newsletter on intellectual freedom

IFC ALA

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closure of federal libraries angers scientists

The NASA library in Greenbelt, Maryland, was part of John C. Mather's daily routine for years leading up to the astrophysicist's sharing of the 2006 Nobel Prize for shedding new light on the big bang theory of creation. He researched existing space hardware and instrumentation there while designing a satellite that collected data for his prize-winning discovery.

So when he learned that federal officials were planning to close the library, Mather was stunned. "It is completely absurd," he said. "The library is a national treasure. It is probably the single strongest library for space science and engineering in the universe."

Mather is one of thousands of people who critics say could lose access to research materials as the government closes and downsizes libraries that house collections vital to scientific investigation and the enforcement of environmental laws.

Across the country, half a dozen federal libraries are closed or closing. Others have reduced staffing, hours of operation, public access, or subscriptions.

In Washington, books are boxed at an Environmental Protection Agency library that helped toxicologists assess health effects of pesticides and chemicals. The General Services Administration headquarters library where patrons conducted research on real estate, telecommunications, and government finance was shuttered this year, as was the Department of Energy headquarters library that collected literature for government scientists and contractors.

Officials say the cutbacks have been driven by tight budgets, declining patronage and rising demand for online services. And they say leaner operations will improve efficiency while maintaining essential functions. "We are trying to improve access and . . . do more with a little less money," said Linda Travers, acting assistant administrator for the EPA's office of environmental information.

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in this issue

targets of the censor

books

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IFC report to ALA Council

The following is the text of the ALA Intellectual Freedom Committee's report to the ALA Council delivered at the ALA Midwinter Meeting in Seattle by IFC Chair Kenton Oliver on January 24.

The ALA Intellectual Freedom Committee (IFC) is pleased to present this update of its activities.

Information

Festschrift to Honor Gordon M. Conable

At the 2005 Midwinter Meeting, the Intellectual Freedom Round Table (IFRT), the Freedom to Read Foundation (FTRF), and the IFC began work on a *festschrift* to honor Gordon M. Conable. It is anticipated the *festschrift* will be published in 2007. All proceeds will be donated to the Gordon M. Conable Fund of the Freedom to Read Foundation.

Freedom of Information Act Request

In the fall of 2005, the American Civil Liberties Union announced it had filed an Freedom of Information Act (FOIA) request after receiving information leading it to believe the federal government may be surveilling organizations actively opposed to the USA PATRIOT Act in whole or in part.

Given ALA's strenuous efforts in regard to Section 215 (and to a lesser extent, Section 505), ALA councilors suggested ALA also should file an FOIA request to determine whether it, its divisions, its staff, and/or its members are under FBI surveillance. The Executive Board and ALA Executive Director Keith Michael Fiels asked the Office for Intellectual Freedom and the Washington Office to develop such a request. The Freedom to Read Foundation agreed to join the effort since the Foundation and ACLU have jointly filed several other FOIA requests related to the USA PATRIOT Act.

ALA leaders and members sent FOIA requests to Theresa Chmara, FTRF Counsel, who compiled them, and filed the ALA request prior to Midwinter.

Fostering Media Diversity in Libraries

The IFC Impact of Media Concentration on Libraries Subcommittee has drafted "Fostering Media Diversity in Libraries: Strategies and Actions" to provide libraries, library consortia, and library networks with a centralized list of strategies and actions to help them fulfill one of their key responsibilities: to provide access to a diverse collection of resources and services. Special attention has been given to the acquisition of and access to small, independent, and alternative sources—including locally produced ones—in all formats: print, AV media, and electronic.

A copy will be available for review following this Midwinter Meeting.

Projects

Implementation of Resolution on National Discussion on Privacy

At the 2006 Annual Conference, Council adopted the "Resolution on National Discussion on Privacy," which resolves that "the Intellectual Freedom Committee, Intellectual Freedom Round Table, and ALA Fostering Civic Engagement Member Interest Group collaborate with other ALA units toward a national conversation about privacy as an American value."

To implement this resolution, it is proposed that ALA sponsor a national conference on privacy, tentatively entitled "Taking Back American Values." As part of this effort to encourage collaboration and conversation, this conference will involve organizations and individuals from many spheres (e.g., academic presidents and provosts to talk about the affects of CALEA on academic institutions) and will feature nationally known experts on privacy from a variety of fields. The discussions will focus on the exhibit topics, and more, and will help bring attention to the more than apparent attempts to eradicate privacy—indeed, our very expectations of privacy—as an American value.

As part of the ALA Emerging Leaders 2007 project, under the auspices of the Intellectual Freedom Round Table, ALA Past President Pat Schuman (mentor) and Judith Krug (ALA contact), will be working with a number of emerging leaders to help answer how the public views privacy and the related issues of security and transparency and how ALA can frame the discussion to share our views with the public.

Graphic Novels Chapter

OIF, the National Coalition Against Censorship, and the Comic Book Legal Defense Fund developed an introduction to graphic novels for librarians, "Graphic Novels: Suggestions for Librarians." It is available online at www.ala.org/ala/oif/ifissues/graphicnovels_1.pdf. This guide will be noted in Booklist's Graphic Novel Spotlight issue (March 15), along with related links to OIF's "Dealing with Challenges to Graphic Novels" page (www.ala.org/ala/oif/ifissues/graphicnovels.htm).

"Graphic Novels: Suggestions for Librarians" prompted Martha Cornog, a former librarian, and author of the Oboler Award–winning book, *Libraries, Erotica, & Pornography* (Oryx Press, 1991), to contact OIF about whether its staff would be interested in contributing a chapter to her upcoming work, *Graphic Novels: Beyond the Basics: Insights and Issues for Libraries*, to be published by Libraries Unlimited. Three OIF staff members (Erin Byrne, Deborah Caldwell-Stone, and Don Wood) will contribute a chapter addressing censorship issues, including policies and guidelines for coping with censorship and challenges, as well as

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FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's Report to the ALA Council presented January 22 at the ALA Midwinter Meeting in Seattle by FTRF Chair John W. Berry.

As President of the Freedom to Read Foundation, I am pleased to report on the Foundation's activities since the 2006 Annual Conference.

You may recall that last year in San Antonio, author Sandra Cisneros generously agreed to appear at a fundraiser for the Freedom to Read Foundation. Her appearance drew an enthusiastic audience and generated much-needed funds and new members for the Foundation. We knew it was a tradition we had to continue.

On Sunday night, January 21, author Chris Crutcher served as the guest of honor at the Foundation's second annual Midwinter Meeting fundraiser. Chris is a remarkable individual who writes with compassion about the lives of young adults. An advocate for the freedom to read, he has stood with and supported teachers and librarians working to keep books—his, as well as others'—on library shelves.

In his time with us, Chris described his experiences as one of the most challenged authors of the past decade, describing the young adults who have come to him to tell him how they have seen their lives in his powerful works of realistic fiction. His stories about a troubled young father and his fond memories of librarian Michael Printz touched us all. Chris then signed books, generously agreeing to stay until he met everyone in the long line of his admirers.

The Freedom to Read Foundation thanks Chris, a member of the Freedom to Read Foundation, for supporting the Foundation's work. We also thank Greenwillow Press, Chris' publisher, who generously donated the books for the event; and thank the Seattle Public Library and its director, Deborah Jacobs, a Trustee of the Foundation, for donating the space for the event at the extraordinary Main Library. As a result of their generosity, the Foundation now has new members and new funds to sustain its work.

Safeguarding Our Right to Privacy

Last summer's report described the Freedom to Read Foundation's work in support of the Connecticut librarians who courageously stood up to the FBI by challenging the constitutionality of the National Security Letter (NSL) provision of the USA PATRIOT Act. Ultimately, the government withdrew the NSL served on The Library Connection, resulting in a great victory for The Library Connection and the library patrons it serves. It is very important to note, however, that by withdrawing the NSL, the government prevented actual review of the NSL statute.

Now, the government has similarly evaded judicial review of the National Security Letter statute by withdrawing the NSL served on the original "John Doe," the anonymous plaintiff who filed the first lawsuit challenging the constitutionality of the NSL statute in *Doe* v. *Gonzales*.

As I reported earlier, the Second Circuit Court of Appeals returned "John Doe's" lawsuit to Judge Marrero of the Southern District of New York, instructing the judge to reconsider his original opinion that found the use of NSLs unconstitutional in light of the changes to the law following the reauthorization of the USA PATRIOT Act in March 2006. With the assistance of the ACLU and the support of FTRF, "John Doe" refiled his complaint, asking the court to strike down the reauthorized NSL statute on constitutional grounds. Rather than re-litigate the case, the government withdrew the NSL on November 22, 2006. Because the FBI refused to lift the gag order that prevents "John Doe" from disclosing its identity or discussing the NSL, the ACLU continues to challenge the gag order. Briefing is proceeding before the court.

Since the reauthorized USA PATRIOT Act imposes significant burdens on those who wish to challenge an NSL, it is unlikely we will see an open adjudication of the NSL statute on its own merits in the near future.

Similarly, the lawsuit challenging Section 215 of the USA PATRIOT Act, *Muslim Community Association of Ann Arbor* v. *Gonzales*, concluded without any review of the law. After three years of inaction, Judge Denise Page Hood finally ruled the plaintiffs could proceed with their lawsuit and instructed the plaintiffs to file an amended complaint that addressed the law as reauthorized by Congress in March 2006. On October 27, citing the changes to the USA PATRIOT Act, the ACLU withdrew the lawsuit but vowed to continue monitoring the government's use of Section 215 for possible civil liberties violations.

We are also involved in a legal battle to preserve the right to read anonymously. *Forensic Advisors, Inc*. v. *Matrixx Initiatives, Inc*. seeks to quash a subpoena served on a financial advisor's newsletter. The plaintiff, Matrixx Initiatives, is demanding the names of the newsletter's subscribers on the grounds that one or more of the subscribers may be responsible for anonymous Internet posts Matrixx says are defamatory. In September, the Maryland Court of Special Appeals refused to quash the subpoena but held that Timothy Mulligan, the newsletter's editor and publisher, could assert the news media privilege. Mr. Mulligan, hoping to vindicate both his rights and the rights of his subscribers, petitioned the Maryland Court of Appeals, the highest court in Maryland, and that court has taken up the case. FTRF anticipates joining an *amicus* brief in support of Mr. Mulligan's effort to protect the privacy of his readers.

Despite these setbacks in the privacy arena, the sea change wrought by the November elections has brought new hope that the deleterious effects on our privacy and our civil liberties resulting from this administration's use

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ALA criticizes Justice Dept. stance on libraries and privacy

The American Library Association has criticized the Department of Justice for "fail[ing] to comprehend the role of libraries and the importance of privacy in the United States."

ALA President Leslie Burger pointed to a written response to the U.S. Senate from Federal Bureau of Investigation (FBI) Director Robert S. Mueller regarding whether libraries should be subject to National Security Letters (NSLs). The issue is essentially a dispute about interpretation; read literally, as the FBI does, the reauthorization of the USA PATRIOT Act encompasses libraries as "electronic communication services." However, the intention of leading Senators voting for the reauthorization was to exempt libraries.

The FBI submitted Mueller's answers in response to written questions after the May 2, 2006, hearing before the Senate Committee on the Judiciary regarding FBI oversight. Committee Chairman Arlen Specter noted that the reauthorization "is intended to clarify that the FBI may not issue National Security Letters to libraries that are functioning in their traditional role, including but not limited to, lending books, providing access to books or periodicals in digital form, and providing basic access to the Internet. During the debate on the USA PATRIOT Act Additional Reauthorizing Amendments Act, Senator Sununu, the legislation's author and lead sponsor, and I engaged in a colloquy on the floor of the Senate to make clear Congressional intent in this respect."

Mueller responded: "In the context of this particular question regarding libraries, an NSL can only be served on an entity that is an electronic communication service provider. The FBI has always understood an electronic communication service provider to be an entity that provides electronic communication services as defined by 18 U.S.C. 5 2510(15). Thus, a library is only subject to an NSL if it provides electronic communication services." The law defines "electronic communication service" as "any service which provides to users thereof the ability to send or receive wire or electronic communications." Reported in: *Library Journal* online, January 2. □

campus speech codes violate Constitution, report claims

Most college and university speech codes would not survive a legal challenge, according to a report released December 6 by the Foundation for Individual Rights in Education, a watchdog group for free speech on campuses.

The group examined publicly available policies at more than 300 institutions—those highly ranked in *U.S. News & World Report*, as well as other big public universities—and concluded that 93 percent of them prohibit speech that is protected by the First Amendment.

"Codes that would be laughably unconstitutional in the public sphere dominate at colleges," said Greg Lukianoff, president of the watchdog group. Colleges adopt restrictive speech codes not only out of political correctness, Lukianoff said, but also because they fear harassment lawsuits.

The report labeled many speech codes as overly broad or vague, and cited examples such as Furman University's prohibition of "offensive communication not in keeping with the community standards," and a ban on "disrespect for persons" at the University of North Carolina at Greensboro.

Using a traffic-light metaphor, the group gave colleges a "red light" if it found clear restrictions of free speech and a "yellow light" if their policies could be interpreted as limiting protected speech. Only eight institutions received a "green light," meaning the group found them to have no objectionable policies.

Meanwhile, the report warned more than 200 colleges getting the red-light designation that they were "extremely vulnerable to a constitutional challenge." Citrus College, Shippensburg University of Pennsylvania, the State University of New York at Brockport, and Texas Tech University have recently revised their speech codes after the group filed lawsuits against them.

Many colleges' codes are vulnerable to legal challenges because they regulate the content of speech, which is protected by the First Amendment, rather than the effect of speech, which could be threatening or disruptive, said Derek P. Langhauser, general counsel for the Maine Community College System.

Because of that distinction, colleges' disciplinary action against students whose speech has a negative effect is often legally defensible, even if a code itself is not.

A speech code may exist primarily to promote institutional values, Langhauser said. "If nobody is really enforcing it, you're not saving anybody from anybody," he said, referring to the watchdog group's scrutiny. "The better question is how many students are really being prosecuted and losing the opportunity to get an education because of the existence of these codes," Langhauser said.

According to Lukianoff, speech codes, regardless of their enforcement, promote self-censorship. "The code is the harm itself," he said. Reported in: *Chronicle of Higher Education* online, December 7. □

Carter appearance sparks free speech debate

When President Jimmy Carter shook his last hand January 23 and left Waltham, Massachusetts, after a much-anticipated and controversial appearance, Brandeis University administrators most certainly exhaled. It was the culmination of a highly charged month leading up to Carter's speech defending his new book, *Palestine: Peace not Apartheid*, that some have criticized as being overly critical of Israel's dealings with the Palestinians.

There were modest student protests at the Carter event but no major disruptions during his hour-long speech. The latter couldn't be said for the run-up to the event.

Carter's invite spurred a campuswide discussion about academic freedom and the religious identity of Brandeis, an institution that was founded by Jewish leaders in an era of Jewish quotas at top institutions. Brandeis is not officially a Jewish university but has always attracted many Jewish students, faculty, and donors.

Last year, the university became entangled in another controversy when it displayed and then removed a library art exhibition created by Palestinian teenagers after Brandeis officials determined the artwork only showed one side of the Israeli-Palestinian conflict.

The Carter episode attracted national attention. A Brandeis trustee initiated contact with the former president during the fall term, and the proposed event had Carter squaring off in a debate with Alan M. Dershowitz, the Harvard law professor and staunch supporter of Israel. But Carter nixed that format. Some saw the decision to propose a point-counterpoint event as a sign that Brandeis was unwilling to consider Carter's ideas alone.

"Lots of faculty felt that if you invite a president, you don't ask him to debate anyone. You want to hear him speak by himself," said Gordon Fellman, chair of the peace, conflict, and coexistence studies program at Brandeis.

Still, others argued that not allowing Dershowitz to speak at the event violated his freedom of speech and would allow Carter to emerge from the event without being challenged on his views.

After weeks of back-and-forth at Brandeis, more than one hundred students and professors signed a petition inviting Carter to speak alone. A committee of faculty members and students extended the new invitation to Carter, and he accepted. So the former president gave a fifteen minute speech and answered questions that had been selected in advance—a decision that some students and faculty criticized. Dershowitz spoke in a separate event later that night.

Dennis Nealon, a Brandeis spokesman, said the university was proud of the civil discourse that took place at both events. "It's the duty of a college to spark debate and make sure those who want to engage in the debate were given the outlet," Nealon said. "Controversy is part of a university's life. We've never flinched from controversy."

Added Fellman, who was on the committee that invited Carter the second time: "Here's a university at its best—allowing open inquiry. We know there are donors who are upset [by Carter's presence], but they need to be reminded that there's nothing that shouldn't be open for discussion at Brandeis. We hope this sets the tone."

But Stephen Flatow, the father of two daughters who attended Brandeis (one of whom was killed in Israel in a suicide bombing) said he wanted to attend the event to challenge Carter on points in his book. Flatow said he was told by a university official that the event was open only to faculty, students, and staff.

"For an institution that's supposed to represent freedom of speech, it seemed pretty controlled," he said.

The circumstances surrounding Carter's invitation to Brandeis were unique, but the case of a controversial speaker or a speaker with a controversial message coming to campus is not. A new policy at Boston College, which requires balancing speakers for those who differ on certain issues from Roman Catholic teachings, has upset many students there.

Last year, the American Association of University Professors reviewed the issue of controversial political speakers and published a proposed statement declaring the importance of inviting such people to campuses—and rejecting the notion that speakers must be balanced, person by person, as invitations go out.

Robert Post, a Yale University law professor who was on the panel that wrote the AAUP statement, said there's no general rule when inviting guests to campus. "You have to think through the mind of an administrator," Post said. "A bad way to go about it is to say, 'We don't like your views and stay away.' A good mindset is, 'He has very strong views, and we want to give students the full educational experience by hearing both sides.'"

Nealon, the Brandeis spokesman, said the decision to invite speakers belongs to the faculty and students, and that the college's role is to create a forum for discussion. He said the college has no official policy on whether a speaker should come alone or be invited onto a panel. In the case of the Carter invitation, that choice was limited by the president's decision to reject the panel format, Nealon said.

Greg Lukianoff, president of Foundation for Individual Rights in Education, said often times colleges get in the most trouble when they attempt to "over-regulate things."

"This case is not about individual rights but about good pedagogy and policy," Lukianoff said. "If a university invites a person to speak, it's in its power to define the format." Brandeis was under no obligation to give Carter the whole stage, nor was it obliged to find a speaker with a different viewpoint, he said.

"The belief that Brandeis needed to provide a counterpoint is part of a growing misconception that some colleges seem to be buying into—the idea that they are endorsing a speaker's ideas if they invite them to come alone," Lukianoff said. Reported in: insidehighered.com, January 25. □

movement to ban "nigger" grows

The N-word is no longer welcome in *Ebony* and *Jet* magazines. In the February issue of *Ebony*, Bryan Monroe, vice president and editorial director of Johnson Publishing Co., explained why these venerable African American publications will no longer use the controversial noun "nigger."

"N-word has been swung like a clumsy nightstick by whites for years, trying to demean, dehumanize, and destroy the dignity of black America," Monroe writes. "We have a generation who have been desensitized to—or never were taught—the real origins and impact of such a hateful term. But whether it ends in 'er' or 'ah' or 'a,' the word—and the pain—is still the same."

The word is derived from the Latin "niger" or the French "negre," both of which mean "black," according to "Enough! Why Blacks and Whites Should Never Use the 'N-Word' Again," *Ebony*'s package of articles and essays on the word and its history.

It is believed Southern slave owners began using the word to refer with contempt to their black slaves but mispronounced it, resulting in the pronunciation we have today.

Johnson Publishing is part of a small, scattered, but increasingly vocal movement to ban the use of a word described by Harvard Law Professor Randall Kennedy in his book, *Nigger: The Strange Career of a Troublesome Word*, as "arguably the most consequential social insult in American History."

Former "Seinfeld" star Michael Richards likely would agree with that description. It was his racist rant at a Los Angeles comedy club last November that reignited the debate over whether the word should or should not be acceptable under any circumstances.

The comedian's tirade prompted several African-American leaders, including the Rev. Jesse Jackson and Rep. Maxine Waters (D-CA), to call for a ban on the use of the word by everyday people as well as comedians, rappers, and other entertainers.

Paul Mooney, a protege of Richard Pryor who's written for numerous television sitcoms and sketch comedy shows, made a living for decades incorporating the word into his act. He even joked that he recited the word as much as he could every day because it made his teeth white.

Since viewing the Richards' video, however, Mooney, a staunch, self-described "race man," has sworn off uttering the word. "I've used it and abused it, and I never thought I'd say this," Mooney explained, "[but] Richards is my Dr. Phil. He's cured me."

There are many more entertainers who, unlike Mooney, don't think they're ill. Actor, singer, and comedian Jamie Foxx, who is on tour, was asked recently about the N-word. "Oh, man, they trippin,'" Foxx responded. "That's my word. I don't know what they talking about. I need that word in certain situations."

Those behind the movement to stop use of the word disagree.

"The dependency of this word as a greeting, to complete sentences and start conversations, is a total disregard for every movement that gave us the many freedoms we enjoy today," reads the introductory statement on www.abolishthenword.com. The site was established by a small group of Brooklyn residents who want to put an end to the word being used personally and in entertainment.

"I think there are better things we can do with our time," said Dr. Boyce Watkins, a Syracuse University professor who writes about issues concerning young African Americans. Watkins believes the ban the N-word movement is aimed mostly at young black males and others who copy them.

"The civil rights movement has already lost a ton of social capital with young black males to begin with," he said. "The question they have to ask themselves is, 'Is this the battle we want to pick?' "

He believes the resources and effort being used in this new movement could be better utilized addressing the social and economic issues. "I would love to see the civil rights leaders get equally as passionate about the millions of black men incarcerated in the penitentiaries and the millions of children thrown away by the educational system," Watkins said.

Elsewhere,

- Walt Walker, a football player at the University of South Florida inspired by a column on ESPN.com by LZ Granderson, has asked his teammates both black and white to consider not using the word.
- The Sioux City, Iowa, School Board is backing the local NAACP's campaign asking everyone to stop using the word. The board agreed to put up posters that read: "I will demonstrate dignity and respect towards myself and others by not using the 'N' word."
- City council members in Charleston, South Carolina, approved an ordinance that would allow the silencing or removal of residents who use inappropriate language at meetings. It was prompted by an African American community activist's use of the word at a council meeting.
- Queens, New York, City Councilman Leroy Comrie announced that he plans to introduce a resolution banning the 'N' word. "It is my hope that this resolution will spark a dialogue in communities and begin to move society, especially in our entertainment culture, toward a place where the use of the 'N' word is simply unacceptable in any context," Comrie said.
- United Voices for a Common Cause, which pledges not to use the N-word and encourages others not to use it, has developed a Benedict Arnold Hall of Shame that includes, among others, comedian Damon Wayans for insistence on using the word. Reported in: *Pittsburgh Post-Gazette*, January 16. □

civil liberties panel holds initial meeting

The first public meeting of a Bush administration "civil liberties protection panel" had a surreal quality to it, as the five-member board refused to answer any questions from the press and stonewalled privacy advocates and academics on key questions about domestic spying.

The Privacy and Civil Liberties Oversight Board, which met December 5, was created by Congress in 2004 on the recommendation of the 9/11 Commission, but is part of the White House, which picked all the members. Though mandated by law in late 2004, the board was not sworn in until March 2006, due to inaction on the part of the White House and Congress.

The three-hour meeting, held at Georgetown University, quickly established that the panel would be something less than a fierce watchdog of civil liberties. Instead, members all but said they view their job as helping Americans learn to relax and live with warrantless surveillance.

"The question is, how much can the board share with the public about the protections incorporated in both the development and implementation of those policies?" said Alan Raul, a Washington D.C. lawyer who serves as vice chairman. "On the public side, I believe the board can help advance national security and the rights of American by helping explain how the government safeguards U.S. personal information."

Board members were briefed on the government's NSA-run warrantless wiretapping program and said they were impressed by how the program handled information collected from American citizens' private phone calls and e-mail.

But the ACLU's Caroline Fredrickson was quick to ridicule the board's response to the administration's anti-terrorism policies, charging that the panel's private meetings to date largely consisted of phone calls with government insiders and agencies.

"When our government is torturing innocent people and spying on Americans without a warrant, the PCLOB should act—indeed, should have acted long ago," Fredrickson said. "Clearly you've been fiddling while Rome burns. This board needs to bring a little sunshine. So far America is kept in the dark—and this is the first public meeting you have had."

Lisa Graves, the deputy director of the Center for National Security Studies, asked the board two simple questions: Did they know how many Americans had been eavesdropped on by the warrantless wiretapping program, and, if so, how many?

Raul acknowledged in a roundabout way that the data existed, but said it was too sensitive to release. Graves then asked if the board had pushed to have that data made public, as the Justice Department is required to do with typical spy wiretaps. Raul declined to say. "It is important for us to retain confidentiality on what recommendations we have and haven't made," he said.

Graves tried to push the issue of whether the board was going to be public or private, but chairwoman Carol Dinkins politely cut her off and ended the question-and-answer session.

Board member Lanny Davis, who had introduced himself by saying he grew up in a household where the ACLU was considered a "heroic organization," jumped in to explain why the nation's most prominent privacy board won't be transparent about whether it is urging more transparency.

"Congress put us in the office of the president, we didn't," Davis said. "Had Congress wanted us to be an incensement agency, it would have made us independent."

The sparsely attended meeting shaped up as a mostly one-way conversation, with attendees offering suggestions on how the board could transform itself into an effective organization by building on the work of earlier government privacy panels.

Fred Cate, a cybersecurity professor at Indiana University, stressed that anti-terrorism programs that collect and sift through data on Americans—such as the no-fly list and the recently announced Automated Targeting Center that has been computing terrorism quotients for those flying in and out of the country for more than five years—need to have a robust way for people to contest the scores and underlying data.

"Redress seems to be the foundation of any system," Cate said. "The only certainty in this entire field is that there will be false positives."

The committee members largely kept their views to themselves, and the press was barred from posing questions during the two short public question periods. Dinkins, the board's chairwoman, who is a partner at the same law firm where Attorney General Alberto Gonzales once worked, offered little beyond pleasantries. Another board member, Francis Taylor, never spoke. Reported in: Wired News, December 6. □

Iraq's national library closes

After months of determined efforts to keep going amid Iraq's deepening violence and chaos, the National Library and Archive, the country's largest depository of books and documents, has closed.

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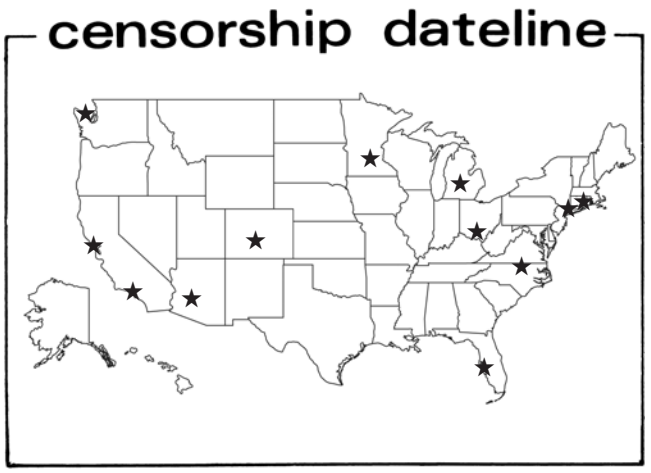


libraries

Manatee County, Florida

Patrons of the Manatee County Library System no longer have access to the social networking Web site MySpace.com, effective December 11. Manager of Library Services John Van Berkel said the decision was made by county administrators rather than the library. "But it's not a new policy," he added. "It's an enforcement of our current policy," which prohibits chat-room access, e-mail, and recreational uses.

The news was not welcome to at least one library user, who utilizes the computers at the Island branch to keep in touch with friends and family. John Cole, III, of Holmes Beach, said that "MySpace had become the main access for e-mail for many people. I use MySpace to communicate with my relatives in Texas."

Van Berkel said the county also blocks access to YouTube videos, and that all public and staff computers in the county system use filtering software, although the library staff "can ask the computer department to unblock specific sites." He said county administrators considered MySpace.com did not serve educational purposes.

But Cole disputed that view. "As this is written, I am at the public library," he wrote. "Is the woman checking her boarding pass with Delta doing educational work? Is the man on the other side who is checking the latest NFL stats for his fantasy football team having an educational experience?" Cole said that like other young adults he did not own a computer and had to use the library's.

Van Berkel said he did not expect the county to reverse its decision, as Cole was the only patron he was aware of who had complained.

The blocking of Internet-based social networks is fairly rare around the country, according to Linda Braun, a past board member of the Young Adult Library Services Association. "I'm not saying it's not done," Braun said, "but we try in public libraries to work with teens in this area."

YALSA, a division of the American Library Association, promotes how to use Internet sites such as MySpace responsibly. "Our role as librarians, educators, and parents is to teach teens how to use social networking sites safely and successfully," said Braun, who is now a consultant in New York on technology for libraries and schools. "It's up to the libraries to talk to the community and get input."

Cole said he didn't think MySpace was creating a disturbance and pointed to computer users playing video games at the library as the problem. "The games take a lot of bandwidth and slow down the other computers," Cole said.

Jean Peters, chief librarian in the Tampa-Hillsborough County Public Library system, said there is a tremendous demand for computer time in the Tampa-area libraries. But they have not blocked any of the social networking sites, the video-streaming sites, such as YouTube.com, or any of the video gaming sites.

The only things we filter are things not protected by law," Peters said, "such as obscenity."

Students in Manatee County schools are blocked from accessing MySpace, according to George Vensel, technology director for the district. Vensel said MySpace is an open forum where people can create a personal profile that may not reflect the true identity of the site user. "There's no checking," he said. "It could be an entirely different person." He said sexual predators have used that site to lure children. "They start communicating with someone on false pretenses," Vensel said.

Schools are required by federal law, under the Child Internet Protection Act (CIPA), to have filters on their computer systems.

Braun pointed out, however, that social networking sites can be beneficial and a constructive learning tool for teens and young adults. She gave an example of a teenager who used MySpace to improve his photography skills. "He would ask others about how to take better pictures and who to write to get his work published," she said. "He ended up having two of his photographs on the cover of a book."

Braun said Internet social networks expand the world of teenagers, much like Cole, giving them access to anywhere in the world. "The key point is that this teen's

family was involved in the process," she said. Reported in: *American Libraries* online, December 15; *Bradenton Herald*, December 14.

Wilson, North Carolina

Parents of a Toisnot Middle School student want a sexually explicit book removed from the school's library. Gary and Mary Strange met with Toisnot Principal Craig Harris December 20 to discuss the situation. Their daughter, Maggie, checked out the book, *The Kissing Stars* by Geralyn Dawson, right before Thanksgiving.

After Mary Strange happened to read a passage in the book, she started marking the sexually explicit parts. The book is categorized as fiction. Dawson is an award-winning romance novelist. The book is not available at any other middle school library in the school system.

"She stopped tabbing them after a bunch," Gary Strange said.

Harris said the book, which is not required reading, will be removed from circulation and reviewed by the school's media center coordinator, who will document any passages she thinks are inappropriate. Then, Harris will review the book and highlight any passages he thinks are inappropriate. After that, the book will be turned over to the school's Media Advisory Committee for review and recommendation.

Copies of the committee's report and recommendation will be forwarded to Harris and Wilson County Schools Superintendent Larry Price. Harris will make a decision. If the parents object to Harris' decision, they have ten days to appeal it to Price. The book will then be reviewed by the Wilson County Schools Media Advisory Committee. If the parents object to Price's decision, they have ten days to appeal it to the Wilson County Board of Education for a decision.

Guidelines the Wilson County Board of Education approved in July 1997 state the "primary objective of a school's educational media center is to enrich, support and help implement the educational program of the school." The school board has also endorsed the Library Bill of Rights of the American Library Association.

Harris said the book has been in the library since about 2000, before he or the current librarian came to the school. Harris said the book has been checked out several times. However, this is the first time an issue with the book has been brought to his attention.

Gary Strange questioned whether anyone read the book before it was ever added to the library. He said he would now like to know what other similar sexually explicit books are in the school's library.

Strange said this is not the first book of this type Maggie, who is twelve years old and in seventh grade, has checked out of the school library. They discovered this while discussing the issue with Maggie. "No, apparently, there were others before that," he said. "But we didn't know what they were."

Strange said after the meeting that Harris made them feel like because the book was not required reading and because Maggie picked out the book that "it's her fault the book is in the library."

The couple had not allowed their daughter to return the book to school because they were trying to figure out what to do about it. Strange said his wife mentioned the book to the school's assistant principal when the family attended the choral concert on December 13. Strange said Harris called their home on Tuesday wanting the book, which is overdue, returned.

Harris said he called to see what their concerns were and to set up a meeting.

"We debated what do we do with this," Strange said. "We decided what we ought to do is copy a passage or two and take it to somebody and then give the book back."

Strange said he's shocked a child could pick up a book like this when they can't go to the grocery store or convenience store and buy *Penthouse* magazine. "What's the difference," he said.

The spine of the book features a couple kissing. The teaser on the cover clearly states it is a historical romance novel.

In 2004, a book containing sexually explicit passages was removed from the Speight Middle School library after Cliff and Karyn Harwood of Wilson objected to their daughter reading it as part of the Accelerated Reader program. That book was *Diamond Dogs* by Alan Watt. Reported in: wilsondaily.com, December 21.

schools

Peoria, Arizona

A book being used in an American Literature class has a student and his mother so offended that the mother has threatened to file a civil-rights complaint. The mother, Dolores Fisher, alleged racial mistreatment, the segregation of her son, and the use of a racial slur in the classroom. The book at the center of the controversy is Mark Twain's classic *The Adventures of Huckleberry Finn*.

The Adventures of Huckleberry Finn is required reading at Cactus High School. But it soon became a troubled tale when Fisher's fifteen-year-old son brought it home and said he wasn't comfortable reading it in class.

"I read it and I was in shock," Dolores Fisher said. "When I went to high school in New York, I actually didn't have to read it because it was taken off shelves."

Fisher's upset with the derogatory word that appears more than 400 times in the book. But the blow came when she contacted her son's teacher and was told to take it up

with the school board. "We have policies in the district to allow parents to opt their students out of classes," said Jim Cummings of the Peoria School District. "Their students are given alternative reading assignments where the child can be moved to another class where the book isn't being used."

Fisher thought the teacher should have offered an abridged version of the text or another book altogether. But the teacher didn't, so Fisher decided she only had one option: For her son to choose an alternative reading assignment, which meant he had to be separated from his class.

Even though other parents feel it's a parent's right, they don't take offense to the book. "It's a very good book by a very famous author," said parent Carl Stacey. "I think it has some good virtues in it. I don't see anything wrong with it at all."

The district says it's not uncommon to have parents talk to school leaders about certain reading material. But it is uncommon for a parent to have their child pulled from a particular class. Reported in: azfamily.com, December 13.

Howell, Michigan

The Howell Board of Education is struggling over whether to allow books with obscenities and strong sexual content in the classroom.

The debate arose after the board revamped a high school English class to comply with new state graduation requirements. The process included a review of reading lists.

Three volumes sparked several parents' objections, including *Black Boy* by Richard Wright, and *The Bluest Eye* by Toni Morrison, both read by juniors at Howell High School. The third book, *The Freedom Writers Diary: How a Teacher and 150 Teens Used Writing to Change Themselves and the World Around Them* by the Freedom Writers and Zlata Filipovic, recently was placed on a syllabus for tenth-graders.

It's a best-selling book that has achieved national acclaim and was made into a recent hit movie. *The Freedom Writers Diary* is about a first-year English teacher in Long Beach, California, who was able to engage and help turn around the fortunes of her class of at-risk children, who many had written off as unteachable.

But the mature content of the book has also made it controversial, and because the book's content includes drug use, sexual acts and profanity, Howell Public Schools officials barred it from being taught in a Howell High School English classroom.

According to Jeanne Farina, assistant superintendent of curriculum for Howell schools, the book was not approved before it was used in Catherine Capy's tenth-grade accelerated English class. "The teacher allowed them to read the book although the content was questionable," Farina said.

Farina said a book that includes the type of content found in *The Freedom Writers Diary* has to go through the proper channels before it is allowed to be introduced in a classroom. "Those procedures need to be followed," Farina said.

Students from the class were outspoken in their opposition to the district's decision to remove the book. Sophomore Stephane Onderchanin said the students in the class are mature enough to be able to handle the content and understand the themes of the book. "The book is not encouraging us to drink alcohol or use drugs," she said.

Onderchanin wondered why the district is sheltering students from a world "that is less conservative than Howell." "This further validates the opinion that we are a close-minded community that doesn't allow for diversity," she said.

A parent of a student in the class was supportive of the decision to remove the book. Gwen Hoganson said her daughter, Whitney, was disturbed by the content of the book. Hoganson, who described herself as liberal person, felt the book was inappropriate for a classroom.

The book is currently under review by the language arts curriculum committee.

In a separate incident, the works of two noted African American authors were among three books that a group of residents touting family values want banned from Howell High School.

Nobel Prize author Toni Morrison's first novel, *The Bluest Eye*, and an acclaimed memoir written by Richard Wright in 1945, *Black Boy*, were the latest to be characterized as "smut." Both books address social issues of blacks in 1940s America and have been used for at least two years in an American literature class.

The course is being expanded from a semester to a full school year, requiring curriculum changes and approval from the Board of Education.

Ann Blaine, a Howell resident and author of a Christian novel, read several graphic paragraphs before the school board from *The Bluest Eye* that told of incest and rape through the narrative of an eleven-year-old girl.

"Tell me, what is the redeeming quality of this book?" Blaine yelled to school board members and the standing-room only crowd of about 100. "I've never read such smut like that in my life."

On the other side of the issue was resident Andrew Ketchum: "I can't believe in the twenty-first century we're still talking about banning books." The books have been under fire by members of Livingston Organization for Values in Education, or LOVE, and school board member Wendy Day. Day has been a vocal critic of the content, saying it's inappropriate for teens when offensive books are available.

Steve Manor, president of Livingston Diversity Council, said proposed book banning and other "family values issues" dominating recent school board meetings could be a step backward for efforts his group has made in the past eighteen years.

"I hope (others outside of the community) don't look at this and say, 'Yep. That's Howell.' Every community goes through things like this; the conversations I've had with people seem to be there's a lot of people concerned about the tenor, the tone of all of this," he said.

Howell High teacher Tracy Ash, a member of the District Curriculum Council, defended the literature selections, saying books address important social issues and must be viewed on the whole rather than by selected excerpts. Reported in: *Daily Press and Argus*, December 13; *Detroit News*, January 24.

Lakeville, Minnesota

The "n-word" appears one too many times in *The Adventures of Huckleberry Finn* for Mark Lewis. Make that at least two hundred times in the Mark Twain classic.

Lakeville high school sophomores were required for years to read *Huck Finn*, but that may change this year after some parents questioned the use of the book.

Lewis first became concerned about *Huck Finn* when his daughter was required to read the book in her English class several years ago. During discussion of the book, Lewis' daughter said she was uncomfortable with views she said students expressed—that blacks should go to hell and interracial marriage was immoral, for instance.

After meeting with administrators, Lewis's daughter was allowed to go to the library to read a different book during discussions. Lewis also requested that the school board remove that book from the curriculum, but the request was denied.

Now, Lewis's son is a sophomore at Lakeville North, and he doesn't want him to go through the same experience. His son would have had to write two research papers while other students could read the book and take an exam.

This time, however, Lewis was told the school district is re-evaluating how the book will be used in sophomore English classes. Students might be given a choice of two books.

Barbara Knudsen, Lakeville director of teaching and learning services, said schools strive to meet their educational mission and goals but parents have the legal right to request alternatives for their children.

State laws dictate that districts form curriculum advisory councils—which include parents, teachers, community members, administrators and students—to help shape what is taught in classrooms. Although school boards have the ultimate say, they often take committees' recommendations.

In Lakeville's case, the district also brought in a University of Minnesota professor to help instructors learn how to teach a controversial book like *Huck Finn*.

Gwen Johnson, another Lakeville parent, said her son does not want to go through the *Huck Finn* unit but that "it's more embarrassing to go out of the classroom. He didn't want to be put somewhere alone. He'd rather sit through it." Reported in: *St. Paul Pioneer Press*, February 1.

New York, New York

Officials at a New York City middle school pulled three books for sixth-graders that give instructions on French kissing and homosexuality.

Parents of students at Public School 150 in the borough of Queens began complaining about their children reading books filled with profanities and descriptions of sexual acts. In one poetry book called *You Hear Me?*, there are repeated vulgar references to genitalia, while another compares eating an orange to having sex.

Gladys Martinez wrote a letter to her son's teacher after hearing him talk about "First French Kiss," which describes a teen's bumbling make-out session.

"I mean, he shouldn't be sheltered from the world but if he's going to learn that stuff it shouldn't be at school," Martinez said.

Principal Carmen Parache said that after reviewing the books, she found them "definitely inappropriate" and said classroom materials would be more carefully screened in the future. Reported in: upi.com, December 7.

Federal Way, Washington

It's gotten a lot more inconvenient in Federal Way schools to show the global-warming alert *An Inconvenient Truth*, one of the top-grossing documentaries in U.S. history. After a parent who supports the teaching of creationism and opposes sex education complained about the film, the Federal Way School Board on January 9 placed what it labeled a moratorium on showing the film. The movie consists largely of a computer presentation by former Vice President Al Gore recounting scientists' findings.

"Condoms don't belong in school, and neither does Al Gore. He's not a schoolteacher," said Frosty Hardison, a parent of seven who also said that he believes the Earth is 14,000 years old. "The information that's being presented is a very cockeyed view of what the truth is. . . . The Bible says that in the end times everything will burn up, but that perspective isn't in the DVD."

"No you will not teach or show that propagandist Al Gore video to my child, blaming our nation—the greatest nation ever to exist on this planet—for global warming," Hardison wrote in an e-mail to the Federal Way School Board. The 43-year-old computer consultant is an evangelical Christian who says he believes that a warming planet is "one of the signs" of Jesus Christ's imminent return for Judgment Day.

Hardison's e-mail to the school board prompted board member David Larson to propose the moratorium. "Somebody could say you're killing free speech, and my retort to them would be we're encouraging free speech,"

said Larson, a lawyer. "The beauty of our society is we allow debate."

School board members adopted a three-point policy that says teachers who want to show the movie must ensure that a "credible, legitimate opposing view will be presented," that they must get the OK of the principal and the superintendent, and that any teachers who have shown the film must now present an "opposing view."

The teacher who screened the film in a science class, Kay Walls, said that after Hardison's e-mail she was told by her principal that she would receive a disciplinary letter for not following school board rules that require her to seek written permission to present "controversial" materials in class.

The requirement to represent another side follows district policy to represent both sides of a controversial issue, board President Ed Barney said. "What is purported in this movie is, 'This is what is happening. Period. That is fact,' "Barney said. Students should hear the perspective of global-warming skeptics and then make up their minds, he said. After they do, "if they think driving around in cars is going to kill us all, that's fine, that's their choice."

Asked whether an alternative explanation for evolution should be presented by teachers, Barney said it would be appropriate to tell students that other beliefs exist. "It's only a theory," he said.

While the question of climate change has provoked intense argument in political circles in recent years, among scientists its basic tenets have become the subject of an increasingly stronger consensus.

In late January, a report by the Intergovernmental Panel on Climate Change, which advises policymakers and is composed of hundreds of leading scientists worldwide, declared that global warming is almost certainly a reality and is assuredly produced by human activity.

The basics of that position are backed by the American Meteorological Society, the American Geophysical Union, the American Association for the Advancement of Science, and the National Academy of Sciences.

Laurie David, a coproducer of the movie, said this was the first incident of its kind relating to the film. "I am shocked that a school district would come to this decision," David said in a prepared statement. "There is no opposing view to science, which is fact, and the facts are clear that global warming is here, now."

The Federal Way incident started when Hardison learned that his daughter would see the movie in class. He objected. Hardison and his wife, Gayla, said they would prefer that the movie not be shown at all in schools.

"From what I've seen (of the movie) and what my husband has expressed to me, if (the movie) is going to take the approach of 'bad America, bad America,' I don't think it should be shown at all," Gayle Hardison said. "If you're going to come in and just say America is creating the rotten ruin of the world, I don't think the video should be shown."

Scientists say Americans, with about 5 percent of the world's population, emit about 25 percent of the globe-warming gases.

Larson, the school board member, said a pre-existing policy should have alerted teachers and principals that the movie must be counterbalanced. The policy, titled "Controversial Issues, Teaching of," says in part, "It is the teacher's responsibility to present controversial issues that are free from prejudice and encourage students to form, hold and express their own opinions without personal prejudice or discrimination."

"The principal reason for that is to make sure that the public schools are not used for indoctrination," Larson said.

Students said they favor allowing the movie to be shown. "I think that a movie like that is a really great way to open people's eyes up about what you can do and what you are doing to the planet and how that's going to affect the human race," said Kenna Patrick, a senior at Jefferson High School.

When it comes to the idea of presenting global warming skeptics, Patrick wasn't sure how necessary that would be. She hadn't seen the movie but had read about it and would like to see it. "Watching a movie doesn't mean that you have to believe everything you see in it," she said.

Members of the school board say they have been bombarded by thousands of e-mails and phone calls, many of them hurtful and obscene, accusing them of scientific ignorance, pandering to religion, and imposing prior restraint on free speech.

It has been a terrible ordeal, Larson said during a long, emotional speech at the next board meeting. "I am here to foster healing in our community," he said, while noting with sadness that "civility and honest discourse are dying in our country."

What the school board had really intended to do, Larson and school board members insisted, was not to stop schools from teaching the science of global warming, but merely to follow long-standing school board rules that require students to be exposed to "other perspectives" when they view a film like *An Inconvenient Truth*.

In public comments at the board meeting, several riled-up Federal Way residents argued that *An Inconvenient Truth* was, indeed, scientifically true and that saying otherwise is "deliberate obfuscation."

These residents derisively compared the search for "balance" in the global-warming issue to decades of phony claims by cigarette companies about the lack of "proof" that smoking is harmful to human health.

Before the board meeting January 23, several residents buttonholed Larson and asked him if there should be a "balanced" presentation of the Nazi Holocaust, because there are many who deny that it occurred.

"The Holocaust happened," Larson said. "We have evidence and photos. The difference between the Holocaust

and the global warming is we don't have photos of what will happen fifty years from now."

Sitting in on this conversation was Walls, the seventh-grade science teacher whose class includes Frosty Hardison's daughter. "We do have photos of snow melting off Kilimanjaro," Walls said, hopefully.

In the end, the board opted for an abundance of balance. That means that *An Inconvenient Truth* may be shown only with the written permission of a principal—and only when it is balanced by alternative views that are approved by both a principal and the superintendent of schools.

Hardison was pleased. "I am happy they are giving the kids as much information as possible," he said.

His daughter's science teacher, meanwhile, said she is struggling to find authoritative articles to counter the information in the Gore documentary. "The only thing I have found so far is an article in *Newsweek* called 'The Cooling World,'" Walls said.

It was written thirty-seven years ago. Reported in: *Seattle Post-Intelligencer*, January 11; *Washington Post*, January 24.

student press

Los Angeles, California

An administrator at the University of Southern California overrode the staff of the *Daily Trojan*, the student newspaper, by blocking Zach Fox, the student they had picked to serve as their top editor, from assuming that position. Journalism faculty members at the university said they could not recall any other time in the newspaper's history when the administration had not honored the results of the student vote.

Fox, a senior majoring in journalism, had served as editor-in-chief for the fall semester but was denied the opportunity to continue in that position in the spring after he repeatedly pressed for the newspaper to have greater financial and editorial independence from the university.

Top management decisions at the *Daily Trojan* have always been subject to approval from an interdisciplinary Student Media Board and the university's vice president for student affairs. But such approval is commonly regarded as a formality, according to journalism faculty members and students on the newspaper staff. The newspaper receives financing and other resources, like office space and legal counsel, from the university.

The incident prompted eighteen other daily college newspapers to print identical editorials December 5 criticizing Southern California's decision. The editorials state that "a meddling administration undermines the educational value of student journalism."

Fox resigned from his position, and Jeremy Beecher, another senior who supports many of the changes Fox wants to make, was voted in by the staff and approved by administrators as the new editor-in-chief.

Michael L. Jackson, vice president for student affairs, said he denied Fox's reapplication for the job because Fox wanted to drastically change the duties of the editor-in-chief. Instead of overseeing the daily production of the newspaper, Jackson said, Fox wanted to spend more time reorganizing the paper and the way it was managed.

"His application did not meet the job requirements," said Jackson. "My stance was that he raised some interesting ideas that we should explore, but there is a job that needs to be done right now, and that we needed to review his proposals because they have broader implications for the newspaper and its staff."

Fox said he had made it clear in his application that he would share the daily management duties with an additional managing editor by creating a new position. The *Daily Trojan* needs more editors to oversee its staff of more than 250, he said, and to make it a top college newspaper.

"I know what it takes to run that paper, and the last thing I would have done was run it into the ground," said Fox, who will continue to serve as a reporter and editor for the *Trojan*. "There's a lot of things we can be doing differently and better, and I wouldn't have been able to implement those changes if I served in the same capacity that I did last semester."

While the staff of the *Daily Trojan* ended the impasse by voting to appoint Beecher as an alternative editor-in-chief, many issues about the organization of the paper remain unresolved. One major bone of contention for *Trojan* staffers is that they have no access to the newspaper's budget and, consequently, no knowledge of how much money it brings in to the university or any say over how that money is spent.

During his semester as editor-in-chief, Fox had repeatedly pressured administrators to give his staff a budget statement, to no avail. Student staff members say they would ultimately like complete financial and managerial independence from the university because it would improve the quality of their publication.

"What does it say when the administration censors the editor who challenged them the most editorially and operationally?" said Beecher, the new editor-in-chief. "Reporters and editors would certainly go after their stories with stronger zeal if they knew they weren't going to be subjected to approval by the administration later on. . . . I think Mr. Jackson is threatened by the notion of an independent press at USC."

In response to the situation, Jackson formed a committee of faculty members and students to consider various options for reorganizing and improving the newspaper. The group is expected to make recommendations by the end of the spring semester.

"Zach's resignation was the straw that broke the camel's back," said Beecher. "Because of what happened, many

people who never thought about it before have realized that it's time for the *Trojan* to be independent from the university." Reported in: *Chronicle of Higher Education* online, December 6.

San Francisco, California

Students and faculty members are criticizing what they call a pattern of censorship of student projects at the Art Institute of California at San Francisco, including the confiscation in December of several hundred copies of a student magazine, *Mute/Off,* with racially themed content.

Included in the magazine, the final project for a cultural studies course, were two items that administrators found objectionable: a collage of corporate logos overlaid by the words "organized crime" and a short story involving characters who call each other "niggaz" and go on a sex and shooting spree that is later revealed to be a video game played by three white boys.

According to the instructor of the course, the author of the story, who is African American, was trying to show white teenagers' fascination with "gangsta rap" stereotypes.

But a spokeswoman for the Art Institute, Gigi Gallinger-Dennis, said the publication was "racially derogatory." "We've been doing a lot with diversity," Gallinger-Dennis said. "That was counterproductive."

There is a strict approval process, spelled out in the student handbook, for any student work distributed on the campus, said Gallinger-Dennis. The students and the instructor circumvented that process, she said, by not submitting the magazine for review.

Administrators also worried about the use of the institution's logo, and possible copyright infringement in the collage of corporate logos, one of which belonged to the financial-services firm Goldman Sachs, which acquired the for-profit Art Institute last year.

On December 6, a day after the magazines were left in staff members' mailboxes and in large envelopes tacked to classroom bulletin boards, nearly all of them were removed, some plucked from readers' hands, said Robert Ovetz, the instructor of the cultural studies class.

The institution's legal adviser has since reviewed and approved the magazine, Gallinger-Dennis said, and it will be redistributed.

But that will be too late, said Ovetz. The instructor lost his job—because of the magazine controversy, he said—and, he added, administrators sent students the message that some issues trumped freedom of expression.

Ovetz was told on December 20 that he could not return to teach a class in world conflict for the winter quarter. He has taught at the Art Institute for about three years and also teaches political science at the College of Marin.

Ovetz said he believes the dismissal was prompted by his complaint that the administration had violated the First Amendment, as well as a state law protecting student publications from censorship, by confiscating nearly all 500 copies of the magazine.

Ovetz said he wasn't told the magazine would be recalled and that it took administrators two weeks to respond to his e-mail inquiries about what happened to the magazine, which was supposed to be available to students and faculty.

"I protested very strongly the censorship, and the next day, they called me up and said they were not giving me the class they had already committed to for the next quarter, starting Monday," he said. "The timing is impeccable."

"They took action to protect their brand," Ovetz said. "That's where the tension is emerging, between 'Is it a business?' or 'Is it an institution of higher learning?' With the Art Institute, their answer time and time again is that it's a business," he said, citing other recent incidents as examples of censorship.

Gallinger-Dennis confirmed one of those incidents, in which administrators removed a student photograph from an exhibition on taboos last quarter. The color photo showed a condom and a fluid on a plate with a piece of toast.

"It did not particularly uphold what the academic director thought would be a good representation of his program," said Gallinger-Dennis. "We have to be careful with things that are going out that are an endorsement of our school," she said, explaining that prospective students and their families often visit the institute's main gallery.

This past fall, a student in video game art and design discovered that his clay sculpture of an alien had been removed from the gallery after administrators complained that it looked like a vagina.

"It was very discouraging," said the student, Steve Kick, who added that the alien's mouth turned out more yonic than originally intended. But art education should be about free expression, he said. "Something like this says 'Be careful what you do,' and that's the wrong thing to have on our minds when we're creating art."

Bill Barrett, executive director of the Association of Independent Colleges of Art and Design, said art administrators frequently have to make judgment calls about racy student projects.

"I think every school attempts to do everything it can short of pulling it off the wall," he said. "I can understand an institution being sensitive to PR issues, but on the other side, removing an artwork creates just as many PR issues." Reported in: *Chronicle of Higher Education* online, January 3; *San Francisco Chronicle*, January 4.

Cincinnati, Ohio

Parents of a high school sportswriter are questioning whether an opinion piece his principal ordered ripped out of the school magazine because of its digs at the football

team met the U.S. Supreme Court's standards for allowing censorship of student journalism.

The student staff was ordered to rip out two pages of the December issue of *Odin's Word* magazine containing the column by Evan Payne, a seventeen-year-old junior. The piece blames the football team's 8-23 record during the past three seasons mainly on a coaching strategy to pursue an offense that relies on passing by a freshman quarterback, and accuses the team of ignoring the running game.

It also takes shots at the players. "I wonder if they want to be on the field on Friday nights," Payne wrote.

Coach Bill Leach said he complained that the column was unfair but did not ask to pull it.

Aaron Mackey, superintendent of the district that encompasses several Cincinnati suburbs, defended the decision and said he will tighten oversight of the magazine by assigning the district spokeswoman as an adviser and clarifying a school policy that advisers may censor articles.

"The (school) board pays for that publication," he said.

Payne's parents, magazine illustrator C. F. Payne and Paula Payne—who also is treasurer of the school's booster group—wrote to the school board objecting to the censorship. Their letter also said pulling the football piece was inconsistent with past practice, such as allowing predictions of poor seasons for other sports and even snide comments about students, such as a photograph caption teasing a tall girl for dating a short boy.

Evan Payne said he was trying to use a tone like the one used by professional commentators in newspapers and television. "I knew it would probably make somebody mad, but for them to cut it out, it completely threw me off guard."

Mackey said officials had Payne's interests at heart as well. "You're dealing with a very large football squad, not in stature but in numbers," he said. "You've got one kid putting his neck out there. It may not be in his best interest to have that article. This is not a threat, but it creates an attitude and a situation between kids."

The rest of the student journalists don't agree with the decision but realize change is coming, said Ruth Pearson, a senior who is chief editor.

"Most of our staff has not accepted it, but they've come to terms with it," she said. "We're going to continue to cover things that might be controversial and that might raise eyebrows."

English teacher Achilles Lakes, the faculty adviser, said the magazine would lose even more independence if students fight the issue too much. "Journalism in high school is not the same as journalism in the real world," he said. "Sometimes, we have to chose our battles." Reported in: *Akron Beacon-Journal*, January 6.

Portsmouth, Rhode Island

Patrick Agin, a high school senior in Portsmouth, was surprised by his school's refusal this fall to use a yearbook photograph of him dressed in medieval chain mail, with a broadsword over his shoulder.

"I didn't think it would be that big a deal," said Agin, a seventeen-year-old who attends Portsmouth High School. "I just really like the picture, and it's one of the first good photos I've taken in a long time."

Good or not, the school said, the picture ran afoul of its zero-tolerance weapons policy.

"Students wielding weapons is just not consistent with our existing policies or the mission of the school," said Robert Littlefield, the principal. "I think the picture speaks for itself."

It is not that simple. The Rhode Island branch of the American Civil Liberties Union has filed suit supporting Agin's free-speech rights to use the photo, and both sides have agreed to take the matter to the state education commissioner.

The civil liberties organization said the school's position took zero tolerance well past the point of common sense. "It's a perfect example of bureaucratic ridiculousness," said Steven Brown, executive director of the Rhode Island branch of the organization. "We have had zero-tolerance cases before, one where a district punished a kindergartner for bringing in a butter knife, and another where a school suspended two first graders who brought a toy ray gun. But this case is even more ridiculous, since Patrick was not even bringing the weapon to school."

The school's position is particularly untenable, he said, given that the school mascot is a Revolutionary War soldier carrying a rifle.

"That's an entirely different issue," Littlefield said. "I don't think anybody could reasonably construe a cartoon depiction of a soldier from 250 years ago as a threat to our educational environment."

Agin and his mother, Heidi Farrington, say there is no threat in the chain mail, either, just self-expression. "Historically, the kids have always been encouraged to take their pictures in a self-expressive fashion," said Ms. Farrington, herself a graduate of the high school. "There was one kid last year on a skateboard, jumping off a set of stairs, and band members who pose with their instrument. I tried to talk to the superintendent, but I didn't hear back from her for two weeks, several days after I'd gotten in touch with the ACLU."

Agin comes by his interest in chain mail naturally; his uncle makes chain mail, and his mother sells it at fairs. He also belongs to the Society for Creative Anachronism, which promotes re-enactments of medieval history.

The school offered to let Agin buy a yearbook ad showing the photo. By itself, that takes the whole situation into the surreal, the civil liberties organization said.

"I guess they think it's a danger to the school system on Page 6, but not on Page 26," Brown said.

But the school said it had higher standards for editorial content than for advertising. "We believe that our official

publications are not necessarily an open public forum for students to express whatever it is they feel," Littlefield said. "We see it as our official annual publication, and we reserve the right to exercise some reasonable editorial control over the content."

The lawyer for the school, Stephen Robinson, said the yearbook's advertising section had traditionally operated under less scrutiny. "There have been two instances in the past of kids wanting to pose with weapons," he said. "One was a Civil War re-enacter, with a musket, and another was a marksman, and in both cases, we let them take out ads." Reported in: *New York Times*, December 20.

Internet

San Francisco, California

In the latest skirmish between big media and a blogger, the Walt Disney Company has succeeded in shutting down the Web site Spocko's Brain.

On the site, blogger and media critic "Spocko" took issue with on-air comments made by right-wing talk show hosts at Bay Area ABC affiliate radio station KSFO. He posted audio files of hosts' comments on his Web site, and also began a letter-writing campaign that, he says, resulted in advertisers fleeing the station.

But on January 2, Spocko's Internet service provider, 1&1 Internet, pulled the plug on the blog—a move prompted by a December 22 cease-and-desist letter from ABC Radio claiming that material on Spocko's Brain violated Disney's copyright.

Neil Simpkins, spokesperson for 1&1, said the company gave Spocko one week to remove the material, and when he did not, took down his site. He said the company is particularly leery of the audio files, adding that 1&1 would "probably be more than likely" to allow the blog back if Spocko used transcripts of the show as opposed to actual audio files of what aired.

But Spocko argued that the audio files on his site constitute a "fair use" of the copyrighted material. "The [fair use] battle for bloggers hasn't been waged yet," Simpkins says. "Right now, technology is outracing the legal system."

San Francisco station KSFO features hard right-wing talk show hosts who endorse torture, call for the public hangings of *New York Times* editor Bill Keller and other journalists, and demand that callers mock Islam. They also mock their own advertisers—calling Chevrolet, for example, "sh!tty," or recommending that Sears' Diehard battery be attached to an African American's testicles.

Spocko not only recorded the programming and posted audio files on his site, but also sent letters to advertisers on the station, including AT&T, Bank of America, Visa, MasterCard, and others—pointing out the station's content and directing them to his blog to hear proof through his audio files.

After Spocko began contacting advertisers, they departed KSFO in droves. Netflix, MasterCard, Bank of America, and most recently, Visa pulled their advertising from the station. According to Spocko, Federal Express, AT&T, and Kaiser Permanente are weighing their departure as well.

Spocko's situation was originally reported on the Web site Daily Kos. Reported in: Online Media Daily, January 5.

art

Manitou Springs, Colorado

Just two days after a bronze Great Dane statue was installed on a city sidewalk, Mayor Marcy Morrison ordered it removed. "It was anatomically correct—let's put it that way," says Brian Powers, a local worker who broke out laughing when he saw the statue in the city's center. "It was very well-endowed and lying on its back. A lot of people were offended."

The statue, one of three donated by artists to help revitalize art in Manitou Springs, wasn't a casualty of censorship, Morrison said. It simply wasn't the one the City Council had agreed to display on the city-owned property.

"That was not the dog that we chose from the photograph," Morrison said, adding that another dog sculpture by the same artist was put in the space, in an unauthorized switch, apparently because the original had been sold.

In a town known by its conservative neighbors to be relatively anything-goes, the issue may have been considered a rare hiccup. But then a ten-year-old girl reignited the debate regarding the appropriateness of naughty bits in public view.

The girl, Cheyne Landrum, complained to the Manitou Springs City Council about nude male and female statuettes in the window of Nelson's Antique Bazaar.

"She thought it was inconsistent that the dog had to go, but not the statues," said her mother, Aimee Cox. "She's very smart that way and wanted to get engaged in civic life, which I encourage. The penises and everything were hanging out at her eye level."

Morrison thought Landrum merely came to express her opinion to city officials, but didn't expect any change. "I felt that was the intent," Morrison said. But City Administrator Verne Witham contacted owner Larry Nelson after Landrum spoke to the council.

"I did nothing more than kindly ask if he'd consider removing the statues from the window because there was a ten-year-old girl involved," he said. Witham added that he merely made a request, because Nelson's shop is privately owned.

"There's probably nothing legally we can do about it," he noted. "We wouldn't infringe on rights."

Nonetheless, it left Nelson fretting. "Do these look like art to you?" he asked, pointing to a nude male bronze statuette. "They're not sexual. These are sculptures." He also feared the controversy will leave some to conclude that his store sells obscene items, rather than the rare antiques, memorabilia, treasures from abroad, swords, and figurines that clutter it.

City Council hasn't officially stepped into the fray and probably won't, Morrison says. However, other members of the council say they're still studying the matter.

Last week, Nelson, concerned by the city's reaction to the complaint, taped plastic fig leaves to the figures bestowed with larger penises. He left other statuettes, such as a replica of an ancient nude archer and several female figurines, as they were.

"I've had nude women statues in the window for years," he says. "Nobody ever complained."

Cox and her daughter returned to the site afterward to see Nelson's changes. There were still nude statuettes in the window, but some were covered, Cox noted.

"From my daughter's view, it's a little better," she said. "But there's still a naked lady lying under a sign that reads, "May all your Christmas dreams come true.' I mean, please."

It's likely far from over. Since Cox's last visit, Nelson has removed the fig leaves. An unnamed city official visiting the shop wasn't offended by the statuettes, Nelson said, which prompted his returning the statuettes to their natural state. "So we're back where we started," he declared.

Nelson has also added a sign to his window. It reads: "Art is meant to disturb." Reported in: *Colorado Springs Independent*, December 14.

foreign

Blackpool, England

Eleven workers at Blackpool's Queen Street library—nine women and two men—stripped off their clothes to raise cash for charity. But after seeing the saucy proofs, horrified library bosses banned the fundraising calendar for which the pictures were taken from going to the printers after seeing the saucy proofs.

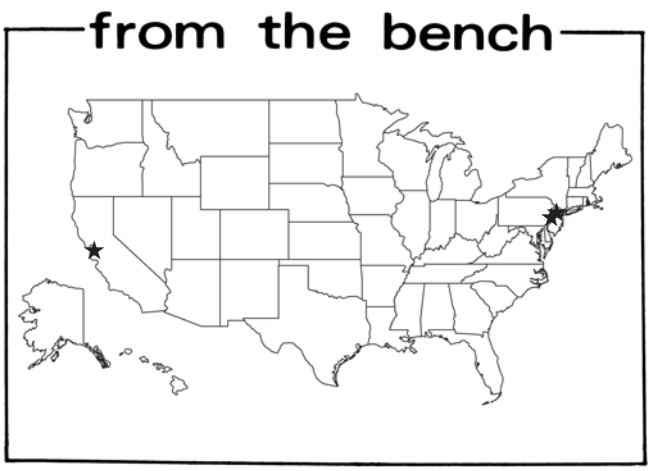
One worker branded council bosses "killjoys" and said: "It's ridiculous. They're tasteful and nothing like you would see in a lads' magazine. The money raised was to go to charity. Whoever has decided it can't be printed is a killjoy."

The images showed the semi-naked staff's private parts hidden behind copies of Beethoven, newspapers, a date stamp and book shelves. The most risque picture showed one woman worker covering herself with a thin strip of microfilm. The calendar was to be sold to raise cash for the mayor's chosen charities.

Library administrators insisted the calendar had only been shelved with the most "inappropriate" images to be re-shot in the new year—even though it would go on sale late. Paul Marland, principal library manager, said, "We were happy to support the calendar idea but there was maybe too much of a lack of clothing. We ended up with a number of images which, on closer examination, we felt were a little too risque.

"The concern was that if staff were seen in a certain way it would detract from the production. We don't want to be down on staff enthusiasm, but one or two pictures were inappropriate. "Some of the images may be used in a future calendar and the idea has not entirely been abandoned."

A spokeswoman for Blackpool Council said: "We are talking to library staff about ideas to move this forward early in the new year and, in principle, are very supportive of this fund raising concept. "The council is definitely not banning this calendar but just rethinking a few of the images and incorporating ideas other staff may have." Reported in: blackpooltoday.co.uk, December 13. □



school

Frenchtown, New Jersey

A second-grader's singing of a fire-and-brimstone religious song in a public school talent show does not violate the First Amendment's Establishment Clause, and prohibiting it deprives her of free speech, a federal judge ruled December 11.

U.S. District Court Judge Freda Wolfson in Trenton, sustained a civil liberties challenge to the Frenchtown Elementary School District Board of Education's refusal to let eight-year-old Olivia Turton perform "Awesome God" in the after-school "Frenchtown Idol" contest.

Wolfson found the school board's proffered reason for excluding the song—namely, that it "had a legitimate pedagogical concern in distancing itself from proselytizing religious speech"—a subterfuge for unlawful viewpoint discrimination.

According to the facts stipulated by each side, when Turton told her music teacher she intended to sing "Awesome God," the teacher decided to submit the lyrics—due to their content—to School Superintendent Joyce Brennan for review. Brennan found the song inappropriate because of its "overtly religious message and proselytizing nature."

"Awesome God," by the late religious songwriter Rich Mullins, includes the lyrics: "When He rolls up His sleeves/ He ain't just putting on the Ritz/ There's thunder in His footsteps/ And lightning in His fists/ And the Lord wasn't joking/ When He kicked 'em out of Eden/ It wasn't for no reason/ That He shed His blood/ His return is very close/ And so you better be believing that/ Our God is an awesome God."

Brennan did offer to let Turton select a replacement—perhaps one with less strident religious content. Instead, Turton's mother brought the matter to the attention of the school board, which backed Brennan's decision, leading to the law suit, *O.T.* v. *Frenchtown Elementary School District Board of Education*.

The Turtons challenged the board's action as a violation of constitutionally protected free speech. They were represented by Fair Lawn attorney Demetrios Stratis, the New Jersey counsel for the Alliance Defense Fund in Scottsdale, Arizona, a group that deals with religious free-speech issues.

Joining in the case as *amici curiae* were the American Civil Liberties Union of New Jersey and the U.S. Department of Justice Civil Rights Division.

Ruling on cross motions for summary judgment, Wolfson accepted the challengers' argument that "Frenchtown Idol," an extracurricular activity open to participation by any child in the town, constituted a limited public forum, in which government "intentionally open[s] a nontraditional public forum for public discourse." In such a forum, the government "may not exclude speech where its distinction is not reasonable in light of the purpose served by the forum ... nor may it discriminate against speech on the basis of its viewpoint."

Wolfson found the school board's decision to exclude "Awesome God," despite the contest's general tolerance for songs with religious themes, constituted viewpoint discrimination. As for the board's argument that it was the song's proselytizing nature that made it objectionable, Wolfson found that the contest rules did not disqualify songs with messages exhorting the audience to action.

Lastly, Wolfson found that the board's viewpoint discrimination could not be justified by the Establishment Clause. Unlike U.S. Supreme Court cases against prayer at public school graduations or football games, participation in the talent show was entirely voluntary and the content was "selected, developed, practiced and performed by the individual students and without substantial interference by the school." The only oversight imposed by the school was that the content be G-rated.

"For these reasons, this Court rejects the notion that the Frenchtown Idol audience would perceive Plaintiff's song as the 'public expression' of anyone other than Plaintiff herself," Wolfson wrote.

Plaintiffs lawyer Stratis said of the ruling, "The judge did a very detailed analysis of the case law and found that the school board's decision amounted to viewpoint discrimination that was not outweighed by any violation of the Establishment Clause."

ACLU-NJ volunteer counsel Jennifer Klear, of the New York office of Drinker Biddle & Reath, said, "The court upheld an important distinction between religious

expression that is initiated or expressed by school officials and speech that is initiated by individual students." Klear was assisted by ACLU-NJ legal director Edward Barocas. Reported in: *New Jersey Law Journal*, December 15.

broadcasting

New York, New York

All that talk about "profane" talk not belonging on TV was on TV after all. The oral arguments in broadcasters' challenge to the FCC's profanity rulings against Fox Billboard Awards broadcasts was allowed to be televised. The U.S. Court of Appeals for the Second Circuit in New York informed the attorneys involved on December 11 that it granted a request from C-SPAN to televise the December 20 arguments.

The televised coverage was "uncommon but not unprecedented," said Andrew Schwartzman of the Media Access Project, which represented intervenor Center for Creative Voices.

Broadcaster petitioners—led by Fox—filed their briefs with the court buttressing their case and responding to the FCC's defense of its rulings that the Billboard Awards broadcast of variants of the F-word and S-word by Cher and Nicole Richie were indecent by contemporary community standards.

A C-SPAN spokesman said that the Ninth and Second Circuits have been historically more amenable to TV coverage. He said no other cable or broadcast news operation had yet asked for a pool feed of the arguments, which it has supplied for Ninth Circuit arguments in the past, but that it would consider such requests.

Veteran First Amendment attorney John Crigler of Garvey Schubert Barer called the coverage news "super," pointing out that federal courts are historically reluctant to allow coverage of oral argument.

"These kinds of cases don't come along often," says Adonis Hoffman, senior VP and counsel for the American Association of Advertising Agencies, "and now that the fines have been statutorily increased, there are more than constitutional principles at stake. Plus, everyone wants to know where the lines should be drawn." Reported in: *Broadcasting and Cable*, December 12.

copyright

San Francisco, California

A federal appeals court has ruled against archivists who sought to ease copyright restrictions on old books and films to promote archiving them on the Internet, where they would be freely available.

In the case, *Kahle* v. *Gonzales*, two groups—the Internet Archive, a nonprofit digital library, and Prelinger Associates, which preserves films—sued the U.S. Department of Justice. The archivists said that four copyright laws were thwarting the public from viewing out-of-print books, old films, and academic articles that have no commercial value. Under copyright law, works do not generally fall into the public domain until seventy years after the author's death.

But a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit, in San Francisco, said the case too closely resembled an earlier lawsuit that had challenged the Copyright Term Extension Act of 1998. In that case, *Eldred* v. *Ashcroft*, the U.S. Supreme Court upheld the act.

The plaintiffs' main claims in *Kahle* "attempt to tangentially relitigate *Eldred*," Judge Jerome Farris wrote in the Ninth Circuit panel's opinion, issued January 22. "However, they provide no compelling reason why we should depart from a recent Supreme Court decision."

Brewster Kahle, director and cofounder of the Internet Archive, said he was disappointed in the decision. "The idea that out-of-print materials are risky to have in libraries of the future," Kahle said of the court's opinion, "is a corruption of the idea of copyright and the traditions of libraries."

Lawrence Lessig, the founder and director of Stanford Law School's Center for Internet and Society, argued for the plaintiffs in both the *Kahle* and *Eldred* cases.

Anthony Falzone, executive director of the center's Fair Use Project, said the archivists will probably ask for a rehearing of the case before a full panel of the appeals court's judges. Reported in: *Chronicle of Higher Education* online, January 24.

defamation

New York, New York

A federal judge said January 12 that he will throw out—for the second time—the defamation lawsuit a former Army scientist filed against the New York Times Co. over columns that he contends blamed him for the 2001 anthrax attacks.

Saying that the *Times's* motion to dismiss the case "should be granted," U.S. District Court Judge Claude M. Hilton in Alexandria, Virginia, canceled a trial set for January 29, according to the court's docket. Hilton indicated that he would explain his reasoning in a subsequent order throwing out the case.

The development was a victory for *Times* columnist Nicholas D. Kristof, who has been fighting the lawsuit filed by Steven J. Hatfill in 2004. Hatfill said the paper defamed him in a series of Kristof columns that identified him as a "likely culprit" in the anthrax-spore mailings that killed five people and sickened 17.

Hatfill has been identified by authorities as a "person of interest" in the attacks, but no one has been charged.

David McCraw, assistant general counsel for the Times Co., said the paper is "extremely gratified" by Hilton's decision. "In the end, we think the law worked the way it should, which is to protect aggressive journalism," he said.

Kristof said the decision is an important victory for journalists, who have suffered a series of court defeats recently in efforts to shield news-gathering activities from the legal process. Kristof had earlier refused to disclose confidential sources used for the anthrax columns.

"It's been a very difficult few years for journalists entangled in the law, and so today feels like a victory," Kristof said.

Hilton first threw out the case in 2004, ruling that Kristof accurately reported that the scientist was a focus of the FBI probe. The U.S. Court of Appeals for the Fourth Circuit reinstated the suit in 2005 and said Kristof's columns could be read as blaming Hatfill for the attacks.

As the case moved toward trial, the *Times* argued that Kristof did not intend to implicate Hatfill and was only trying to jump-start the FBI investigation. In the 2002 columns, Kristof said the FBI had failed to aggressively pursue a scientist he first identified as "Mr. Z." He wrote that the biodefense community had called Mr. Z a "likely culprit," partly because the scientist was familiar with anthrax.

Kristof later acknowledged that Hatfill was Mr. Z and wrote that Hatfill deserved the "presumption of innocence." Hatfill's attorneys argued that Kristof labeled Hatfill as the anthrax killer and deliberately ruined his reputation. Reported in: *Washington Post*, January 13. ☐

log on to

newsletter on intellectual freedom *online*

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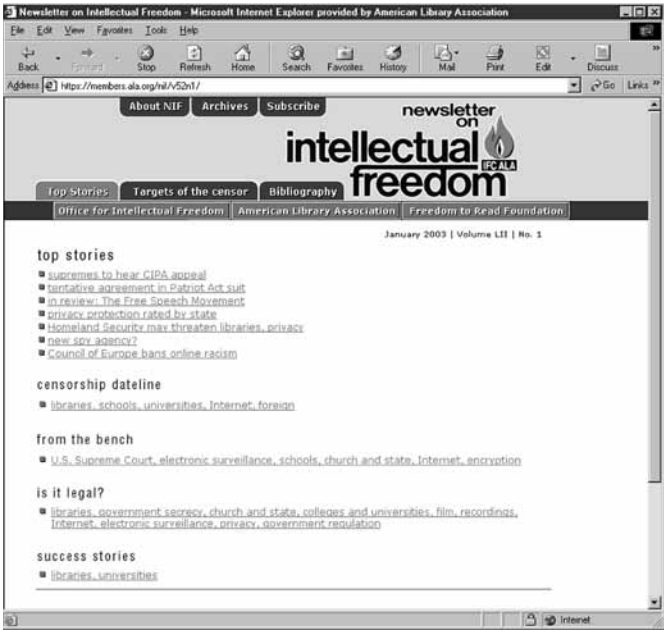

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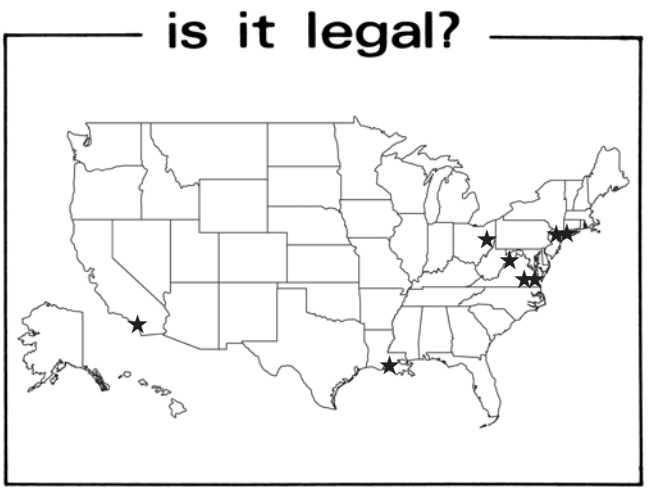

libraries

Los Angeles, California

A student at the University of California at Los Angeles involved in a library disturbance last year filed suit January 17 against the university and campus police. Mostafa Tabatabainejad, 23, alleges that his civil rights were violated on November 14, 2006, when a campus security officer repeatedly used a Taser on him during a library visit because the student refused to show his identification. The suit names as defendants the university, campus police, and six individual officers.

An Iranian American, Tabatabainejad contends he was singled out because of his Middle Eastern appearance, noting that the guard refused his request to demand identification from the other students who were present at the time. The suit also claims that the campus violated the Americans with Disabilities Act because the officers inflicted emotional distress on him despite his advising them that he has bipolar disorder. "He told the officers he had the condition and the officers' response was to Taser him and to hurt him rather than to deal with him as a person with a disability," plaintiff attorney Paul Hoffman said.

UCLA Interim Chancellor Norman Abrams expressed regret over the suit being brought, noting that "shortly after the incident, I urged everyone not to rush to judgment and to let the investigations take their course." Reported in: *American Libraries* online, January 19.

Rosedale, Louisiana

The ACLU of Louisiana has threatened litigation against the Riverdale Middle School in suburban New Orleans unless the school rescinds a five-year policy barring students from visiting the nearby Rosedale branch of the Jefferson Parish Library System after school without a parental permission note for each day the student visits the library. The policy also forbids students from waiting in the library parking lot for a ride; violations can result in a school suspension.

"There is no statutory authorization for you to require office approval for what a student does after school hours, much less for such non-disorderly conduct as going to the public library," Joe Cook, executive director of the ACLU's Louisiana chapter, wrote Riverdale Principal Randy Bennett December 20. "If you are concerned about their conduct while there, then you might teach them about proper behavior in such a setting."

Cook said he sent the letter after a Riverdale parent brought the policy to his attention. Cook declined to identify the individual because the parent feared "retaliation and repercussions" against that family's child.

Bennett said the policy will stand unless Superintendent Diane Roussel decides differently. He went on to explain that it was instituted—after the library experienced many problem behaviors from Riverdale students—in consultation with school and library officials, as well as the sheriff's office. Reported in: *American Libraries* online, January 8.

colleges and universities

New York, New York

A seemingly innocuous policy change at the City University of New York has faculty leaders worried that their institution—which has not been front and center in the battles over David Horowitz's Academic Bill of Rights—may end up giving the conservative activist a victory, at their expense.

CUNY administrators have proposed that the university's board adopt new procedures for handling student complaints that are not related to either academic freedom or covered by other university policies. The proposal sets up investigative responsibilities and creates panels to adjudicate those complaints in which a mutual conclusion can't be reached. CUNY officials portray the policy as a clarification that will help students who don't know what to do when they feel they have been mistreated in the classroom. Very few cases are likely to be covered by the

policy, CUNY officials say, and it has nothing to do with Horowitz's cause.

In one sense, the proposed CUNY policy differs from Horowitz's proposals because the latter are described by him as a protection of academic freedom, while CUNY's policy is meant to apply to incidents that aren't covered by academic freedom. But the CUNY proposal is very consistent with Horowitz's claim that there are categories of student complaints (he has tended to talk about inappropriate political posturing in class) for which most colleges don't have a current policy. Most college and faculty groups have said Horowitz grossly overstates any problem and that policies exist to cover any inappropriate actions that need review.

That's what faculty leaders are saying at CUNY, too. But the new policy states that there is no procedure in place for student complaints about faculty conduct in the classroom or academic settings, when those complaints don't involve academic freedom. The CUNY draft policy doesn't offer examples of what kind of situations would be covered, but faculty leaders note that there are already policies on sexual harassment, various forms of bias, and academic dishonesty.

"This sets up this gigantic machinery, without ever defining what one might be complaining about," said Barbara Bowen, president of the Professional Staff Congress, the American Federation of Teachers unit that represents CUNY faculty members. "There's a mystery at the center of this procedure? Why create this now?"

The CUNY rules state that if a student files a complaint, the department chair (or academic dean, if the chair is the subject of the complaint) would conduct a fact-finding investigation within thirty days, try to work out an agreement with everyone involved, and issue a formal finding and recommendation. If either party appeals, the chief academic officer would then serve as chair of an appeals committee, which would have as additional members the chief student affairs officer, two elected faculty members, and one elected student. In considering appeals, the panel would be charged with "particular focus on whether the conduct in question is protected by academic freedom."

A critique of the policy prepared by the Faculty Senate noted that despite the statements about academic freedom, faculty members would have their conduct judged by a panel on which faculty members aren't a majority.

Frederick Schaffer, general counsel for CUNY, said the new policy will not permit any intrusions on academic freedom. He said the policy was for cases—and he estimated there may be one or two a year—in which students feel a faculty member has been "abusive" in class, generally in a dispute over political views. That doesn't mean professors can't express political views, he said, just that they can't go beyond a certain point of professionalism in interacting with students.

"Professors are entitled to have a point of view, to express a point of view, and to teach as they see fit as a teacher," Schaffer said. "On the other hand, occasionally, professors' conduct could spill over into something that could be thought of as abusive or discriminatory," and the policy was designed for such cases. In cases of a problem, he said, it was likely that informal discussions would resolve matters. Anything that would lead to real discipline, he said, would have to end up in the system currently in the faculty's contract with the university.

Bowen raised a number of concerns about the proposal. She said that absent any sense of a real problem to solve, it's hard to ignore "the political context" in which it appears. "This would be a win for whatever groups want to politicize the classroom and intimidate and silence faculty," she said.

A major criticism professors have made of the Academic Bill of Rights is that it would create a mechanism for students to respond to professors' intellectual arguments by sending them into some sort of judicial system. So a student offended by a professor's insistence that evolution and creationism are not theories of equal weight files a complaint that the professor denigrated religion. Or a student encouraged by various groups to monitor professors for criticism of the United States or Israel ends up filing reports or complaints, rather than debating ideas in the classroom.

"This is an invitation to politicize the classroom, to ask students to go in and report on their professors," Bowen said.

Bowen stressed that she was not suggesting that faculty members have the right to say or do anything in class. But she said that review procedures, existing complaint procedures, and various CUNY offices gave any aggrieved student a range of options to seek help with any real problem. "As a union, we feel 100 percent that we stand for treating students with fairness and respect. The classroom should be a place for lively discussion and challenging one's views and expanding one's thoughts and that can be done—and is best done—when students are treated completely respectfully," she said.

Schaffer said he realized that the Horowitz debates nationally have faculty members concerned. But he said repeatedly that he did not want CUNY's actions to be seen as in any way backing the Academic Bill of Rights. "This is not an attempt to ensure that faculty be absolutely neutral," he said. "This is not an attempt to enforce any kind of orthodoxy."

He predicted that some complaints that would be made under the policy would be valid and others wouldn't be. Why put forward the policy now? There are no complaints right now, he said, and CUNY didn't want the issue viewed through a specific case. "We were careful to bring this forward because there isn't a hot controversy." Reported in: insidehighered.com, January 18.

Beaver Falls, Pennsylvania

Geneva College, a Christian college in Pennsylvania, is suing the state for refusing to include its jobs—which have religious requirements—in a database of available positions.

In a complaint filed December 15 in U.S. district court, lawyers with the Center for Law & Religious Freedom of the Christian Legal Society and the Alliance Defense Fund charge that in the state's failure to provide employment and recruiting services for positions with religious criteria, the government is denying faith-based organizations their First Amendment rights. The lawyers argue that the First Amendment, along with Title VII of the 1964 Civil Rights Act and the Pennsylvania Human Relations Act, affirm the right of a religious institution to hire employees on the basis of faith.

"The thrust of it is the idea that the First Amendment provides the right of religious employers to hire people that share their religious beliefs. In this case, the state and the federal government are trying to coerce religious employers like Geneva College to forgo that right in order to participate in this job placement program," said Timothy Tracey, a lawyer for the Center for Law & Religious Freedom.

The case surrounds Pennsylvania's administration of the federal Workforce Investment Act of 1998, which funds and assists state efforts to provide employment and job training services. The act includes a stipulation that programs receiving federal assistance must comply with a nondiscrimination provision that expressly prohibits religious discrimination and does not exempt religious institutions. According to the complaint, the Pennsylvania Department of Labor and Industry informed Geneva College in 2004 that the department was "precluded from listing a job opening that would limit the applicant pool to members of one faith" on the agency's CareerLink job database. In 2005, Geneva College administrators were told that they could not include the word "Christian" in job listings, except for jobs with "bona fide" religious requirements (such as to be a priest, one must be Roman Catholic).

Geneva, a Christian college governed by the Reformed Presbyterian Church of North America, requires all new hires to "demonstrate a credible Christian commitment." According to the complaint, "The inability of an applicant to articulate a personal faith commitment to Jesus Christ and be supportive of a Reformed worldview will have a direct impact on employment consideration.'"

The main defendants identified in the complaint are the secretaries for the U.S. and Pennsylvania labor departments. Multiple calls to the public relations office at the U.S. Department of Labor were not returned, and Barry Ciccocioppo, press secretary for the Pennsylvania Department of Labor & Industry, said the agency had not yet been served the complaint. He added that he could not comment on pending litigation.

Robert Tuttle, a professor of law and religion at George Washington University, said a 2004 Supreme Court decision finding that while the government has the ability to extend government benefits to faith-based institutions, it does not have the obligation to do so on their terms, will likely present the biggest barrier to the plaintiffs' case. In *Locke* v. *Davey*, a case involving the state of Washington's Promise Scholarship, which provided funds to students to attend accredited public or private universities in-state but restricted the monies from going toward preparatory programs for the ministry, the court determined 7–2 that, as Tuttle said, "There may be good reasons for the government to treat religious organizations differently, and it can do so without violating the constitution."

"The government, under current establishment clause law, is allowed to include religious organizations under federal funding programs. But the constitution doesn't require that they be included, or included with full protections for the ability to hire people based on religion," Tuttle said.

At the same time, Tuttle said the Religious Freedom Restoration Act of the early 1990s, which has since been struck down for states but not for the federal government, might prove to be the plaintiffs' best bet in court. If a court rules that the act applies, and Geneva College could demonstrate that the restriction imposes a significant burden on its expression of religious beliefs, the onus would be shifted to the government to demonstrate why the restriction would represent a "compelling public interest."

In addition to Geneva College, the Association of Faith-Based Organizations, which includes Geneva among its more than thirty members, is also listed as a plaintiff. Tracey said some of the members of the association are Christian colleges and universities, although he did not elaborate. Reported in: insidehighered.com, December 20.

Providence, Rhode Island

The American Civil Liberties Union of Rhode Island has filed a federal lawsuit against Rhode Island College for removing a student group's reproductive-rights display. The signs, created by the Women's Studies Organization, said, "Keep your rosaries off our ovaries" and "Our bodies, our choice." They were removed after objections were raised by a Roman Catholic priest who conducts a weekly mass on the campus. The ACLU is also challenging the college's signage policy, which the civil-rights group alleges is selectively enforced. Reported in: *Chronicle of Higher Education* online, December 8.

Petersburg, Virginia

Virginia State University agreed to pay $600,000 to Jean R. Cobbs, who it fired as a tenured professor in 2005 and whose claims against the university have been backed by several academic groups.

Cobbs and her supporters have said she was dismissed for her political views (she is an outspoken black Republican at a historically black college where her views place her in a distinct minority) and for backing other professors (of a range of political views) in disputes with the Virginia State administration. In announcing the settlement of her case, the Virginia Association of Scholars—one of the groups backing Cobbs—said information obtained by Cobbs's lawyer showed that the university's provost, W. Eric Thomas, replaced Cobbs with a woman with whom he is living.

The dismissal of Cobbs was among the cases that led the American Association of University Professors to censure Virginia State in 2005 for a post-tenure review process (used in her dismissal) that the association found lacking in due process and fairness. The association's investigation found that Cobbs was dismissed after a series of disputes, over several years, with the administration in which she criticized various decisions. In her post-tenure review, the AAUP found, she was denied the right to challenge unfair statements or a system of due process. The AAUP gives universities it investigates for possible censure the right to respond, and Virginia State never exercised that right, except to say that the association had made unspecified "errors" on which the university could not elaborate because of "legal considerations."

The federal lawsuit Cobbs filed—which will be ended if a judge approves the settlement, as is expected—charged Virginia State with violating its own procedures in a way that denied Cobbs due process.

Carey E. Stronach, president of the Virginia Association of Scholars, released a statement on the settlement in which he said: "We are most pleased that Dr. Cobbs received this favorable settlement after being defamed by the VSU administration for the past twelve years. The taxpayers of Virginia should not have to continue to pay damages for the ongoing misdeeds" of the university's leaders.

Cobbs taught sociology and social work at Virginia State for thirty-three years. She is currently working as a volunteer at a home for at-risk children.

She said she was "pleased that this has ended," and that she wished she could have defended herself at the university and stayed on there. She said that as part of the settlement talks, she was offered reinstatement, but she couldn't go back when the administrators who fired her were still in charge. "There's not much for me to go back to," she said. "When this kind of injustice goes on for years, your career is ruined, and the only thing you can try to do is be vindicated," she said. "I hope this will make it better for other individuals." Reported in; insidehighered.com, January 26.

Williamsburg, Virginia

When the College of William & Mary was founded, there wasn't much of an emphasis on separation of church and state. The college—the second oldest in the United States—received its charter in 1693, well before the United States existed as a country and before a William & Mary alumnus, Thomas Jefferson, started to define for Virginia and the United States the idea of church-state separation. Even if Jefferson's ideas had been in circulation, they might not have applied: William & Mary didn't become a fully public institution until early in the twentieth century, when ownership transferred to Virginia.

But the semester just completed saw a significant debate over the role and visibility of religion at William & Mary, ending with a letter released just before Christmas by President Gene R. Nichol. In the letter, Nichol admitted that his "own missteps" and poor communication have contributed to the anger over his decision to remove an altar cross from permanent display in the chapel of the college's Christopher Wren building. But while Nichol announced some minor modifications to the policy, he is largely standing behind it.

In his letter, Nichol offered a detailed explanation for his decision, which he framed around the need for all parts of the campus to be truly open to all. "Does the Wren Chapel, our most remarkable place, belong to every member of the College community, or is it principally for our Christian students? Do we take seriously our claims for religious diversity, or do we, even as a public university, align ourselves with one particular religious tradition?" he wrote.

Nichol predicted that the issues involving the cross were "too powerful and heartfelt" to go away, and he's already been shown to be correct. A group of alumni and students called Save the Wren Cross, which has gathered more than 7,000 signatures on a petition opposing the change, has condemned Nichol's letter, saying that it indicates he has learned "nothing" from the uproar. The group is continuing to organize alumni and others to question the decision, and a number of conservative columnists and bloggers nationwide are taking up the cause.

Some of the online discussion has overstated Nichol's changes. Nichol ordered that the cross be removed from permanent display, but he didn't ban the use of the cross when requested for Christian religious services or other events at which participants want the cross. Many of the critics have stressed the long history of the Wren Chapel, suggesting that Nichol was changing centuries of tradition. While the Wren building is indeed centuries old, the cross is a relatively recent addition. A two-foot, gold altar cross, it was donated by a church to the college and put on display in 1931.

Nichol, who became president last year, said that he has quickly become fond of the Wren Chapel, calling it "the most ennobling and inspiring place on one of the most remarkable campuses in the world."

As he learned more about the college, Nichol wrote, "I began to understand that the experience of the chapel is not the same for all of us." He said "a number of members

of our community have indicated to me that the display of a cross—in the heart of our most important and defining building—is at odds with our role as a public institution." To such students, he wrote, the cross divides those on the campus into "insiders and outsiders," into "those for whom our most revered space is keenly inviting and those whose presence is only tolerated."

He stressed that these concerns were not just theoretical. "I have been saddened to learn of potential students and their families who have been escorted into the chapel on campus tours and chosen to depart immediately thereafter. And to read of a Jewish student, required to participate in an honor council program in the chapel during his first week of classes, vowing never to return to the Wren. Or to hear of students, whose a capella groups are invited to perform there, being discomfited by the display of the cross. Or of students being told in times of tragedy of the special opening of the chapel for solace—to discover that it was only available as a Christian space. Or to hear from a campus counselor that Muslim students don't take advantage of the chapel in times of spiritual or emotional crisis. Or to learn of the concerns of parents, immensely proud for the celebration of a senior's initiation into Phi Beta Kappa, but unable to understand why, at a public university, the ceremony should occur in the presence of a cross."

Alexandra S. Eichel, a junior at William and Mary who is president of the Hillel chapter there, said that the organization of Jewish students hadn't made the cross an issue and that she was as surprised as anyone to learn that the cross had been removed from permanent display. But she said she backed the president's decision.

Hillel—which does not have a permanent facility at William and Mary and uses a variety of spaces for religious services and other activities—has never used the chapel, because of the cross. "It's a viable option for us now. I think he did the right thing," said Eichel. Of those protesting, she said, "I don't think they understand the church-state thing."

Critics of the decision say that Nichol has made too much out of the concerns about the cross and is insulting the college's traditions and history.

"The easily offended will always be with us. The only change signaled by Nichol's cross-removal order is a new tolerance for the intolerant," wrote Vince Haley, an alumnus who is founder of Save the Wren Cross. "What will be next? The altar table and rail? The pulpit? W&M's alma mater song contains this stanza: 'God, our Father, hear our voices/Listen to our cry/Bless the College of our Fathers/ Let her never die.' Surely those who object to a cross in a chapel will be mortally offended by these words."

Added Haley: "The Wren Cross is now stuffed away—hidden like a shameful relic of an embarrassing past. W&M's new president may be terribly confused about W&M's identity. It doesn't mean the rest of us in the Commonwealth have to be."

Other critics of the president have focused more on process than substance. An editorial in *The Flat Hat*, the student newspaper, set out the issues this way: "Despite the obvious importance of this decision, it was made unexpectedly and without debate. There was no indication from the president that he was considering changing a half-century-old tradition, nor any consultation with the thousands of William and Mary students, professors and alumni who consider the Wren Building a symbolic embodiment of the college they hold so dear. The complete dismissal of community opinion is disrespectful to our traditions and ideals, and it has stirred up a deep well of resentment."

In his letter Nichol said that he had moved ahead too quickly, and without consulting enough people, or communicating his ideas. He also said he was taking two additional steps. On Sundays, the cross will remain on display all day, not just during scheduled services. In addition, the college will commission a plaque for the chapel to commemorate its origins as an Anglican place of worship.

Save the Wren Cross is not impressed, putting out statements that Nichol is again acting without consultation, and reiterating its call for the cross to be restored permanently.

Nichol's letter suggested that he's not backing down. And he said good things are already happening as a result of the controversy. He said that Hillel had reserved the chapel for an event—the first time that had ever happened in anyone's memory. And he said he has heard from both Muslim and Jewish students that they are using the chapel, for the first time, as a place for prayer and contemplation. Reported in: insidehighered.com, December 27.

Internet

Washington, D.C.

Two senators reintroduced a bill January 9 that would prohibit broadband companies from offering preferential treatment to internet content providers who pay for premium service. Sen. Byron Dorgan (D-ND) and Sen. Olympia Snowe (R-ME) were joined by six other senators, including Hillary Clinton (D-NY) and Barack Obama (D-IL), in sponsoring the Internet Freedom Preservation Act (S. 215), which is identical to a bill rejected 11–11 last year by the Senate Commerce Committee.

Backers of the network neutrality legislation hope that the new Democratic majority in Congress will improve its chances this year. The bill specifies that telecommunication services shall not "block, interfere with, discriminate against, impair, or degrade the ability of any person to use a broadband service." It also requires companies to offer an option for broadband service that is not bundled with cable, phone, or Voice Over Internet Protocol service.

"I think we have a shot at getting this done," Dorgan said. "It's controversial, it's not easy, but it's really impor-

tant public policy." The online CNet news service reported that Rep. Edward Markey (D-MA) was expected to reintroduce his own net neutrality proposal from last year.

Advocates cheered concessions made by AT&T in agreeing to adhere to network neutrality rules for two years to secure FCC approval for its $86-billion takeover of BellSouth Corporation in December. Reported in: *American Libraries* online, January 12.

New York, New York

MySpace.com, the social networking site, said December 5 that it was developing technologies that would help combat the use of its site by sexual predators by cross-referencing its more than 130 million users against state databases of registered sex offenders.

The Web site, which is owned by the News Corporation, said that within thirty days it planned to deploy the technology, which will seek to identify known sex offenders not just by their names, but also by date of birth, height, weight, and ZIP code.

If the automated system finds a potential match between a MySpace user and a registered sex offender, employees will try to verify the match or determine if it is a false positive. Users who are registered sex offenders, MySpace said, will be denied access to the site and, depending in the circumstances, be turned over to law enforcement.

The system, which MySpace executives said was the first of its kind, comes as the site has faced scrutiny and criticism by advocates of children's safety. Ernie Allen, president of the National Center for Missing and Exploited Children, said the technology was a potentially useful step in slowing the incidence of sexual solicitation of minors.

According to the National Center for Missing and Exploited Children, a nonprofit group, one in seven regular Internet users between the ages of ten and seventeen will be solicited online for sex. That figure has fallen from 2000, when it was one in five.

The perception, particularly among parents, has been that children are vulnerable on social networking sites like MySpace.com, which allow users to create profiles, share their interests, and create a vast social network. MySpace said that more than 80 percent of its users were eighteen years or older.

In its announcement, MySpace said it had signed a deal to use technology created by the Sentinel Tech Holdings Corporation. Forty-six states have public data bases that include 550,000 registered sex offenders. The technology will compare the names on the databases with the 135 million MySpace users.

Hemanshu Nigam, chief security officer for MySpace, said the company hoped the technology would work in real time, meaning that as people signed up—which they are doing at a rate of 320,000 a day—the system would automatically compare the names to the databases.

The system, by MySpace's admission, is not foolproof. If registered sex offenders sign up but do not give their real names, physical attributes, locations, or post their real picture, they could elude detection.

Similarly, there is a chance that people who are not sex offenders might be flagged by the system. Nigam said a team was in place to analyze potential matches and throw out false positives.

Kevin Bankston, a staff lawyer for the Electronic Frontier Foundation, a free speech and consumer advocacy group, said the technology was a response to growing worries about the extent of the problem of sexual solicitation of minors on the Internet. Bankston said the incidents of such solicitation were falling but fear was causing companies to take steps that could ultimately impinge civil liberties.

"My concern is MySpace is acting based on a level of pressure and fear that may be unreasonable," he said. Reported in: *New York Times*, December 6.

government secrecy

Washington, D.C.

The Bush administration has employed extraordinary secrecy in defending the National Security Agency's highly classified domestic surveillance program from civil lawsuits. Plaintiffs and judges' clerks cannot see its secret filings. Judges have to make appointments to review them and are not allowed to keep copies. Judges have even been instructed to use computers provided by the Justice Department to compose their decisions.

But now the procedures have started to meet resistance. At a private meeting with the lawyers in one of the cases in January, the judges who will hear the first appeal next week expressed uneasiness about the procedures, said a lawyer who attended, Ann Beeson of the American Civil Liberties Union.

Lawyers suing the government and some legal scholars say the procedures threaten the separation of powers, the adversary system, and the lawyer-client privilege.

Justice Department officials say the circumstances of the cases, involving a highly classified program, require extraordinary measures. The officials say they have used similar procedures in other cases involving classified materials.

In ordinary civil suits, the parties' submissions are sent to their adversaries and are available to the public in open court files. But in several cases challenging the eavesdropping, Justice Department lawyers have been submitting legal papers not by filing them in court but by placing them in a room at the department. They have filed papers, in other words, with themselves.

At the meeting, judges on the United States Court of Appeals for the Sixth Circuit asked how the procedures

might affect the integrity of the files and the appellate records. In response, Joan B. Kennedy, a Justice Department official, submitted, in one of the department's unclassified filings, a detailed seven-page sworn statement defending the practices.

"The documents reviewed by the court have not been altered and will not be altered," Kennedy wrote, and they "will be preserved securely as part of the record of this case."

Some cases challenging the program, which monitored international communications of people in the United States without court approval, have also involved atypical maneuvering. Soon after one suit challenging the program was filed last year in Oregon, Justice Department lawyers threatened to seize an exhibit from the court file.

This month, in the same case, the department sought to inspect and delete files from the computers on which lawyers for the plaintiffs had prepared their legal filings.

The tactics, said a lawyer in the Oregon case, Jon B. Eisenberg, prompted him to conduct unusual research. "Sometime during all of this," Eisenberg said, "I went on Amazon and ordered a copy of Kafka's *The Trial*, because I needed a refresher course in bizarre legal procedures."

A federal district judge in the case, Garr M. King, invoked another book after a government lawyer refused to disclose whether he had a certain security clearance, saying information about the clearance was itself classified. "Frankly, your response," Judge King said, "is kind of an *Alice in Wonderland* response."

Questions about the secret filings may figure in the first appellate argument in the challenges, before the Sixth Circuit, in Cincinnati. The three judges who will hear the appeal met with lawyers for the Justice Department and the American Civil Liberties Union on January 8 in a judge's chambers in Memphis.

"The court raised questions about the procedures the government had used to file classified submissions in the case and the propriety and integrity of those procedures," said Beeson, associate legal director of the ACLU, which represents the plaintiffs in the appeal. "They were also concerned about the independence of the judiciary," given that "the Justice Department retains custody and total control over the court filings." Beeson said.

Nancy S. Marder, a law professor at the Chicago-Kent College of Law and an authority on secrecy in litigation, said the tactics were really extreme and deeply, deeply troubling. "These are the basics that we take for granted in our court system," Marder said. "You have two parties. You exchange documents. The documents you've seen don't disappear."

A spokesman for the Justice Department, Dean Boyd, said employees involved in storing the classified documents were independent of the litigators and provided "neutral assistance" to courts in handling sensitive information. The documents, Boyd said, are "stored securely and without alteration."

The appellate argument in Cincinnati will almost certainly also concern the effects of the administration announcement in January that it would submit the program to a secret court, ending its eavesdropping without warrants. In a brief filed January 25, the government said the move made the case against the program moot.

Beeson of the ACLU said the government was wrong. At least one case, the one in Oregon, is probably not moot. It goes beyond the other cases in seeking damages from the government, because the plaintiffs say they have seen proof that they were wiretapped without a warrant.

In August 2004, the Treasury Department's Office of Foreign Assets Control, which was investigating an Oregon charity, al-Haramain Islamic Foundation, inadvertently provided a copy of a classified document to a foundation lawyer, Lynne Bernabei. That document indicated, according to court filings, that the government monitored communications between officers of the charity and two of its lawyers without a warrant in spring 2004.

"If I gave you this document today and you put it on the front page of *The New York Times*, it would not threaten national security," Eisenberg, a lawyer for the foundation, said. "There is only one thing about it that's explosive, and that's the fact that our clients were wiretapped."

Bernabei circulated the document to two directors of the charity, at least one of them in Saudi Arabia, and to three other lawyers. She discussed them with two more lawyers. A reporter for the *Washington Post*, David B. Ottaway, also reviewed the document.

The full significance of the document was apparently not clear to any recipient, more than a year before the *The New York Times* disclosed the existence of the NSA program in December 2005.

The FBI learned of the disclosure almost immediately in August 2004, Judge King said at a court hearing last year, but made no effort to retrieve copies of the document for about six weeks. When it did, everyone it asked apparently returned all copies of the document. In a statement reported in the *Post* in March, for instance, Ottaway said the FBI had told him that the document had "highly sensitive national security information."

"I returned it after consulting with *Washington Post* editors and lawyers, and concluding that it was not relevant to what I was working on at the time," Ottaway said.

In a sworn statement in June, a lawyer who had the document, Asim Ghafoor, said the bureau took custody of his laptop computer "in order that the document might be 'scrubbed' from it." The computer was returned weeks later.

In February 2006, the charity and the two lawyers who say they were wiretapped sued to stop the program, requesting financial damages. They attached a copy of the classi-

fied document, filing it under seal. They have not said how they came to have a copy.

Three weeks later, the lawyers for the foundation received a call from two Justice Department lawyers. The classified document "had not been properly secured," the lawyers said, according to a letter from the plaintiffs' lawyers to the judge. As Eisenberg recalled it, the government lawyers said, "The FBI is on its way to the courthouse to take possession of the document from the judge."

But Judge King, at a hurriedly convened hearing, would not yield it, and asked, "What if I say I will not deliver it to the FBI?" A Justice Department lawyer, Anthony J. Coppolino, gave a measured response, saying: "Your Honor, we obviously don't want to have any kind of a confrontation with you. But it has to be secured in a proper fashion."

The document was ultimately deposited in a "secure compartmented information facility" at the bureau office in Portland.

In the meantime, copies of the document appear to have been sent abroad, and the government concedes that it has made no efforts to contact people overseas who it suspects have them. "It's probably gone many, many places," Judge King said of the document at the August hearing. "Who is it secret from?"

A Justice Department lawyer, Andrew H. Tannenbaum, replied, "It's secret from anyone who has not seen it." He added, "The document must be completely removed from the case, and plaintiffs are not allowed to rely on it to prove their claims."

Judge King wondered aloud about the implications of that position, saying, "There is nothing in the law that requires them to purge their memory."

Eisenberg said that was precisely the government position. "They claim they own the portions of our brains that remember anything," he said.

In a decision in September, Judge King ruled that the plaintiffs were not entitled to review the document again but could rely on their recollections of it. In October, they filed a motion for summary judgment, a routine step in many civil litigations. In a sealed filing, they described the classified document.

Government lawyers sent Judge King a letter saying the plaintiffs had "mishandled information contained in the classified document" by, among other actions, preparing filings on their own computers. In a telephone conference on November 1, Judge King appeared unpersuaded. "My problem with your statement," he told Tannenbaum, "is that you assume you are absolutely correct in everything you are stating, and I am not sure that you are."

Boyd of the Justice Department said the government "continues to explore with counsel ways in which the classified information may be properly protected without any intrusion on the attorney-client privilege." Reported in: *New York Times*, January 26.

privacy

Washington, D.C.

The Justice Department is building a massive database that allows state and local police officers around the country to search millions of case files from the FBI, Drug Enforcement Administration, and other federal law enforcement agencies, according to Justice officials.

The system, known as "OneDOJ," already holds approximately one million case records and is projected to triple in size during the next three years, Justice officials said. The files include investigative reports, criminal-history information, details of offenses, and the names, addresses and other information of criminal suspects or targets, officials said.

The database is billed by its supporters as a much-needed step toward better information-sharing with local law enforcement agencies, which have long complained about a lack of cooperation from the federal government. But civil liberties and privacy advocates say the scale and contents of such a database raise immediate privacy and civil rights concerns, in part because tens of thousands of local police officers could gain access to personal details about people who have not been arrested or charged with crimes.

The little-noticed program has been coming together during the past year and a half. It already is in use in pilot projects with local police in Seattle, San Diego, and a handful of other areas, officials said. About 150 separate police agencies have access, officials said.

But in a memorandum sent to the FBI, U.S. attorneys and other senior Justice officials, Deputy Attorney General Paul J. McNulty announced that the program will be expanded immediately to fifteen additional regions and that federal authorities will "accelerate . . . efforts to share information from both open and closed cases."

Eventually, the department hopes, the database will be a central mechanism for sharing federal law enforcement information with local and state investigators, who now run checks individually, and often manually, with Justice's five main law enforcement agencies: the FBI, the DEA, the U.S. Marshals Service, the Bureau of Prisons and the Bureau of Alcohol, Tobacco, Firearms and Explosives. Within three years, officials said, about 750 law enforcement agencies nationwide will have access.

McNulty said the goal is to broaden the pool of data available to local and state investigators beyond systems such as the National Crime Information Center, the FBI-run repository of basic criminal records used by police and sheriff's deputies around the country. By tapping into the details available in incident reports, interrogation summaries and other documents, investigators will dramatically improve their chances of closing cases, he said.

"The goal is that all of U.S. law enforcement will be able to look at each other's records to solve cases and

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libraries

Westport, Connecticut

Westport Schools Superintendent Elliott Landon has rejected a request to remove a book from the Coleytown Middle School library. In December, a parent requested the removal of *The Lovely Bones*, by Alice Sebold, from the library, and the Challenged Materials Committee spent several meetings reviewing the request.

The committee recommended to Landon he not remove the book from the library, and in a January 5 letter, he supported the committee's decision. In the first chapter of the book, which was published in 2002, a fourteen-year-old girl is walking home from school when she is abducted, raped, and killed by a neighbor.

In his letter, Landon wrote that the committee members, all of whom read the book, acknowledged that the book is "for mature readers" and also acknowledged that "the book is appropriate to be part of a middle school library collection serving students from ages 11–14, many of whom possess the maturity level to read this book."

Landon further writes middle school students requested the book and that it has been reviewed and named on "three lists used for middle school collection development."

Further, he wrote, "The committee recognized the school system's responsibility to stretch the collection of each of Westport's school library collections to reach every child. In effect, the committee confirmed that the school system would be abrogating its responsibility to serve the needs of all students if it limited the collection of our middle school library." Reported in: WestportNow.com, January 18.

Maplewood, New Jersey

Trustees of the Maplewood Memorial Library met with Mayor Fred Profeta in an emergency meeting January 14 to reexamine their December decision to close the library weekday afternoons because of disruptive middle school student—a policy that would have gone into effect two days later. Library Director Jane Kennedy said "the board voted to rescind its decision about changing library hours" and the township offered some "funding for the library to develop new after-school programs." The board's unanimous vote will keep the main and Hilton branch libraries open between 2:45 and 5 p.m.

"We can do what Maplewood does best," Profeta said at the meeting, "in a pragmatic way." Shortly after the vote, trustee President Marianna Noto commented, "The squeaky wheel gets the what? Grease. And we squeaked a lot."

Profeta announced that he had at his disposal $170,000 from the state's Family Connections program and potentially $50,000 in proceeds from the Mayor's Ball fundraiser in April. Declaring 2007 to be the "Year of the Middle School" in Maplewood, the mayor said that new after-school programs could be rolled out in days.

The board was less excited about the township's offer to provide "nonthreatening safety supervisors" who would wear blazers and dress shirts rather than security-guard uniforms, and deferred the issue for later discussion. "I have real issues about using security guards as our first line of defense against eleven- and twelve-year-olds," board Vice-President Karen Pettis said. Reported in: *American Libraries* online, January 19.

Charlotte, North Carolina

Tango and his two penguin daddies won't face a formal review from Charlotte-Mecklenburg Schools, CMS officials said in January. The district stirred up unwanted international coverage in December by banning *And Tango Makes Three*, a picture book that some say promotes homosexuality. Superintendent Peter Gorman said top staffers mistakenly sidestepped CMS process and pulled the book from four elementary school libraries after a few parents and Mecklenburg County Commissioner Bill James questioned the controversial but true story.

Gorman returned the books after the *Charlotte Observer* questioned the ban. He initially said CMS would convene a staff committee to review whether the book is appropriate for young children. He said his chief of staff would file a complaint based on what parents had told Gorman.

A staff attorney "kind of nixed that," CMS spokeswoman Nora Carr said. Instead, the book will be reviewed only if parents ask for its removal, which hasn't happened. "Hopefully, it's over," said CMS library director Gloria Miller.

Miller noted that the flap spurred interest in the book, which tells about two male penguins in New York's Central Park Zoo who paired up and hatched an adopted egg. "Everybody wants to read that book," Miller said. "It's a wonderful way to get students and parents reading."

One parent at Myers Park Traditional Elementary has asked that his child not be allowed to check out the book, Miller said.

CMS policy says library books should be age appropriate; stimulate knowledge, ethics and enjoyment of reading; present diverse viewpoints that will help students be informed citizens; and depict "many religious, ethnic, and cultural groups." Each school is supposed to have a committee to guide book selection and deal with challenges or complaints. Members include staff, parents, or community representatives and, in middle and high schools, students.

Most book challenges are dealt with at individual schools. The school's decision can be appealed to a district-twide committee, the superintendent and the school board. CMS hasn't banned a book in more than a decade, officials said. Reported in: *Bradenton Herald*, January 9.

schools

Cobb County, Georgia

A suburban Atlanta school board that put stickers in high school science books saying evolution is "a theory, not a fact" abandoned its legal battle to keep them December 19 after four years. The Cobb County board agreed in federal court never to use a similar sticker or to undermine the teaching of evolution in science classes. In return, the parents who sued over the stickers agreed to drop all legal action.

"We certainly think that it's a win not just for our clients but for all students in Cobb County and, really, all residents of Georgia," said Beth Littrell of the American Civil Liberties Union of Georgia.

The school board placed the stickers inside the front cover of biology books in 2002 after a group of parents complained that evolution was being taught to the exclusion of other theories, including a literal reading of the biblical story of creation. The stickers read: "This textbook contains material on evolution. Evolution is a theory, not a fact, regarding the origin of living things. This material should be approached with an open mind, studied carefully, and critically considered."

A federal judge ordered the stickers removed in 2005, saying they amount to an unconstitutional government endorsement of religion. The school board appealed, but a federal appeals court sent the case back, saying it did not have enough information.

"We faced the distraction and expense of starting all over with more legal actions and another trial," said board chair Teresa Plenge. "With this agreement, it is done and we now have a clean slate for the new year."

School board attorney Linwood Gunn said the agreement is not an admission that the stickers were unconstitutional. "The school board attempted to reach what they thought was a reasonable compromise," he said. The board agreed to pay about one-third of the plaintiffs' court costs, Gunn said.

"The settlement brings to end a long battle to keep our science classes free of political or religious agendas," parent Jeffrey Selman said in a statement handed out by Americans United for Separation of Church and State, one of the groups that represented the plaintiffs.

In 2004, Georgia's state schools superintendent briefly proposed a science curriculum that dropped the word "evolution" in favor of "changes over time." That plan was scrapped amid protests by teachers. Reported in: MSNBC .com, December 19.

Gwinnett County, Georgia

A mother of four Gwinnett County elementary-school students has lost her third attempt to get the Harry Potter series banned from the county schools' libraries and classrooms. The Georgia Board of Education ruled December 14 that Laura Mallory had failed to prove her contention that the series "promote[s] the Wicca religion," and therefore that the books' availability in public schools does not constitute state-sponsored advocacy of a religion.

Mallory, whose children attend J. C. Magill Elementary School, has worked for more than a year to ban the popular books from Gwinnett schools, claiming the popular fiction series is an attempt to indoctrinate children in religious witchcraft.

William Bradley Bryant, vice chairman for appeals at the Georgia Board of Education, wrote in a four-page decision that the only evidence presented by complainant Mallory at her previous appeal to the county school board in May "consisted of unverified hearsay that she obtained from the Internet." Bryant went on to say that, despite testimony to the county school board "that claimed the books caused a child to engage in witchcraft and that the books instilled a fear response in children . . . the hearing officer found, these were only 'cause-and-effect assumptions' that failed to establish that the behavior would not have occurred but for the Harry Potter books."

Gwinnett school officials have argued that the books are good tools to encourage children to read and to spark creativity and imagination. Banning all books with references

to witchcraft would mean classics such as "Macbeth" and "Cinderella" would have to go, they said.

Mallory, a mother of four from Loganville, questions the educational value of the fiction series. "That's the kind of stuff in these books—murder and greed and violence. Why do they have to read them in school? If parents wanted to get these books, they could get them in bookstores," she said.

She said she has fought to ban the books from the classrooms—where she said teachers are assigning the books as homework—rather than restricting them from school libraries. "It's a clear promotion of the books," she said. "And the books promote witchcraft."

Mallory remained adamant that the series is an evil influence on youngsters. "It's mainstreaming witchcraft in a subtle and deceptive manner, in a children-friendly format," she said, adding that she is unsure whether she will appeal to the Gwinnett Superior Court, although she acknowledged having already contacted an expert witness just in case. Regardless of winning a subsequent appeal, Mallory asserted that "If even one parent or one child has looked into this more closely, it's worth it." Reported in *American Libraries* Online, December 15; *Columbus Ledger-Enquirer*, December 14.

Carroll, Iowa

What's Eating Gilbert Grape, by Peter Hedges, was welcomed back January 15 into Carroll High School's classrooms. The Carroll school board voted to overturn Superintendent Rob Cordes' decision to ban the book from the high school's literature-to-film class. He ousted the book in November after parents complained that its sexual content was not suitable for teenagers.

A special committee—comprised of eight district employees, community members, and students—then reviewed the book and recommended that the school board overturn the ban.

The board voted 4–1 to keep the book in the school's library and curriculum. However, students will now need a signed permission slip from their parents to read the 1991 novel.

What's Eating Gilbert Grape deals with a young man's experiences with his troubled family in the fictional Iowa town of Endora. Some committee members agreed the novel has objectionable sexual content but said many reluctant readers may relate to the characters.

Hedges has also defended his book, saying his novel focuses on redemption and regret. He said the district shouldn't let those larger themes be obscured by the relatively few pages with sexual content that he intended to drive plot.

"The fact that the book is being discussed because of its sexual content is somewhat disappointing to me," Hedges said. "I think what the book's ultimately about is how we come back alive and how we navigate a treacherous terrain between our responsibilities to our families and our duty to ourselves."

That's why so many people relate to Gilbert Grape, a 24-year-old rural Iowan attempting to live in a dying town, Hedges said. "Here's a guy whose just trying to be a good person, but he's getting eaten by his circumstances," he said.

Hedges, a father of ten- and twelve-year-old boys, acknowledged that his book isn't for all young people. "But a seventeen-year-old or an eighteen-year-old? They can handle this book," he said. "It's mild compared to what's actually going on in the world, and it's hopeful and redemptive. So there's a part of me that's just like, 'Come on, move on.'" Reported in: *Sioux City Journal*, January 16.

Sherborn, Massachusetts

In a reversal of its decision made in November (see *Newsletter*, January 2007, p. 13), the Dover-Sherborn Regional School committee voted unanimously January 2 to keep *So Far from the Bamboo Grove* as part of a sixth-grade language arts unit on survival. Their decision nevertheless addressed concerns of the book's opponents.

Middle school Headmaster Frederick Randall told the committee that the administration and language arts department were committed to keeping the book in the curriculum and were exploring other texts to bring balance to the unit in response to the criticism leveled against the book by some parents and community members.

The discussion began with Superintendent Perry Davis reviewing a summary of the e-mails and letters the committee and administration received since the November decision. The summary broke the responses down into four categories: concern for the banning or censorship of a book by the Dover-Sherborn Regional School Committee; support for the use of the book and its author because of the positive experience of the students when coming to understand a personal struggle to survive; concern for the content of the book and questioning the maturity of students in the sixth grade to understand issues of rape and war; and concern that the book is not balanced in its reporting of events at the end of World War II and the occupation of Korea by Japan.

Davis said he had consulted with John Hickey, social studies department head at the high school, to see if the book would be more appropriate at some stage of the high school history curriculum. Davis said that Hickey and his staff felt that the book had merit, but the reading level of the text made it more appropriate for middle school readers than high school readers. Davis said that Hickey told him that although Imperialism is a part of the sophomore world history curriculum and WWII is part of the junior American

history curriculum, use of the entire text is impractical because of the volume of material that must be covered at each level.

Randall reported to the committee that the social studies department at the middle school had also reviewed the grade-level curriculum to determine if there were a more appropriate use of the text. Randall said the readability of the text made it inappropriate at the eighth-grade level. He noted that the eighth-grade American history curriculum ends at Reconstruction. The seventh-grade curriculum is geography-based and therefore not an appropriate fit for the book.

Randall said that continued use of the book at the sixth-grade level would require context. He brought along several texts that he said could be used to bring balance to the unit: *Lost Names: Scenes from a Korean Boyhood* by Richard E. Kim, and *Year of Impossible Goodbyes* by Sook Nyul Choi.

"The objective would be to bolster the survival unit with the use of additional texts to provide background," Randall said.

Davis addressed another criticism against the use of the book when he said that the issues of rape and war could be taught through guided reading and discussion in class rather than assigned as homework. Davis emphasized that the book is used in English classes in the unit on survival and not as a history text.

"I believe that everyone is sincere about this issue," Davis said, "and the middle school English department is willing to work constructively to address all concerns."

School committee member Shelly Paulsen said she received correspondence from the author that recommended the committee pull the book "if it will bring peace to your hearts." Paulsen said that she was grateful that the issue surrounding the book had come up because it brought attention to an aspect of school policies with which few people were familiar. Paulsen noted that the committee is planning to review the book-adoption policy.

Committee member David Chase said the book makes it very clear to sixth-graders what war does to people. Chase said he would support keeping the book with the additional contextual material.

Committee member Mark Linehan said he believed the decision needed to be left to the professionals. "If the teachers think they can do this," Linehan said, "then we need to support them." Reported in: *Dover-Sherborn Press*, January 9.

Puyallup, Washington

The Autobiography of Miss Jane Pittman, by Ernest Gaines, will remain required reading for eighth-graders in the Puyallup School District. The Puyallup School Board voted 5–0 December 3 to uphold an earlier decision by a district committee requiring eighth-graders to read the novel.

The board made the decision in considering an appeal from a parent and a group of six teachers who challenged the requirement. The challengers said that while the novel is a valuable and compelling account of its period, its complicated content, including implied incest and rape and heavy use of racial slurs made it inappropriate for eighth-graders.

In explaining their vote, each board member recounted the difficulty of balancing valid concerns on each side of the debate. Board President Diana Seeley said it wasn't a sole issue of dealing with racism or the "n-word." "This is about the environment in which it's being used. We don't necessarily know that by telling children not to use that word, they will stop using it. But it is our hope by giving them an explanation of the word and where it came from, they'll understand it's inappropriate to use it in the future."

District administrators announced they would bring University of Washington instructors to help design lessons for the book. Former Tacoma School Board member and administrator Willie Stewart will provide cultural competency training for Puyallup teachers in February.

The Ernest Gaines work is a fictional account of a black woman born near the end of the slavery era who lived to see the civil rights movement.

Carol Stratford, one of the junior high school teachers who challenged the requirement, was disappointed with the decision but said she would teach the book. "We have to be philosophical about it and realize the school board has spoken. . . . I wish there were other novels we could choose from that dealt with the same issues and that are more age-appropriate."

She added that some eighth-graders read at the third-grade level and some are in special education. Since the book will be the basis for a new districtwide assessment for eighth-graders, she said, "We wanted all kids to be successful and understand the content."

Superintendent Tony Apostle said he thinks there will be a few parents who will "opt" their children out of reading the book, but the district would work with them. "We'll have to substitute something that almost nearly duplicates the thematic lessons with regard to slavery, civil rights, and relations between Caucasians and slaves during that period of time, and the horrible treatment of African Americans in the early history of America. This book does it all. To find a replacement will be very difficult."

Before making their decision, board members heard from numerous parents, community members and staff members. Some advocated requiring the book for eighth-graders for its perspective on race relations and slavery, while others were concerned that youngsters that age would be confused by the book's adult situations. Several expressed concerns for children who have been sexually abused, and the trauma

they could experience as they study the book in a classroom of peers.

One psychotherapist, however, said that abuse victims are likely to encounter many experiences reminding them of their trauma in everyday life and that it was more important for teachers to create the appropriate environment for instruction of the book. Reported in: *Tacoma News-Tribune*, December 5.

government secrecy

New York, New York

Federal prosecutors in New York December 18 withdrew a subpoena to the American Civil Liberties Union that had sought to retrieve all copies of a classified document. In an opaque and defensive four-page letter to the judge in the case, the prosecutors said they were acting "in light of changed circumstances" and their determination that "the grand jury can obtain the evidence necessary to its investigation from other sources."

Another factor may have played a role. A transcript of a closed hearing in the case suggested the government was going to lose.

Anthony D. Romero, the ACLU's executive director, sounded jubilant in describing the development. "The government blinked in this standoff," Romero said. The subpoena was unusual in that it sought not only to gather evidence but also to confiscate all tangible traces of the information in the document, apparently with the goal of preventing its distribution.

The document itself, declassified December 15 and released by the ACLU three days later, was not obviously confidential. An "information paper" dated December 20, 2005, it was marked "secret" at the top and bottom of each of its four pages. The ACLU said it received the document in an unsolicited e-mail message in October.

The document collected a number of policies concerning photographs of enemy prisoners of war. Journalists, the document said, "are generally permitted, and to some extent even encouraged, to photograph" prisoners "from point-of-capture throughout the entire detainment process," though they are discouraged from showing recognizable faces.

The document was dated almost two years after photographs of abuse at the Abu Ghraib prison in Iraq were first made public and during the debate over the Detainee Treatment Act, which included an amendment introduced by Senator John McCain prohibiting the cruel, inhumane, or degrading treatment of detainees. President Bush signed the bill ten days later.

A lawyer for the ACLU said the document was potentially embarrassing, but that its release hardly endangered the national defense. "If you read between the lines," said the lawyer, Charles S. Sims, a First Amendment specialist at Proskauer Rose, "what it really says is that we want to exploit group photos of detainees." The implicit instruction in the document, he said, was this: "If pictures of detainees can help sell the war, go for it."

The effort to retrieve all copies of the document was a novel and, according to many legal experts, improper use of a grand jury subpoena. The subpoena cited a provision of the espionage laws that requires people in possession of some sorts of national security information to return it to the government if asked. But the ACLU said the document at issue did not qualify and that, in any event, a subpoena was the wrong way to enforce the law.

In a transcript of a closed hearing in the case on December 11, Judge Jed S. Rakoff of Federal District Court in Manhattan seemed to indicate grave reservations about the tactic. "What's the authority for saying that a subpoenaed party can't keep a copy of any document that they produced to the grand jury?" Judge Rakoff asked Jennifer G. Rodgers, an assistant United States attorney. Rodgers did not provide a direct answer, and the letter withdrawing the subpoena did not address the question.

Later in the hearing, Judge Rakoff compared the situation to the Nixon administration's effort to stop the *The New York Times* and the *Washington Post* from publishing a secret history of the Vietnam War.

"There seems to be a huge difference," Judge Rakoff said, "between investigating a wrongful leak of a classified document and demanding back all copies of it, and I'm old enough to remember a case called the Pentagon Papers."

In the letter, Rodgers suggested that the ACLU had set up the government, creating a fight that could have been resolved informally.

"The government has attempted to pursue its investigation and its request for the document at issue in as amicable, cooperative and unobtrusive a manner as possible," she wrote. The ACLU filed a motion to quash the subpoena, she continued, even though "the matter might be something the parties could negotiate without litigation, which always remained the government's strong preference."

Sims said of Rodgers's letter, "Virtually every factoid in that presentation is entirely false."

Judge Rakoff, too, in the argument, appeared unconvinced by the government's contention that it thought the matter could have been resolved short of litigation. "It's not easy to believe," Judge Rakoff said, "that the ACLU, despite its history, would be cooperative. Well, hope springs eternal."

Romero, the ACLU's executive director, said the case would have a lasting impact. "It certainly helps the press and whistle-blowers to resist the strong-arm efforts of the government," he said. Reported in: *New York Times*, December 19. □

(is it legal? . . . from page 70)

protect U.S. citizens," McNulty said. "With OneDOJ, we will essentially hook them up to a pipe that will take them into its records."

McNulty and other Justice officials emphasize that the information available in the database already is held individually by the FBI and other federal agencies. Much information will be kept out of the system, including data about public corruption cases, classified or sensitive topics, confidential informants, administrative cases, and civil rights probes involving allegations of wrongdoing by police, officials said.

But civil liberties and privacy advocates—many of whom are already alarmed by the proliferation of federal databases—warn that granting broad access to such a system is almost certain to invite abuse and lead to police mistakes.

Barry Steinhardt, director of the Technology and Liberty Project at the American Civil Liberties Union, said the main problem is one of "garbage in, garbage out," because case files frequently include erroneous or unproved allegations. "Raw police files or FBI reports can never be verified and can never be corrected," Steinhardt said. "That is a problem with even more formal and controlled systems. The idea that they're creating another whole system that is going to be full of inaccurate information is just chilling."

Steinhardt noted that in 2003, the FBI announced that it would no longer meet the Privacy Act's accuracy requirements for the National Crime Information Center, its main criminal-background-check database, which is used by 80,000 law enforcement agencies across the country.

"I look at this system and imagine it will raise many of the same questions that the whole information-sharing approach is raising across the government," said Marc Rotenberg, executive director of the Electronic Privacy Information Center, a Washington-based group that has criticized many of the government's data-gathering policies. "Information that's collected in the law enforcement realm can find [its way] into other arenas and be abused very easily."

McNulty and other officials said the data compiled under OneDOJ would be subject to the same civil liberties and privacy oversight as any other Justice Department database. A coordinating committee within Justice will oversee the database and other information-sharing initiatives, according to McNulty's memo. Reported in: *Washington Post*, December 26.

Washington, D.C.

President Bush has quietly claimed sweeping new powers to open Americans' mail without a judge's warrant. The president asserted his new authority when he signed a postal reform bill into law on December 20. Bush then issued a "signing statement" that declared his right to open people's mail under emergency conditions.

That claim is contrary to existing law and contradicted the bill he had just signed, say experts who have reviewed it.

Bush's move came during the winter congressional recess and a year after his secret domestic electronic eavesdropping program was first revealed. It caught Capitol Hill by surprise.

"Despite the president's statement that he may be able to circumvent a basic privacy protection, the new postal law continues to prohibit the government from snooping into people's mail without a warrant," said Rep. Henry Waxman (D-CA), the House Government Reform Committee chairman, who cosponsored the bill.

Experts said the new powers could be easily abused and used to vacuum up large amounts of mail. "The (Bush) signing statement claims authority to open domestic mail without a warrant, and that would be new and quite alarming," said Kate Martin, director of the Center for National Security Studies in Washington. "The danger is they're reading Americans' mail."

"You have to be concerned," agreed a career senior U.S. official who reviewed the legal underpinnings of Bush's claim. "It takes executive branch authority beyond anything we've ever known."

A top Senate Intelligence Committee aide promised, "It's something we're going to look into."

Most of the Postal Accountability and Enhancement Act deals with mundane reform measures. But it also explicitly reinforced protections of first-class mail from searches without a court's approval. Yet in his statement Bush said he will "construe" an exception, "which provides for opening of an item of a class of mail otherwise sealed against inspection in a manner consistent ... with the need to conduct searches in exigent circumstances."

Bush cited as examples the need to "protect human life and safety against hazardous materials and the need for physical searches specifically authorized by law for foreign intelligence collection."

White House spokeswoman Emily Lawrimore denied Bush was claiming any new authority. "In certain circumstances—such as with the proverbial `ticking bomb'—the Constitution does not require warrants for reasonable searches," she said.

Bush, however, cited "exigent circumstances" which could refer to an imminent danger or a longstanding state of emergency. Critics point out the administration could quickly get a warrant from a criminal court or a Foreign Intelligence Surveillance Court judge to search targeted mail, and the Postal Service could block delivery in the meantime.

But the Bush White House appears to be taking no chances on a judge saying no while a terror attack is looming, national security experts agreed. Martin said that Bush is "using the same legal reasoning to justify warrantless opening of domestic mail" as he did with warrantless eavesdropping. Reported in: *New York Daily News*, January 4. □

(closure . . . from page 41)

Although hundreds of federal libraries remain open, critics say the downsizing, especially at the EPA, demonstrates the Bush administration's indifference to transparent government and to scientific solutions to many pressing problems.

"Crucial information generated with taxpayer dollars is now not available to the public and the scientists who need it," said Emily Sheketoff, head of the American Library Assn.'s Washington office. "This is the beginning of the elimination of all these government libraries. I think you have an administration that does not have a commitment to access to information."

Opponents of the EPA's reductions say they are likely to slow the work of regulators and scientists who depend on librarians and reference materials that are not online. They fear that some publications will never be digitized because of copyright restrictions or cost. They worry that important material will be dispersed, discarded or lost. And they contend that many people will lose access to collections because they cannot navigate online services.

In addition to shutting its headquarters library and a chemical library in the nation's capital, the EPA has closed regional libraries in Chicago, Kansas City, and Dallas that have helped federal investigators track sources of fish kills and identify companies responsible for pollution.

The plans prompted the EPA's own compliance office to express concern that cuts could weaken efforts to enforce environmental laws. EPA employee unions decried the severity of a proposed $2.5-million cut in a library budget that was $7 million last fiscal year. And, at the request of three House committees, the Government Accountability Office now is examining the reductions.

"Congress should not allow EPA to gut its library system, which plays a critical role in supporting the agency's mission to protect the environment and public health," eighteen U.S. senators, nearly all Democrats, said in a November letter seeking restoration of library services until the issue can be reviewed.

The EPA said the president's proposed budget had accelerated efforts to modernize the system, and they said that library visits were declining.

"I think we are living in a world of digitized information," said Travers of the EPA. "In the end there will be better access." Travers said all EPA-generated documents from the closed libraries would be online by January and the rest of the agency's 51,000 reports would be digitized within two years. The EPA, she said, would not digitize books, scientific journals, and non-EPA studies but would keep one copy of each available for interlibrary loans.

But ALA President Leslie Burger countered that "it is a gross oversimplification to state that everyone benefits when libraries go digital. This is only true when there is a thoughtful digitization plan that ensures valuable information is not lost and public access is retained. We are still waiting for the EPA to disclose its digitization plan and budget."

The Library of Congress has digitized more than 11 million items in its collection of 132 million, and it retains the originals. But Deanna Marcum, associate librarian for library services there, said maintaining library space with staff provides important benefits, especially at specialized libraries.

"The librarians are so accustomed to doing searches and know the sources so well, and it would be difficult for scientists to have the same level of comfort," she said. "So, will they take the information they get and use it rather than being exhaustive in their searches?"

An EPA study in 2004 concluded that the libraries saved millions of dollars a year by performing time-consuming research for agency staff members. The general public also uses EPA's libraries.

When a sanitary district proposed a sludge incinerator along Lake Michigan in Waukegan, Illinois, a few years ago, activist Verena Owen went to the EPA library in Chicago, and with help from a librarian researched how much mercury comes from incinerators and its toxicity. Owen said her findings helped a successful campaign to relocate the plant.

When she recently heard the library had gone dark, Owen was outraged: "If I had known about it, I would have chained myself to the bookcase."

The EPA's chemical library in Washington assisted scientists who developed drinking water standards and studied the effects of pesticides. "It allowed scientists to check on what they were being told by companies registering new chemicals," said Linda Miller Poore, a longtime contract librarian there.

In May, after learning the library would close, Poore took a job at NASA's Goddard Space Flight Center library in Greenbelt, Maryland, a facility that supports space exploration and global warming research. But Poore said she was notified that the Goddard library would be closed January 1, leaving its collection available only online. She said she was fired November 17 after telling patrons about the plans. The company that employed her declined to comment.

Mather, the Nobel-winning astrophysicist, said the library's paper collection is indispensable. "If we ended up moving into an age where paper did not exist, we would need the equivalent to reach all the texts and handbooks, and until the great library is digitized, I think we need the paper," he said.

In the wake of complaints from scientists and engineers, the center's operations director, Tom Paprocki, said the library was being funded through March and that officials were exploring whether to preserve part of it.

The discovery of discarded scientific journals last year in a dumpster at NASA's Ames Research Center in Silicon Valley prompted a union grievance. Plans to slash

library space later were scaled back, said union president and scientist Paul K. Davis. "If not for our efforts, about three-quarters of the library materials would have been gone," he said.

At the Energy Department's headquarters, people researched radiation exposure of family members who worked with atomic energy or weaponry. And the library staff helped DOE employees and contractors. Last summer the library closed, except the law section, and became an online service. "By taking our headquarters library and making it virtual, more people can access it than just being in Washington," said Energy Department spokeswoman Megan Barnett, adding that the department's labs often have their own libraries. Reported in: *Los Angeles Times*, December 8. □

(IFC . . . from page 43)

examples and case studies of actual challenges and how they were handled.

Contemporary Intellectual Freedom Series

Few works provide practical, easy-to-access guidance on intellectual freedom and privacy issues to a broader audience that can include front-line librarians, library workers, LIS students, library volunteers, and members of the general public. Three former IFC members are writing a series that will contain an introduction to intellectual freedom for public, academic, and school librarians. The series will address the practical application of intellectual freedom principles in public, academic, and school libraries through a series of case studies.

Law for Librarians

A major Ford Foundation grant is supporting two OIF projects—Lawyers for Libraries trainings and Law for Librarians. In the latter case, the grant enabled OIF to sponsor a three-day "Train the Trainers" in early April 2006 in Chicago for all state chapter IFC chairs. State library directors and ALA chapter executive directors also were invited—and many attended. Each chapter IFC attendee committed to conducting two similar Law for Librarians trainings over the next two years. The training focused on litigation and laws that affect intellectual freedom in libraries; attendees also received training in putting together trainings so they can fulfill their commitment to organize at least two in their home states on legal topics affecting libraries. Evaluations indicated the trainings were very well received, and enthusiasm was high for continuing the work on the state level.

Law for Librarians continues to bear fruit, as attendees fulfill their pledges to put on at least two similar trainings in their states. OIF established a wiki through which attendees post information about those activities.

Lawyers for Libraries

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

Eight regional training institutes have been held since 2002, in Boston, Chicago, Dallas, San Francisco, Washington, D.C., Atlanta, Seattle, and Columbus, Ohio (November 3, 2006). In April, the Texas Library Association cosponsored a Lawyers for Libraries training as a preconference at its 2006 annual conference. Philadelphia is the site of the next training, to be held May 17, 2007. To date, more than 200 attorneys, trustees, and librarians have attended these trainings, and an e-list has been created to allow for ongoing communication. Attorneys and library managers use their e-list, established in 2003, to consult each other on questions regarding privacy, access, and minors' use of libraries, among many other topics.

Topics addressed at the trainings include the USA PATRIOT Act, Internet filtering, the library as a public forum, meeting room and display area policies, and how to defend against censorship of library materials.

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

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

LeRoy C. Merritt Humanitarian Fund

The LeRoy C. Merritt Humanitarian Fund is stronger than ever, and continues to assist librarians who have been harmed in their jobs due to discrimination or their defense of intellectual freedom. For more information on the LeRoy C. Merritt Humanitarian Fund, visit www.merrittfund.org.

2007 Banned Books Week

ALA's annual celebration of the freedom to read—Banned Books Week—begins September 29 and continues through October 6, 2007; it marks BBW's twenty-sixth year. BBW once again will highlight that intellectual freedom is a personal and common responsibility in a democratic society. This and subsequent year's BBW posters, bookmarks, t-shirts, and other related products are being marketed by ALA Graphics (*http://tinyurl.com/qrqb4)*. More information on Banned Books Week can be found at www.ala.org/bbooks.

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

(FTRF. . . from page 44)

of the USA PATRIOT Act and similar initiatives will be moderated by Congress. Representatives have introduced legislation to assure the right to habeas corpus, to regulate and prevent data mining, and to amend and reform the Foreign Intelligence Surveillance Act to prevent warrantless wiretapping conducted by the National Security Agency. It is refreshing to speak about how members of Congress are working to preserve our rights, rather than anticipating future battles against laws that undermine our right to be free from unwarranted government surveillance.

Safeguarding the Right to Read Freely

This fall, the Freedom to Read Foundation joined in three new lawsuits aimed at protecting our rights under the First Amendment:

The first lawsuit, *The Local Church* v. *Harvest House Publishers* sought to address the chilling effect of libel litigation on authors and publishers. A religious group called the Local Church filed a libel action against authors John Ankerberg and John Weldon and their publisher, Harvest House, after the Local Church was included in the authors' work, *The Encyclopedia of Cults and New Religions*. The Texas Court of Appeals dismissed the lawsuit after holding that the Local Church's inclusion neither defamed the plaintiff nor provided grounds for a suit, as the determination that a group is a cult depends on an individual's religious beliefs. The Local Church subsequently asked the Texas Supreme Court for review.

FTRF joined the American Association of Publishers (AAP), the American Booksellers Foundation for Free Expression (ABFFE), and the American Association of University Presses (AAUP) to file an *amicus curiae* brief to urge the Texas Supreme Court to uphold the Court of Appeals' decision to dismiss the lawsuit. In December, we were pleased to learn that the Texas Supreme Court denied the Local Church's petition for review, effectively dismissing their lawsuit. The plaintiffs have petitioned for a rehearing, however, and we are waiting for the court's decision on that motion.

The second lawsuit, *American Civil Liberties Union of Florida* v. *Miami-Dade School Board* addresses the decision of the Miami-Dade School Board to remove the books *A Visit to Cuba* and *Vamos a Cuba* and all the books in the "A Visit To" series on the grounds the books are educationally unsuitable and offensive to members of Miami's Cuban community. When the district court ruled the removal was unconstitutionally motivated and entered a preliminary injunction ordering the school district to immediately replace the entire series on library shelves, the Miami-Dade School Board appealed the decision to the Eleventh Circuit Court of Appeals.

FTRF has joined ABFFE, the Association of Booksellers for Children (ABC), REFORMA, Peacefire, and the National Coalition Against Censorship (NCAC) to file an *amicus* brief urging the Eleventh Circuit to uphold the district court's findings. We are now waiting for the court's decision.

The third lawsuit, *Entertainment Software Association et al.* v. *Hatch*, seeks to overturn Minnesota's Restricted Video Games Act, which imposes civil penalties on minors who rent video games rated "AO" or "M" by the Entertainment Software Rating Board (ESRB). The statute also requires retailers to post signs warning minors about the prohibition.

The District Court of Minnesota ruled the law unconstitutional in July 2006. It held that there was no showing a statute restricting minors' access to violent video games alone would protect children. It also held the statute unconstitutionally delegated the state's authority by using the ESRB's ratings and unconstitutionally compelled speech by requiring retailers to post signs about the law.

When the state appealed to the Eighth Circuit Court of Appeals, the Foundation joined ABFFE, AAP, International Periodical Distributors Association (IPDA), Motion Picture Association of America, Inc. (MPAA), Publishers Marketing Association (PMA), and Recording Industry Association of America (RIAA) to file an *amicus* brief urging the Eighth Circuit Court of Appeals to uphold the district court's decision. We are waiting for the court to schedule oral arguments.

In regard to litigation addressing restrictions on minors' right to access video games, I am pleased to report a successful result in *Entertainment Software Association* v. *Blagojevich*. The original lawsuit asked the court to enjoin enforcement of two Illinois statutes limiting the sale and rental of violent and sexually explicit computer and video games to minors. After the federal district court ruled the laws unconstitutional, the Illinois attorney general appealed the decision concerning the Sexually Explicit Video Game Law to the Seventh Circuit Court of Appeals. FTRF filed an *amicus* brief with several of its partners to argue that the law's provisions violate the First Amendment. On November 27, 2006, the Seventh Circuit upheld the lower court's determination that the statute is unconstitutional.

The Foundation is also participating in the following First Amendment actions:

Gonzales v. *American Civil Liberties Union* (formerly *Ashcroft* v. *ACLU*): In June 2004, the Supreme Court issued an opinion upholding the injunction barring enforcement of the Child Online Protection Act (COPA) and returned the lawsuit to the federal district court in Philadelphia for a trial to determine whether COPA's "harmful to minors" restrictions are the least restrictive means of achieving the government's goal of protecting children from seeing sexually explicit materials online, given the ability of parents to purchase and use Internet filtering software. Trial began in October 2006, and the parties presented their evidence regarding the effectiveness of filtering programs for four weeks. We are now waiting for a decision from the court.

Regretfully, the Supreme Court recently upheld a Pennsylvania Department of Corrections policy restricting long-term prisoners' access to newspapers, magazines, and books. In *Beard* v. *Banks*, FTRF argued that the prison's

policy impermissibly infringed on the First Amendment right of the prisoners to obtain information and the First Amendment right of publishers and writers to freely disseminate their works. By a 6–2 decision issued on June 28, 2006, the Supreme Court held that prison officials had demonstrated adequate support for their policy and that the policy was rationally related to the legitimate penological objectives of prison safety and rehabilitation.

There are two additional lawsuits the Foundation is monitoring due to their importance to the library community. The first, *Sarah Bradburn, et al.* v. *North Central Regional Library District*, is the first legal challenge to a library's Internet filtering policies filed since the Supreme Court upheld the Children's Internet Protection Act (CIPA). The complaint, filed by the American Civil Liberties Union of Washington State in November 2006, not only alleges that the library filters Internet content too broadly, but also that the library refuses to unblock its filters when requested to do so by adult patrons. The library has denied the allegations, and the case is now proceeding before the U.S. District Court in the Eastern District of Washington.

The second lawsuit, *Faith Center Church Evangelistic Ministries* v. *Glover*, was filed in July 2004 after a local religious group was barred from using the Contra Costa County (Calif.) Public Library's meeting room because the group wanted to hold religious services. After the district court ruled the group was likely to succeed on its First Amendment claims and entered a preliminary injunction enjoining the library not to enforce its meeting room policy, the county appealed the decision to the Ninth Circuit Court of Appeals. That court reversed the district court's finding of unconstitutionality on the grounds that the library's policy was reasonable in light of the library's intended use of its public forum. The plaintiffs asked the Court of Appeals for a rehearing on October 3, and their motion is pending before that court.

At this time, FTRF is not a participant in either lawsuit.

Safeguarding Internet Access: State Internet Content Laws

In the states, the legislatures continue to pass laws criminalizing the publication of Internet content deemed "harmful to minors." The Freedom to Read Foundation actively pursues opportunities to challenge these laws to assure the right of individuals to decide for themselves what they read and see on the Internet.

The most pressing lawsuit was filed in Utah, where FTRF is part of a challenge to a Utah statute that extends the state's "harmful to minors" prohibitions to the Internet. In 2005, FTRF joined with ABFFE, AAP, CBLDF, the ACLU of Utah, and several Utah bookstores, Internet providers, and residents to bring the lawsuit, *The King's English* v. *Shurtleff*.

On August 25, 2006, the district court enjoined enforcement of the law and gave the state government until November to propose amendments to it that would cure its defects. After examining the state's proposed changes, the plaintiffs concluded the amendments would not cure the law's constitutional defects and sent a letter to the state government demanding that the state comply with outstanding discovery requests. The case is pending before the court.

State Legislation

Although we are only a few weeks into the new legislative season, we are seeing several state-level initiatives aimed at restricting the right of library users to access information. Among these is a Virginia bill proposing legislation to implement its own mini-CIPA, requiring libraries to install filters to receive state funding.

State legislatures in three states—Kentucky, Montana, and Missouri—are considering adopting an "Academic Bill of Rights" or "intellectual diversity" provisions that would restrict academic freedom on campus. Utah is considering a new "harmful to minors" statute that would prohibit the distribution of "inappropriate violence" as "harmful to minors." Both New York and Virginia are considering new restrictions on violent video games and video games that contain racial or religious stereotypes. And South Carolina's legislature is considering a bill that would make it a crime to disseminate profanity to a minor or to use profanity in a public forum.

Finally, Illinois is facing a concerted challenge to the state library confidentiality act, initiated by police officers who believe they should have unfettered access to users' library records, without needing to go to the trouble of obtaining a court order.

Fundraising

I am pleased to report that the Freedom to Read Foundation has new membership brochures reflecting the breadth and depth of its efforts to advance the First Amendment and protect intellectual freedom and privacy in our society. One brochure is for individual members; the second brochure includes information on the Foundation's new "organizational member" category that allows libraries and other institutions to support the FTRF's work at a more substantial level. Increasing organizational membership is a priority this year. Please urge your library, Friends group, business, and other organizations you are affiliated with to join FTRF.

We encourage all our colleagues and friends to become personal members of the Freedom to Read Foundation. Please send a check to:

Freedom to Read Foundation
50 E. Huron Street
Chicago, IL 60611

You also can use a credit card to join the Foundation. Call 1-800-545-2433, ext. 4226, or visit us online at www.ftrf.org to use our online donation form. □

(Iraq national library. . . from page 48)

Saad Bashir Eskander, the library's director-general, said on December 6 that he had reluctantly decided to shutter the institution on November 21 after several staff members were killed and the building had increasingly come under fire.

The institution and its collections were heavily damaged when the library was twice looted and burned shortly after the American-led invasion of Iraq in March 2003. The national library was only one of many institutions—including libraries, museums, universities, and hospitals—that were plundered in the lawlessness that followed the invasion. But after being gradually repaired, the National Library and Archive, which is known as the NLA, had become a haven for students and scholars in Baghdad, the capital.

The library, on Rashid Street, is a modern three-story structure with four wings built around a central courtyard. Unfortunately for the institution, it is located on the front line of battles between Shiite and Sunni militias, which have escalated in recent months.

"On many occasions, the NLA was hit directly," Eskander wrote. "Windows were smashed. My staff are naturally frightened." Three staff members have been "murdered," he said, as have three drivers. The library has devoted a significant portion of its meager budget to providing buses to carry its staff—which numbered 230 last year—safely to and from the institution. Eskander added that fifty staff members had been forced to flee their homes because of the sectarian violence or death threats.

The director had wanted to reopen the library in early December but then reconsidered, he wrote in an e-mail message to Jeffrey B. Spurr, a librarian at Harvard University who has helped organize training programs for Iraqi librarians in neighboring Middle East countries.

"Today, Sunday December 3, I have decided not to reopen the library and the archive," Eskander wrote. "As soon as I arrived to my office, a bomb exploded in the opposite building. We have not received any instruction from either the government or from our minister," he said, referring to the minister of culture. "It is really chaos."

Eskander, who has been director-general since December 2003 and is credited with working diligently to rebuild and modernize the battered institution, said the library's thirty guards have been unable to provide much protection. "Four months ago," he wrote, "armed men opened fire on our guards at night. My guards contacted the Ministry of Interior, asking for its help. The answer they received was: 'Are the attackers Shiites or Sunnis? If they are Shiites, do not worry—they will not hurt you. If the attackers are Sunnis, please resist them.'"

Iraq's armed forces, and its interior ministry, are controlled by Shiite factions.

"I reported the incident to our minister of culture, who in turn reported it to the minister of interior," continued Eskander. "Nothing happened."

Eskander said that preserving the library is crucial to Iraq's future. "If Iraq becomes a stable country," he wrote, the institution "can play a constructive role in the transition process to democracy. For example, we can provide . . . historically invaluable documents, records, and books to our readers without censorship."

The library has large archives and manuscript collections, from as far back as the conquest of Iraq by Süleyman the Magnificent in 1535, near the beginning of the Turkish Ottoman period. The collections were seriously damaged in the looting of 2003.

Yet experts who have been involved with international efforts to rescue Iraq's cultural heritage viewed the fate of the national library, more than three years after the toppling of the government of Saddam Hussein, with much pessimism.

René Teijgeler, an anthropologist at the University of Amsterdam who served as a senior adviser to the Iraqi Ministry of Culture from July 2004 to March 2005, said many of the museums, libraries, and monuments that were rebuilt during the last three years have again been suffering damage as the country spirals into civil war.

"Compared to 2003, when the whole world was concerned about preserving Iraq's cultural heritage," he said, "it's even worse now. It's all going down the drain." Reported in: *Chronicle of Higher Education* online, December 7. □

FBI releases last Lennon files

The FBI agreed December 19 to make public the final ten documents about the surveillance of John Lennon that it had withheld for twenty-five years from a University of California, Irvine, historian on the grounds that releasing them could cause "military retaliation against the United States."

Despite the fierce battle the government waged to keep the documents secret, the files contain information that is hardly shocking, just new details about Lennon's ties to New Left leaders and antiwar groups in London in the early 1970s, said the historian, Jon Wiener.

For example, in one memo, then-FBI Director J. Edgar Hoover wrote to H. R. Haldeman, President Nixon's chief of staff, that "Lennon had taken an interest in 'extreme left-wing activities in Britain' and is known to be a sympathizer of Trotskyist communists in England."

Another document had been blacked out on the grounds of national security when Wiener obtained it more than twenty years ago through litigation brought under the

Freedom of Information Act. It is now known that it said two prominent British leftists, Tariq Ali and Robin Blackburn, had courted Lennon in hopes that he would "finance a left-wing bookshop and reading room in London."

But the newly released document adds that Lennon apparently gave them no money "despite a long courtship by Blackburn and Ali."

Another surveillance report states explicitly that there was "no certain proof" that Lennon had provided money "for subversive purposes." And yet another says there was no evidence that Lennon had any formal tie to any leftist group.

Another describes an interview with Lennon published in 1971 in an underground London newspaper called the *Red Mole*. "Lennon emphasized his proletarian background and his sympathy with the oppressed and underprivileged people of Britain and the world," the document says.

Wiener and his attorneys, Dan Marmalefsky of Morrison & Foerster and Mark Rosenbaum of the American Civil Liberties Union of Southern California, all said the documents revealed there was no sign that government officials considered Lennon a serious threat. They said they were mystified that several administrations had resisted making the material public.

"The content of the files released today is an embarrassment to the U.S. government," said Wiener, 62, who has written two books on the late Beatle, *Come Together: John Lennon in His Time* and *Gimme Some Truth: The John Lennon FBI Files*.

"I doubt that Tony Blair's government will launch a military strike on the U.S. in retaliation for the release of these documents. Today, we can see that the national security claims that the FBI has been making for twenty-five years were absurd from the beginning," said Wiener, who requested the documents in 1981.

Wiener initially obtained some files showing that the FBI closely monitored Lennon's activities in 1971 and 1972. The documents indicated Nixon administration concern that Lennon would support then-Senator George S. McGovern (D-SD) for president against incumbent Richard M. Nixon in 1972, the first year that eighteen-year-olds could vote.

But the FBI also withheld numerous files, saying they were exempt from the Freedom of Information Act, including part of a surveillance report on a December 1971 antiwar rally in Michigan. There, Lennon urged the release of activist and singer John Sinclair, who was serving a ten-year sentence for possession of two marijuana joints. A judge soon freed him.

Wiener sued in U.S. District Court in Los Angeles seeking all the documents. The FBI countered that some contained "national security information provided by a foreign government under an explicit promise of confidentiality" and that release of the documents "can reasonably be expected to . . . lead to foreign diplomatic, economic and military retaliation against the United States," according to a government brief filed in 1983.

Wiener lost the initial court skirmishes, but in 1991 he won a major victory in the U.S. Court of Appeals for the Ninth Circuit, which ruled that declarations filed by FBI agents provided inadequate grounds for keeping the material secret. From that point forward, the court ruled, the FBI had to file "affidavits containing sufficient detail" to allow Wiener to "intelligently advocate" for their release and for a trial judge "to intelligently judge the contest."

That decision significantly strengthened the hand of people trying to pry secret documents out of the government. Justice Department attorneys, including John Roberts, who is now the Chief Justice of the United States, appealed, but the Supreme Court let the ruling stand.

Six years later, Wiener settled with lawyers from the Clinton administration and obtained a number of FBI files on the former Beatle. But Justice Department lawyers continued to withhold ten documents under the national security exemption of the Freedom of Information Act.

Scott Hodes, who was acting chief of the FBI litigation unit dealing with freedom of information cases, said disclosure of the documents could strain relations between the U.S. and a foreign government, lead to diplomatic, political, or economic retaliation and have a chilling effect on the flow of information between the two countries. Hodes also said disclosure of the documents could subject the government agents involved in the Lennon operation to "public ridicule, ostracism" or even jeopardize their safety.

In August 2004, U.S. District Judge Robert M. Takasugi granted summary judgment to Wiener, concluding that the government had not adequately supported its claims. Justice Department lawyers said they would appeal. But a Ninth Circuit mediator eventually forged a settlement, leading to a final settlement resolution of the case.

Years ago, Wiener called the case a "rock 'n' roll Watergate," in part because the FBI took an intense interest in Lennon at the time operatives from the Nixon administration perpetrated the Watergate burglary. But Wiener agreed that given how long the case dragged out, it might more appropriately be characterized as a "rock 'n' roll *Bleak House*, referring to the Dickens novel about a years-long inheritance case.

"The release of these final documents, concealed from public view for nearly a quarter of a century, reveals government paranoia at a pathological level and an attempt to shield executive branch abuse of civil liberties under the rubric of national security," said Rosenbaum of the ACLU. "The ultimate lesson of these documents is that the head of document classification for the FBI must be Stephen Colbert."

On his late-night television show, satirist Colbert plays a right-wing talk show host who is a government cheerleader.

The Justice Department declined to comment.

Marmalefsky said the one concession that Wiener made in settling the suit was agreeing that the letterhead on some of the documents released could be blacked out "as well as a word here or there that would identify the foreign government" that provided information to the U.S.

However, Marmalefsky said, "having reviewed the final documents and all the others in this case, it is very difficult to believe that it could be any government other than the United Kingdom." Reported in: *Los Angeles Times*, December 20. ☐

intellectual freedom bibliography

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