bodies."

If the court formally adopts the rule, after a public comment period that ended September 30, it will be the strictest ban on secrecy in settlements in the federal courts. Mary Squiers, who tracks individual federal courts' rules for the United States Judicial Conference, said only Michigan had a similar rule, which unseals secret settlements after two years. The conference is the administrative body for federal courts.

Judge Anderson said the new rule might save lives. "Some of the early Firestone tire cases were settled with court-ordered secrecy agreements that kept the Firestone tire problem from coming to light until many years later," he wrote. "Arguably, some lives were lost because judges signed secrecy agreements regarding Firestone tire problems."

Lawyers said the proposal, which was widely discussed at the American Bar Association's conference in Washington, was likely to be influential in other federal courts and in state courts, which often follow federal practice in procedural matters. In South Carolina, the state's chief justice has expressed great interest in the proposal.

The Catholic Church scandals are one reason for a renewed interest in the topic of secrecy in the courts, legal experts said. "All reactions are going to be affected by the bureaucratic cover-your-cassock responses of the church hierarchy," said Edward H. Cooper, a law professor at the University of Michigan.

But some legal experts and industry groups called the blanket rule unwise. "The judges of South Carolina, God bless them, have not evaluated the costs of what they are proposing," said Arthur Miller, a law professor at Harvard and an expert in civil procedure. He said the ban on secret settlements would discourage people from filing suits and settling them, and threaten personal privacy and trade secrets.

Joyce E. Kraeger, a staff lawyer at the Alliance of American Insurers, said the current system, in which judges have discretion to approve sealed settlements or not, worked fine. "There shouldn't be a one-size-fits-all approach," Kraeger said.

Jeffrey A. Newman, a lawyer in Massachusetts who represents people who say they were abused by Catholic priests, praised the South Carolina proposal. Newman said he regretted having participated in secret settlements in some early abuse cases. "It was a terrible mistake," he said, "and I think people were harmed by it." Newman said a rule banning secret settlements, combined with the Internet, would create a powerful tool for lawyers seeking information on patterns of wrongful conduct.

The impact of such a ban could be limited, however, if adopted only by federal courts. Most personal injury and product liability cases, and almost all claims of sexual abuse by clergy, are litigated in state courts. Several states have laws and rules that limit secret settlements, typically in cases involving public safety. Florida, for instance, forbids court orders that have the effect of "concealing a public hazard." Experts say many of those limits are difficult to enforce, particularly when every party to a case is urging the judge to approve a settlement. Indeed, Judge Anderson's colleagues rejected his proposal, which was limited to matters of public health and safety, in favor of a blanket ban.

The federal proposal in South Carolina caught the attention of Jean Toal, the chief justice of the South Carolina Supreme Court. Chief Justice Toal said that she would await the formal adoption of the rule before making her own proposal, but that the issue was important and timely. "I'm very intrigued about this," she said, noting that some of her interest arose from "recent claims involving pedophilia and sealed cases."

Even under the South Carolina proposal, the settlement amount and the requirement that parties keep quiet could be placed in a private contract not filed with the court. If the contract were violated, a new lawsuit would be required to seek redress. A court-approved settlement, on the other hand, can be enforced by returning to the original judge for a contempt order.

"If they don't want the might and majesty of the court system to enforce their settlement, that's one thing," Chief Justice Toal said. "Sealing the economic terms of the settlement is only one part of it. We're often talking about sealing the entire public record of the case."

Opponents of the proposal argue that secrecy encourages settlements, which they say are desirable given limited court resources.

Judge Anderson told his colleagues that their court, at least, had available capacity. He wrote that the court had disposed of 3,856 civil cases in the previous 12 months, which included only 35 cases tried to a verdict. "If the rule change I propose were enacted and it did result in two or three more jury trials per judge per year (which is far from certain)," Judge Anderson wrote, "I think we could handle the increased workload with little problem."

Robert A. Clifford, a Chicago lawyer who typically represents plaintiffs, scoffed at the notion that defendants would not settle without secrecy provisions, saying the alternative to a public settlement was a far more public trial. "The undeniable fact is that the reason they want secrecy is so victim No. 2 does not find out what victim No. 1 got," Clifford said.

Kraeger, of the insurers alliance, did not dispute that. "Making that information widely known could have the effect of driving up litigation costs," she said.

Judge Anderson was most concerned with the selling of secrecy as a commodity, he said in an interview. He recalled being told by a plaintiff's lawyer that the lawyer had obtained additional money for his client in exchange for the promise of secrecy. "That's what really lit my fuse," the judge said. "It meant that secrecy was something bought and sold right under a judge's nose." Reported in: *New York Times*, September 2.

## etc.

**Carson City, Nevada**

A federal appeals court reversed a judge in a Northern Nevada case and ruled August 26 that motorcyclists can wear "biker colors," even those with swastikas, in the courthouse. The U.S. Court of Appeals for the Ninth Circuit tentatively canceled a ruling by U.S. District Court Judge Philip Pro and ruled that a ban on such garb in a Carson City court building violated First Amendment rights of expression.

Circuit Judge William Fletcher, writing for a three-judge panel, said restrictions that led to the arrests of motorcyclists who refused to take their jackets off at the courthouse were unreasonable. The ruling applies to areas of court buildings except for courtrooms where, Fletcher said, judges can impose restrictions to ensure "a reasoned resolution of issues."

But he said there was nothing to show that extending a ban on biker clothing to hallways or other noncourtroom areas "can plausibly be justified by the need to protect the courtroom environment itself." The judge also said there's no evidence to conclude that "clothing indicating affiliation with biker organizations is particularly likely to be disruptive or intimidating."

While court officials defended the clothing rules by citing a confrontation between security guards and the bikers, Fletcher said the bikers were protesting "what they perceived as an unconstitutional policy."

"It was not a disturbance that demonstrates any disruptiveness inherent in the wearing of such clothing," Fletcher said. "The government may not use a conflict over the challenged regulation as evidence of circumstances giving rise to the need for that very regulation."

Citing 1985 and 1971 U.S. Supreme Court cases on First Amendment rights, Fletcher added it's not reasonable "to prohibit speech in courthouse hallways merely because it may offend some people's sense of decorum." There was no evidence of any danger created by the bikers' jackets and so the rules seem to be "impermissibly motivated by a desire to suppress a particular point of view," the judge said.

The case was remanded to Judge Pro to see whether Carson City judges and the district attorney want to add anything to the record to bolster their case. Until that occurs, Fletcher said he wouldn't hold that the bikers were completely successful with their appeal.

The controversy began with the March 2001 arrests of Scot Banks and Steve Dominguez when they appeared at the courthouse on a traffic citation and refused to remove their "Branded Few" motorcycle club jackets that bear a swastika in the insignia.

Ten other bikers were arrested when they came to the men's hearing and also refused to take their jackets off. Reported in: *Las Vegas Review-Journal*, August 27. ☐

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*(is it legal . . . from page 278)*

provide the the information that would allow the record industry to do so. He added that the demand that Verizon block access to the user's files was only a formality to comply with the terms of the copyright act; the RIAA simply wants to warn the subscriber that he or she is violating the law.

Deutsch said the industry's motives in the case are particularly suspect because Verizon offered a simple alternative: The RIAA could sue the user, naming him or her as an unknown party, and then subpoena Verizon for the user's name. Under that scenario, Deutsch said, Verizon would comply because there would be a valid legal action pending.

But the labels "would like to be able to serve millions of these types of subpoenas and collect subscriber names, and then pick out the most favorable for a lawsuit against the user community," Deutsch said.

In briefs filed September 3, the RIAA said that until Verizon's refusal to honor the subpoena, many Internet service providers had given it the identities of individuals accused of copyright violations. "It's ironic that Verizon's

position basically encourages us to sue their subscriber," he said.

Deutsch said the user has not been notified of the dispute because the company's view is that the subpoena is invalid. In other cases, in which potentially illegal material is hosted on Verizon's network, users receive notification and time to take the material off the system before Verizon does so, she said.

Despite mounting efforts by the recording industry—including successfully shutting down the trailblazing Napster service—file sharing continues to boom. According to the Web site of Kazaa, one of the leading providers of file-sharing software, nearly 14 million copies of its product have been downloaded by users, 2.6 million of them in the past month. File-sharing software can be used for documents, media files or other data, and Kazaa warns its users against violating copyrights. But music swapping abounds.

In response, the music industry is pushing on a number of fronts. At the industry's behest, nineteen members of Congress asked the Justice Department to aggressively enforce the law, and the agency has said it will do so. Pending legislation sponsored by Reps. Howard L. Berman (D-CA) and Howard Coble (R-NC) would allow the industry to hack into offenders' computers to disrupt file sharing, while the industry is also putting out fake music files to try to discourage downloads. Reported in: *Washington Post*, September 4.

## police misconduct

**Denver, Colorado**

Holding the just-released 18-page file that had been secretly compiled on her by police, activist Barbara Cohen smiled and shrugged her shoulders. "Don't I look like a dangerous criminal?'' the barely 5-foot tall, 53-year-old gray-haired legal secretary asked.

About two hundred people crowded the lobby of Police Department headquarters September 3 after officials opened 3,200 "spy files'' on local activists and organizations. City officials have conceded police went too far when they began documenting individuals and groups some three years ago. Mayor Wellington Webb, himself the subject of police surveillance when he was a young activist, has condemned the practice. He said it violated city policy.

Many who waited for up to an hour to see their file received papers that still smelled of black marker where police had deleted the names of people linked to them. Some of these files, which were categorized by groups, individuals and incidents, contained inaccurate information, some said.

Cohen, who belongs to the group End the Politics of Cruelty, said she is considering a lawsuit after police linked her to a motorcycle group she never heard of. News that religious and peace groups were among those placed under surveillance since about 1999 drew charges of police misconduct, an investigation by a three-judge panel and the decision to let some people see their files before the reports are purged.

Mark Silverstein, legal director of the Colorado chapter of the American Civil Liberties Union, had a file for speaking at a rally in February 2000, which he insisted he didn't attend. "It sounds like I ran my mouth off at a rally, but I wasn't there,'' he said.

The American Friends Service Committee, a Quaker group and a Nobel Peace Prize winner, was listed as a criminal extremist group by police, according to the ACLU. So was the Chiapas Coalition, which supports the Mayans of the Chiapas state in Mexico where there have been guerrilla uprisings. Amnesty International was listed as a civil disobedience group.

Some officers were not properly trained in intelligence gathering and some people and groups may have been misclassified as criminal extremists, said C.L. Harmer, spokeswoman for the Department of Safety, which oversees the police department. The system has been examined by outside auditors and training is under way, she said.

Criminal intelligence gathering, however, remains an important police tool, Harmer added. "As we approach 9-11, I think it reaffirms the legitimate use of legitimate criminal files,'' she said. Records of people not suspected of crimes will be released to those people, then purged after November 1. However, the city attorney's office will keep copies of all files, including those eliminated by police. The names of people or groups considered legitimate targets of surveillance, as determined by an outside auditor, will remain in the files and won't be released. Reported in: *New York Times*, September 4. □

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*(most censored stories . . . from page 251)*

And Barlow writes that Rick Scott, president of Columbia, the world's largest for-profit hospital corporation, "has publicly vowed to destroy every public hospital in North America," saying doctors, "are not 'good corporate citizens.'" Merrill Lynch has already predicted public education will be privatized. *Source: Maude Barlow, The Ecologist, Feb. 2001.*

**3. U.S. Policy Funds Human Rights Abuses in Colombia**

In October 2001, Human Rights Watch released a report revealing the ugly truth about U.S. involvement in Colombia. The report contained evidence that the Colombian military was working closely with rightwing paramilitary death squads such as the United Self Defense Forces of Colombia (AUC). In other words, the third largest recip-

ient of U.S. aid and a close ally in the war on drugs was using American dollars to fund groups known to be responsible for more than 70 percent of human rights abuses in Colombia's civil war.

It was a startling revelation that would have made news on most days, especially since the State Department had designated the AUC as a "foreign terrorist organization," charged with kidnaping, pillaging and the massacre of hundreds of civilians. But few media outlets covered the report at the time. The headlines were focused instead the global war on terror and the imminent war on Afghanistan.

The lack of media attention became less excusable in February, when the Bush administration announced its plans to expand its cooperation with Colombia. The White House requested $98 million in new Pentagon training and equipment for the Colombian military, in a new initiative to recruit Colombia as an ally in the global war on terror.

Jim Lobe, one of the journalists who covered the story, says the war on terrorism has "conspired to substantially reduce attention to paramilitary, as opposed to guerrilla abuses." FARC and other leftist guerillas are labeled "terrorist" groups within this global us v. them narrative, while crimes committed by government-sponsored death squads are brushed aside. According to Lobe, journalists have bought into this flawed narrative mainly due to their own view of Latin American nations as inherently violent. *Sources: Alexander Cockburn and Jeffrey St. Clair, Counterpunch, July 1, 2001; Jim Lobe, Asheville Global Report, Oct. 4, 2001; Dan Kovalik and Gerald Dickey, Steelabor, May 2001; Rachel Massey, Rachel's Environment & Health News, Dec. 7, 2001.*

**4. Bush Administration Ordered FBI Off Bin Laden Trail**

Shielding the Saudi royal family and their friends from bad press is a veritable presidential tradition, as Greg Palast learned when he launched an investigation into why the FBI took its agents off the trail of bin Laden family members residing in the U.S. Drawing on information he uncovered in classified FBI documents, Palast reported that bin Laden's brother, Abdullah bin Laden, who lived in Washington, was a suspect in terrorist activities as long ago as 1996 but high-up intelligence officials pressured the FBI to discontinue its surveillance. "There were always constraints on investigating the Saudis," an intelligence source told Palast, who broke the story just two months after 9/11. Those restrictions were tightened considerably when George W. Bush took office.

Both the Bush and the bin Laden families have significant holdings in the Carlyle Group, the enormous private investment firm that has grown bloated off U.S. defense contracts. It seems as if the U.S. government is more in the business of protecting the Saudis and its own oil interests than of finding the perpetrators of 9/11. Change is in the wind, however; recent public opinion polls show that Americans are growing increasingly disenchanted with Saudi policy—and perhaps, by extension, Bush's financial ties to the royal family. *Sources: Greg Palast and David Pallister, The Guardian, Nov. 7, 2001; Rashmee Z. Ahmed, Times of India, Nov. 8, 2001; Amanda Luker, Pulse, Jan. 16, 2002.*

**5. U.S. Destruction of Iraqi Water Supply**

The Persian Gulf War ended more than a decade ago, but for many Iraqi citizens, the real misery had just begun. Thomas J. Nagy uncovered documents of the Defense Intelligence Agency proving beyond a doubt that the United States government, after destroying the Iraqi water system, sanctioned the country from improving their water with purification equipment and importing chlorine.

The six documents Nagy discovered confirm that the Pentagon and the U.S. government fully understood the consequences of their decision to degrade the water supply. One document plainly states, "conditions in Baghdad remain favorable for communicable disease outbreaks," and another says, "the main causes of infectious diseases, particularly diarrhea, dysentery, and upper respiratory problems, are poor sanitation and unclean water. These diseases primarily afflict the old and young children." This blatant act of inhumanity is in direction violation of the Geneva Convention, which expressly prohibits destroying the source of a civilian population's ultimate survival. Source: Thomas J. Nagy, The Progressive, Sept. 2001

**6. Renewed Threat of Nuclear Warfare**

In the summer of 2001, Stephen Schwartz, publisher of the *Bulletin of the Atomic Scientists*, warned his readers that an influential group of right-wing analysts, scientists and members of Congress were "quietly paving the way for a nuclear revival." Schwartz wrote: "They want to build a variety of new and improved warheads, including a new generation of highly accurate, ground-penetrating, bunker-busting beauties."

Few reporters paid attention at the time. But the following year, when the *Los Angeles Times* leaked the details of the Pentagon's plans to revamp its nuclear policy, it became apparent that the threat of nuclear war was more serious than ever. The Nuclear Posture Review (NPR) emphasized developing "usable" lower-yield weapons and expanding the number of scenarios under which the United States might use or threaten to use nuclear arms.

Over the past six months, the threat of nuclear warfare has received far greater attention. The mainstream media has paid close attention to the Bush administration's decision to pull out of the Anti-Ballistic Missile Treaty, and has attacked the Bush-Putin missile accord as dangerous and ineffective. But as Schwartz points out, this attention has

been "episodic" rather than sustained, primarily due to the lack of controversy. "There has been no sense in the public or Congress that this is wrong," he says.

"What is required is a massive reeducation effort." Source: Stephen I. Schwartz, Bulletin of the Atomic Scientists, July 2001.

**7. Public Schools Become Guinea Pigs for HMO Model**

Public schools ain't so public anymore. For over a decade, private, for-profit educational management (EMO) companies have billed themselves as the saving grace for America's failing school systems by promising to cut costs and raise standards. All this while padding shareholders' wallets.

But EMOs like Edison Schools, Inc., have proved unsuccessful thus far. Studies cited by Barbara Miner in her *Multinational Monitor* article, "Business Goes to School," found that EMO schools are not besting traditional public schools. And return on private investment has been nonexistent.

The business media has followed the ups and downs of EMOs closely over the years. Edison made *Wall Street Journal* headlines this summer for losing its $39 million contract with the Dallas school board. Some investors have even sued Edison for misreporting revenue. Vanishing hopes of profitability may now be scaring away some investors who once thought EMOs would do for schools what HMOs did for health care. *Sources: Barbara Miner, Multinational Monitor, Jan. 2002; Frosty Troy, Progressive Populist, Nov. 15, 2000; Dennis Fox, North Coast Xpress, Winter 2000; Linda Lutton, In These Times, June 2001.*

**8. NAFTA Impoverishes Small Family Farmers**

In June of 2001, Public Citizen released a report graphically illustrating the failure of NAFTA to increase the income of farmers. Not only did American farms lose nearly $18 billion in annual revenue, but Mexican farmers' income fell 17 percent. Canadian farmers, who were told to expect a $1.4 billion increase in income, found their bank accounts $600 million emptier. The NAFTA/Farm report perfectly represents the larger goal of NAFTA, the transfer of wealth from small, independent operators to multinational conglomerates. As over 33,000 small American farms went out of business, agribusiness giants such as ConAgra and Archer Daniels Midland had significant earnings gains. From 1993 to 2000, ConAgra's profits grew 189 percent from $143 million to $413 million; and Archer Daniels Midland's profits nearly tripled between 1993 and 2000 from $110 million to $301 million. Small wonder the media conglomerates failed to report on the death of free trade. *Sources: Anita Martin, Fellowship of Reconciliation, Dec. 2000; Jim Hightower, Hightower Lowdown, Sept. 2001.*

**9. Housing Crisis in the U.S.**

Six million Americans currently have no place to call home, as affordable low-cost housing continues to waste away in a silent, even hostile political climate. In recent years, around 1.5 million units of housing have disappeared—which means millions of children growing up homeless or in housing that is substandard and potentially hazardous.

Randy Shaw, director of Housing America, a San Francisco-based housing rights organization, reported in *In These Times* that America's housing situation is dire and only getting worse. Shaw reports that the silence that surrounds the issue in both the political sphere and mass media is confounded by the vast institutional problems of corruption and limited budgets faced by the federal Department of Housing and Urban Development. With the new downturn in the economy, this is a story that continues to unfold, and continues to get little notice in the mainstream press. Source: Randy Shaw, In These Times, November 2000.

**10. CIA Spooks Destabilize Macedonia**

Look at the front page of your newspaper any time in the last few months and you've seen a story about the U.S. protecting its interests abroad, usually in the form of discussions about the once and future war on Iraq. But one story you probably haven't seen is about the U.S. using NATO forces and CIA money to promote an alliance with Macedonia, in hopes of controlling that country's oil supply. Control and ownership of the AMBO project (Albanian-Macedonian-Bulgarian Oil), which centers around a proposed pipeline that traverses the three Balkan nations, has been exclusively granted to a consortium of American-led interests, notably Vice President Dick Cheney's Halliburton Energy.

Michel Chossudovsky, director of the Centre for Research on Globalisation, contends that U.S.-controlled interests in Macedonia are disrupting peace talks in order to justify NATO intervention and secure an American and British affiliation for the controlling forces, rather than ties to UN interests. As A.C. Thompson points out, the hypothesis is credible and merits further exploration, although Chossudovsky's story is ultimately "more of a starting point than a smoking gun." *Source: Michel Chossudovsky, GlobalResearch.com, June 14, 2001 and July 26, 2001.* □

# intellectual freedom bibliography

*Compiled by Beverley C. Becker, Associate Director, Office of Intellectual Freedom.*


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