newsletter on intellectual freedom

IFC ALA

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ACLU challenges expanded FISA powers

President George Bush signed into law July 10 the Federal Intelligence Surveillance Act (FISA) of 1978 Amendments Act of 2008, a bill expanding legal authority for wiretaps by spy agencies that has been hotly debated since the February expiration of the Protect America Act. Within hours of the bill's signing, the American Civil Liberties Union (ACLU) filed suit in the U.S. Southern District Court of New York challenging its constitutionality on First and Fourth Amendment grounds.

HR 6304 rewrites the Foreign Intelligence Surveillance Act in a way that expands the executive branch's spying powers without doing enough to protect the privacy of innocent people whose communications are being monitored, stated Emily Sheketoff, executive director of the American Library Association's (ALA) Washington Office July 9, after the Senate passed the bill 69–28. The House approved the legislation 293–129 three weeks earlier.

The amended FISA Act could affect any library user who uses the internet in the library to communicate with foreign friends, family members living in other countries, foreign companies—any international communications, said Deborah Caldwell-Stone, deputy director of ALA's Office for Intellectual Freedom. Similarly, any librarian who contacts colleagues overseas or conducts business with foreign publishers could have their international communications monitored under the amended FISA Act, she said.

Caldwell-Stone explained that the FISA Amendments Act alters the requirement for obtaining a warrant from the Foreign Intelligence Surveillance Court (FISC) to conduct wiretapping. The amended law eliminates the need for any specificity in an eavesdropping request, so FISC judges would no longer know whose communications they were allowing to be intercepted. For example, she said, federal agents could obtain an order that could simply collect e-mails that pass through AT&T servers in San Francisco going to Asia in bulk under a warrant issued under the FISA rules, and then peruse them at their leisure.

The legislation also grants retroactive immunity to telecommunications firms that allegedly shared with the federal government all telephone and internet communications routed through their networks since 2001, as some forty civil lawsuits contend.

(continued on page 209)

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Kenton L. Oliver, Chair

in this issue

targets of the censor

books

periodicals

film and video

theater

READ BANNED BOOKS

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chilling effects of "libel tourism"

When the College Art Association decided recently to settle rather than fight a possible libel action in Britain over a book review published in one of its journals, it did more than sidestep a costly and probably doomed legal battle. It opened itself up to sharp accusations that it had failed to stand up for freedom of expression.

The episode is a reminder of how wide a gulf separates the United States—where First Amendment protections and jurisprudence make libel very difficult to prove—from most of the rest of the world, where protecting reputations and public sensibilities trump the right to say what one pleases. It also points to the hazards of publishing in a truly global context, where, thanks to the Internet, a journal article or monograph or blog post can be accessed almost anywhere, no matter where it was written or published.

The fracas comes at a time when Congress is moving forward on legislation that would protect American writers and publishers from foreign libel judgments. The draft legislation would make such rulings unenforceable here unless they meet First Amendment criteria. And the episode also casts light on an effective culture of resistance to such judgments among American librarians, who often perceive them as censorship.

The recent controversy centered on a review in the fall 2007 issue of *Art Journal*, which is published by the association. The review was written by Joseph A. Massad, an associate professor of Arab politics in the department of Middle East and Asian languages and culture at Columbia University.

In a discussion of *Palestinian Art*, by Gannit Ankori, Massad alleged that Ankori had appropriated the work of Kamal Boullata, a Palestinian painter and art historian, without giving him due credit. That allegation has been made elsewhere as well.

Ankori, who chairs the art history department at Hebrew University in Jerusalem, considered the review defamatory. She consulted British lawyers, who contacted the association. The College Art Association reviewed Ankori's assertions, consulted its own lawyers, and decided to settle.

The resulting agreement has not been made fully public, but it did include a payment of $75,000 to Ankori and an apology. The association also issued a statements to its institutional subscribers, acknowledging "factual errors and certain unfounded assertions" in the review. It asked subscribers to remove the offending passages from their copies of *Art Journal*.

Massad called the decision to settle "a cowardly act." Linda Downs, executive director of the association, said the group concluded it could not afford to take the case to court. "We really didn't have a choice but to settle it," she said.

Ankori's decision to explore legal action in Britain is known in some circles as "libel tourism" or "forum shopping," in which plaintiffs seek out jurisdictions where the burden of proof falls on the defendant. Several high-profile cases of libel involving American authors and the British legal system have caught the public eye lately. One American scholar, Rachel Ehrenfeld, ran afoul of a Saudi billionaire, Khalid bin Mahfouz over her book *Funding Evil*, which alleged that bin Mahfouz had financial ties to terrorist groups.

Cambridge University Press agreed to pulp one of its books, *Alms for Jihad*, by J. Millard Burr and Robert O. Collins, in response to another complaint by bin Mahfouz. *Alms for Jihad* was at least published in Britain, which made bin Mahfouz's decision to pursue a legal remedy there more logical. If it seems odd that an Israeli plaintiff would even contemplate taking an American publisher to court in Britain, publishers of all stripes have found that such cross-jurisdictional gambits are becoming more and more common. "My client has a reputation in Britain which was damaged in Britain," Ankori's lawyer, said, taking a standard line used by plaintiffs in such cases.

According to prevailing American notions, Ankori should have duked it out with Massad in the court of public opinion. But from the British perspective, the preeminent place we give the First Amendment is "a very parochial way of looking at things," Ankori's lawyer said. "One person's freedom to speak is another person's freedom to be defamed. One has to strike a balance, and that's what the law tries to do." America, he said, "is out of step with many, many other countries."

Ankori successfully contested the same allegation made in *Art Journal* when it appeared in *The Art Book*, a respected British art journal published by Blackwell. That settlement also involved an apology, a retraction of the disputed article, and financial compensation.

"Yes, terrible damage can be done, especially with the Internet, to someone's reputation, and there has to be recourse," said Judith Platt, director of communications and public affairs for the Association of American Publishers, director of its Freedom to Read advocacy campaign, and President of the Freedom to Read Foundation. "But the balancing factor has got to be the right of the public to be informed on matters of public importance."

The Ankori case shows that it isn't just the hottest hot-button topics—e.g., terrorism—that can provoke lawsuits or legal approaches to publishers for redress. Palestinian art is, admittedly, a more charged topic than many, but any subject may be fair game. And while the Internet has allowed scholars and publishers to tap into new audiences and extend their reach, it also exposes them in ways they haven't encountered before.

"Every time a book is sold over the Internet, an American author, an American publisher becomes vulnerable," said Platt. Many American publishers, however, have not experienced that vulnerability firsthand. The Association of

(continued on page 210)

IFC report to ALA Council

The following is the text of the Intellectual Freedom Committee's report to the ALA Council presented by IFC Chair Kenton Oliver at the ALA Annual Conference in Anaheim on July 2.

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

Information

Ethics Training Session

Prior to the IFC Spring Meeting, Veanna Baxter and Nancy Zimmerman held an ethics training session for members of the Committee on Professional Ethics and the Intellectual Freedom Committee.

Strategic Thinking

At its 2006 Spring Meeting, the Intellectual Freedom Committee discussed how it could strategically place itself in ALA, how it could spend more of its time and energy helping to create direction for ALA, and how to continue bringing in other ALA units' expertise on its projects, as well as ensure collegial reciprocity. Lists of strategies were prepared.

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. ALA Editions will publish it in early 2009. All proceeds will be donated to the Gordon F. Conable Fund of the Freedom to Read Foundation.

Libel Tourism

The program, "The Biggest Threat to Free Speech You May Never Have Heard Of!," which was held on Monday, June 30, addressed issues of libel tourism. Libel tourism refers to the practice of using foreign libel laws as a weapon to intimidate and silence American journalists and authors. Libel tourists sue authors in countries without First Amendment protections, where they can obtain substantial judgments against the authors and court orders to destroy entire print runs of books. Recent examples include lawsuits filed against the authors of *Alms for Jihad* and *Dr. Rachel Ehrenfeld*, author of Funding Evil. The Office for Intellectual Freedom (OIF) will contact the Washington Office to address current legislation on libel tourism pending in Congress. The principles surrounding this particular issue are of vital importance to the library community.

Projects: New

Privacy for All: Rallying Americans to Defend Our Freedoms

At the 2006 Annual Conference, Council adopted the "Resolution on National Discussion on Privacy," which urged the Intellectual Freedom Committee to collaborate with other ALA units toward a national conversation about privacy as an American value. The Intellectual Freedom Committee, working with other privacy advocates, has developed a three year project to bring the concept of privacy to the American public and to inspire Americans to stand with librarians as they fight to usher in privacy standards for the digital age. The project was unveiled at this conference at a panel discussion entitled, "Privacy: Is it Time for a Revolution?," featuring Cory Doctorow, science fiction author and blogger from BoingBoing; Dan Roth, senior editor at *Wired* magazine; and Beth Givens, director of the Privacy Rights Clearinghouse.

An initial seed grant of $350,000 has been received from the Open Society Institute to implement the beginning phases of the privacy discussion.

To take a survey on privacy and libraries, please visit www.privacyrevolution.org.

Projects: Continuing

Contemporary Intellectual Freedom Series

The majority of printed materials addressing intellectual freedom and privacy issues in the library tend to be either academic works or compilations of policies and articles like the *Intellectual Freedom Manual*. While these references make excellent resources for the academic, the professional librarian, or the student conducting in-depth research, 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 publications currently being written by Candace Morgan, Barbara Jones, and Pat Scales will constitute a series that introduces the reader to intellectual freedom and also provides more specific materials addressing the practical application of intellectual freedom principles in public, academic, and school libraries. Each publication will discuss intellectual freedom concepts via a series of case studies that will both illustrate and teach a particular intellectual freedom or privacy concept. The reader should be able to jump into the work at any point or find a case study to address a current problem or issue of concern.

Each case study will describe a set of facts, followed by a discussion of the applicable intellectual freedom principles. The overall discussion will employ text, Q&As, sidebars, hot tips and other creative means to provide information useful to the front-line library worker or the LIS student seeking an introduction to intellectual freedom. ALA editions will publish the series in 2009.

(continued on page 212)

FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council, delivered by FTRF President Judith Platt at the ALA Annual Conference in Anaheim on June 30.

As President of the Freedom to Read Foundation, I am pleased to report on the Foundation's activities since the 2008 Midwinter Meeting:

Defending the Right to Read and the Right to View

This spring, FTRF filed two new lawsuits to defend our right to freely access, read, and purchase books without fear of government interference. The first, *Big Hat Books* v. *Prosecutors*, challenges a new Indiana law requiring anyone selling "harmful to minors" materials as defined by Indiana statute to register with the state as an "adult business," provide a description of the material, and pay a $250 registration fee. The law's registration requirement extends to individuals as well as businesses and institutions, and could well apply to libraries or Friends groups that hold sales of discarded books.

Joining FTRF as co-plaintiffs are two Indianapolis bookstores, the Indianapolis Museum of Art, the Indianapolis Downtown Artists' and Dealers' Association, the American Booksellers' Foundation for Free Expression (ABFFE), the Association of American Publishers (AAP), the Entertainment Merchants Association, the National Association of Recording Merchandisers, and the Great Lakes Booksellers Association. The plaintiffs have filed a motion for summary judgment, and a ruling is expected in the near future.

The second new lawsuit, *Powell's Books Inc*. v. *Hardy Myers*, challenges a new Oregon law that criminalizes the dissemination of sexually explicit material to anyone under the age of 13 or the dissemination to anyone under the age of 18 of any material with the intent to sexually arouse the recipient or the provider. The new statute, which makes no provision for judging the material as a whole or for considering its serious literary, artistic, or scientific value, went into effect on January 1.

The lawsuit, filed April 25 in federal district court in Portland, seeks an injunction barring enforcement of the statute, calling it unconstitutionally vague and overbroad. The suit further claims the statute burdens the exercise of free expression and creates a chilling effect on the sale, display, and dissemination of constitutionally protected speech.

Specifically, the complaint alleges that the statute violates the First Amendment because the definition of what material is criminal does not include the following required findings for what constitutes obscenity for minors: (1) consideration of the material as a whole; (2) a finding that the material is patently offensive; (3) an evaluation based on community standards; and (4) a finding that the material taken as a whole lacks serious artistic, scientific, or educational value.

Notably, the law contains no exception for family members; thus, those who could be prosecuted include a 17-year-old girl who lends her 13-year-old sister a copy of Judy Blume's *Forever*, or a grandmother who gives her 7-year-old grandson a copy of Robie Harris' *It's Perfectly Normal*. FTRF's co-plaintiffs include seven Oregon bookstores, ABBFE, AAP, the Comic Book Legal Defense Fund (CBLDF), the Oregon ACLU, FTRF Trustee Candace Morgan, Planned Parenthood, and the Cascades AIDS Project. Last week, we received word that the judge had denied the motion for a preliminary injunction, so the case is expected to go to trial.

Sexual explicitness, of course, is not the only reason state legislators attempt to restrict access to constitutionally protected materials. I am pleased to report that the successful challenge to a Minnesota law restricting minors' access to violent video games, *Entertainment Software Association and Entertainment Merchants Association* v. *Swanson* (formerly *ESA* v. *Hatch*), was upheld by the Eighth Circuit Court of Appeals. On March 17, a three-judge panel of the court held the restrictions to be unconstitutional and the state's motion for a rehearing *en banc* has been denied. The Freedom to Read Foundation participated as an *amicus curiae* in this case.

This is the ninth time courts have struck down a state statute seeking to regulate constitutionally protected materials solely on the basis of violent content, and we are now seeking a tenth victory in a similar case, *Video Software Dealers Assn*. et al. v. *Schwarzenegger*. FTRF recently filed an *amicus curiae* brief asking the Ninth Circuit Court of Appeals to uphold a federal district court ruling that permanently enjoined enforcement of a California law restricting the sale or rental of video games classified by the state as "violent" to those under the age of 18.

FTRF is also concerned about increasing attempts to criminalize speech that markets or promotes materials protected by the First Amendment. For this reason, FTRF filed an *amicus curiae* brief along with ABFFE, AAP, CBLDF, and Publishers Marketing Association, the independent book publishers' association, in *U.S.* v. *Williams*, a challenge to a federal statute criminalizing the act of advertising, promoting, presenting, distributing, or soliciting material in a manner that reflects the belief, or is intended to cause another to believe, that the material is illegal child pornography. Our brief did not address the law directly, but instead discussed the constitutional issues raised by efforts to criminalize the marketing of First Amendment-protected material which might affect materials marketed or sold by members of the amici groups. On May 19, the Supreme Court, in a 7–2 decision, upheld the law. Justice Scalia, writing for the majority, stated that "offers to engage in illegal transactions are categorically excluded from First Amendment protection."

The same concern for protecting promotional speech prompted the Foundation, along with AAP and ABFFE, to file an *amicus curiae* brief in *Gorran* v. *Atkins Nutritionals Inc.* in the U.S. Court of Appeals for the Second Circuit. The brief urged the court to reject arguments by a disgruntled former Atkins dieter that the best-selling book *Dr. Atkins' New Diet Revolution*, as well as portions of the Atkins website, are commercial speech because they promote the sale of Atkins-branded products, and thus are subject to state unfair competition laws.

In a ruling issued on May 28, the Second Circuit held that the book and the website were not commercial speech but rather First Amendment–protected expression which sought to communicate a particular view on health, diet, and nutrition, with an offer to purchase the message.

We continue to fight both federal and state laws that limit our freedom to read materials published on the Internet. The most important of these is *Mukasey* v. *American Civil Liberties Union* (formerly *ACLU* v. *Gonzales*), the long-standing lawsuit challenging the constitutionality of the Child Online Protection Act (COPA). COPA would impose criminal and civil penalties for any communication of "harmful to minors" materials via the World Wide Web for commercial purposes that can be accessed by minors. Almost nine years after its passage, and after a tortuous journey that carried the challenge through the Third Circuit Court of Appeals and up to the U.S. Supreme Court twice, COPA was struck down for a second time by the same federal judge who issued a preliminary injunction in 1999 barring its enforcement. FTRF has filed *amicus* briefs at every stage of the proceedings and again is asking the U.S. Court of Appeals for the Third Circuit to uphold the district court's decision. Oral argument before the Third Circuit took place on June 9. [A decision upholding the District Court was issued on July 22. See page 190.]

FTRF also has filed a brief in *ABFFE* v. *Dann* (formerly *Bookfriends Inc*. v. *Taft*), a lawsuit challenging the Ohio obscenity statute and "harmful to minors" law that threatens to restrict access to constitutionally protected Internet content. Last September, U.S. District Court Judge Walter Rice issued his written opinion holding the Ohio "harmful to minors" statute, as applied to the Internet, to be unconstitutional. The state filed a notice of appeal and the parties, including the Freedom to Read Foundation, are now filing briefs with the Sixth Circuit Court of Appeals.

The Foundation continues to monitor and participate in other lawsuits aimed at protecting the right to read and view, including the *American Civil Liberties Union of Florida* v. *Miami-Dade School Board*. This lawsuit challenges the Miami-Dade School Board's decision to remove from its classrooms and libraries all copies of the book *Vamos a Cuba* and its English-language companion book, *A Visit to Cuba*, asserting that this picture book aimed at four to six year olds failed to accurately convey the harsh political realities of life in Cuba. The case is pending before the Eleventh Circuit Court of Appeals.

I want to report on recent developments in an important case that the Foundation is closely watching, although it is not yet a participant. *Sarah Bradburn et al.* v. *North Central Regional Library District*, a challenge to a library's policy of refusing to honor adults' requests to temporarily disable Internet filters for research and reading, has been referred to the Washington State Supreme Court after the federal district court certified several questions of state law to that court. The Washington State Supreme Court now must decide those questions before the federal lawsuit can continue.

Defending Privacy and Civil Liberties

The Foundation believes the right to privacy and the freedom from unwarranted and unjustified government surveillance are fundamental to the exercise of our First Amendment rights. It has joined in several actions both to establish and to defend the right to informational privacy. Among these is *New Jersey* v. *Reid*, an appeal to the New Jersey Supreme Court urging it to uphold a state appellate court ruling that the New Jersey state constitution confers a privacy interest in an individual's Internet Service

(continued on page 217)

FTRF honors Carol Nemeyer with memorial fund

The Freedom to Read Foundation has announced the creation of the Carol A. Nemeyer Memorial Fund. The fund honors Dr. Nemeyer, who died in Fort Lauderdale, Florida, on June 30. A former president of the American Library Association and a member of the Board of Trustees of the Freedom to Read Foundation, Dr. Nemeyer was, during a long and distinguished career, a passionate advocate for libraries and their essential role in creating an informed citizenry.

She was a graduate of Berea College and Columbia University School of Library Service, where she received a doctoral degree. Her thesis, entitled *Scholarly Reprint Publishing in the United States*, was published by the R. R. Bowker Company. Dr. Nemeyer was the librarian at the McGraw-Hill Publishing Company before joining the staff of the newly created Association of American Publishers in the early 1970s, where she directed the General Publishing and Direct Marketing/Book Club Divisions and the Committee on Education for Publishing. At the AAP, she created enthusiastic publisher support for, and participation in, the Cataloging-in-Publication Program and served on their Advisory Board.

Dr. Nemeyer left AAP in 1977 to become associate librarian for national programs at the Library of Congress, overseeing the creation of, and gaining nationwide support for, The Center for the Book. She was President of the American Library Association (ALA) in 1983, where she set "Connections" as the theme of her presidency—one of the first prominent recognitions of the importance of networking. Under her leadership, ALA sponsored the first live nationwide broadcast of a major national professional conference, connecting members and the general public to a major library event. She also founded the Washington, D.C., Chapter of the Women's National Book Association.

The Freedom to Read Foundation is affiliated with, but separate from, ALA. The foundation serves as ALA's First Amendment legal defense arm. Among its activities, the foundation helps to defend the First Amendment in the courts, including the U.S. Supreme Court; supports librarians around the country who are besieged by attempts to restrict library materials and services; expands the freedom to read by offering legal and financial help in free speech cases involving librarians, authors, publishers and booksellers; and protects the privacy of library users by opposing unwarranted access to confidential library records.

"The establishment of this Fund provides the many friends and admirers of Carol A. Nemeyer with an opportunity to honor her remarkable legacy of service and her commitment to intellectual freedom and to express their appreciation for her extraordinary gifts," said Freedom to Read Foundation President Judith Platt.

Contributions to the fund, which are tax deductible, can be made by check payable to the Freedom to Read Foundation and mailed to: Carol A. Nemeyer Memorial Fund, c/o The Freedom to Read Foundation, 50 East Huron Street, Chicago, IL 60611. You also may donate by calling 1-800-545-2433, ext. 4226, or by visiting http://tinyurl.com/5kpr49 and clicking the orange "Give Direct" button (type "Carol Nemeyer Fund" in the comments section). □

a new Church Committee?

The last several years have brought a series of revelations about the George W. Bush administration, from the manipulation of intelligence to torture to extrajudicial spying inside the United States. But there are growing indications that these known abuses of power may only be the tip of the iceberg. Now, in the twilight of the Bush presidency, a movement is stirring in Washington for a sweeping new inquiry into White House malfeasance that would be modeled after the famous Church Committee congressional investigation of the 1970s.

The online journal *Salon* obtained a detailed memo proposing such an inquiry, and spoke with sources involved in discussions around it on Capitol Hill. *Salon* reported that the memo was written by a former senior member of the original Church Committee; the discussions have included aides to top House Democrats, including Speaker Nancy Pelosi and Judiciary Committee chairman John Conyers, and until now have not been disclosed publicly.

Salon also uncovered further indications of far-reaching and possibly illegal surveillance conducted by the National Security Agency inside the United States under President Bush, including the alleged use of a top-secret, sophisticated database system for monitoring people considered to be a threat to national security. It also includes signs of the NSA's working closely with other U.S. government agencies to track financial transactions domestically as well as globally.

The proposal for a Church Committee–style investigation emerged from talks between civil liberties advocates and aides to Democratic leaders in Congress, according to *Salon*. Looking forward to 2009, when both Congress and the White House may well be controlled by Democrats, the idea is to have Congress appoint an investigative body to discover the full extent of what the Bush White House did in the war on terror to undermine the Constitution and U.S. and international laws. The goal would be to implement government reforms aimed at preventing future abuses—and perhaps to bring accountability for wrongdoing by Bush officials.

"If we know this much about torture, rendition, secret prisons and warrantless wiretapping despite the administration's attempts to stonewall, then imagine what we don't

know," says a senior Democratic congressional aide who is familiar with the proposal and has been involved in several high-profile congressional investigations.

"You have to go back to the McCarthy era to find this level of abuse," said Barry Steinhardt, the director of the Program on Technology and Liberty for the American Civil Liberties Union. "Because the Bush administration has been so opaque, we don't know [the extent of] what laws have been violated."

The parameters for an investigation were outlined in a seven-page memo, written after the former member of the Church Committee met for discussions with the ACLU, the Center for Democracy and Technology, Common Cause and other watchdog groups. Key issues to investigate, those involved say, would include the National Security Agency's domestic surveillance activities; the Central Intelligence Agency's use of extraordinary rendition and torture against terrorist suspects; and the U.S. government's extensive use of military assets—including satellites, Pentagon intelligence agencies and U2 surveillance planes—for a vast spying apparatus that could be used against the American people.

Specifically, the ACLU and other groups want to know how the NSA's use of databases and data mining may have meshed with other domestic intelligence activities, such as the U.S. government's extensive use of no-fly lists and the Treasury Department's list of "specially designated global terrorists" to identify potential suspects. As of mid-July, says Steinhardt, the no-fly list includes more than 1 million records corresponding to more than 400,000 names. If those people really represent terrorist threats, he says, "our cities would be ablaze." A deeper investigation into intelligence abuses should focus on how these lists feed on each other, Steinhardt says, as well as the government's "inexorable trend towards treating everyone as a suspect."

"It's not just the 'Terrorist Surveillance Program,'" agreed Gregory T. Nojeim from the Center for Democracy and Technology, referring to the Bush administration's misleading name for the NSA's warrantless wiretapping program. "We need a broad investigation on the way all the moving parts fit together. It seems like we're always looking at little chunks and missing the big picture."

A prime area of inquiry for a sweeping new investigation would be the Bush administration's alleged use of a top-secret database to guide its domestic surveillance. Dating back to the 1980s and known to government insiders as "Main Core," the database reportedly collects and stores—without warrants or court orders—the names and detailed data of Americans considered to be threats to national security.

According to several former U.S. government officials with extensive knowledge of intelligence operations, Main Core in its current incarnation apparently contains a vast amount of personal data on Americans, including NSA intercepts of bank and credit card transactions and the results of surveillance efforts by the FBI, the CIA, and other agencies. One former intelligence official described Main Core as "an emergency internal security database system" designed for use by the military in the event of a national catastrophe, a suspension of the Constitution, or the imposition of martial law. Its name, he says, is derived from the fact that it contains "copies of the 'main core' or essence of each item of intelligence information on Americans produced by the FBI and the other agencies of the U.S. intelligence community."

Some of the former U.S. officials interviewed, although they have no direct knowledge of the issue, said they believe that Main Core may have been used by the NSA to determine who to spy on in the immediate aftermath of 9/11. Moreover, the NSA's use of the database, they say, may have triggered the now-famous March 2004 confrontation between the White House and the Justice Department that nearly led Attorney General John Ashcroft, FBI director Robert Mueller, and other top Justice officials to resign en masse.

The Justice Department officials who objected to the legal basis for the surveillance program—former Deputy Attorney General James B. Comey and Jack Goldsmith, the former head of the Office of Legal Counsel—testified before Congress last year about the 2004 showdown with the White House. Although they refused to discuss the highly classified details behind their concerns, the *New York Times* later reported that they were objecting to a program that "involved computer searches through massive electronic databases" containing "records of the phone calls and e-mail messages of millions of Americans."

According to William Hamilton, a former NSA intelligence officer who left the agency in the 1970s, that description sounded a lot like Main Core, which he first heard about in detail in 1992. Hamilton, who is the president of Inslaw Inc., a computer services firm with many clients in government and the private sector, says there are strong indications that the Bush administration's domestic surveillance operations use Main Core.

Hamilton's company Inslaw is widely respected in the law enforcement community for creating a program called the Prosecutors' Management Information System, or PROMIS. It keeps track of criminal investigations through a powerful search engine that can quickly access all stored data components of a case, from the name of the initial investigators to the telephone numbers of key suspects. PROMIS, also widely used in the insurance industry, can also sort through other databases fast, with results showing up almost instantly. "It operates just like Google," Hamilton said in an interview in his Washington office in May.

Since the late 1980s, Inslaw has been involved in a legal dispute over its claim that Justice Department officials in the Reagan administration appropriated the PROMIS software. Hamilton claims that Reagan officials gave PROMIS to the NSA and the CIA, which then adapted the software—and

its outstanding ability to search other databases—to manage intelligence operations and track financial transactions. Over the years, Hamilton has employed prominent lawyers to pursue the case, including Elliot Richardson, the former attorney general and secretary of defense who died in 1999, and C. Boyden Gray, the former White House counsel to President George H. W. Bush. The dispute has never been settled. But based on the long-running case, Hamilton says he believes U.S. intelligence uses PROMIS as the primary software for searching the Main Core database.

Hamilton was first told about the connection between PROMIS and Main Core in the spring of 1992 by a U.S. intelligence official, and again in 1995 by a former NSA official. In July 2001, Hamilton says, he discussed his case with retired Adm. Dan Murphy, a former military advisor to Elliot Richardson who later served under President George H. W. Bush as deputy director of the CIA. Murphy, who died shortly after his meeting with Hamilton, did not specifically mention Main Core. But he informed Hamilton that the NSA's use of PROMIS involved something "so seriously wrong that money alone cannot cure the problem," Hamilton added. "I believe in retrospect that Murphy was alluding to Main Core." Hamilton also provided copies of letters that Richardson and Gray sent to U.S. intelligence officials and the Justice Department on Inslaw's behalf alleging that the NSA and the CIA had appropriated PROMIS for intelligence use.

Hamilton said James B. Comey's congressional testimony in May 2007, in which he described a hospitalized John Ashcroft's dramatic standoff with senior Bush officials Alberto Gonzales and Andrew Card, was another illuminating moment. "It was then that we [at Inslaw] started hearing again about the Main Core derivative of PROMIS for spying on Americans," he said.

An article in *Radar* magazine in May, citing three unnamed former government officials, reported that "8 million Americans are now listed in Main Core as potentially suspect" and, in the event of a national emergency, "could be subject to everything from heightened surveillance and tracking to direct questioning and even detention."

The alleged use of Main Core by the Bush administration for surveillance, if confirmed to be true, would indicate a much deeper level of secretive government intrusion into Americans' lives than has been previously known. With respect to civil liberties, says the ACLU's Steinhardt, it would be "pretty frightening stuff."

The Inslaw case also points to what may be an extensive role played by the NSA in financial spying inside the United States. According to reports over the years in the U.S. and foreign press, Inslaw's PROMIS software was embedded surreptitiously in systems sold to foreign and global banks as a way to give the NSA secret "backdoor" access to the electronic flow of money around the world.

Main Core may be the contemporary incarnation of a government watch list system that was part of a highly classified "Continuity of Government" program created by the Reagan administration to keep the U.S. government functioning in the event of a nuclear attack. Under a 1982 presidential directive, the outbreak of war could trigger the proclamation of martial law nationwide, giving the military the authority to use its domestic database to round up citizens and residents considered to be threats to national security. The emergency measures for domestic security were to be carried out by the Federal Emergency Management Agency (FEMA) and the Army.

In the late 1980s, reports about a domestic database linked to FEMA and the Continuity of Government program began to appear in the press. For example, in 1986 the *Austin American-Statesman* uncovered evidence of a large database that authorities were proposing to use to intern Latino dissidents and refugees during a national emergency that might follow a potential U.S. invasion of Nicaragua. During the Iran-Contra congressional hearings in 1987, questions to Reagan aide Oliver North about the database were ruled out of order by the committee chairman, Democratic Sen. Daniel Inouye, because of the "highly sensitive and classified" nature of FEMA's domestic security operations.

In September 2001, according to *The Rise of the Vulcans*, a 2004 book on Bush's war cabinet by James Mann, a contemporary version of the Continuity of Government program was put into play in the hours after the 9/11 terrorist attacks, when Vice President Cheney and senior members of Congress were dispersed to "undisclosed locations" to maintain government functions. It was during this emergency period, some former government officials believe, that President Bush may have authorized the NSA to begin actively using the Main Core database for domestic surveillance.

One indicator they cite is a statement by Bush in December 2005, after the *New York Times* had revealed the NSA's warrantless wiretapping, in which he made a rare reference to the emergency program: The Justice Department's legal reviews of the NSA activity, Bush said, were based on "fresh intelligence assessment of terrorist threats to the continuity of our government."

It is noteworthy that two key players on Bush's national security team, Cheney and his chief of staff, David Addington, have been involved in the Continuity of Government program since its inception. Along with Donald Rumsfeld, Bush's first secretary of defense, both men took part in simulated drills for the program during the 1980s and early 1990s. Addington's role was disclosed in *The Dark Side*, a book published in July about the Bush administration's war on terror by *New Yorker* reporter Jane Mayer. In the book, Mayer calls Addington "the father of the [NSA] eavesdropping program," and reports that he was the key figure involved in the 2004 dispute between the White House and the Justice Department over the legality of the program. That would seem to make him a prime wit-

ness for a broader investigation.

Getting a full picture on Bush's intelligence programs, however, will almost certainly require any sweeping new investigation to have a scope that would inoculate it against charges of partisanship. During one recent discussion on Capitol Hill, according to a participant, a senior aide to Speaker Pelosi was asked for Pelosi's views on a proposal to expand the investigation to past administrations, including those of Bill Clinton and George H. W. Bush. "The question was, how far back in time would we have to go to make this credible?" the participant in the meeting recalled.

That question was answered in the seven-page memo. "The rise of the 'surveillance state' driven by new technologies and the demands of counter-terrorism did not begin with this Administration," the author wrote. Even though he acknowledged in interviews with *Salon* that the scope of abuse under George W. Bush would likely be an order of magnitude greater than under preceding presidents, he recommended in the memo that any new investigation fol-

(continued on page 219)

Michigan to stop distributing radical publisher

The University of Michigan Press is ending its controversial relationship with Pluto Press at the end of this year. As of December 31, it will no longer distribute titles for Pluto Press, a London-based independent publisher. Pluto counts Noam Chomsky among its authors and espouses what it calls a "radical political agenda." The Michigan press took fire last year for one of Pluto's books, *Overcoming Zionism*, by Joel Kovel, a professor of social studies at Bard College. The pro-Israel lobbying group StandWithUs spearheaded a vocal protest, attacking the book as "a polemic against Israel" and a "collection of propaganda, misquotes, and discredited news stories."

On its website, StandWithUs wrote that "hundreds of anti-West, anti-American and anti-Israel propaganda texts reach us exclusively via University of Michigan Press."

The unwelcome attention led the university to take the unusual step of drafting guidelines to govern its press's distribution and marketing agreements. The guidelines, announced in January, state that the press may consider entering into partnerships "with other scholarly publishers whose mission is aligned with the mission of the UM Press and whose academic standards and processes of peer review are reasonably similar."

The guidelines direct the press's director and executive board to review proposed distribution agreements to make sure they fit those criteria. Pluto Press's peer-review process, which involves sending book proposals but not completed manuscripts out to reviewers, apparently did not.

Few university presses maintain formal guidelines for such distribution and marketing agreements, treating them more as business deals than as intellectual partnerships. The controversy over Pluto caused the university and the press's board to re-examine those relationships. "Distribution clients are money-making arrangements, but we wanted the profit-making arrangements to conform to our values," said Peggy S. McCracken, a professor of French and women's studies who also serves as the board's chair.

McCracken described the decision as a matter of academic standards, not academic freedom. "Certainly the free and open exchange of ideas is the foundation of everything we do at the University of Michigan," she said. Books published by the university press represent "a standard of scholarly rigor," she added. "It's our review procedures that guarantee that that is true."

Philip Pochoda, the Michigan press's director, declined to comment on the severing of ties with Pluto. But Kelly Cunningham, director of the university's office of public affairs and media relations, confirmed that the distribution agreement had been terminated, effective December 31.

The press's board reached the decision "after careful examination," she said. Cunningham said the board had "determined that the Pluto Press mission and procedures are not reasonably similar to UM Press as specified by the guidelines and, therefore, do not meet the requirements to continue as a distribution client."

The press also has distribution agreements with the American Academy in Rome and two of the university's scholarly centers. Those agreements were vetted by the board and were found satisfactory, Cunningham said.

The impending breakup did not come as a shock to Pluto Press, according to its chairman, Roger van Zwanenberg. The Israel lobby "didn't like the book," he said. "They are unremitting, and the end result is that we're more trouble than we're worth."

Pluto sends every proposal out to half-a-dozen scholars in the relevant field. But small commercial presses like his cannot afford to do the kind of peer review done at subsidized university presses, van Zwanenberg said.

Were the new guidelines crafted so as to disqualify Pluto? No one has said so publicly. But as van Zwanenberg sees it, "The hoops that the University of Michigan Press created were only for university presses."

Although he expected the news, the chairman expressed disappointment with how the Michigan press handled the controversy. "They should have defended us much more than they have done," he said. "But we're very small, and they're very large, and there are many interests involved which make principle very difficult to carry out."

"For a tiny overseas publisher to have this sort of effect in the United States is quite astonishing," he said, "and it reflects powerful forces who are deeply antagonistic to free speech when it comes to issues around Israel and Palestine." Reported in: *Chronicle of Higher Education* online, June 18. □

censorship dateline

libraries

Parker, Colorado

A patron at Douglas County Libraries in Colorado has submitted the first known challenge to Uncle Bobby's Wedding, a children's book by Massachusetts author Sarah Brannen, that features two gay guinea pigs.

In an e-mail to library director James LaRue on June 26, Parker resident Anita Gohde formally asked that the book be removed from the library, placed in a special area, or labeled "some material may be inappropriate for young children." She also submitted a letter to her local newspaper, the *Parker Chronicle*, which appeared the same day.

In her letter to the paper, Gohde wrote: "I want my voice to be heard. I am offended. Shouldn't I have the right to voice my opinion and to take my young daughter to the public library without concern that she will choose a book that promotes gay marriage—a view that is a slap in my face?" She added a call for action: "Does anybody out there hear me? Where are all of the other moms who are willing to stand up for their beliefs? If you are, then get up, call the library, call the governor, call anybody. Do something."

LaRue submitted a response to the *Parker Chronicle*, which appeared July 5. In it, he said that while Gohde has the right to free expression, so does everybody else: "She does not have the right to insist that no one will express an opinion contrary to hers, or that people won't write books that she disagrees with, or that such books will somehow be hidden or made more difficult to find."

LaRue also composed a lengthier, formal response to Gohde, which he e-mailed to her on June 27. Suspecting that the book would garner more challenges, he also posted this response on his blog (jaslarue.blogspot.com) on July 14, in the hope that other librarians might find it useful. Coverage of the flap first appeared on the blog Mombian (www.mombian.com) on July 15.

Brannen, a Boston-area author and illustrator, said in an interview that the experience of having a book challenged is new to her. "It makes me unhappy that anyone would object to my book enough to want to remove it from library shelves," she said. "Someone posted a review on Amazon and said they threw the book away, and that makes me sad too." At the same time, she added, "I'm very, very touched by the many people who have posted on message boards and the comment sections after online articles, supporting the book and fighting for it. I wrote the book for people I love. It is, in every way, an expression of family love. I truly don't think there's anything in it that any child shouldn't see."

Brannen's experience promoting the book has demonstrated this. When she read the book to a group of young children at a school book fair in May, she recalled, they asked many questions: "How long did it take you to write the book? How did you draw them so cute? Is the little white mouse a baby? Is the white one at the wedding a boy? How did you make their clothes? Were you ever a flower girl in a wedding? And that was it." None of them seemed phased by the fact that Bobby was marrying another male.

In his blog post, LaRue addressed Gohde's concern that the purpose of the book is to show the wedding of the two male characters as "no big thing." LaRue agreed, noting that the storyline revolves around Uncle Bobby's niece Chloe, and her fear that their special relationship will change after he marries, not around the fact that he is marrying another male.

To her allegation that the book is inappropriate for children, LaRue observed that children's books may deal with a wide variety of difficult subjects, including death, alcoholism, and family violence. "What defines a children's book," he said, "is the treatment, not the topic." Based on the book's length, vocabulary, illustrations, and publisher—G. P. Putnam's Sons, a division of Penguin Young Readers Group—LaRue concluded the treatment was indeed appropriate for children.

To Gohde's assertion of her strong belief "in America and the beliefs of our founding fathers," and that "marriage is a covenant between a man and a woman as stated in the Webster's dictionary and also in the Bible," LaRue cited the founding fathers vision of freedom of speech. He noted that several of the definitions of "marriage" in Webster's could apply to same-sex couples and that definitions can change. Now that marriage of same-sex couples is legal in some parts of the country, he asked, "how could writing a book about it be inappropriate?"

He also reminded Gohde that her own seven-year-old daughter's response to the book was that "Boys are not sup-

posed to marry," and said this proves Gohde has conveyed her own values to her child. "That's what parents are supposed to do," he wrote, "and clearly, exposure to this book, or several, doesn't just overthrow that parental influence."

LaRue also acknowledged that the book might in reality help others in the community, including gay parents, their children, and gay youth. He explained, "Most of the books we have are designed not to interfere with parents' notions of how to raise their children, but to support them. But not every parent is looking for the same thing."

The two other letters that appeared in the *Parker Chronicle* in response to Gohde also supported this attitude. Tim Kuznlar of Highlands Ranch wrote that it is a parent's responsibility, not the library's, to screen books for her children. Gohde has the right to tell her daughter that she doesn't approve of certain "lifestyle choices," he said, but "it would still do her well to harbor a tolerance for the choices of others."

Ricki Chambers, also of Highlands Ranch, reiterated the theme of parental, not library, responsibility. She added, "Perhaps we should follow the views of another man I am reminded of who believed in love your neighbor as yourself—Jesus Christ. As a heterosexual married mother with straight and gay friends, I choose to practice acceptance of others—and not intolerance. Be assured that I will call everybody, I will vote and I will do something."

LGBT–themed children's books are no strangers to challenge. *And Tango Makes Three*, about a same-sex penguin pair, has topped the American Library Association's (ALA) list of the most-challenged books for two years in a row. The classics *Heather Has Two Mommies* and *Daddy's Roommate* are on ALA's multi-year "100 Most Frequently Challenged" list. Libraries are not the only arenas. Two sets of parents in Lexington, Massachusetts, who objected to the reading of gay-themed children's book *King & King* in their children's school, have appealed their case to the U.S. Supreme Court after the circuit court rejected it. (The Supreme Court has not yet accepted the case.)

When *Uncle Bobby's Wedding* was published at the end of March, conservative commentator Brent Bozell III, wrote at Townhall.com, "Already we can predict how the ALA next year will complain about any objection to a book called *Uncle Bobby's Wedding*." He added, "the ALA doesn't favor open discussion and debate with parents—which is what the 'challenges' represent. Its idea of 'freedom' is emboldening librarians to be brave enough to indoctrinate children with what they really need to know, whether their parents object or even know about it."

LaRue's letter demonstrated a different approach. He stressed parents' involvement in their children's reading, saying, "I believe that every book in the children's area, particularly in the area where usually the parent is reading the book aloud, involves parental guidance." He concluded, "If the library is doing its job, there are lots of books in our collection that people won't agree with; there are certainly many that I object to. Library collections don't imply endorsement; they imply access to the many different ideas of our culture, which is precisely our purpose in public life."

Timothy Travaglini, the book's editor at G. P. Putnam's Sons, concurred, saying LaRue's letter has a broad purpose. "There is a constant push-and-pull in our society between censorship and free speech, and librarians such as Jamie LaRue stand on the front lines, ever ready to address such challenges with thoughtfulness and intelligence," Travaglini said in an interview. "His response to his patron's concern is as brilliantly reasoned as it is considerate of her point of view, and serves as an excellent model for the defense of any book challenged for any reason." Reported in: baywindows.com, July 23; mombian.com, July 15; jaslarue .blogspot.com, July 14.

Batavia, Illinois

Batavia Public Library (BPL) has moved a link to Planned Parenthood's Teenwire sex education website from the "Young Adult" page on BPL's website to the general health section of its "Web Reference" page. The board voted 4–2 to move the link July 15 in response to resident Kerry Knott's request to have it removed from the site entirely.

More than 120 people attended the board meeting while picketers walked outside the library carrying signs with anti–Planned Parenthood messages. More than thirty spoke on the issue, with a majority in favor of removing the link. "I need to implore the board to listen to your constituents," resident Jennifer Russell argued. "If you are elected to represent the citizens of the library district of Batavia, you need to listen to your constituents."

Others equated removing the link with censorship. "I am constitutionally frightened and offended that political agendas are trying to dictate what this library offers," said resident Susan Tatnall. "Your job is to provide information and avenues of learning and education for this community. It is a slippery slope when you start to limit that information because of the political views of some members of the community."

"There's no way teens can look at this and get accurate information," parent Kerry Knott had told the Batavia Library Board June 17. "It's extremely misleading, and I look to the library as a credible source of information."

She said the website has inaccurate medical information and downplays the health risks involved in sexual activity and abortion. "We as taxpayers should have a say in what the library is promoting and not promoting," she said.

Parents filed a complaint with the library, and a review committee of staff members found the site appropriate, library Director George Scheetz said. The group then asked to appeal that decision to the library board.

The library's staff and board members will review a fifty-nine-page booklet of information from the group and

decide if a change should be made, he said. "Accuracy is certainly a key issue for us," he said.

Pam Sutherland, vice president for public policy at Planned Parenthood Illinois, said the site's information is accurate. "One thing Planned Parenthood has always prided itself on is giving medically accurate information," she said. The site has won awards for its content and offers an alternative to abstinence-only sex education teens may be getting, she said. "Teens come to the Web site because they need information about all of their decisions," she said. Reported in: *American Libraries* online, July 18; *Arlington Heights Daily Herald*, June 18, July 16.

Bloomington, Illinois

A DVD copy of a movie called pornographic by a library customer has been pulled from the Bloomington Public Library shelves. On July 14, library Director Georgia Bouda said a review by a library committee resulted in a unanimous agreement to remove the DVD of the independent film *Shortbus*. Bill Swearingen, of Bloomington, had complained about the movie. He said he was pleased to learn of the results.

"I think that's great," Swearingen said. "I'm not a prude but it really was soft porn and to me I don't see why it should be in the library."

Bouda said she is not sure why the movie was selected for the library's collection. As part of her process to review material, Bouda selected several librarians to watch the movie, read reviews and research whether it is in the collection of other libraries in similar size to the Bloomington library.

Shortbus is an unrated movie released in 2006. Bouda said there are many foreign films in the library's collection that also are not rated. Foreign films typically do not go through the same rating process as domestic films, she added.

"We went back and looked at the film, reconsidered and it was unanimous decision to pull it," Bouda said. Removing material from the library is rare, Bouda said.

Swearingen said he believes the actions taken by Bouda and the other librarians show they are trying to stand up for the community's values. "I appreciate that they acted on this immediately and listened to my concerns," Swearingen added. Reported in: Pantagraph.com, July 14.

universities

Washington, D.C.

Scholars of the Armenian genocide have long accused Turkey of using its financial support to promote the idea that a genocide didn't take place or that the jury is still out—views that have little credibility among historians of genocide. An incident in 2006, only recently being talked about publicly, has some scholars concerned that Turkey and its supporters may be interfering in American scholarship.

The chair of the board of the Institute of Turkish Studies, which is based at Georgetown University, resigned at the end of 2006, and he says he was given a choice by Turkish officials of either quitting or seeing the funding for the institute go away.

At least one scholarly group that has investigated the matter recently issued a report backing the ousted chair, and at least one other board member has resigned while another has called for more discussion of the accusations. The executive director of the institute, while flatly saying that the ousted chair is wrong, confirmed that he was asked by Turkish Embassy officials to have the scholar talk with the Turkish ambassador to the United States about an article where he used the word "genocide" in reference to what happened to the Armenians. It was after that talk that the chair—Donald Quataert—quit.

The fact that Quataert is at the center of the controversy is significant. A historian at the State University of New York at Binghamton, Quataert is an expert on the Ottoman Empire. In the 1980s, when the scholarly consensus about the Armenian genocide was not as broad as it is today, he signed a statement calling for more research on whether genocide took place. Quataert says today he never thought the statement would be used as it was by Turkish supporters to question claims of a genocide, but he notes that as a result of his having signed at the time, he was viewed favorably by the Turkish government and with considerable skepticism by Armenians. And it is Quataert who used the word "genocide" in a journal and who says he was given a choice by the Turkish ambassador, Nabi Sensoy, of quitting as the institute's chair or seeing its financing disappear.

The Institute of Turkish Studies, founded with funds from Turkey, supports research, publications, and language training at many American colleges and universities. Most of the work is not controversial. This year the institute is providing library grants to Kennesaw State University and the University of Mississippi, supporting doctoral students' work at New York University ("The Specter of Pan-Islamism: Pilgrims, Sufis and Revolutionaries and the Construction of Ottoman-Central Asian Relations, 1865–1914") and the University of Texas at Austin ("Gender, Education, and Modernization: Women Schoolteachers in the Late Ottoman Empire, 1871–1922"); undergraduate exchange programs at the University of Nevada at Reno and the University of Wisconsin at Madison, and seed money to create new faculty positions at Boston University and the University of Minnesota.

The institute is led by a board, primarily made up of scholars of Turkey, only a few of whom have focused on issues related to what happened to the Armenians. Even those who question the way Turkey has responded to the genocide issue say that much of the work supported by the institute is important and meets high standards.

Quataert led the institute's board from 2001 until his controversial departure at the end of 2006.

The dispute started when he published a book review in the *Journal of Interdisciplinary History* in the fall of 2006. The review, which included both praise and criticism, was of Donald Bloxham's *The Great Game of Genocide: Imperialism, Nationalism and the Destruction of the Ottoman Armenians* (Oxford University Press). In the review, Quataert wrote about how when he entered graduate studies in Ottoman history in the late 1960s, "there was an elephant in the room of Ottoman studies—the slaughter of the Ottoman Armenians in 1915." He wrote that "a heavy aura of self-censorship hung over Ottoman history writing," excluding not only work on Armenians, but also on religious identity, the Kurds, and labor issues. Only in recent years, he continued, has the "Ottomanist wall of silence" started to crumble.

Quataert noted concerns about the use of the word "genocide," namely, that discussions of its use or non-use can "degenerate into semantics and deflect scholars from the real task at hand, to understand better the nature of the 1915 events." But despite those concerns, he wrote that there is no question today that what took place meets United Nations and other definitions of genocide, and that failure to acknowledge as much is wrong.

Of using the term, he wrote: "Although it may provoke anger among some of my Ottomanist colleagues, to do otherwise in this essay runs the risk of suggesting denial of the massive and systematic atrocities that the Ottoman state and some of its military and general populace committed against the Armenians."

That sort of analysis is not exceptional for historians writing about the period. Most leading scholars of genocide have said that it is beyond question that what took place was genocide. In 2005, for example, the International Association of Genocide Scholars issued a letter that said in part: "We want to underscore that it is not just Armenians who are affirming the Armenian Genocide but it is the overwhelming opinion of scholars who study genocide: hundreds of independent scholars, who have no affiliations with governments, and whose work spans many countries and nationalities and the course of decades."

While calling the Armenian genocide a genocide isn't controversial among historians, it is unusual for the board of the Institute of Turkish Studies. Its board hasn't been known for taking stands on the issue, and one of its members is Justin McCarthy, a professor at the University of Louisville who describes what happened not as genocide, but a period of civil war in which many people died, more of them Muslims than Armenians.

In an interview, Quataert said that after his review was published, he was told by David C. Cuthell, director of the institute, that people in Turkey were upset about his use of the word genocide and that he should call the Turkish ambassador. "He told me the embassy was unhappy and was getting a lot of pressure and maybe I should speak to the ambassador."

Quataert said that he then called Ambassador Sensoy and had a "very cordial and polite" discussion, and that the ambassador "made it clear that if I did not separate myself as chairman of the board that funding for the institute would be withdrawn by the Turkish government and the institute would be destroyed."

After thinking about it for a few days, Quataert said he decided to resign. "It was clear to me that there was a genuine danger that the funding would be withdrawn by these powerful elements in Ankara and all the good I have seen would vanish, and money that young scholars need to learn language and travel would dry up," he said. "I still feel that the institute over the decades has done a lot of good work. It was not for Turkish propaganda. That's why I agreed to be the chairman of the board."

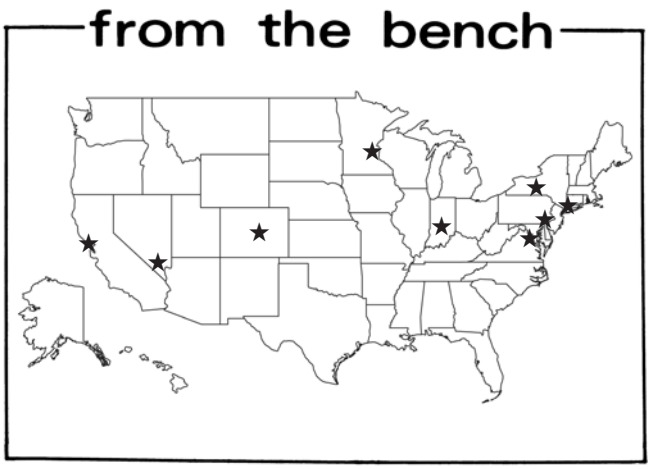
Based on his experience, Quataert said that it is "a very difficult question" to consider whether the institute at this point has credibility as a source of financing for research and education. "By forcing my resignation, the Turkish government has made very clear that there are bounds beyond which people cannot go," he said.

Birol Yesilada, a professor of political science and international relations at Portland State University, where he focuses on contemporary Turkish studies, said he quit the institute's board for two reasons: health (he is recovering from a heart attack) and concern over what happened to Quataert. Yesilada said he didn't know all the facts, and has heard differing accounts of what happened, but that "it does not look good." Further, he said he was troubled by "the silence" of the institute director and many board members about Quataert's departure.

One board member who sent a series of e-mail messages to other board members was Fatma Müge Göçek, a sociologist at the University of Michigan. She wrote that Quataert was within his rights as a scholar to write the review as he did. "[T]he only activities that ITS has any control or say over in relation to Donald's activities are only limited to his service as the board chairman, not as a research scholar," she wrote. "If ITS in any way intervenes in Donald's research activities, however, that would indeed be a violation of his academic freedom because Donald's research does not fall within the purview of ITS's domain of activities. In addition, of course, I should not have to point out that the funding agencies that provide money to ITS should not do so with strings attached with respect to the research the scholars do. That too is considered unethical."

The Academic Freedom Committee of the Middle East Studies Association also recently reviewed the case, and weighed in with a letter to Turkish officials expressing anger over "the Turkish government's interference in the academic freedom of one of our most respected academic

(continued on page 219)



library

Las Vegas, Nevada

A district court judge issued a preliminary injunction June 9 preventing the Friends of Southern Nevada Libraries from distributing money made from its book sales to any organization but the Las Vegas–Clark County Library District. The library sued the Friends in May, the culmination of a messy dispute over the library's demand that the Friends be audited and the Friends' threat to dissolve and disburse its funds to other groups. District Judge Mark Denton also required the Friends to be audited, which the Friends had already agreed to.

"I hope that the bloodletting of these unnecessary expenses of public funds can stop now," said library Director Daniel Walters. The lawsuit cost the library approximately $45,000. Reported in: *American Libraries* online, June 13.

church and state

Lakewood, Colorado

A federal appeals court ruled July 23 that Colorado's higher-education coordinating board discriminated against Colorado Christian University when it denied the institution state funds for student aid on the grounds that it is "pervasively sectarian." The decision, by the U.S. Court of Appeals for the 10th Circuit, overturned a 2007 trial court ruling.

The Colorado Commission on Higher Education administers student scholarships for accredited colleges in the state but under state law must exclude those deemed pervasively sectarian. Criteria for whether a college falls into that category includes whether students are required to attend religious services and whether required religion courses "indoctrinate or proselytize" students. Based on those criteria, coordinating-board officials had determined that a Methodist university and a Roman Catholic university were not pervasively sectarian but that two other colleges, including Colorado Christian, were.

The university disputed both the coordinating board's assessment that it was pervasively sectarian and the legitimacy of the statute. Colorado Christian sued the Colorado Commission on Higher Education in 2004, claiming that the coordinating board was denying the college's First Amendment right to the free exercise of religion and its Fourteenth Amendment right to equal protection. Last year, the U.S. District Court in Denver ruled in favor of the coordinating board. The university appealed that decision.

The Tenth Circuit attempted to clarify the First Amendment's protection of religious freedom. The court held that in some instances, the state can refuse to provide financial support for programs on religious grounds. But it said Colorado had gone too far. The appeals court based its decision on two Constitutional principles that it said the Colorado exception violated. First, it said the coordinating board discriminated among religions by differentiating between "sectarian" and "pervasively sectarian" institutions. Second, it was overly intrusive in requiring state employees to make judgment calls on religious matters, including whether certain course work was designed to indoctrinate or proselytize.

Colorado Christian has students from many denominations, but that the institution takes faith seriously has never been in dispute. Students must sign a pledge to emulate "the example of Jesus Christ and the teachings of the Bible," traditional age undergraduates must attend chapel weekly, and faculty members must sign a statement of faith that declares the Bible to be infallible.

While Colorado officials examined these and other characteristics of the university to determine that it is pervasively sectarian, the appeals court ruled that judgment was irrelevant and that the state had no business ruling that one college was too religious to qualify for aid, while another was not.

"The sole function and purpose of the challenged provisions of Colorado law is to exclude some but not all religious institutions on the basis of the stated criteria," the court ruled. "Employing those criteria, the state defendants have decided to allow students at Regis University, a Roman Catholic institution run by the Society of Jesus, and the University of Denver, a Methodist institution, to receive state scholarships, but not students at CCU or Naropa University, a Buddhist institution. This is discrimination."

"Anyone familiar with the varied reactions to *The New York Times* and FOX News knows how often assessments of objectivity and bias depend on the beholder. Many courses in secular universities are regarded by their critics as excessively indoctrinating, and are as vehemently defended by those who think the content is beneficial," the ruling said. "Such disagreements are to be expected in a diverse society. But when the beholder is the State, what is beheld is the exercise of religion and what is at stake is the right of students to receive the equal benefits of public support for higher education, the Constitution interposes its protection. The First Amendment does not permit government officials to sit as judges of the indoctrination quotient of theology classes."

The court also interpreted *Locke* v. *Davy*, a 2004 Supreme Court decision, differently than Colorado's higher-education coordinating board had. In that case, the court determined that a state could withhold funding from theological training.

The Colorado commission had argued that its pervasively sectarian test was similar to determining whether a program of training was theological. The appeals court, however, rejected that argument because an institution, as opposed to the state, determines whether a program is theological.

The right to discriminate "does not extend to the wholesale exclusion of religious institutions and their students from otherwise neutral and generally available government support," the court said.

Gregory S. Baylor, director of the Christian Legal Society's Center for Law and Religious Freedom, which represented Colorado Christian, said he expected the court to rule in the university's favor. The main question is how the court would make its argument: "In our view, they had choices," he said.

The ruling was a direct challenge to a standard that has in the past been used by many states to limit state support for religious institutions. But the ruling came at a time that such distinctions may be falling. Just last year, the California Supreme Court ruled that the state could not bar pervasively sectarian universities from participation in programs in which government agencies issue bonds on behalf of colleges.

Barry Lynn, executive director of Americans United for Separation of Church and State, agreed that the decision was significant, but criticized it as part of "an erosion" of the rights of Americans not to support religious education and belief with which they disagree. "This will support universities set up precisely to promote the faith, and now they will be promoting it with tax dollars of people who disagree with their view," Lynn said. Reported in: *Chronicle of Higher Education Online*, July 24; insidehighered.com, July 24.

broadcasting

Washington, D.C.

In a decision that cleared CBS of any wrongdoing for airing the 2004 Super Bowl halftime show that featured Janet Jackson's infamous "wardrobe malfunction," a federal appeals court overturned the $550,000 fine that the Federal Communications Commission (FCC) levied against the station, calling the fine arbitrary and capricious.

The decision was handed down July 21 by a three-judge panel of the United States Court of Appeals for the Third Circuit, which found that the fine was unfair because the commission, in imposing it, deliberately strayed from its practice of exempting fleeting indecency in broadcast programming from punishment. The commission also erred, the judges ruled, by holding CBS responsible for the actions of Janet Jackson and Justin Timberlake, who were characterized by the judges as "independent contractors hired for the limited purpose of the Halftime Show."

"Like any agency, the FCC may change its policies without judicial second-guessing," the court said. "But it cannot change a well-established course of action without supplying notice of and a reasoned explanation for its policy departure."

The live broadcast on February 1, 2004, sparked headlines around the world with one swift motion that came at the end of the halftime show, when Justin Timberlake tore off part of Jackson's bustier during the song "Rock Your Body," exposing her right breast. The network quickly cut to an aerial shot of the stadium, but not before the image was seen— and in many cases replayed on video recordings— in millions of homes. Although the exposure appeared to be pre-planned, CBS said it was surprised by the incident, and a spokesman for Jackson later said that Timberlake had accidentally removed too much of her outfit, calling it a "malfunction of the wardrobe."

The controversy surrounding the incident yielded a record-breaking 540,000 complaints to the commission in the weeks following the show. The commission responded by calling the exposure inappropriate, and imposed the penalty on CBS, in the form of fines of $27,500 against each of the twenty television stations that CBS owns and which—unlike the network—depend on FCC licenses to operate.

The fine was the largest the commission has yet levied against a television company, but only the second largest overall; the record was set in 2003 in a settlement with Clear Channel Communications, the largest chain owner of radio stations, stemming from complaints about broadcasts by Howard Stern and other radio personalities.

CBS, a division of Viacom, apologized for the Super Bowl incident and paid the FCC fines, but appealed the decision in court. In their ruling, the judges said CBS could not be held responsible for the exposure, and went on to question the extent of genuine public outrage over it, saying that "the record is unclear on the actual number of

complaints received from unorganized, individual viewers" as opposed to advocacy groups. During arguments, lawyers for CBS had argued that many of the complaints the commission received were form letters.

The court, in its ruling, said the FCC would have had a stronger case against CBS had the performance been pre-recorded. But because it was aired live, and there was no solid evidence that CBS had advance knowledge that Timberlake was going to tear at Jackson's bustier, the station did not appear to have acted recklessly by broadcasting the show.

In fact, the court said, CBS had implemented an audio delay and other measures to help censor any unexpected profanity, and numerous "script reviews" and "wardrobe checks" before the show did not reveal any problems.

"CBS rejected other potentially controversial performers who had previously engaged in offensive on-air conduct in favor of Jackson and Timberlake, with the NFL ultimately approving the selections," the court wrote. "Timberlake in particular, CBS asserts, had on several prior occasions performed 'Rock Your Body' live on national television without incident."

The FCC did not immediately react to the ruling, but CBS released a statement calling it a victory. "We are gratified by the court's decision, which we hope will lead the FCC to return to the policy of restrained indecency enforcement," the network said in a statement. "This is an important win for the entire broadcasting industry, because it recognizes that there are rare instances, particularly during live programming, when it may not be possible to block unfortunate fleeting material."

The 2004 incident prompted the commission to step up its enforcement of indecency rules. In the years that followed, the agency has levied larger fines on broadcasters than before and, in 2006, Congress agreed to increase the maximum fine for a single violation tenfold, to $325,000. It was unclear what impact the ruling might have on that trend. Reported in: *New York Times*, July 22.

bookstores

Indianapolis, Indiana

A federal judge on July 1 struck down an Indiana law requiring bookstores and other retail establishments that sell even a single "sexually explicit" book, magazine, video, or recording to register with the state and pay a $250 license fee. "Clearly, a vast array of merchants and materials is implicated by the reach of this statute as written," Judge Sarah Evans Barker declared in a written opinion. "A romance novel sold at a drugstore, a magazine offering sex advice in a grocery store checkout line, an R-rated DVD sold by a video rental shop, a collection of old *Playboy* magazines sold by a widow at a garage sale—all incidents of unquestionably lawful, non-obscene, non-pornographic material being sold to adults—would appear to necessitate registration under the statute."

Barker agreed with the plaintiffs—booksellers, book publishers, libraries, video and recording retailers, and an Indianapolis art museum—that the law would have a chilling effect on the sale of constitutionally protected works. To avoid being labeled an "adult" store, retailers would have been forced to suppress the sale of almost all works with sexual content. "There can be no doubt that compliance with such a vague mandate will be unduly burdensome, will have a chilling effect on expression, and will fail to provide ordinary people with a reasonable degree of notice as to the law's requirements; the Constitution demands no less," Barker said. Barker's opinion is online at www.abffe.com/bighatbooksopinion.pdf.

"Judge Barker's decision is a resounding victory for the First Amendment rights of booksellers and their customers," Chris Finan, president of the American Booksellers Foundation for Free Expression (ABFFE), said. ABFFE, the bookseller's voice in the fight against censorship, joined Big Hats Books of Indianapolis, Boxcar Books and Community Center of Bloomington, and the Great Lakes Booksellers Association in challenging the law.

The other plaintiffs were the Freedom to Read Foundation, the Association of American Publishers, the Entertainment Merchants Association, the National Association of Recording Merchandisers, the American Civil Liberties Union of Indiana Foundation, the Indiana Museum of Art, and the Indianapolis Downtown Artists and Dealers Association. They were represented by Michael A. Bamberger of Sonnenschein, Nath, and Rosenthal. Bamberger is general counsel of Media Coalition, a legislative and legal watchdog on First Amendment issues for producers and distributors of media, including books, magazines, recordings, videos, and video games.

This is not the first time that Barker has ruled in a First Amendment case brought by booksellers. In 1984, in her first case as a judge, Barker, who was appointed by Ronald Reagan, struck down an Indianapolis anti-pornography law drafted by Catharine MacKinnon and Andrea Dworkin. Her decision in the case, *American Booksellers Association* v. *Hudnut*, was affirmed by the U.S. Court of Appeals for the Seventh Circuit and the U.S. Supreme Court. Reported in: Free Expression Network press release, July 1.

privacy

San Francisco, California

A federal judge in California said July 2 that the wiretapping law established by Congress was the "exclusive" means for the president to eavesdrop on Americans, and he rejected the government's claim that the president's constitutional authority as commander in chief trumped that law. The judge, Vaughn R. Walker, the chief judge for the

Northern District of California, made his findings in a ruling on a lawsuit brought by an Oregon charity. The group says it has evidence of an illegal wiretap used against it by the National Security Agency under the secret surveillance program established by President Bush after the terrorist attacks of 9/11.

The Justice Department has tried for more than two years to kill the lawsuit, saying any surveillance of the charity or other entities was a "state secret" and citing the president's constitutional power as commander in chief to order wiretaps without a warrant from a court under the agency's program.

But Judge Walker, who was appointed to the bench by former President George H. W. Bush, rejected those central claims in his fifty-six-page ruling. He said the rules for surveillance were clearly established by Congress in 1978 under the Foreign Intelligence Surveillance Act, which requires the government to get a warrant from a secret court.

"Congress appears clearly to have intended to—and did—establish the exclusive means for foreign intelligence activities to be conducted," the judge wrote. "Whatever power the executive may otherwise have had in this regard, FISA limits the power of the executive branch to conduct such activities and it limits the executive branch's authority to assert the state secrets privilege in response to challenges to the legality of its foreign intelligence surveillance activities."

Judge Walker's voice carries extra weight because all the lawsuits involving telephone companies that took part in the National Security Agency's program have been consolidated and are being heard in his court.

Jon Eisenberg, a lawyer for Al-Haramain Islamic Foundation, the plaintiff in the case, said the legal issues Judge Walker's ruling raised were significant. "He's saying FISA makes the rules and the president is bound by those rules," Eisenberg said.

Officials at Al-Haramain say they were mistakenly given a government document revealing the NSA operation. The Federal Bureau of Investigation demanded the document back, and Judge Walker's ruling made it more difficult for Al-Haramain to use what it claims to have seen. But he refused to throw out the lawsuit, giving the charity's lawyers thirty days to restructure their claim. "We still have our foot in the door," Eisenberg said. "The clock is a minute to midnight, but we've been there before and survived."

The ruling came as the Senate was overhauling the foreign intelligence law. The measure ultimately passed reaffirmed FISA as the exclusive means for the president to order wiretaps through court warrants, but it also provides legal immunity to phone companies involved in the eavesdropping program.

The immunity issue would not directly affect this lawsuit because Al-Haramain is suing the government, not the phone companies. But the nearly forty other lawsuits against phone companies that Judge Walker is overseeing will almost certainly have to be dismissed. Reported in: *New York Times*, July 3.

Internet

Philadelphia, Pennsylvania

A federal appeals court on July 22 agreed with a lower court ruling that struck down as unconstitutional a 1998 law intended to protect children from sexual material and other objectionable content on the Internet.

The decision by the U.S. Court of Appeals for the Third Circuit in Philadelphia was the latest twist in a decade-long legal battle over the Child Online Protection Act (COPA). The fight has already reached the Supreme Court and could be headed back there.

The law, which has not taken effect, would bar websites from making harmful content available to minors over the Internet. The act was passed the year after the Supreme Court ruled that another law intended to protect children from explicit material online—the Communications Decency Act—was unconstitutional in the landmark case *Reno* v. *American Civil Liberties Union*.

The ACLU challenged the 1998 law on behalf of a coalition of writers, artists, health educators, and the publisher Salon Media Group. ACLU attorney Chris Hansen argued that Congress has been trying to restrict speech on the Internet far more than it can restrict speech in books and magazines. But, he said, ''the rules should be the same.''

Indeed, the Child Online Protection Act would effectively force all websites to provide only family-friendly content because it is not feasible to lock children out of sites that are lawful for adults, said John Morris, general counsel for the Center for Democracy and Technology, a civil liberties group that filed briefs against the law.

In its ruling, the federal appeals court concluded that COPA is unconstitutionally overly broad and vague. The court also ruled that the law violates the First Amendment because filtering technologies and other parental control tools offer a less restrictive way to protect children from inappropriate content online.

Morris argued that filters also provide a more effective way to protect children since they can block objectionable websites that are based overseas, beyond the reach of U.S. law.

For its part, the Justice Department said it will review the ruling before deciding its next step. ''We are disappointed that the court of appeals struck down a congressional statute designed to protect our children from exposure to sexually explicit materials on the Internet,'' said department spokesman Charles Miller.

If the case ends up before the Supreme Court, it would not be the first time that the justices have considered the Child Online Protection Act. In 2004, the high court upheld

a ruling that the law violates the First Amendment. But the Supreme Court sent the case back to the district court to determine whether any changes in blocking software would affect the law's constitutionality. Reported in: *New York Times*, July 22.

Mountain View, California

Google has struck a deal to protect the personal data of millions of YouTube users in the billion dollar copyright court case brought against the video-sharing website by Viacom. Under the deal, Google will make user information and internet protocol addresses from its YouTube subsidiary anonymous before handing over the data to Viacom in the U.S. legal case.

On July 2, a judge in New York ordered Google to pass on the personal data of more than 100 million YouTube users to Viacom. Viacom, the media company that owns TV channels including MTV, Comedy Central, and the Paramount film studio, had demanded the information so it could conduct a detailed examination of the viewing habits of millions of YouTube users around the world.

The agreement that Google has struck also applies to other litigants pursuing YouTube user information over copyright claims in a class action that includes the FA Premier League, the Rodgers and Hammerstein Organization and the Scottish Premier League.

"We are pleased to report that Viacom, MTV and other litigants have backed off their original demand for all users' viewing histories and we will not be providing that information," Google commented in a post on the official YouTube blog. "In addition, Viacom and the plaintiffs had originally demanded access to users' private videos, our search technology, and our video identification technology. Our lawyers strongly opposed each of those demands and the court sided with us."

The Electronic Frontier Foundation argued that the initial court order had "threatened to expose deeply private information" and violated the Video Privacy Protection Act. There also were fears that Viacom might use the personal information to go after individuals for uploading illegal content such as music videos.

Google has now agreed to provide Viacom, and a class action group led by the FA Premier League, with a version of a YouTube viewership database that removes user name and IP data that would identify individual users. However, the agreement does not address the issue of the viewing and uploading habits of Google and YouTube employees on the video-sharing website.

Viacom wants the data to prove that infringing material is more popular than user-created videos, which could be used to increase Google's liability if it is found guilty of contributory infringement.

Viacom filed suit against Google in March 2007, seeking more than $1 billion in damages for allowing users to upload clips of Viacom's copyright material. Google argues that the law provides a safe harbor for online services so long as they comply with copyright takedown requests.

Although Google argued that turning over the data would invade its users' privacy, the judge's ruling described that argument as "speculative" and ordered Google to turn over the logs on a set of four terabyte hard drives. The judge also turned Google's own defense of its data retention policies—that IP addresses of computers aren't personally revealing in and of themselves—against it to justify the log dump.

The order also required Google to turn over copies of all videos that it has taken down for any reason. Viacom also requested YouTube's source code, the code for identifying repeat copyright infringement uploads, copies of all videos marked private, and Google's advertising database schema.

Those requests were denied in whole, except that Google will have to turn over data about how often each private video has been watched and by how many persons.

The way the Internet is set up now, an IP address by itself doesn't identify an individual user. But an IP address can be traced to a specific Internet service provider, and with a subpoena, the Internet provider can be forced to identify which of their customers was assigned a particular IP address at a particular time. That is how the recording industry has been identifying and suing people who use file sharing programs.

Viacom said it wasn't going to use the information from Google to sue individual YouTube users for copyright infringement, but there is nothing under the law that would stop it from doing so. Reported in: *Guardian*, July 15; wired.com, July 2; *New York Times*, July 7.

Mamaroneck, New York

The authors of anonymous online posts that accused a former congressman of paying $25,000 to the mayor of Mamaroneck, N.Y., in connection with a home renovation project may soon find themselves the named defendants in a defamation action.

Westchester County Court Judge Rory J. Bellantoni held that after Richard Ottinger and his wife notified the online contributors of their right to intervene anonymously and stated a prima facie case of defamation against the fictitiously named defendants, the couple had sufficiently satisfied the standard necessary to pierce the free speech rights of the writers who allegedly posted false comments about the Ottingers on a website operated by *The Journal News*.

The posts appeared under the names "hadenough," "SAVE10543" and "aoxomoxoa."

Mark A. Fowler, who represented the newspaper, said that while an Internet service provider cannot be held liable for the defamatory statements of its subscribers, many providers traditionally would turn over identifying information of users in a "knee-jerk fashion." By requiring a plaintiff to

make a heightened showing before obtaining the identity of anonymous posters, Judge Bellantoni's ruling sets forth "important safeguards" for the entire online community, where speech sometimes gets "wild and wily," Fowler said.

The allegedly defamatory posts, which appeared on the "LoHud" site maintained by the *Journal News*, centered around an effort by Ottinger and his wife, June, to renovate their Mamaroneck home.

In September 2007, a post under the name "SAVE10543" accused the couple of presenting a fraudulent deed "in order to claim they own land under water," and "lying to the State" and other officials to secure permits for their home's construction. Subsequently, a post under the name "hadenough" maintained that the Ottingers were part of an "illegal scam." A third post by "aoxomoxoa" later chimed in that the mayor of Mamaroneck "took the juice from Richard and June Ottinger to the tune of $25,000 so they could build their starter Taj Mahal on a substandard lot."

In February 2008, the Ottingers brought a "John Doe" action against the anonymous writers.

Ottinger, who served as the dean of Pace University Law School from 1994 to 1999 and spent sixteen years as a member of the U.S. House of Representatives, and his wife contended that the online statements defamed their "good name" and honest reputation. The couple sought, among other relief, $1 million in punitive damages and a "public apology" on the LoHud site.

After the Ottingers served a subpoena on the *Journal News* to compel the disclosure of the writers' identities, the newspaper made a motion to quash. During a hearing in late May, Judge Bellantoni converted the action to a special proceeding to permit the Ottingers to seek pre-action discovery. He also ordered the Ottingers to post a notice on the LoHud site that gave the forum posters an opportunity to intervene "anonymously, or otherwise" in the action.

In July, after no one came forward in response to the court-ordered notification, Bellantoni turned to the merits of the Ottingers' request for the writers' identities.

"There is no question that the First Amendment protects the right of a person to speak anonymously. That protection, however, is no greater than the right of a person to speak when their identity is known," the judge wrote. He noted that *Greenbaum* v. *Google, Inc*., constituted the "only reported decision" in New York that addresses the rights of anonymous writers who post allegedly defamatory statements on the Internet.

"That case, however, failed to set a standard because the court found, as a matter of law, that the statements made were not defamatory," the judge wrote.

Judge Bellantoni then turned to the four-step test set forth by the Superior Court of New Jersey, Appellate Division, in *Dendrite International* v. *Doe*, to guide his inquiry. In *Dendrite*, the court held that a plaintiff who wants an Internet service provider to disclose the identity of anonymous posters must first "undertake efforts" to inform the writers that "they are the subject of a subpoena or application for an order of disclosure." A plaintiff must also identify the "exact" alleged defamatory statements and "produce sufficient evidence supporting each element of its cause of action, on a prima facie basis." Finally, a court "must balance the defendant's First Amendment right of anonymous free speech against the strength" of the plaintiff's case.

Bellantoni explained that he had already ordered the Ottingers to provide notice to the writers. And with the exception of constitutional malice, the Ottingers had sufficiently backed up each element of their prima facie defamation claim, the judge wrote.

Relying on the Delaware Supreme Court case of *Doe* v. *Cahill*, he acknowledged the difficultly of proving actual malice before learning of the anonymous writers' identities and concluded that "the petitioners, at this point in the proceeding, need not prove this element to obtain pre-action disclosure."

Russell J. Ippolito, who represents the Ottingers, said he thinks that one individual used three separate aliases to defame his clients. Reported in: law.com, July 14.

political protest

St. Paul, Minnesota

A U.S. district court judge upheld a decision by the city of St. Paul to restrict the route and timing of a parade protesting the Iraq war during the Republican National Convention. Noting that the president, vice president and other political figures are expected to attend the convention, U.S. District Court Judge Joan Erickson wrote July 16 that security concerns justified the city's placing some restrictions on the permit for the parade.

"Threats to the convention that the Secret Service must consider include terrorist attacks, lone gunmen, fire, chemical or biological attacks, detonation of explosive devices and suicide attacks," Erickson wrote.

The city's decision to deny protesters the ability to "encircle the arena, marching on every route that directly abuts the convention site" served the substantial government interest of securing the site, Erickson ruled.

A coalition of protest groups had filed suit, with the support of the Minnesota branch of the American Civil Liberties Union (ACLU), arguing the restrictions violated their First Amendment rights.

While war protesters won't get to surround the Xcel Energy Center, under the permit provided by the city they will be able to march past two of the three media sites for the convention, according to Erickson.

She said protesters appear to have "unprecedented access"

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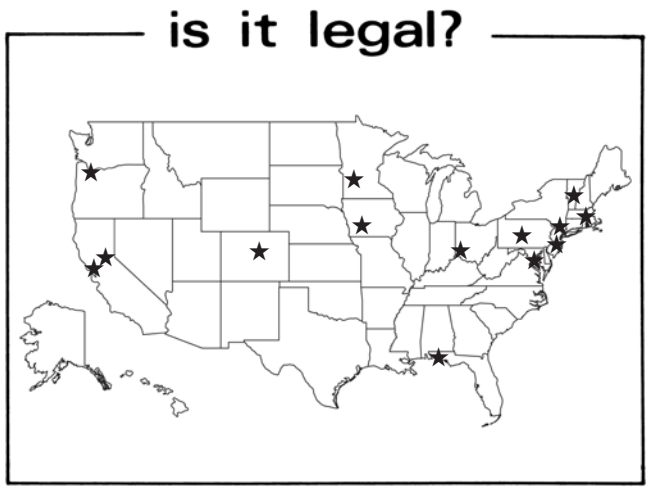

libraries

Clermont County, Ohio

The Alliance Defense Fund (ADF), a coalition of religious-rights attorneys, filed a lawsuit June 4 against the Clermont County Public Library board of trustees for refusing to allow a financial planning seminar in a meeting room because presenters intended to quote scripture. Religious discussions were not allowed in the meeting rooms according to library policy. In response, library trustees voted June 9 to change that policy, limiting the use of meeting rooms to library-run programs.

"We regret that this policy change will have the effect of not allowing the Boy Scouts, the Girl Scouts, and other nonprofit groups the ability to use our meeting rooms," board President Joe Braun said.

The lawsuit was filed in the federal district court in Cincinnati on behalf of George and Cathy Vandergriff and the Institute for Principled Policy, an Ohio-based religious public policy organization. "The denial sends the message to the Vandergriffs and other Christians that they are not deemed a valuable part of the community," ADF Senior Counsel Kevin Theriot said. "Christians have the same First Amendment rights as anyone else in America."

"It is our belief that the suit is moot at this point," said Braun after the library changed its policy. However, David Langdon, attorney for the Vandergriffs, believes the constitutional rights of his clients were violated and intends to seek compensatory damages.

This is not the first time that religious-freedom legal defense groups have become involved in contesting library meeting room policies. In 2007, the U.S. Supreme Court refused ADF's request to repeal a library worship ban at Contra Costa (California) Library's Antioch branch. Liberty Counsel, another faith-based law firm, has also sued over library meeting-room policies in states including Colorado, Florida, Texas, South Carolina, and Wisconsin.

"If libraries have opened their meeting rooms to the public, they should be cautious about excluding religious groups from their meeting rooms," Deborah Caldwell-Stone, deputy director of the American Library Association's Office for Intellectual Freedom, said. "In the Contra Costa case, the Court of Appeals itself cautioned that the library could not prohibit religious groups from engaging in other religious activities, including reading, Bible discussions, Bible instruction, praying, singing, sharing testimony, and discussing political or social issues." Reported in: *American Libraries* online, June 13.

Randolph, Vermont

Children's librarian Judith Flint was getting ready for the monthly book discussion group for eight and nine year olds on *Love That Dog* when police showed up. They weren't kidding around: Five state police detectives wanted to seize Kimball Public Library's public access computers as they frantically searched for a twelve-year-old girl, acting on a tip that she sometimes used the terminals.

Flint demanded a search warrant, touching off a confrontation that pitted the privacy rights of library patrons against the rights of police on official business.

"It's one of the most difficult situations a library can face," said Deborah Caldwell-Stone, deputy director of the Office for Intellectual Freedom issues of the American Library Association.

Investigators did obtain a warrant about eight hours later, but the June 26 standoff in the 105-year-old, red brick library on Main Street frustrated police and had fellow librarians cheering Flint.

"What I observed when I came in were a bunch of very tall men encircling a very small woman," said the library's director, Amy Grasmick, who held fast to the need for a warrant after coming to the rescue of the 4-foot-10 Flint.

Library records and patron privacy have been hot topics since the passage of the U.S. PATRIOT Act. Library advocates have accused the government of using the anti-terrorism law to find out—without proper judicial oversight or after-the-fact reviews—what people research in libraries.

But the investigation of Brooke Bennett's disappearance wasn't a PATRIOT Act case. "We had to balance out the fact that we had information that we thought was true that Brooke Bennett used those computers to communicate on

her MySpace account," said Col. James Baker, director of the Vermont State Police. "We had to balance that out with protecting the civil liberties of everybody else, and this was not an easy decision to make."

Brooke, from Braintree, vanished the day before the June 26 confrontation in the children's section of the tiny library. Investigators went to the library chasing a lead that she had used the computers there to arrange a rendezvous. Brooke was found dead July 2. An uncle, convicted sex offender Michael Jacques, has since been charged with kidnapping her. Authorities say Jacques had gotten into her MySpace account and altered postings to make investigators believe she had run off with someone she met online.

Flint was firm in her confrontation with the police. "The lead detective said to me that they need to take the public computers and I said 'OK, show me your warrant and that will be that,'" said Flint, 56. "He did say he didn't need any paper. I said 'You do.' He said 'I'm just trying to save a 12-year-old girl,' and I told him 'Show me the paper.'"

Cybersecurity expert Fred H. Cate, a law professor at Indiana University, said the librarians acted appropriately. "If you've told all your patrons 'We won't hand over your records unless we're ordered to by a court,' and then you turn them over voluntarily, you're liable for anything that goes wrong," he said.

A new Vermont law that requires libraries to demand court orders in such situations took effect July 1, but it wasn't in place that June day. The library's policy was to require one.

The librarians did agree to shut down the computers so no one could tamper with them, which had been a concern to police. Once in police hands, how broadly could police dig into the computer hard drives without violating the privacy of other library patrons?

Baker wouldn't discuss what information was gleaned from the computers or what state police did with information about other people, except to say the scope of the warrant was restricted to the missing girl investigation.

"The idea that they took all the computers, it's like data mining," said Caldwell-Stone. "Now, all of a sudden, since you used that computer, your information is exposed to law enforcement and can be used in ways that (it) wasn't intended.'" Reported in: Associated Press, July 19.

schools

Lexington, Massachusetts

Lexington parents David and Tonia Parker and Joseph and Robin Wirthlin have appealed to the U.S. Supreme Court their federal civil rights lawsuit against their town's school department, in which they alleged that Estabrook Elementary School's gay-inclusive diversity curriculum violated their right to religious freedom.

The U.S. Court of Appeals for the First Circuit dismissed the case on January 31, but the Parkers and Wirthlins filed a petition for writ of certiorari with the Supreme Court the first week of June asking the court if "objecting parents have a Constitutional right to opt their public school children out of, or even to receive notice of, undisputed government efforts to indoctrinate kindergarten, first and second grade school children into the propriety, indeed desirability, of same gender marriage?"

Named in the suit are William Hurley and Paul Ash, former and current Lexington Superintendent of Schools, among others. It is not clear if the Court will accept the case. Typically, the Supreme Court accepts only a small percentage of the petitions it receives. And attorneys at Gay and Lesbian Advocates and Defenders are counting on this going nowhere.

"We don't see any reason why the Supreme Court would be interested in this case," said Nima Eshghi, a GLAD staff attorney. "[The] First Circuit examined this case very carefully, found no coercion, no burden on the parent's right of free exercise [of religion]—they didn't see anything that frankly gave the plaintiffs a leg to stand on in this case."

But the Parkers and Writhlins feel otherwise. "Simple logic, as well as the tapestry of this Court's earlier authority compels the conclusion that open and notorious attempts to teach tiny children that their families' faith is wrong creates an enormous burden on the faith that can never be overcome," the parents say in their petition to the Supreme Court.

In January, U.S. Court of Appeals of the First Circuit Judge Sandra Lynch rejected the parents' claim, saying that exposing children to books that depict a same-sex marriage and other GLBT–related stories such as *King and King*—the picture book at the center of the parents' complaint—do not violate their ability to direct the religious training of their children.

"It is a fair inference that the reading of *King and King* was precisely intended to influence the listening children toward tolerance of gay marriage, That was the point of why that book was chosen and used," said Lynch in her ruling. "Even assuming there is a continuum along which an intent to influence could become an attempt to indoctrinate, however, this case is firmly on the influence-toward-tolerance end. There is no evidence of systemic indoctrination. There is no allegation that Joey [Parker] was asked to affirm gay marriage. Requiring a student to read a particular book is generally not coercive of free exercise rights. Public schools are not obliged to shield individual students from ideas which potentially are religiously offensive, particularly when the school imposes no requirement that the student agree with or affirm those ideas, or even participate in discussions about them."

Eshghi said she does not expect the court will touch the case before their summer recess. If that happens, no action on the case would happen until the Court begins its fall term in October. Should the Supreme Court decide to hear the

case, and should they rule in favor of the Parkers, it would place a burden on schools, said Eshghi.

"What's really at stake here is the way in which our opponents are attacking schools. This type of case is an example of frankly anti-gay and anti-equal marriage attacking schools and teachers who are doing nothing more than sending a message of tolerance," she said. "I think the stakes are that schools districts are going to be intimidated if they think they're going to be the subject of litigation if they address the issue of same-sex marriage in an age-appropriate way." Reported in: *innewsweekly*, June 18.

Beaverton, Oregon

A former teacher who proposed bringing a controversial play to Southridge High School in 2005 is now suing the Beaverton School District for $125,000 because he claims the district created an unfit working environment that forced him to resign.

In Wade Willis' wrongful discharge lawsuit, filed June 30 in Multnomah County Circuit Court, the Portland man claims he was "harassed, intimidated and humiliated" for attempting to produce "The Laramie Project." The play is about the 1998 murder of gay college student Matthew Shepard in Laramie, Wyoming.

Willis says in the lawsuit that Principal Amy Gordon disciplined him for failing to follow the school's review procedures in producing the play.

Willis said he did follow policy.

Gordon stopped production in September 2005, saying the play had profanity and sexual content. Groups of parents, students, and teachers discussed and debated the play's content while Gordon's actions drew an outcry from gay-rights activists and members of an anti-gay church.

In February 2006, a play committee voted 7–4 to produce the play—with provisions. Parents had to give their children permission to audition, and play posters and tickets needed to include disclaimers that the play contained mature subject matter.

Willis, the school's theater director, resigned at the end of that school year. He taught music, drama, and language arts at the two-thousand-student school, said Maureen Wheeler, district spokeswoman.

In his lawsuit, Willis said the play did not contain any sexual content and that the play's author, Moises Kaufman, had authorized revisions to remove profanity to make it appropriate for Southridge High School.

Michael Vergamini, Willis' attorney, said his client filed the complaint because the two-year statute of limitations on such a lawsuit expired that day. "He's never been able to let this go because he feels that not only has there been an injustice," Vergamini said, "but that he owes a duty to the students and parents of the Beaverton School District to make some positive change as a result of his experience there."

Willis, 41, is suing for $100,000 in special damages and $25,000 in compensatory damages. He now works at The Broadway Rose Theatre Company in Tigard as an education and outreach manager.

Though Willis chose to resign, Vergamini said a wrongful discharge lawsuit can be filed when an employer "maintained specific working conditions so intolerable" that a person would resign. "At a fundamental level, this lawsuit is about a controversial play," Vergamini said. "There was so much divisiveness and hostility generated as a result of wanting to put on an award-winning play that is now recognized as a great piece of literature." Reported in: *Portland Oregonian*, July 2.

student press

Sacramento, California

Student newspaper advisers are something of an endangered species these days. They often get caught in the middle when administrators and student journalists clash over content, and in more than a few cases on college campuses in recent years, advisers—sometimes faculty members with tenure or tenure-like protections, but often vulnerable staff members—have found themselves losing their jobs. (High school newspaper advisers are even more vulnerable.)

"All you have to do is look around the country to see how many conflicts there are," said Mark Goodman, the Knight Chair of Scholastic Journalism at Kent State University and former executive director of the Student Press Law Center. "This has really gained steam."

It was with several recent such controversies in mind, and numerous instances of censorship at high schools in California, that the state's legislature overwhelmingly approved legislation in June that would prohibit a college or school district from firing, suspending, or otherwise retaliating against an employee for acting to protect a student's free speech. Then, with the measure, SB 1370, sailing for passage and a trip to the governor's office for Arnold Schwarzenegger's hoped-for signature, the University of California quietly revealed its opposition to the bill.

In a letter to State Sen. Leland Yee, the legislation's sponsor, a lobbyist for the university system "respectfully" warned Yee that the university did not expect to abide by the requirement if it was enacted. "The University of California must maintain its ability to correct situations in which a member of its teaching corps or a University employee has failed to comply with academic teaching standards, violated UC policies, broken rules or laws, or misused University resources," wrote Happy Chastain, senior legislative director for state government relations in the UC president's office. "Under the provisions of SB 1370, UC is concerned that its ability to act in such circumstances would be restricted and expose the University to frivolous and unwarranted litigation."

The last-minute opposition from UC officials infuriated Yee and other supporters of the bill. Not only did they challenge the university's logic for fighting the measure, disputing the suggestion that it would restrict its institutions' ability to punish faculty members who teach inappropriate material in the classroom; more broadly, they also expressed surprise that the university could assert the right not to abide by the law. "We think their interpretation is wrong," said Adam Keigwin, a spokesman for Senator Yee.

SB 1370 is only the latest piece of legislation aimed at ensuring the speech rights of student journalists. At the core of the effort is 1992's California Education Code Section 66301, which broadly protected the right of college students not to be punished solely "on the basis of conduct that is speech or other communication that, when engaged in outside a campus of those institutions, is protected from governmental restriction by the First Amendment to the United States Constitution" or California's own Constitution.

In 2006, the California Legislature approved a measure (AB 2581) sponsored by Senator Yee that, in the wake of 2005's controversial *Hosty* v. *Carter* decision, prohibited colleges in the state from censoring student newspapers or exercising "prior restraint" of student speech or the student press.

The reason Yee followed up with the pending legislation, SB 1370, said Keigwin, his aide, is because campus media advisers are often thrust into the position of defending (or not defending) the student journalists whose work they oversee. If campus administrators can readily dismiss a faculty or staff member who stands up for student journalists, and replace him or her with someone who won't, Yee asserts, the 2006 legislation can be seriously undermined.

"Since administrators are unable [under AB2851] to exercise prior restraint with regard to a student publication, they lean on advisers to do what they legally cannot," said Jim Ewert, legal counsel for the California Newspaper Publishers Association, which supports the Yee measure. "When advisers refuse, they are punished because administrators know they will face no legal consequences. SB 1370 is necessary to close this gaping loophole in the law."

Added Keigwin: "Without this bill, the speech [protected by AB 2581] is in jeopardy."

On the day that the state Assembly approved Yee's legislation, the University of California—for the first time, according to aides to Yee—expressed its opposition to the measure. In the letter to Yee, Chastain noted that the university "feels strongly about academic and speech freedoms," but argued that existing laws and university policies "already afford substantial freedom of speech protections for students and faculty." The fact that the issue raised by the proposed legislation may not be an issue at UC, Chastain suggests, is "evidenced, in part, by our inability to identify a single example of the University of California acting to discipline employees for supporting the free speech of University students."

Echoing criticism made by the Association of California School Administrators, she said that the proposed legislation would inappropriately tie the hands of college officials to "take appropriate measures if a faculty member or UC employee fails to observe instruction standards or University policies that are appropriate to the academic environment and are based upon course criteria and academic issues."

What would happen, the university suggested, if "during delivery of a course in mathematics, a student uses class time to promote opinions unrelated to mathematics or the course materials, and . . . the instructor of record not only allows this behavior to persist, but also reinforces the student's beliefs in class." In such a case, in which "the course is not being taught according to the curriculum approved by the University," Chastain wrote, UC must retain "the right to take appropriate measures to ensure that our standards and policies are upheld."

Supporters of the media adviser law were surprised by the last-minute nature of the university's opposition ("It came totally out of the blue," said Keigwin, "on the day after it passed the second house—that's just not the way you do things") and by some of its assertions. They argued, for instance, that the example cited in Chastain's letter is an illegitimate comparison because the university would have every right to punish a faculty member who is not teaching the curriculum.

"The letter cites as a hypothetical example a math instructor who allowed a student to promote opinions unrelated to the subject during class time, suggesting that under the law, the university would be prohibited from punishing the teacher for tolerating the disruptive student speech," Goodman, the Kent State professor, wrote in a post on the blog of the Center for Scholastic Journalism. "Of course, the letter never explains why the University believes that off-topic student speech in the classroom would be protected by the law in the first place, a requirement for the university employee protections of the bill to come into play."

In addition, just because UC has not punished a media adviser or other employee for protecting the free speech rights of students does not mean that university employees do not feel constrained and do not need protection, said Keigwin, the Yee spokesman. The Student Press Law Center has received numerous complaints in recent years about free speech being impaired at UC campuses, and since Yee introduced his bill, his office has received complaints about as many as a dozen cases "where the adviser felt some pressure to steer the paper in a certain way," said Keigwin. "Speech has still been squelched at the college level."

More fundamentally, Goodman and others were perplexed by the university's assertion that it would not be obliged to abide by SB 1370 should it become law. In an e-mail message late Sunday, a UC spokesman, Brad

Hayward, said that the university's Constitutional status gives it "discretion in implementing state law. . . . In this particular case, the bill proposes to amend Section 66301 of the California Education Code, which is within Part 40 of the Education Code. Another section of Part 40, Section 67400, states, "No provision of [Part 40] shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make that provision applicable."

In this case, Hayward and Chastain warn, the regents do not plan to let the media adviser provision apply if it should become law.

"How is it that the university sees itself as not being subject to the media advisers' legislation but bound, presumably, by the underlying free speech legislation on which it is based?" Goodman asked. "I don't see a legal distinction between one and the other. Why do they think this one is problematic when the underlying statute is not?"

Told of the university's assertion that it has the right to opt out of the underlying free speech law, too, Goodman said the issue "all does come back to whether they support the protections in 66301—that the university should not have the authority to discipline students or engage in prior restraint of their expression when that expression would be protected by the First Amendment or the California Constitution if the expression occurred off campus." He added: "If they do agree with that, then they should have not a problem with SB 1370 as it only protects university employees from punishment for student expression that is already protected by 66301."

Goodman said he hoped that the university, even if it sticks to its current position, might see fit to embrace the principle contained in Yee's bill. "If they believe this legislation is unnecessary, they should have no problem adopting a policy that they will not remove advisers for defending protected content" in student publications, he said. Reported in: insidehighered.com, June 23.

colleges and universities

Berkeley and Stanford, California

Caught between the demands of academic freedom and national security in a post–9/11 world, the Bay Area's two major research universities are walking away from lucrative research contracts rather than consenting to intrusive restrictions on their work.

A new major study of twenty top schools found 180 instances of "troublesome clauses" attached by the federal government to research contracts—up from 138 in 2004. The survey, conducted by two Washington, D.C.–based groups, Association of American Universities and Council on Governmental Relations, concluded that the vast majority of disputes involve the U.S. Department of Defense or defense contractors.

The University of California-Berkeley reported twelve cases in which restrictions led to impasses in research grant negotiations; Stanford University reported three. University officials would not elaborate on how many of those cases were resolved—or how much money the schools lost by passing up grants.

Federally funded research is crucial to UC–Berkeley and Stanford. But so is their ability to share discoveries with the vast scientific community in classrooms, conferences, and journals. "We have certain principals, including academic freedom," said Carol Mimura, UC–Berkeley's assistant vice chancellor for intellectual property and research. "And we can never violate those principals."

In an effort to safeguard research data from potential terrorists, the Department of Defense and other federal agencies increasingly tie strings onto their research contracts, despite a long-standing presidential order that such findings be open and public. Sometimes they want the right to review, edit, or prevent publication of research discoveries. In other instances, they seek to prevent foreign students from conducting research.

Universities are exempt from most federal controls on their work because they conduct what the government calls "fundamental research"—work that is taught in open classrooms, published in journals, and shared openly at scientific conferences. A 1985 order issued by former President Reagan stated that fundamental research should generally not be classified.

But federal authorities say they are concerned that major U.S. research institutions, including Stanford and UC–Berkeley, unwittingly grant foreign researchers unauthorized access to unclassified, but sensitive, technologies.

"Our overriding focus is to prevent exports that are contrary to our security and foreign policy interests," explained acting undersecretary for Industry and Security of the Department of Commerce Peter Lichtenbaum in a 2005 speech.

A few years ago, Berkeley rejected several industry subcontracts from the Defense Advanced Research Projects Agency (DARPA), the central research and development organization for the Department of Defense, said Mimura. They were worth hundreds of thousands of dollars, she said.

"When confronted by a restriction that in any way limits our ability to publish, then we fight back," she said. "It is absolutely essential that we publish what we do here, that we own, because academic freedom is sacrosanct."

UC–Berkeley also has rejected contracts because of language prohibiting research by foreign nationals. Because UC has policies that prohibit discrimination in campus activities based on citizenship, it cannot accept contract language that would prevent foreign students from performing research on campus, she said. "We would never accept an obligation to ensure that a student is a U.S. citizen," Mimura said.

Similarly, Stanford University recently turned down a defense contract with Boeing because "we could not get language we agreed on," said Provost John Etchemendy. He would not elaborate on the value of the contract, or its sticking points.

"We obey the law," he said at a conference last October. "But we do not accept any grant that restricts academic freedom, freedom of speech or infringes on institutional authority." Moreover, with 15,000 students in an open campus setting, "it is impossible to regulate," he said.

In addition to restricting who does research, and where it is published, government officials also seek to label a new class of contracts "sensitive but unclassified," and subject to further controls, according to the AAU-CGR report. But universities caution that at a time when the nation is seeking greater competitiveness in science and engineering, restrictions could slow research and discourage foreign nationals from attending U.S. graduate schools.

Ample safeguards are already in place, including visa screening for foreign nationals, limits on foreign students' ability to participate in sensitive projects, and high-security classification procedures for off-campus research at places like Lawrence Livermore Lab, schools say.

"Scientific progress depends on researchers being able to fully share information about their research findings, so other researchers can benefit and build upon that," said Bob Hardy of the Council on Governmental Relations, who co-wrote the new report.

"Restrictions on our ability to do that are in conflict with the open nature of universities," he said, "and our core value, the free exchange of information." Reported in: *San Jose Mercury-News*, July 30.

Creston, Iowa

Southwestern Community College in Iowa has agreed to pay an undisclosed amount of money to settle a wrongful termination lawsuit filed by an instructor who said he was fired last fall for teaching the biblical story of Adam and Eve as a myth, rather than as a story to be taken literally.

The instructor, Steve Bitterman, taught Western Civilization but said the college had sided with students who complained about the content of his course. A lawyer for the college said that Bitterman was no longer on the college's faculty and that the settlement would be made final.

Bitterman taught this summer aboard the U.S.S. Dwight D. Eisenhower, an aircraft carrier berthed in Norfolk, Virginia, through a program for sailors run by Central Texas College. He said he had used the same textbook from his Iowa class. Reported in: *Chronicle of Higher Education* online, July 14.

Morris, Minnesota

When P. Z. Myers decides to take on religion, there are no sacred cows. Myers is a biologist at the University of Minnesota at Morris who has a national following for Pharyngula, the blog on which he regularly exposes and lambastes efforts by creationists to undermine the teaching of evolution. This summer he wrote a blog entry in which he defended a University of Central Florida student who protested the presence of religious groups on his campus by taking a Eucharist—the small wafer blessed in Roman Catholic services and then seen as the body of Christ—and removing it from the service rather than consuming it. Myers, in an entry entitled "It's a Frackin' Cracker"—questioned why this was such a big deal.

Ever since, Myers and his university have been bombarded by e-mail and other messages attacking him and calling for the university to punish him for insulting Catholic teachings.

On July 24, Myers responded by staging what he called a "great desecration." For the desecration, he took a communion wafer (sent to him by a supporter in the United Kingdom, who removed it from a church there), and pierced it with a rusty nail. ("I hope Jesus's tetanus shots are up to date," Myers quipped on the blog.) He then threw it in the garbage with a banana peel and coffee grounds, symbols of refuse. But to show that he wasn't picking on Catholics, Myers added to his mixture some ripped out pages of the Koran. As a proud atheist, Myers isn't a member of a faith that he could desecrate at the same time, so he took a text he does cherish—*The God Delusion*, by Richard Dawkins—and tore some pages out and added them to the trash.

In a blog posting that described the attacks he has received and then features a photo of the desecration, Myers finished with a call to question everything: "Nothing must be held sacred. Question everything," he wrote. "God is not great, Jesus is not your lord, you are not disciples of any charismatic prophet. You are all human beings who must make your way through your life by thinking and learning, and you have the job of advancing humanity's knowledge by winnowing out the errors of past generations and finding deeper understanding of reality. You will not find wisdom in rituals and sacraments and dogma, which build only self-satisfied ignorance, but you can find truth by looking at your world with fresh eyes and a questioning mind."

This statement sent his critics into a major e-mail campaign. The Catholic League for Religious and Civil Rights ran an article called "Myers Desecrates the Eucharist," in which it called on the University of Minnesota to "apply the appropriate sanction" against Myers. The league said that Myers was violating university rules against harassment or hostility based on religion. The league then issued another statement in which it said that since the university fired a professor for having child pornography on his computer, it should fire Myers.

"It strains credulity to maintain that Christian students can expect fair treatment by a faculty member who has publicly shown nothing but contempt for their religion," said a

statement from Bill Donohue, president of the league. "It is a sure bet that UMN would not tolerate a white professor who worked a comedy club on weekends trashing blacks. Indeed, it would say that such behavior disqualifies his ability to be objective. In many respects Myers is worse, and that is why sanctions are warranted."

Jacqueline Johnson, chancellor at Morris, issued a statement in which she said that the views expressed by Myers "do not reflect" those of the university. She noted that two weeks ago, the university removed a link from the biology department's website to Pharyngula, and that the blog is on a commercial server, maintained by Myers as an individual, not a professor. Under principles of academic freedom, she said, a professor has the right "to speak or write as a public citizen without institutional discipline or restraint." That statement in turn prompted the Catholic League to demand to file a complaint with the university's Board of Regents, demanding action against Myers.

Myers called the removal of the link to his blog "a little bit bothersome." He said that the university cited a rule—that is only sometimes enforced—of permitting only links to sites that contain a disclaimer that they do not reflect the university's views. He plans to create a new site, with the disclaimer and a link to his blog, to restore the connection from the university to Pharyngula.

He said that he has received about twelve thousand e-mail messages about his views on "desecration." Almost all of them appear to be from people inspired by the Catholic League, which posted his e-mail address. Myers said that a number of the e-mail messages threatened him, and that some appeared to go out of their way to mention the names of his children. "There are substantial number of people who have fallen off the edge of craziness," he said.

Myers said that he was pleased that the university wasn't taking action against him, but he said that he "took for granted" that his freedom of speech was protected. "That's the whole idea of academic freedom. We can criticize things society holds sacred." Reported in: insidehighered.com, July 28.

Princeton, New Jersey

On July 29, the Princeton-based National Association of Scholars announced the launch of the Argus Project—named for the figure of Greek mythology whose body was covered with eyes—to recruit volunteers to monitor college campuses nationwide. The volunteers, a mix of faculty members and private citizens, "have begun to look into whether that college conducts politicized teaching, requires ideological adherence, or sustains slights to conservative students," said the association's announcement.

Stephen H. Balch, president of the association, said about thirty such volunteers are in place, and they will not necessarily identify themselves to campus officials. Many more will soon join the network. They will provide reports to the association's staff members, who will review any

material before it is used. Balch said that Argus was a way for the association to monitor many more campuses than its small staff could do by itself.

Asked whether some might view the idea of monitors as intrusive, Balch compared the Argus volunteers to "freelance journalists" and said that they would be dealing with "publicly available information." Will the efforts to identify "politicized teaching" include sitting in on classes? Balch said that "if people can walk in on their own, they can do it, but it's not something we would encourage." He added that "my own notion of etiquette is that if you are going to go to someone's classroom, you should get permission."

The National Association of Scholars has always insisted that it is not a conservative organization, but rather one that is committed to a set of traditional and nonpartisan academic values. To recruit Argus volunteers, however, the association sent invitations to readers of Townhall.com, a conservative website whose education section features such articles as "Evolutionists Fear Academic Freedom," "The Liberal's Agenda—Antichrist or Just Anti-Christ?" "Quit Whining and Study," and "A Lawsuit a Day Keeps the Leftist at Bay."

Townhall readers who responded were given a questionnaire and then some were selected for the program. Asked if using such an ideological website for recruitment might raise questions about the association's balance, Balch jokingly asked back whether he should have recruited Salon readers. Asked whether he might have recruited from both sites, he said that "we needed a place where we could get volunteers. They have an electronic database of a quarter of million people. We thought it was a cost effective way of reaching people."

Balch added that the association's view of itself is as a group that "stands for principles that a very broad spectrum could find perfectly satisfying."

The blog Free Exchange on Campus—whose members include numerous faculty and civil liberties groups—was less than impressed with the arrival of Argus. A posting called "Informants R Us" speculated that Townhall's readers were drafted as "eagle-eyed, no doubt incredibly judicious informants" because David Horowitz's readers at Frontpagemag.com "already had other projects on their plates." Reported in: insidehighered.com, July 30.

University Park, Pennsylvania

Two undergraduates on Pennsylvania State University's main campus have filed four complaints against instructors under new procedures designed to help students who believe that their professors have presented biased lessons in the classroom. Two more complaints have been filed at Temple University.

Penn State and Temple put their student-complaint procedures in place in 2006, after Pennsylvania's legislature held much-publicized hearings to investigate allegations that professors had indoctrinated students in left-wing ideology and discriminated against conservatives.

David Horowitz, a conservative activist, has made those allegations against higher education in general. But Penn State and Temple appear to be among only a few universities in the country that have adopted special procedures allowing students to complain. The process lets students file complaints if they think professors are one-sided in presenting course material or if they think professors have introduced subject matter that is not germane to the course.

Abigail H. Beardsley, who will be a senior at Penn State in the fall, filed a complaint about an instructor in a French course. A. J. Fluehr, who will graduate with a degree in political science in August, filed three complaints concerning faculty members and graduate teaching assistants in English, speech communications, and human sexuality.

Penn State administrators investigated the four complaints. In two cases, the officials acknowledged that the instructors either may have acted inappropriately or could have done a better job of ensuring that a variety of views were presented. Officials dismissed the two other complaints, saying they found no problem with the instructors' teaching methods.

Horowitz worked with the Penn State students in shaping their complaints. He said university officials responded with hostility to some of them. "It takes an incredibly stubborn, gutsy student to follow through," he said, noting that one of Fluehr's complaints took more than a year to resolve.

But Blannie E. Bowen, vice provost for academic affairs, said he is proud of Penn State's complaint policy, which is "far more than most universities have," he said. "We encourage students to submit complaints, and we do so very publicly. It is very fair."

The complaints filed at Penn State involved multiple issues. The one filed by Beardsley said a graduate instructor in French last spring inappropriately showed part of the movie *Sicko*, by Michael Moore, which criticizes the American health-care system and applauds the more-socialized systems of care in European countries. Beardsley said showing the film in a French reading, speaking, and writing course was inappropriate because it did not use any French terms. She also said the instructor had not given students much time to debate the film.

"Feeding students unalloyed propaganda, without critical materials, in a class not designed to address such issues can have a powerful indoctrinating effect," Beardsley wrote in her complaint.

Heather McCoy, coordinator of the French-language program, investigated the complaint and determined that *Sicko* was an appropriate teaching tool because the film portrays French culture through the country's health-care system. But she said the course instructor may not have left enough time for students to discuss critical views of the film. McCoy also said she regretted that "the polemical

nature of Michael Moore's film" had gotten in the way of instruction.

In one of his three complaints, Fluehr said a graduate instructor had told him that a speech Fluehr wrote for a class in the spring of 2006 had offended three students. The instructor had warned him that his grade would be jeopardized if he delivered another controversial talk.

During his speech, Fluehr displayed cartoons of the Prophet Muhammad that sparked protests among Muslims worldwide in 2005 after they were published in a Danish newspaper.

James P. Dillard, head of the department of communication arts and sciences at Penn State, backed the instructor's warning to Fluehr, telling him that a speech is not effective if it alienates listeners. But Susan Welch, dean of the College of the Liberal Arts, said Fluehr may have justifiably felt censored, and she ruled that the communications department should spend more time training graduate instructors in how to guide student speeches without appearing to limit controversy.

Fluehr also filed complaints regarding two other classes. He objected to an English course on effective writing in the social sciences, which he took in the spring of 2007, on two grounds: that it required only two books, both of which he said were left of center, and that the professor showed Al Gore's film, *An Inconvenient Truth*, even though global warming, Fluehr argued, is a matter of environmental, not social, science.

"The left-wing view of global warming was inappropriately presented as though it were fact," he wrote in his complaint.

Dean Welch found that complaint without merit because, she wrote, the professor had "required students to pose critical questions about the material" and had used the movie not to teach about global warming but to show students "how to analyze a rhetorical argument."

Fluehr also found multiple grounds for complaint in a course on human sexuality and health that he took that same spring. He said the professor had misrepresented Americans' views on abortion as more favorable than Fluehr believed the data showed. He also said the professor had degraded the value of abstinence-only sexual education in schools. Fluehr cited as well a graduate teaching assistant in the course, whom he said had made a wisecrack about how Pennsylvanians were fortunate that Rick Santorum, a former Republican U.S. senator, was no longer in office.

Ann C. Crouter, dean of the College of Health and Human Development, responded that the professor was not biased in her classroom presentations or discussions. The dean also said the teaching assistant contended that in making the remark about Santorum, he was merely repeating a comment by a student to make sure the rest of the class had heard it.

Horowitz said he and the students had achieved a "small victory" in Dean Welch's ruling in the complaint about the speech class. "Some teachers at Penn State are going to understand better their responsibilities as educators," he said. But he found the larger picture discouraging, given the resistance he said the complaining students had met from professors and administrators.

"This has illuminated the bigger problem," Horowitz said, "which is that the university community is not yet willing to support its own academic-freedom principles as they apply to students."

The complaints at Temple were resolved confidentially. Reported in: *Chronicle of Higher Education Online*, July 14.

church and state

Annapolis, Maryland; West Point, New York

Three years after a scandal at the Air Force Academy over the evangelizing of cadets by Christian staff and faculty members, students and staff at West Point and the Naval Academy are complaining that their schools, too, have pushed religion on cadets and midshipmen.

The controversy led the Air Force to adopt guidelines that discourage public prayers at official events or meetings. And while those rules do not apply to other branches of the service, critics say the new complaints raise questions about the military's commitment to policies against imposing religion on its members.

Religion in the military has come under increasing scrutiny in recent years, especially because the close confines of military life often put two larger societal trends—the rise of evangelicals and the rise of people of no organized faith—onto a collision course.

At the Naval Academy in Annapolis, nine midshipmen recently asked the American Civil Liberties Union (ACLU) to petition the school to abolish daily prayer at weekday lunch, where attendance is mandatory. The midshipmen and the ACLU assert that the practice is unconstitutional, based in large part on a 2004 appellate court ruling against a similar prayer at the Virginia Military Institute. The civil liberties group has threatened legal action if the policy is not changed.

But the academy is not persuaded. "The academy does not intend to change its practice of offering midshipmen an opportunity for prayer or devotional thought during noon meal announcements," Cmdr. Ed Austin, an academy spokesman, said.

In interviews at West Point, seven cadets, two officers, and a former chaplain said that religion, especially evangelical Christianity, was a constant at the academy. They said that until recently, cadets who did not attend religious services during basic training were sometimes referred to as "heathens." They said mandatory banquets begin with prayer, including a reading from the Bible at a recent gala.

But most of their complaints center on Maj. Gen. Robert

L. Caslen, until recently the academy's top military leader and, since early May, the commander of the 25th Infantry Division in Hawaii. The cadets and staff said General Caslen, as commandant of cadets at West Point, routinely brought up God in speeches at events cadets were required to attend.

In his farewell speech to the cadet corps this spring, General Caslen told them: "Draw your strength in the days ahead from your faith in God. Let it be the moral compass that guides you in the decisions you make."

The groups of cadets and midshipmen, who do not know each other, echo the same view: that the military, regardless of its official policies, by emphasizing religion, especially Christianity, at events that students are required to attend sends the message that to be considered successful officers they have to believe in God.

"Nowhere does it say that you have to be a good Christian officer or Jewish officer or Muslim officer: You need to be an officer dedicated to the Constitution of the United States," said Steven Warner, who graduated from West Point in June. "They tell us as an officer you have to put everything aside, all your personal stuff. But religion is the one thing they encourage you to wear on your sleeve."

Cynthia Lindenmeyer, a 1990 West Point graduate who was a civilian chaplain at the school from 2000 to 2007, offered a similar view. "As a cadet, you are at a very vulnerable place in your spiritual development," she said, "and you want to be like the people who mentor you."

Col. Bryan Hilferty, a West Point spokesman, rejected the idea that the academy endorses religion, even tacitly, or that General Caslen had said anything inappropriate in his time there. And others, including many cadets, endorsed that view.

In interviews on campus, fifteen randomly selected cadets said that they did not feel religion was foisted upon them. "There is a spiritual aspect here that people feel is part of the development of an officer," said Brad Hoelscher, who graduated last month, "but not a specific brand of religion or even religion itself."

Col. John J. Cook III, head chaplain at West Point, said, "No one is pushing them to believe."

Referring to prayers at mandatory settings, he said: "This is something we have done in the military for centuries. It is not designed to make people religious. The majority of people here are people of faith, and a prayer asks God's blessing on a gathering and on the food."

The Air Force, however, took a different view in the guidelines it adopted in 2005. For example, the guidelines say: "Supervisors, commanders and leaders at every level bear a special responsibility to ensure their words and actions cannot reasonably be construed as either official endorsement or disapproval of the decisions of individuals to hold particular religious beliefs or to hold no religious beliefs."

Since the Air Force investigation, controversies over religion in the military have continued. Last year, the Army inspector general issued a report critical of seven officers, including four generals, who appeared, in uniform and in violation of military regulations, in a 2006 fund-raising video for the Christian Embassy, an evangelical Bible study group. General Caslen was among the officers.

The cadets and midshipmen do not claim practices at West Point and the Naval Academy are as egregious as those at the Air Force Academy, which were found to include expressions of anti-Semitism, official sponsorship of a showing of "The Passion of the Christ," and a locker room banner that said athletes played for "Team Jesus." But given the vast authority superiors have over subordinates in the military, prayer and repeated mention of God in mandatory settings can communicate a requirement to be religious, military and legal experts said.

"You always have to be aware of the authority you have within your rank and uniform and the coercive potential of that authority," said Robert Tuttle, a constitutional law expert and professor at George Washington University Law School, whose father is a retired four-star Army general.

At the Naval Academy, midshipmen have contacted the ACLU over the years, questioning the constitutionality of the noon meal prayer, especially after the 2004 court ruling, said Debbie Jeon, legal director of the group's Maryland organization.

No midshipmen have wanted to take action until now, Jeon said. Three recent graduates, who spoke on condition of anonymity for fear of retaliation, said that all 4,300 midshipmen enter the noon meal together and that before they eat they are invited to pray by a chaplain. The academy's eight chaplains are all officers, and all but one are Christian. Those midshipmen who do not bow their heads with their hands clasped in front are conspicuous, they said, which makes some, especially underclassmen, feel very uncomfortable.

"By these people talking everyday, whether they make it voluntary or not, they make it very clear that this is the standard, and the standard is Judaism or Christianity," said a recent graduate who was raised Roman Catholic but is now an atheist. "I feel it's inappropriate to have this in a public institution."

The midshipmen used an anonymous feedback system at the academy to voice their concerns to the administration. But its response, in a list of answers to questions about "the USNA noon meal prayer," contends that exposure to religious customs is important to the development of midshipmen and that those against the prayer should compromise.

The Navy's arguments, however, were rejected by appellate court decisions in earlier lawsuits, Tuttle said.

Religious liberty advocates like Mikey Weinstein of the Military Religious Freedom Foundation said fear silenced those troubled by religiosity at the academies. "There is this massive sense of two things: that you are not wanted and

you are made to feel like last-class citizens," said Weinstein, a former Air Force officer. He added that he had been contacted by thirty-one cadets and staff members from West Point, including those who raised concerns about General Caslen, and fifty-six people from the Naval Academy, including thirty-nine midshipmen. Almost all are afraid to go public.

At West Point, nearly all of those who raised concerns about religion at the academy in interviews were raised as Christians, though some are now agnostic or atheist. They said the primacy of faith was apparent at West Point. This year, all cadets received a book about moral development based on the cadet prayer. At his commencement speech this year at West Point, Secretary of the Army Pete Geren started and ended with a quote from the Bible when God speaks to Isaiah, and he cast the wars in Iraq and Afghanistan as a clash between American and radical Islamic approaches to religious liberty.

General Caslen served as commandant of cadets from mid-2006 to last month. Cadets praised him as a military commander, but they said religiosity at West Point increased under him. In a speech last August that all cadets had to attend, General Caslen told cadets they were all God's children and that was why he respected them.

"It wasn't the first time," said Warner, who was raised Pentecostal but is now atheist. "He always brings it up when he talks about leadership or moral values."

In an interview, General Caslen said he had a "hard time" understanding how describing the dignity of others in terms of their being God's children would be offensive, but nonetheless he apologized. He said he was careful not to use his position to impose his religious views on others. But he said that while one need not be religious to be a good officer, a West Point field manual on leadership talks of the spiritual formation of cadets.

"That is the leadership development model for West Point and that recognizes there is a supreme being," he said. "The values of one's faith play an important role in moral development, and they undergird the development of ideas like duty, honor, country."

The West Point cadets and Navy midshipmen said they wanted the practices to end, and their hope is that the military will make changes on its own. "I have more faith in the Army than most people do," said Warner, who served as an enlisted man before enrolling at West Point. "It can police itself if it chooses to." Reported in: *New York Times*, June 25.

Internet

Washington, D.C.

The Federal Communications Commission (FCC) is seeking comments on a proposal to open up a swath of spectrum to provide free wireless Internet—one of the FCC's "goals of achieving the universal availability of broadband access."

But as with all free things, there's a hitch. The winner of the spectrum, 25 percent of which must be available for free Internet access, is required to filter out pornography and "any images or text that otherwise would be harmful to teens and adolescents."

The filtering device, "a network-based mechanism," as the FCC calls it, "must be active at all times" on that free service. The connection would have laudable surfing speeds with "engineered data rates of at least 768 kbps downstream."

The required filtering mechanism, according to the FCC, is one "that filters or blocks images and text that constitute obscenity or pornography and, in context, as measured by contemporary community standards and existing law, any images or text that otherwise would be harmful to teens and adolescents. For purposes of this rule, teens and adolescents are children 5 through 17 years of age."

David Kravetz, who revealed the proposal on wired.com, wrote that he "suspect[s] this broad censorship plan has little to do with government morals and government opposition to underwriting the delivery of pornography into America's living rooms. It's more likely the censorship rules are crafted to minimize opposition from ISPs, which would certainly go bust if there were a free, uncensored internet.

"More important, however, to comport with the censorship rules, the spectrum would become a playground for real-world testing of filtering, throttling, eavesdropping and other protocols, a platform whose users, most likely the poor, are its guinea pigs," Kravetz added. Reported in: wired.com, June 25.

Washington, D.C.

The Chairman of the Federal Communications Commission (FCC) charged that Comcast is arbitrarily blocking customers' open access to the Internet. Comcast faces sanctions for failing to disclose network management practices for handling P2P applications such as BitTorrent.

Comcast is guilty of blocking consumers' access to the Internet and faces federal sanctions, FCC Chairman Kevin Martin said July 10. If Martin's fellow commissioners agree with his verdict, Comcast would become the first major broadband provider judged to be violating the FCC's network neutrality principles.

"The commission has adopted a set of principles that protects consumers' access to the Internet," Martin said. "We found that Comcast's actions in this instance violated our principles."

Martin planned to circulate his findings and recommendations to the FCC commissioners July 11 and was hoping for a final vote at the agency's August 1 open meeting. Martin will order Comcast to stop blocking traffic, disclose

to the FCC the full extent of the cable giant's traffic practices, and to keep the public informed of its future network management plans.

The nation's largest cable provider's network neutrality woes began late last year when testing caught Comcast throttling P2P applications such as BitTorrent during peak network hours. The disclosure prompted Free Press and members of the SavetheInternet.com Coalition to file a network neutrality violation complaint with the FCC.

Comcast contends its practices are reasonable under FCC rules, and even if the FCC found Comcast in violation, the agency has no authority to enforce its network neutrality principles.

Marvin Ammori, general counsel of Free Press, said, "This is an historic test for whether the law will protect the open Internet. If the commission decisively rules against Comcast, it will be a remarkable victory for organized people over organized money." Reported in: eweekly.com, July 11.

political protest

Denver, Colorado

A sixty-year-old librarian received a trespassing ticket July 7 after a liberal group's protest outside John McCain's town-hall meeting. Clutching a sign that read "McCain = Bush," Carol Kreck was removed from the atrium of the Denver Performing Arts Complex by four Denver police officers.

Kreck—a former *Denver Post* reporter who works part-time as a librarian for an education think tank—said she was removed as she quizzed a police officer about whether he could deny her free-speech rights "on city property" by taking away her sign, while McCain supporters wore buttons inside.

Jenny Schiavone, a spokeswoman for the performing arts center, said the venue is city-owned rental property but is not legally defined as public property.

The liberal group ProgressNowAction had called the center before the event and asked about being inside the atrium, she said. The group was told it would have to rent space or use previously designated protest areas along the street, Schiavone said.

Detective John White, a spokesman for the Denver Police Department, said officers acted as they would have for any complaint on private property.

"Our officers received a signed complaint from a security guard at a private event and acted accordingly," he said.

Tom Kise, a spokesman for the McCain campaign, said that he did not know about Kreck's ouster but that the town-hall-style meeting was open to supporters and opponents. "All the campaign asked for is a respectful dialogue," Kise said.

"What's disrespectful about pointing out that attendees voted for Bush and would be voting for McCain?" Kreck said of her sign. Reported in: *Denver Post*, July 8.

privacy

Washington, D.C.

Advocacy groups and some legal experts told Congress June 26 that it was unreasonable for federal officials to search the laptop computers of United States citizens when they re-enter the country from traveling abroad. Civil rights groups said certain ethnic groups have been selectively profiled in the searches by Border Patrol agents and customs officials who have the authority to inspect all luggage and cargo brought into the country without obtaining warrants or having probable cause.

Companies whose employees travel overseas also have criticized the inspections, saying that the search of electronic devices could hurt their businesses. The federal government says the searches are necessary for national security and for legal action against people who bring illegal material into the country.

"If you asked most Americans whether the government has the right to look through their luggage for contraband when they are returning from an overseas trip, they would tell you 'yes, the government has that right,'" Senator Russ Feingold, Democrat of Wisconsin, said at the hearing of a Senate Judiciary subcommittee.

"But," Feingold continued, "if you asked them whether the government has a right to open their laptops, read their documents and e-mails, look at their photographs and examine the websites they have visited, all without any suspicion of wrongdoing, I think those same Americans would say that the government absolutely has no right to do that."

In April, the U.S. Court of Appeals for the Ninth Circuit ruled that the Customs and Border Protection agency could conduct searches without reasonable suspicion.

In her testimony, Farhana Y. Khera, the president and executive director of Muslim Advocates, said Muslim Americans traveling abroad often had electronic storage devices seized without apparent cause. She said several also had been questioned about their political views.

Susan K. Gurley, executive director of the Association of Corporate Travel Executives, said the seizing of laptops could hurt people who travel overseas for business. "In today's wired, networked and borderless world, one's office no longer sits within four walls or a cubicle; rather, one's office consists of a collection of mobile electronic devices such as a laptop, a BlackBerry, PDA, and a cellphone," Gurley said in prepared remarks. She said the searches meant "you may find yourself effectively locked out of your office indefinitely."

Gurley said a concern was the lack of published regulations explaining what happened to data when it was seized

and who had access to it.

Tim Sparapani, senior legislative counsel for the American Civil Liberties Union, said in an interview, "You can't go into my home and search my computer without a warrant, but simply because I'm carrying my computer with me as I travel, you can search it."

But Nathan A. Sales, an assistant professor at the George Mason University School of Law, said in a statement: "The reason the home has enjoyed uniquely robust privacy protections in the Anglo-American legal tradition is because it is a sanctuary into which the owner can withdraw from the government's watchful eye. Crossing an international border is in many ways the opposite of this kind of withdrawal."

Feingold expressed discontent that the Department of Homeland Security, which oversees the customs and border agency, did not send a witness to testify. He said a written statement by Jayson P. Ahern, deputy commissioner for the agency, provided "little meaningful detail on the agency's policies."

Ahern's statement said the agency's efforts did not infringe upon privacy and it was important to note that the agency was "responsible for enforcing over 600 laws at the border, including those that relate to narcotics, intellectual property, child pornography and other contraband, and terrorism." Reported in: *New York Times*, June 26.

obscenity

Pensacola, Florida

Judges and jurors who must decide whether sexually explicit material is obscene are asked to use a local yardstick: does the material violate community standards? That is often a tricky question because there is no simple, concrete way to gauge a community's tastes and values.

The Internet may be changing that. In a novel approach, the defense in an obscenity trial in Florida plans to use publicly accessible Google search data to try to persuade jurors that their neighbors have broader interests than they might have thought.

In the trial of a pornographic website operator, the defense plans to show that residents of Pensacola are more likely to use Google to search for terms like "orgy" than for "apple pie" or "watermelon." The publicly accessible data is vague in that it does not specify how many people are searching for the terms, just their relative popularity over time. But the defense lawyer, Lawrence Walters, is arguing that the evidence is sufficient to demonstrate that interest in the sexual subjects exceeds that of more mainstream topics—and that by extension, the sexual material distributed by his client is not outside the norm.

It is not clear that the approach will succeed. The Florida state prosecutor in the case, which was scheduled for trial July 1, said the search data may not be relevant because the volume of Internet searches is not necessarily an indication of, or proxy for, a community's values.

But the tactic is another example of the value of data collected by Internet companies like Google, both from a commercial standpoint and as a window into the thoughts, interests, and desires of their users.

"Time and time again you'll have jurors sitting on a jury panel who will condemn material that they routinely consume in private," said Walters, the defense lawyer. Using the Internet data, "we can show how people really think and feel and act in their own homes, which, parenthetically, is where this material was intended to be viewed," he added.

Walters also served Google with a subpoena seeking more specific search data, including the number of searches for certain sexual topics done by local residents. A Google spokesman said the company was reviewing the subpoena.

Walters is defending Clinton Raymond McCowen, who is facing charges that he created and distributed obscene material through a website based in Florida. The charges include racketeering and prostitution, but Walters said the prosecution's case fundamentally relies on proving that the material on the site is obscene.

Such cases are a relative rarity this decade. In the last eight years, the Justice Department has brought roughly fifteen obscenity cases that have not involved child pornography, compared with seventy-five during the Reagan and first Bush administrations, according to Jeffrey J. Douglas, chairman emeritus of the First Amendment Lawyers Association. (There have been hundreds involving child pornography.) Prosecutions at the state level have followed a similar arc.

The question of what constitutes obscenity relies on a three-part test established in a 1973 decision by the Supreme Court. Essential to the test has been whether the material in question is patently offensive or appeals to a prurient interest in sex—definitions that are based on "contemporary community standards."

Lawyers in obscenity cases have tried to demonstrate community standards by, for example, showing the range of sexually explicit magazines and movies available locally. A better barometer, Douglas said, would be mail-order statistics, because they show what people consume in private. But that information is hard to obtain.

"All you had to go on is what was available for public consumption, and that was a very crude tool," Douglas said. "The prospect of having measurement of Internet traffic brings a more objective component than we've ever seen before."

In a federal obscenity case heard in June, Douglas defended another Florida pornographer. In the trial, Douglas set up a computer in the courtroom and did Internet searches for sexually explicit terms to show the jury that there were millions of webpages discussing such material. He then searched for other topics, like the University of Florida quarterback Tim Tebow, to demonstrate that there were not

nearly as many related websites.

The jury was evidently not swayed, as his client was convicted on all counts.

The case Walters is defending takes the tactic to another level. Rather than showing broad availability of sex-related websites, he is trying to show both accessibility and interest in the material within the jurisdiction of the First Circuit Court for Santa Rosa County, where the trial is taking place.

The search data he is using is available through a service called Google Trends (trends.google.com). It allows users to compare search trends in a given area, showing, for instance, that residents of Pensacola are more likely to search for sexual terms than some more wholesome ones.

Walters chose Pensacola because it is the only city in the court's jurisdiction that is large enough to be singled out in the service's data.

"We tried to come up with comparison search terms that would embody typical American values," Walters said. "What is more American than apple pie?" But according to the search service, he said, "people are at least as interested in group sex and orgies as they are in apple pie."

The Google service, however, does show the relative strength of many mainstream queries in Pensacola: "Nascar," "surfing" and "Nintendo" all beat "orgy."

Chris Hansen, a staff lawyer for the national office of the American Civil Liberties Union, called the tactic clever and novel, but said it underscored the power of the Internet to reveal personal preferences—something that raises concerns about the collection of personal information.

"That's why a lot of people are nervous about Google or Yahoo! having all this data," he said.

One question is whether the judge in the case will admit the data as evidence; it was given only in a deposition in June. Walters said he was confident the information would be allowable given that there has been a growing reliance on such data.

Russ Edgar, the Florida state prosecutor, said he was still assessing whether he would try to block the search data's use in court. He declined to discuss the case's specifics, but said that the popularity of sex-related websites had no bearing on whether McCowen was in violation of community standards. "How many times you do something doesn't necessarily speak to standards and values," he said. Reported in: *New York Times*, June 24.

international

Beijing, China

For a while, Calla Wiemer said, she held it close.

"We all hoped that the problem would be resolved quickly," said Wiemer, who counts four visa denials stamped into her passport. On a couple of other occasions, her application was declined before it even got to a stamp-wielding bureaucrat. In one more case, the U.S. Embassy intervened to ask the Chinese Foreign Ministry if Wiemer would be approved if she applied. The answer was no.

"Now that it's gone on for all these years, I can't keep it a secret anymore," said Wiemer, who returned to Los Angeles with plans to write a macroeconomics textbook following a series of consecutive one-year contract positions at the National University of Singapore. Wiemer resigned from a tenured associate professor position at the University of Hawaii in 1997, becoming "uprooted academically" she said, and then "the problem with my visa has made it very difficult to land again. Because I'm a career Sinologist and I haven't been able to get into China for five years now."

Wiemer is one of a small number of U.S. scholars seemingly "blacklisted" from China for her scholarly output—and, specifically, her contribution to a 2004 book on Xinjiang, China's northwestern, largely Muslim region and a seat of some separatist sentiment. She said a Chinese translation of *Xinjiang: China's Muslim Borderland* was already circulating, prepublication, at the time of her first visa denial in October 2003.

According to the accounts of several scholars involved, the sixteen collaborators on the Xinjiang book have largely been blocked from entering China. The book's editor, S. Frederick Starr, of Johns Hopkins University's Paul H. Nitze School of Advanced International Studies, or SAIS, maintains he's not "convinced or unconvinced" that there's a link between the book and visa difficulties. But other collaborators said the connection was crystal clear, and two said that Starr was "in denial."

"I have been denied a visa to China since 2005, following the publication of the book on Xinjiang. I have applied each year and been turned down. The Chinese government has not given a specific reason: It said only, 'You are not welcome in China. You should know why,'" said Peter C. Perdue, a professor of history at Yale University who coauthored a chapter on Xinjiang's political and cultural history. He added, however, that a systematic pattern of visa denials affecting the book's contributors "makes [the reason] pretty clear. We know that the Communist Party had this volume translated, labeled internal circulation, and discussed it."

Perdue had to shift his Fulbright fellowship from Beijing to Taiwan last spring after the U.S. State Department couldn't get him in.

"It's not a devastating impact on my research. If it continues, though, it will have a devastating impact on younger scholars," said Perdue. "It's more pervasive than just this book. There are other people who have had these problems, and in this year leading up to the Olympics it's become even more restrictive."

"I think," Perdue said, when asked about self-censorship among scholars, "there may well be a significant amount of tailoring of subjects to things that the Chinese government will find acceptable."

Many interviewed for this article said that self-censorship is a charged phrase—no academic wants to admit to it—and

stressed that some academics, including younger scholars, are pursuing bold research agendas on sensitive topics. But generally speaking, they said, concerns about maintaining access—absolutely crucial to many of the social scientists, in particular, who have specialized in China—manifest themselves primarily in which topics scholars choose to study. And which they don't.

"In Chinese, there's even a phrase, san buti, three things you can't raise," said Sharon Hom, executive director of Human Rights in China. "The three Ts—Tibet, Taiwan and Tiananmen Square." Plus one "F" too, she said. "Falun Gong."

"Aside from those topics, you'll never know when another topic becomes sensitive," Hom said. "When you cross the line, the line keeps shifting."

If there is a formal blacklist with U.S. scholars' names on it somewhere in China, it seems it's short. Kellee S. Tsai, a professor of political science and director of East Asian Studies at Johns Hopkins University, recently posted an inquiry on a China studies electronic discussion list asking about this topic. What she found, she said, is that, other than Tibet and some Taiwan-related subjects, "there aren't many other topics that are taboo. Even people who have written on human rights have gotten in."

"For the people who are blacklisted, they are blacklisted and it's very hard to get off that list. But it's not as long or extensive as people might think." Tsai added that some scholars who work on sensitive military and foreign policy issues told her that they'd never had any visa-related trouble.

"I think most people would agree that there probably is a different list. It's a gray list or something," Tsai said. "They are aware of who we are, those of us who are coming in on research visas and publishing on China. They probably start tracking us in graduate school, and just kind of keep tabs on us."

About three years ago, Perry Link, now a professor emeritus of East Asian Studies at Princeton University, learned from a friend that he was on a (black)list of 18. "But I don't know if 18 means worldwide, I don't know if it means just scholars, if it means journalists,' said Link, who will be teaching at the University of California at Riverside this fall and who has been blacklisted since the mid-'90s. The reasons why are unclear, although he too has heard the line, "You know the reason." Some trace it to his involvement with the Princeton China Initiative, a group that formed in the aftermath of the Tiananmen Square massacre. He later co-edited *The Tiananmen Papers* with Andrew J. Nathan of Columbia University. Nathan also can't get to China.

"The radiation effect is the main issue here, not the list itself which after all isn't very long," said Link. "The larger damage to free inquiry and scholarship by far is the indirect effect of self-censorship that especially younger scholars feel."

Link recalled, for instance, a graduate student who was "advised—good-heartedly, but still this is what happens—advised not to write about the topic of democracy in China because it'll get you in trouble and it'll compromise your career. It's not a smart thing to do."

"There are all kinds of holding of one's tongue or rephrasing things. A China scholar talking in public about Tibet or about Taiwan—that's an even better example—is not going to use the phrase, 'Taiwan independence,' at least not in a neutral or a positive way. It's just a radioactive phrase. The very term is avoided, and euphemisms like 'conflict in cross-strait relations' are brought up, something like this that won't hit the nail on the head," Link said. "The same people over a beer at the bar will be voluble about this, but not in public. In my view, the whole American public suffers when this happens. You hear the formal canned language that's politically acceptable to Beijing and it doesn't hit the nail on the head the way the best names in the field could."

"I have been approached by both grad students and junior scholars saying, 'If I do X, Y and Z, do you think I'll be denied a visa or so forth,' and 'Is this risky or not?'" said Nathan, a political scientist who, even before editing the *Tiananmen Papers*, got on the government's bad side, he believes, by writing about Chairman Mao's sex life.

"I can happily say that I can usually assure them that the things they're doing won't get them banned. I don't think the government bans people that easily. But yeah, there's concern. Because many people, especially the younger ones, their careers and their research agendas, really depend upon being able to go to China," Nathan said.

"The fact that there are only a very small number of people who have been physically denied a visa, there are two possibilities for that: Number one, there isn't censorship. Number two, that censorship was so effective. So effective that only a few examples that are out there, everybody looks at them, and says, 'Gee, I don't want to end up in that situation.' I'm afraid it's the latter,'" said Maochun Yu, a professor of history at the United States Naval Academy. He added that foreign scholars are not only worried about getting visas, but also maintaining access in other ways, such as by finding a university that is able to host them. "If you don't behave, you have no chance of getting cooperation from Chinese colleagues and research institutions. This is a very effective control mechanism."

In the case of the scholars involved with the Xinjiang book, many said the offense likely boiled down to topic selection. "I think it was a fairly balanced view of the situation," said Sean R. Roberts, the incoming director of the international development studies program at George Washington University and a contributor to the book. "It was certainly not anti-Chinese, but there was a sense from the Chinese government's response that they did not appreciate foreign scholars commenting on this issue."

Roberts, who rather than being a China specialist, focuses primarily on Central Asia, said that he has not applied for a visa since the book's publication. But he did receive documentation showing that his name appeared on a

no-fly list for a Chinese airline. "I'm assuming if my name appeared on that level, I might have difficulties getting a visa," Roberts said.

Despite the difficulties, some of the scholars involved have been able to get in, with, Perdue said, "considerable pressure." Yet Perdue said he's not optimistic about his long-term future of researching in China. "They can make an exception and let someone in once, but that's no guarantee you're off the list."

Wiemer, the economist who contributed to the volume and whose latest visa denial came in May, said she's been particularly disappointed by the lack of support from the book editor and his institution, SAIS at Johns Hopkins. Starr, the editor and chairman of the Central Asia-Caucasus Institute, said he hadn't surveyed the scholars comprehensively about their difficulties, and suggested other factors could be at work. Also a Central Asia rather than a China specialist, Starr has not applied for a visa to enter China since the book came out, but said he'd had invitations from official sources and had, since the book's publication, hosted senior-level officials.

"When they heard we were doing a big study on Xinjiang, they panicked," Starr said of the Chinese authorities. "That's clear. They were very anxious. And they sent various senior people here to meet with me and other authors. And I explained that our objective was to produce a dispassionate and analytic piece and that very current events would be only one small part of the book as a whole," he said.

"When they heard all that, they calmed down and I would say we had very cordial relations throughout the entire editorial process. Then when the book actually appeared, I sent copies to all the Chinese with whom I'd had contact on this subject and received very cordial responses."

Starr, who in other contexts has been criticized for being an apologist for dictators (a *Harper's* writer once dubbed him "The Professor of Repression"), also pointed to the fact that the Chinese allowed him to distribute a government-backed volume on Xinjiang as evidence that the government might not be too unhappy with Starr and the other authors. "The fact of the matter is even though they were very concerned about this book before it appeared, nonetheless they were delighted when we were giving public presentations on this book. Here in Washington, we offered for the Chinese to distribute at those meetings the book that they had done on the same subject," Starr said. "After the book was in print, if they had been horrified of it, they certainly wouldn't want us to be disseminating their book along with our own. They would view us as contaminated and that wasn't the case."

Starr said, without surveying those involved, he could not "agree or disagree" with scholars who say there's a connection between the book and visa difficulties. "I would stand by the serious and sustained effort of all the scholars to be thorough and dispassionate. Beyond that, as a scholar, that's where my engagement ends. This group will not be reconvening."

Universities in other Western nations are also facing criticism for failing to stand up to China on academic values. Last week, London Metropolitan University apologized to the Chinese government for awarding an honorary degree to the Dalai Lama, as the *Guardian* reported. The news caused such a stir in part because it seemed symbolic, symbolic of just how far foreign universities, anxious to get or maintain footholds in China, will go to stay in the good graces of party authorities—and foreign universities' failures, at times, to stand up for core academic values in interactions with Chinese authorities.

"Everyone has this frenzy for hooking up with China. This kind of fanaticism is based upon half imagination, and half reality," said Yu, of the Naval Academy. "It's understandable why there's a rush to collaborate with China, but then we should collaborate with China with normal international standards. Otherwise, this kind of situation is going to become worse and worse."

Edward Friedman, of the University of Wisconsin at Madison's political science department, said he'd like university administrations to present a united front on the issue of blacklisted scholars. "If all you have is London Metropolitan University, then they pick them off one at a time," he said. And, "Where," he asked "are all the academic associations speaking up for them?"

Robert Buswell, director of the Center for Buddhist Studies at the University of California at Los Angeles and president of the Association for Asian Studies, said that the organization is constitutionally prohibited from making political statements. "I believe this constitutional prohibition was put in place during the Vietnam War-era to ensure that the membership would not become divided over fractious political issues," he wrote. Yet, he continued: "Even though the AAS itself takes no official position on this issue, as an individual scholar, I personally am deeply concerned about any infringements on the academic freedom of scholarly research conducted in China. The heavy-handed attempt to control research access to China creates a climate of mistrust that is extremely damaging to the field of Chinese Studies."

Meanwhile, also back in Los Angeles, Wiemer said if she's allowed in again, she'll stick to her main focus on China's macroeconomics: Xinjiang, she said, was never her primary area of inquiry. "I'll be honest with you," she said. "This will scare me from doing work on Xinjiang ever again. The cost has just been too high. For me, as someone who has never been a Xinjiang specialist, I won't touch it."
Reported in: insidehighered.com, July 14. □

(ACLU . . . from page 173)

Plaintiffs in the ACLU's *Amnesty* v. *McConnell* suit include international human rights organizations such as Amnesty International, PEN American Center, and the International Criminal Defense Attorneys Association, as well as the political journal *The Nation* and its contributing journalists Naomi Klein and Chris Hedges. The ACLU also filed a motion asking that it be apprised of any consideration of its lawsuit by the secret FISA court and that the court's decisions be made public with only those redactions necessary to protect information that is properly classified.

"Spying on Americans without warrants or judicial approval is an abuse of government power—and that's exactly what this law allows. The ACLU will not sit by and let this evisceration of the Fourth Amendment go unchallenged," said ACLU Executive Director Anthony D. Romero. "Electronic surveillance must be conducted in a constitutional manner that affords the greatest possible protection for individual privacy and free speech rights. The new wiretapping law fails to provide fundamental safeguards that the Constitution unambiguously requires."

In its legal challenge, the ACLU argues that the new spying law violates Americans' rights to free speech and privacy under the First and Fourth Amendments to the Constitution. The new law permits the government to conduct intrusive surveillance without ever telling a court who it intends to spy on, what phone lines and e-mail addresses it intends to monitor, where its surveillance targets are located, why it's conducting the surveillance or whether it suspects any party to the communication of wrongdoing.

"As a journalist, my job requires communication with people in all parts of the world—from Iraq to Argentina. If the U.S. government is given unchecked surveillance power to monitor reporters' confidential sources, my ability to do this work will be seriously compromised," said Naomi Klein, an award-winning columnist and best-selling author. "I cannot in good conscience accept that my conversations with people who live outside the U.S. will put them in harm's way as a result of overzealous government spying. Privacy in my communications is not simply an expectation, it's a right."

The ACLU's legal challenge, which was filed in the U.S. District Court for the Southern District of New York, seeks a court order declaring that the new law is unconstitutional and ordering its immediate and permanent halt.

In a separate filing, the ACLU asked the FISC to ensure that any proceedings relating to the scope, meaning or constitutionality of the new law be open to the public to the extent possible. The ACLU also asked the secret court to allow it to file a brief and participate in oral arguments,

to order the government to file a public version of its briefs addressing the law's constitutionality, and to publish any judicial decision that is ultimately issued.

"The new law allows the mass acquisition of Americans' international e-mails and telephone calls," said Jameel Jaffer, Director of the ACLU National Security Project. "The administration has argued that the law is necessary to address the threat of terrorism, but the truth is that the law sweeps much more broadly and implicates all kinds of communications that have nothing to do with terrorism or criminal activity of any kind."

In 2006, the ACLU filed a lawsuit against the National Security Agency (NSA) to stop its illegal, warrantless spying program. A federal district court sided with the ACLU, ruling that warrantless wiretapping by the NSA violated Americans' rights to free speech and privacy under the First and Fourth Amendments of the Constitution, ran counter to the Foreign Intelligence Surveillance Act and violated the principle of separation of powers. The Bush administration appealed the ruling, and an appeals court panel dismissed the case. However, the court did not uphold the legality of the government's warrantless surveillance activity and the only judge to discuss the merits of the case clearly and unequivocally declared that the warrantless spying was unlawful. The Supreme Court declined to hear the case earlier this year.

"A democratic system depends on the rule of law, and not even the president or Congress can authorize a law that violates core constitutional principles," said Christopher Dunn, Associate Legal Director of the New York Civil Liberties Union (NYCLU). "The only thing compromised in this so-called 'compromise' law is the Constitution."

Attorneys on the lawsuit *Amnesty* v. *McConnell* are Jaffer, Melissa Goodman and L. Danielle Tully of the ACLU National Security Project and Dunn and Arthur Eisenberg of the NYCLU. Attorneys on the motion filed with the FISC are Jaffer, Goodman, Tully, as well as Arthur Spitzer of the ACLU of the National Capital Area. Reported in: *American Libraries Online*, July 18; aclu.org, July 10. □

("libel tourism" . . . from page 175)

American University Presses has no policy about libel tourism, according to its executive director, Peter J. Givler.

The art association may be the first scholarly society in this country to have to grapple with libel tourism or forum shopping. The American Council of Learned Societies polled its membership after the Ankori news came out. It found no other reports of the practice so far, "although the prospect of it is worrisome to many," Steven C. Wheatley, the group's vice president, said. "Our national peer-review structure is built on a web of practices—by universities, learned societies, and funders such as ourselves—that easily could be stressed by such litigation," he commented.

The College Art Association found out the hard way that First Amendment protections extend only so far. It's planning a workshop this summer to educate its publishing staff about the issue. And in a statement posted on *Art Journal*'s website after the Ankori settlement, it talked about the need "to respect the distinct responsibilities of publisher and editor"—suggesting that the former must focus on keeping a publishing operation afloat while the latter concentrates on scholarly debate.

"CAA is constantly made aware of the association's dual commitment to advocate for freedom of speech and to maintain access to speech," the statement said.

The association's president, Paul B. Jaskot, emphasized the new international realities of publishing. "We really had to think about that broader element of being an international publisher specifically in this digital context," said Jaskot, an associate professor of art and architectural history at DePaul University. "With that broader distribution, we have to be aware of the variety of scholarly institutions and cultures, and legal cultures as well, in other countries."

To Jonathan Bloom, a lawyer at Weil, Gotshal, and Manges in New York, the combination of the Internet's reach and the availability of lax libel laws outside the United States has proved to be especially dangerous. Bloom has worked with the Association of American Publishers on First Amendment cases, and moderated a panel on the use of foreign libel laws against American authors and journalists at the Annual Conference of the American Library Association in Anaheim, California in early July. "You have this combination of works, even in small numbers, available on the Internet and the aggressive use of more plaintiff-friendly libel law to launder one's reputation and to obtain judgments that not only harm the reputation of U.S. authors but also hang out there as a threat without actual efforts to enforce the judgments in the United States," he said.

In the case of Rachel Ehrenfeld, for instance, a British court found in favor of bin Mahfouz and awarded him a substantial financial settlement. Such a judgment can hang over an author or publisher like a sword of Damocles: When, if ever, will it fall? "Someone like Mahfouz retains this threat that has a chilling effect on the ability of someone like Ehrenfeld to obtain publishing contracts, to have her academic work published," Bloom explained. "It can have an impact on her credit rating. There are all sorts of consequences that are an intended effect of obtaining this foreign judgment and having it hang out there as something that in future may be enforced."

Ehrenfeld may be safe as long as she stays in the United States, but what if she wanted or needed to travel to Britain? The courts there could enforce the judgment, under which she owes bin Mahfouz a substantial sum of money.

The professional and personal consequences can be pronounced and long-lasting. "What happened with *Alms for Jihad* has had a very concrete effect on the authors of that book," said Bloom. Cambridge University Press returned the rights to them last year, but one of the authors, Collins, died in April, and Burr reported that he is still searching for a publisher brave enough to risk bin Mahfouz's legal wrath.

Bloom believes that the chill extends far past the high-profile cases. "I have no doubt there have been many other examples of authors who have not written books or articles or even undertaken research in this area because they didn't want to wind up on the receiving end of a lawsuit," he says. "There's no worldwide security issue that affects us more than the funding of terrorism. The fact that libel laws are being used to chill unvarnished academic writing on this subject is pretty frightening. So it's a very serious matter."

Lawmakers have begun to agree. The New York State Legislature recently passed what's known as Rachel's Law or the Libel Terrorism Protection Act, inspired by Ehrenfeld's case. It protects New York–based writers and publishers from having foreign libel judgments enforced against them by New York courts—unless the country where the judgment came down meets or exceeds First Amendment standards. It also makes it easier for individuals to ask New York courts to declare foreign libel judgments invalid. "Without this statute, an author could be forced to live indefinitely under the pall of a libel judgment, deterring publishers from disseminating that author's work," according to a news release announcing that Governor David A. Paterson signed the bill into law on May 1.

Bills have been introduced in Congress that would offer similar protections nationwide. The House version, HR 6146, was introduced on May 22 by Steve Cohen, Democrat of Tennessee, with sixteen cosponsors. A more comprehensive Senate bill, S 2977, the so-called Free Speech Protection Act of 2008, was introduced on May 6 by Arlen Specter, Republican of Pennsylvania, and Joseph I. Lieberman, Independent of Connecticut.

In Britain, however, there are few signs of change in its libel laws. According to Bloom, courts there have become slightly more open to the idea of protecting published information that relates to the public interest. In most cases, though, the desire to protect reputations trumps the public's right to know.

What plaintiffs might consider, however, is that even if they succeed in having a review pulled or a book pulped, once something has been published, it is very hard to make the offending material disappear altogether. Once someone purchases a copy of *Alms for Jihad*—or any other work—they can do with it what they like. If the buyer happens to be a university or reference librarian in the United States, the book stands a good chance of remaining accessible, particularly if it has been the subject of controversy.

The American Library Association (ALA) counsels librarians in the United States "that they own those books as a piece of property, and they are entitled to retain those books on the shelves," according to Deborah Caldwell-Stone, deputy director of ALA's Office for Intellectual Freedom. "In the interest of providing access to information, which is any library's goal, we say that retaining the book is a good thing so that people can judge the controversy for themselves."

Her group has heard reports that some librarians have moved *Alms for Jihad* into their rare book collections to protect it. The rarer something is, the more desirable it tends to become.

Digitized materials, however, may be most vulnerable to being excised or lost. Database aggregators such as JSTOR, EBSCO, or ProQuest that disseminate digital versions of published works may not be free to ignore publishers' instructions to do away with contested material. And when works are digitized, the print version sometimes ceases to exist anyway.

"We're concerned about the removal of content from databases," Caldwell-Stone said. "The print resource is difficult to find or even destroyed after digitization, and then somebody litigates over the content and the content is removed." Cornell University recently fought off such an attempt by a former student who was concerned that an article about him in the student newspaper from the 1980s had been put online (see page 222).

Librarians do more than just preserve controversial materials; they are also keepers of the history of attempts to do away with them. Barbara M. Jones is university librarian at Wesleyan University and a member of the executive board of the Free Access to Information and Freedom of Expression committee of the International Federation of Library Associations and Institutions. She recalls the days when the Soviet government would send out replacement pages for the Great Soviet Encyclopedia—along with a razor blade for slicing out the old pages. At the University of Illinois at Urbana-Champaign, where she used to work, the librarians would leave the original volumes intact and keep the substitute pages—and the razor blades—as part of the documentary record.

Now, when she gets a notice like the one the College Art Association sent out to its institutional subscribers asking them to emend Massad's review in *Art Journal*, she keeps the notice "as evidence of attempted censorship that we are refusing to comply with."

As Jones sees it, lawsuits are not the way to settle disputes over scholarship, no matter how cantankerous the arguments get. "Instead of removing an article or a book, we need to provide a forum for ideas," she says. "It could be a letter to the editor, protesting. It could be blogs. There are many ways to create intellectual discourse without suing somebody." Reported in: *Chronicle of Higher Education Online*, June 25. □

(IFC . . . from page 176)

Lawyers for Libraries and Law for Librarians

A major Ford Foundation grant is supporting two OIF projects-Lawyers for Libraries and Law for Librarians. Lawyers for Libraries, an ongoing project of the ALA Office for Intellectual Freedom, is designed to build a nationwide network of attorneys committed to the defense of the First Amendment freedom to read and the application of constitutional law to library policies, principles, and problems.

National Lawyers for Libraries training institutes were held in 1997 and 1998. Regional trainings have been held in 2003 in Washington, D.C., Chicago, and San Francisco; 2004 in Dallas and Boston; 2005 in Atlanta and Seattle; 2006 in Houston and Columbus; and 2007 in Philadelphia and Denver.

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.

The next Lawyers for Libraries institute is scheduled for Friday, November 14, 2008, in Tampa. This is the first Lawyers for Libraries training in Florida, and the 14th overall. The first Southern California training, scheduled for early 2009, is in the planning stages.

If you are interested in receiving information about upcoming Lawyers for Libraries events, please contact the Office for Intellectual Freedom at lawyers@ala.org or 1-800-545-2433, ext. 4226.

The Ford Foundation grant also enabled OIF to sponsor a three-day "Train the Trainers" event 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 following two years. The training focused on litigation and laws that affect intellectual freedom in libraries; attendees also received guidance on developing future trainings so they can fulfill their commitment to organize at least two events 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.

The two-year period has now concluded, and OIF is in the process of preparing a final report of the Law for Librarians program.

LeRoy C. Merritt Humanitarian Fund

Founded in 1970, the LeRoy C. Merritt Humanitarian Fund is stronger than ever, and continues to provide financial assistance to librarians who have been harmed in their jobs due to discrimination or their defense of intellectual freedom.

Visit www.merrittfund.org to learn more about the Merritt Fund, its 38-year history, the man for whom it was named, and how it has been a lifeline to librarians in need. If someone you know has need for assistance from the Merritt Fund, please have them apply.

If you would like to help build the Merritt Fund into a greater resource, please consider donating online at www.merrittfund.org/donations, by phone at (800) 545-2433, ext. 4226, or by sending a check payable to LeRoy C. Merritt Humanitarian Fund to 50 E. Huron, Chicago, IL 60611.

The Merritt Fund trustees are in the planning stages of an event to celebrate the Fund's 40th Anniversary at the 2010 Annual Conference in Washington, DC.

2008 Banned Books Week

ALA's annual celebration of the freedom to read—Banned Books Week (BBW)—begins September 27 and continues through October 4, 2008; it marks BBW's 27th year. BBW once again will highlight that intellectual freedom is a personal and common responsibility in a democratic society.

OIF, the McCormick Freedom Museum, and the Chicago Tribune are holding a Banned Books Week Read-Out! in Pioneer Plaza, at Michigan Ave. and the Chicago River, on Saturday, September 27, from noon to 4:30 p.m. Local Chicago celebrities will join several acclaimed authors to read passages from their favorite banned and challenged books. Authors scheduled to appear include Chris Crutcher, Judy Blume, Justin Richardson, Peter Parnell, and Lois Lowry.

ALA Graphics markets our BBW merchandise online at http://tinyurl.com/qrqb4. This year's main tag line is, "Closing Books Shuts Out Ideas." Others include, "Closing Books Limits Understanding" and, "Closing Books Closes Possibilities." More information on Banned Books Week can be found at www.ala.org/bbooks.

Action

Intellectual Freedom Manual-Eighth Edition

The Office for Intellectual Freedom is working with ALA Editions toward publication of the eighth edition of the *Intellectual Freedom Manual*. Publication of this book is tentatively planned to coincide with the 2009 Annual Conference. In preparation for each new edition, the Intellectual Freedom Committee reviews all ALA intellectual freedom policies.

The IFC Spring Meeting was held on March 14-16, at

the ALA headquarters in Chicago. The primary goal of this meeting was to review the *Intellectual Freedom Manual* and discuss possible revisions to intellectual freedom policies. The Committee identified six interpretations of the *Library Bill of Rights* that needed to be revised: Access to Library Resources and Services Regardless of Sex, Gender Identity or Sexual Orientation; Access to Resources and Services in the School Library Media Program; Diversity in Collection Development; Evaluating Library Collections; Expurgation of Library Materials; and Free Access to Libraries for Minors. After thorough discussion of these policies, the Committee approved the documents as amended.

Proposed revisions to the Interpretations and other policies were mailed on May 8, 2008, to the ALA Executive Board, Council, divisions, Council committees, round tables and chapter relations. The IFC considered comments received both prior to and during the 2008 Annual Conference and now is submitting six revised policies for Council's adoption:

1. "Access to Library Resources and Services Regardless of Sex, Gender Identity or Sexual Orientation";
2. "Access to Resources and Services in the School Library Media Program";
3. "Diversity in Collection Development";
4. "Evaluating Library Collections";
5. "Expurgation of Library Materials";
6. "Free Access to Libraries for Minors";

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

"Access to Library Resources and Services Regardless of Sex, Gender Identity, Gender Expression, or Sexual Orientation"

An Interpretation of the Library Bill of Rights

American libraries exist and function within the context of a body of laws derived from the United States Constitution, including the First Amendment. The *Library Bill of Rights* embodies the basic policies that guide libraries in the provision of services, materials, and programs.

In the preamble to its *Library Bill of Rights*, the American Library Association affirms that all libraries are forums for information and ideas. This concept of forum and its accompanying principle of inclusiveness pervade all six Articles of the *Library Bill of Rights*.

The American Library Association stringently and unequivocally maintains that libraries and librarians have an obligation to resist efforts that systematically exclude materials dealing with any subject matter, including sex, gender identity, gender expression, or sexual orientation:

- Article I of the *Library Bill of Rights* states that "Materials should not be excluded because of the origin, background, or views of those contributing to their creation." The Association affirms that books and other materials coming from gay, lesbian, bisexual, and/or transgendered presses; gay, lesbian, bisexual and/or transgendered authors or other creators; and materials regardless of format or services dealing with gay, lesbian, bisexual and/or transgendered life are protected by the *Library Bill of Rights*. Librarians are obligated by the *Library Bill of Rights* to endeavor to select materials without regard to the sex, gender identity, gender expression, or sexual orientation of their creators by using the criteria identified in their written, approved selection policies (ALA policy 53.1.5).
- Article II maintains that "Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval." Library services, materials, and programs representing diverse points of view on sex, gender identity, gender expression, or sexual orientation should be considered for purchase and inclusion in library collections and programs. (ALA policies 53.1.1, 53.1.9, and 53.1.11). The Association affirms that attempts to proscribe or remove materials dealing with gay, lesbian, bisexual, and/or transgendered life without regard to the written, approved selection policy violate this tenet and constitute censorship.
- Articles III and IV mandate that libraries "challenge censorship" and cooperate with those "resisting abridgement of free expression and free access to ideas."
- Article V holds that "A person's right to use a library should not be denied or abridged because of origin, age, background or views." In the *Library Bill of Rights* and all its Interpretations, it is intended that: "origin" encompasses all the characteristics of individuals that are inherent in the circumstances of their birth; "age" encompasses all the characteristics of individuals that are inherent in their levels of development and maturity; "background" encompasses all the characteristics of individuals that are a result of their life experiences; and "views" encompasses all the opinions and beliefs held and expressed by individuals. Therefore, Article V of the Library Bill of Rights mandates that library services, materials, and programs be available to all members of the community the library serves, without regard to sex, gender identity, gender expression, or sexual orientation. This includes providing youth with comprehensive sex education literature (ALA Policy 52.5.2).
- Article VI maintains that "Libraries which make exhibit spaces and meeting rooms available to the public they serve should make such facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use." This protection

extends to all groups and members of the community the library serves, without regard to sex, gender identity, gender expression, or sexual orientation.

The American Library Association holds that any attempt, be it legal or extra-legal, to regulate or suppress library services, materials, or programs must be resisted in order that protected expression is not abridged. Librarians have a professional obligation to ensure that all library users have free and equal access to the entire range of library services, materials, and programs. Therefore, the Association strongly opposes any effort to limit access to information and ideas. The Association also encourages librarians to proactively support the First Amendment rights of all library users, regardless of sex, gender identity, gender expression, or sexual orientation.

Adopted June 30, 1993, by the ALA Council; amended July 12, 2000; June 30, 2004; July 2, 2008.

"Access to Resources and Services in the School Library Media Program"

An Interpretation of the Library Bill of Rights

The school library media program plays a unique role in promoting intellectual freedom. It serves as a point of voluntary access to information and ideas and as a learning laboratory for students as they acquire critical thinking and problem-solving skills needed in a pluralistic society. Although the educational level and program of the school necessarily shape the resources and services of a school library media program, the principles of the *Library Bill of Rights* apply equally to all libraries, including school library media programs. Under these principles, all students have equitable access to library facilities, resources, and instructional programs.

School library media specialists assume a leadership role in promoting the principles of intellectual freedom within the school by providing resources and services that create and sustain an atmosphere of free inquiry. School library media specialists work closely with teachers to integrate instructional activities in classroom units designed to equip students to locate, evaluate, and use a broad range of ideas effectively. Intellectual freedom is fostered by educating students in the use of critical thinking skills to empower them to pursue free inquiry responsibly and independently. Through resources, programming, and educational processes, students and teachers experience the free and robust debate characteristic of a democratic society.

School library media specialists cooperate with other individuals in building collections of resources that meet the needs, as well as the developmental and maturity levels, of students. These collections provide resources that support the mission of the school district and are consistent with its philosophy, goals, and objectives. Resources in school library media collections are an integral component of the curriculum and represent diverse points of view on both current and historical issues. These resources include materials that support the intellectual growth, personal development, individual interests, and recreational needs of students.

While English is, by history and tradition, the customary language of the United States, the languages in use in any given community may vary. Schools serving communities in which other languages are used make efforts to accommodate the needs of students for whom English is a second language. To support these efforts, and to ensure equitable access to resources and services, the school library media program provides resources that reflect the linguistic pluralism of the community.

Members of the school community involved in the collection development process employ educational criteria to select resources unfettered by their personal, political, social, or religious views. Students and educators served by the school library media program have access to resources and services free of constraints resulting from personal, partisan, or doctrinal disapproval. School library media specialists resist efforts by individuals or groups to define what is appropriate for all students or teachers to read, view, hear, or access via electronic means.

Major barriers between students and resources include but are not limited to imposing age, grade-level, or reading-level restrictions on the use of resources; limiting the use of interlibrary loan and access to electronic information; charging fees for information in specific formats; requiring permission from parents or teachers; establishing restricted shelves or closed collections; and labeling. Policies, procedures, and rules related to the use of resources and services support free and open access to information.

It is the responsibility of the governing board to adopt policies that guarantee students access to a broad range of ideas. These include policies on collection development and procedures for the review of resources about which concerns have been raised. Such policies, developed by persons in the school community, provide for a timely and fair hearing and assure that procedures are applied equitably to all expressions of concern. It is the responsibility of school library media specialists to implement district policies and procedures in the school to ensure equitable access to resources and services for all students.

Adopted July 2, 1986, by the ALA Council; amended January 10, 1990; July 12, 2000; January 19, 2005; July 2, 2008.

"Diversity in Collection Development"

An Interpretation of the Library Bill of Rights

Collection development should reflect the philosophy inherent in Article II of the *Library Bill of Rights*: Libraries should provide materials and information presenting all points of view on current and historical issues. Materials

should not be proscribed or removed because of partisan or doctrinal disapproval. Library collections must represent the diversity of people and ideas in our society. There are many complex facets to any issue, and many contexts in which issues may be expressed, discussed, or interpreted. Librarians have an obligation to select and support access to materials and resources on all subjects that meet, as closely as possible, the needs, interests, and abilities of all persons in the community the library serves.

Librarians have a professional responsibility to be inclusive, not exclusive, in collection development and in the provision of interlibrary loan. Access to all materials and resources legally obtainable should be assured to the user, and policies should not unjustly exclude materials and resources even if they are offensive to the librarian or the user. This includes materials and resources that reflect a diversity of political, economic, religious, social, minority, and sexual issues. A balanced collection reflects a diversity of materials and resources, not an equality of numbers.

Collection development responsibilities include selecting materials and resources in different formats produced by independent, small and local producers as well as information resources from major producers and distributors. Materials and resources should represent the languages commonly used in the library's service community and should include formats that meet the needs of users with disabilities. Collection development and the selection of materials and resources should be done according to professional standards and established selection and review procedures. Librarians may seek to increase user awareness of materials and resources on various social concerns by many means, including, but not limited to, issuing lists of resources, arranging exhibits, and presenting programs.

Over time, individuals, groups, and entities have sought to limit the diversity of library collections. They cite a variety of reasons that include prejudicial language and ideas, political content, economic theory, social philosophies, religious beliefs, sexual content and expression, and other potentially controversial topics. Examples of such censorship may include removing or not selecting materials because they are considered by some as racist or sexist; not purchasing conservative religious materials; not selecting resources about or by minorities because it is thought these groups or interests are not represented in a community; or not providing information or materials from or about non-mainstream political entities. Librarians have a professional responsibility to be fair, just, and equitable and to give all library users equal protection in guarding against violation of the library patron's right to read, view, or listen to materials and resources protected by the First Amendment, no matter what the viewpoint of the author, creator, or selector. Librarians have an obligation to protect library collections from removal of materials and resources based on personal bias or prejudice.

Intellectual freedom, the essence of equitable library services, provides for free access to all expressions of ideas through which any and all sides of a question, cause, or movement may be explored. Toleration is meaningless without tolerance for what some may consider detestable. Librarians must not permit their own preferences to limit their degree of tolerance in collection development.

Adopted July 14, 1982, by the ALA Council; amended January 10, 1990; July 2, 2008.

"Evaluating Library Collections"

An Interpretation of the Library Bill of Rights

The continuous review of library materials is necessary as a means of maintaining an active library collection of current interest to users. In the process, materials may be added and physically deteriorated or obsolete materials may be replaced or removed in accordance with the collection maintenance policy of a given library and the needs of the community it serves. Continued evaluation is closely related to the goals and responsibilities of each library and is a valuable tool of collection development. This procedure is not to be used as a convenient means to remove materials that might be viewed as controversial or objectionable. Such abuse of the evaluation function violates the principles of intellectual freedom and is in opposition to the Preamble and Articles I and II of the *Library Bill of Rights*, which state:

The American Library Association affirms that all libraries are forums for information and ideas, and that the following basic policies should guide their services.

I. Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.
II. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.

The American Library Association opposes internal censorship and strongly urges that libraries adopt guidelines setting forth the positive purposes and principles of evaluation of materials in library collections.

Adopted February 2, 1973, but the ALA Council; amended July 1, 1981; July 2, 2008.

"Expurgation of Library Materials"

An Interpretation of the Library Bill of Rights

Expurgating library materials is a violation of the *Library Bill of Rights*. Expurgation as defined by this interpretation includes any deletion, excision, alteration, editing, or obliteration of any part(s) of books or other library

resources by the library, its agents, or its parent institution (if any) when done for the purposes of censorship. Such action stands in violation of Articles I, II, and III of the *Library Bill of Rights*, which state that "Materials should not be excluded because of the origin, background, or views of those contributing to their creation," that "Materials should not be proscribed or removed because of partisan or doctrinal disapproval," and that "Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment."

The act of expurgation denies access to the complete work and the entire spectrum of ideas that the work is intended to express. This is censorship. Expurgation based on the premise that certain portions of a work may be harmful to minors is equally a violation of the *Library Bill of Rights*.

Expurgation without permission from the rights holder may violate the copyright provisions of the United States Code.

The decision of rights holders to alter or expurgate future versions of a work does not impose a duty on librarians to alter or expurgate earlier versions of a work. Librarians should resist such requests in the interest of historical preservation and opposition to censorship. Furthermore, librarians oppose expurgation of resources available through licensed collections. Expurgation of any library resource imposes a restriction, without regard to the rights and desires of all library users, by limiting access to ideas and information.

Adopted February 2, 1973 by the ALA Council; amended July 1, 1981; January 10, 1990; July 2, 2008.

"Free Access to Libraries for Minors"

An Interpretation of the Library Bill of Rights

Library policies and procedures that effectively deny minors equal and equitable access to all library resources and services available to other users violate the Library Bill of Rights. The American Library Association opposes all attempts to restrict access to library services, materials, and facilities based on the age of library users.

Article V of the Library Bill of Rights states, "A person's right to use a library should not be denied or abridged because of origin, age, background, or views." The "right to use a library" includes free access to, and unrestricted use of, all the services, materials, and facilities the library has to offer. Every restriction on access to, and use of, library resources, based solely on the chronological age, educational level, literacy skills, or legal emancipation of users violates Article V.

Libraries are charged with the mission of providing services and developing resources to meet the diverse information needs and interests of the communities they serve. Services, materials, and facilities that fulfill the needs and interests of library users at different stages in their personal development are a necessary part of library resources. The needs and interests of each library user, and resources appropriate to meet those needs and interests, must be determined on an individual basis. Librarians cannot predict what resources will best fulfill the needs and interests of any individual user based on a single criterion such as chronological age, educational level, literacy skills, or legal emancipation. Equitable access to all library resources and services shall not be abridged through restrictive scheduling or use policies.

Libraries should not limit the selection and development of library resources simply because minors will have access to them. Institutional self-censorship diminishes the credibility of the library in the community, and restricts access for all library users.

Children and young adults unquestionably possess First Amendment rights, including the right to receive information through the library in print, nonprint, or digital format. Constitutionally protected speech cannot be suppressed solely to protect children or young adults from ideas or images a legislative body believes to be unsuitable for them. Librarians and library governing bodies should not resort to age restrictions in an effort to avoid actual or anticipated objections, because only a court of law can determine whether material is not constitutionally protected.

The mission, goals, and objectives of libraries cannot authorize librarians or library governing bodies to assume, abrogate, or overrule the rights and responsibilities of parents and guardians. As *Libraries: An American Value* states, "We affirm the responsibility and the right of all parents and guardians to guide their own children's use of the library and its resources and services." Librarians and library governing bodies cannot assume the role of parents or the functions of parental authority in the private relationship between parent and child. Librarians and governing bodies should maintain that only parents and guardians have the right and the responsibility to determine their children's—and only their children's—access to library resources. Parents and guardians who do not want their children to have access to specific library services, materials, or facilities should so advise their children.

Lack of access to information can be harmful to minors. Librarians and library governing bodies have a public and professional obligation to ensure that all members of the community they serve have free, equal, and equitable access to the entire range of library resources regardless of content, approach, format, or amount of detail. This principle of library service applies equally to all users, minors as well as adults. Librarians and library governing bodies must uphold this principle in order to provide adequate and effective service to minors.

See also Access to Resources and Services in the School Library Media Program and Access to Children and Young Adults to Nonprint Materials.

Adopted June 30, 1972, by the ALA Council; amended July 1, 1981; July 3, 1991; June 30, 2004; July 2, 2008.

(FTRF report. . . from page 178)

Provider (ISP) registration and account information. It further asserts that this privacy interest requires a police officer to secure a valid subpoena in order to obtain an individual's personally identifiable information from an ISP. I am pleased to report that the New Jersey Supreme Court upheld the court of appeals' decision on April 22, ruling that there is a reasonable expectation of privacy for anonymous internet use. FTRF partnered with the New Jersey Library Association, the ACLU of New Jersey, the Electronic Frontier Foundation, and Privacy Rights Clearinghouse to file an *amicus curiae* brief arguing for a right to privacy and anonymity in what one views on the Internet.

We also are proud of FTRF's ongoing support for "John Doe," a New York ISP who perseveres with a challenge to provisions of the USA PATRIOT Act that authorize the use of National Security Letters (NSLs). The provisions not only permit the FBI to compel the production of information without judicial review, but also impose an automatic, lifelong "gag order" on the NSL recipient. On March 17, FTRF joined with the American Library Association, AAP, ABFFE, the American Association of University Professors (AAUP) and PEN American Center in filing an *amicus* brief written by FTRF general counsel Theresa Chmara urging the U.S. Court of Appeals for the Second Circuit to uphold a lower court ruling that the NSL gag order is unconstitutional. In September 2007, a federal district court held the gag order to be a prior restraint of speech in violation of the First Amendment and also found that the statutory language "impermissibly ties the judiciary's hands," depriving the courts of the ability to conduct a proper judicial review, in violation of the constitutional separation of powers.

Identifying Issues, Planning for the Future

The Foundation hopes to assist the library community by identifying nascent intellectual freedom issues and suggesting strategies for addressing those issues before they become the subject of litigation. In developing this ongoing initiative, the Board looked at several hot topics, including the use of library meeting rooms by religious organizations and partisan community groups, the removal of content or links from publisher databases and from organizational websites because of objections raised about the nature of the materials, and the risks to privacy posed by the introduction of biometric technologies in libraries and the expanding use of video surveillance cameras in libraries. Jim Neal, chair of the ad hoc strategic planning committee, led our discussions and will work with his committee to suggest possible courses of action for FTRF.

2008 Roll of Honor Recipient Burton Joseph

I am pleased and honored to report that Burton Joseph, a prominent Chicago First Amendment attorney, received the 2008 Freedom to Read Foundation Roll of Honor Award at the Opening General Session. Joseph's First Amendment work began in the 1960s when he was a volunteer attorney in the historic defense of Henry Miller's *Tropic of Cancer*. In the intervening years, he has tried a number of landmark First Amendment cases, including *ABA* v. *Hudnut* and *ABA* v. *Virginia*, and was counsel for *American Library Association* v. *Reno*, the case that led the U.S. Supreme Court to strike down portions of the Communications Decency Act in 1997. He serves as counsel to the Comic Book Legal Defense Fund and special counsel to Playboy Enterprises.

He is also an active member and former chair of the Media Coalition, a First Amendment trade organization of which FTRF is a member; a cooperating attorney with the ACLU; and a founder of Chicago's Lawyers for the Creative Arts. Joseph has served several terms on the FTRF board, including a number of terms as vice president, a post to which he again was elected at Thursday's FTRF meeting. He currently is serving with Robert P. Doyle as cochair of the FTRF 40th Anniversary Celebration Committee. We are very proud to include Burton Joseph on the FTRF Roll of Honor.

Conable Scholarship

I am equally pleased to introduce you to the first recipient of the Conable Scholarship, Jason McGill, a student at the University of Rhode Island's Library and Information Studies Masters program. As this year's Conable Scholar, McGill attended various FTRF and other intellectual freedom meetings and programs at conference and consulted with two mentors, Candace Morgan and Barbara Jones. McGill will present a report to the FTRF Board about his experiences.

McGill holds a B.A. from Brown University and also is enrolled in URI's Masters program in English. His work experience includes positions with a number of non-profit organizations, including the Prisoners Literature Project; In-Sight, a closed-circuit radio station for the blind and visually impaired; and the Everett Dance Theatre in Providence.

The Conable Scholarship honors the memory of Gordon Conable, a past president of the Freedom to Read Foundation, an ALA Councilor, and a tireless champion of intellectual freedom. The Conable Scholarship provides financial assistance to a new librarian or library student who shows a particular interest in intellectual freedom and wishes to attend the ALA Annual Conference. Mentoring was an important undertaking for Gordon, and the board is pleased to be able to honor his memory in this way. If you would like to donate to the Conable Scholarship, please contact FTRF at ftrf@ala.org or (800) 545-2433 x4226.

40th Anniversary Celebration

In 2009, FTRF will mark its 40th year of service as the First Amendment legal defense arm of the American Library Association. As I reported to you at the Midwinter Meeting, Robert Doyle and Burton Joseph, who are chairing our ad hoc celebration committee, are engaged in planning a special observance for the 2009 Annual Conference designed to celebrate FTRF's past achievements while highlighting the ongoing struggle to preserve and protect First Amendment rights. We will announce details soon, and I hope you will plan to join the Foundation and its members in commemorating this important milestone.

Providing a Foundation

Members are the bedrock of the Freedom to Read Foundation, enabling FTRF to advocate and defend intellectual freedom both in the library and more broadly. Therefore, I am happy to report our gains in organizational members, representing many public libraries and academic libraries. Again, I want to thank FTRF Treasurer Jim Neal for his efforts in promoting our new organizational membership category and for helping to bring in nearly 100 new organizational members!

We need to stress, however, the continuing importance of individual members in carrying forward the Foundation's work. I strongly encourage all ALA Councilors to join me in becoming a personal member 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 (800) 545-2433, ext. 4226, or visit us online at www.ftrf.org/joinftrf.html to use our online donation form.

Addendum

Subsequent to delivery of the report, FTRF President Judith Platt reported on one additional case in which the Foundation has been involved:

Plame v. *McConnell*: In February 2008, FTRF joined in filing an *amicus* brief to the U.S. Court of Appeals for the Second Circuit urging reversal of a lower court ruling which forbids former CIA operative Valerie Plame Wilson from referring to the dates of her CIA employment in a recently published memoir. The government's redactions were made despite the fact that Ms. Wilson had received an unclassified letter from a CIA benefits official clearly spelling out the dates of her employment and that this letter was introduced at House hearings, published in the *Congressional Record*, and is widely available on the Internet. □

(Church committee. . . from page 182)

low the precedent of the Church Committee and investigate the origins of Bush's programs, going as far back as the Reagan administration.

The proposal has emerged in a political climate reminiscent of the Watergate era. The Church Committee was formed in 1975 in the wake of media reports about illegal spying against American antiwar activists and civil rights leaders, CIA assassination squads, and other dubious activities under Nixon and his predecessors. Chaired by Sen. Frank Church of Idaho, the committee interviewed more than eight hundred officials and held twenty-one public hearings. As a result of its work, Congress in 1978 passed the Foreign Intelligence Surveillance Act, which required warrants and court supervision for domestic wiretaps, and created intelligence oversight committees in the House and Senate.

So far, no lawmaker has openly endorsed a proposal for a new Church Committee–style investigation. A spokesman for Pelosi declined to say whether Pelosi herself would be in favor of a broader probe into U.S. intelligence. On the Senate side, the most logical supporters for a broader probe would be Democratic senators such as Patrick Leahy of Vermont and Russ Feingold of Wisconsin, who led the failed fight against the recent Bush-backed changes to FISA.

The Democrats' reticence on such action ultimately may be rooted in congressional complicity with the Bush administration's intelligence policies. Many of the war on terror programs, including the NSA's warrantless surveillance and the use of "enhanced interrogation techniques," were cleared with key congressional Democrats, including Pelosi, Senate Intelligence Committee chairman John D. Rockefeller, and former House Intelligence chairwoman Jane Harman, among others.

The discussions about a broad investigation were jump started among civil liberties advocates this spring, when it became clear that the Democrats didn't have the votes to oppose the Bush-backed bill updating FISA. The new legislation could prevent the full story of the NSA surveillance programs from ever being uncovered; it included retroactive immunity for telecommunications companies that may have violated FISA by collaborating with the NSA on warrantless wiretapping. Opponents of Bush's policies were further angered when Democratic leaders stripped from their competing FISA bill a provision that would have established a national commission to investigate post–9/11 surveillance programs.

The next president obviously would play a key role in any decision to investigate intelligence abuses. Sen. John McCain, the Republican candidate, is running as a champion of Bush's national security policies and would be unlikely to embrace an investigation that would, foremost, embarrass his own party. Some see a brighter prospect in Barack Obama, should he be elected. The plus with Obama, said the former Church Committee staffer, is that as a proponent of open government, he could order the executive branch to be more cooperative with Congress, rolling back the obsessive secrecy and stonewalling of the Bush White House. That could open the door to greater congressional scrutiny and oversight of the intelligence community, since the legislative branch lacked any real teeth under Bush.

But even that may be a lofty hope. "It may be the last thing a new president would want to do," said a participant in the ongoing discussions. Unfortunately, he said, "some people see the Church Committee ideas as a substitute for prosecutions that should already have happened." Reported in: salon.com, July 23. □

dateline. . . from page 186)

colleagues."

The letter said that the association is "enormously concerned" that Quataert was pressured to either "publicly retract" parts of his review or to leave the chairmanship of the institute. "The reputation and integrity of the ITS as a non-political institution funding scholarly projects that meet stringent academic criteria is blackened when there is government interference in an blatant disregard for the principle of academic freedom."

Suggestions that the institute does not uphold academic freedom are false, Cuthell said. "Has the Turkish government ever once ever tried to change any of our grants or activities? I can tell you flat out—they have not. They have never interfered in our grants or programs." Asked if the institute has ever supported any research that calls what happened to the Armenians genocide, Cuthell said he couldn't be sure, but "I doubt it."

But he said that wasn't because of censorship or pressure but because "the jury is out" on whether genocide took place. "There are a lot of people who are not qualified to do the work because they can't read the archival material," he said. "There is no archival material the Armenians can produce. There is no smoking gun," he said.

In fact, many historians say that one of the notable developments of recent years has been the emergence of such smoking guns as some scholars have been able to use Ottoman archives to document the role of various leaders in orchestrating the mass killings of Armenians. Notable among these works is *A Shameful Act: The Armenian Genocide and the Question of Turkish Responsibility*, by Taner Akcam of the University of Minnesota, and based

largely on Ottoman documents.

While Cuthell repeatedly said that Quataert and the Middle East Studies Association were all wrong about what had happened, he also indirectly confirmed some of what they have said. For example, Cuthell said that he did in fact tell Quataert that the ambassador wanted to talk to him about his article. Cuthell also confirmed that funding for the institute comes almost entirely from an endowment created by the Turkish government. Cuthell said that there was no threat that the funds could be taken away, so there was no way that Quataert could have feared for the center's survival. But Cuthell also confirmed that the endowment had been moved from the United States to Turkey—a move he said had led to growth in the funds.

None of this, he said, was proof that Quataert was pressured to leave. "Obviously there was concern" about the article Quataert wrote, Cuthell said. But all this was about was that "these are diplomats who wanted to have a conversation with Don." Reported in: insidehighered.com, July 1.

comic book

Houston, Texas

A popular Mexican comic book seen by some as racist will no longer be available at Wal-Mart. *Memin Pinguin*, a comic book that has sold millions on newsstands in Mexico and Latin America, features a character that is meant to be Cuban. But many feel the character plays to racist stereotypes.

"This is poking fun at the physical features of an entire people. Making them look buffoonish (and) portraying the young (black) kid as stupid," said local activist Quanell X. "Whenever they are beating him, they are referring to him as Negro. Even here when he is being punched, slapped (he is called) Negro. This is a disgrace."

Wal-Mart said they plan to take the comic book off their shelves immediately. In a statement the retailer said, "Wal-Mart received a customer complaint regarding the availability of the *Memin* book, based on a cartoon character popular in Mexico, and recently made available in Wal-Mart stores as part of a series of Spanish-language titles. Because we take customer concerns seriously, we have decided to no longer distribute this product in our stores and are in the process of removing existing copies from store shelves."

"Wal-Mart carries a wide array of products that reflect the wants and needs of Hispanic customers. And we understand that *Memin* is a popular figure in Mexico. However, given the sensitivity to the negative image *Memin* can portray to some, we felt that it was best to no longer carry the item in our stores. We apologize to those customers who may have been offended by the book's images," the statement read.

The serial was originally published in the 1960s, but was recently reissued and stocked at the retail chain.

This latest incident was not the first time the comic has stirred up controversy. The character spurred debate in 2005 when the Mexican government issued a stamp commemorating *Memin*. At the time, many U.S. activists and political figures called the character racist. The Mexican government protested the characterizations, asserting that Americans simply do not understand *Memin's* cultural significance in Mexico. Reported in: *Dallas Morning News*, July 9.

foreign

Canberra, Australia

A photograph of a nude six-year-old girl on the cover of a high-brow Australian art magazine sparked an uproar after Prime Minister Kevin Rudd called it disgusting, infuriating liberal art critics. The July issue of the taxpayer-funded *Art Monthly Australia* magazine placed the photograph of the young dark-haired girl on the cover, sitting and with one nipple showing, to protest censorship of a recent photo exhibition featuring similarly naked children.

"I can't stand this stuff," said Rudd, a staunch Christian whose centre-left Labor government won a sweeping victory over conservatives last year, in part on a vow to reinvigorate Australia's small but influential arts community. "We're talking about the innocence of little children here. A little child cannot answer for themselves about whether they wish to be depicted in this way," Rudd added, as officials said they would review the magazine's funding.

Magazine editor Maurice O'Riordan said he hoped the July edition of the monthly magazine would restore "dignity to the debate" about artistic depictions of children and anyone else. The magazine cover followed confiscation by police in May of photographs of a young girl taken by artist Bill Henson and briefly on display in a Sydney art gallery.

The cover photo, which had been on public exhibition in Australia for some time, was taken in 2003 by Melbourne photographer Polixeni Papapetrou and depicted her own daughter, Olympia Nelson, now aged 11.

The Australian Childhood Foundation said parents had no ethical right to consent to nude photographs being taken of their children, as it could have a psychological impact in later years. But Olympia and her father, art critic and professor Robert Nelson, defended the photo in a press conference outside their home in the southern city of Melbourne.

"I love the photo so much. I think that the picture my mum took of me had nothing to do with being abused, and I think nudity can be a part of art," Olympia said.

Rudd met with the leaders of Australia's six states and said he would forge a national child protection system following a spate of shocking cases of child neglect and abuse. Reported in: Reuters, July 7.

Jerusalem, Israel

In a scathing letter to Israel's defense minister, the leaders of six Israeli universities have denounced a military policy that prevents Palestinians from studying in Israel as a gross violation of academic freedom, the human-rights group Gisha reported. The policy, which Gisha has challenged in petitions to Israel's Supreme Court over the past two years, bars Palestinians from the West Bank and Gaza from entering Israel without permission from the army.

The letter was signed by rectors and deans of Ben Gurion University of the Negev, the Hebrew University of Jerusalem, Tel Aviv University, the University of Haifa, the Technion-Israel Institute of Technology, and the Weizmann Institute of Science.

Meanwhile, five Israeli professors requested that the Supreme Court allow them to join Gisha's latest petition, the organization said. One of the professors, Moshe Ron of the Hebrew University, wrote to the court that the policy, if unchanged, "will help those who are trying to impose an academic boycott on Israel and will severely harm Israel's academic standing in the world, especially in Europe."

The military ended an outright ban on allowing Palestinian students into Israel in response to a 2006 request from the court, but the human-rights group maintains that the new restrictions are even harsher, leaving many students in limbo. Last month, the court again asked the military to reconsider its policy. Reported in: insidehighered.com, July 29.

Amsterdam, The Netherlands

It could have been a scene from a frightening thriller. Or, on second thought, from a satirical cartoon. An armed government team, including a half-dozen police officers and several prosecutors, raids the home of a mysterious artist who goes by a pseudonym, inspires zeal, and tackles political themes. They arrest the man and confiscate his computer, telephone, various DVDs, and other materials.

A terrorism suspect?

No, the man arrested May 13 in the Dutch city of Amsterdam was Gregorius Nekschot, a cartoonist. And his alleged crime was making drawings that some people found offensive.

Nekschot's arrest and thirty-hour detention were the latest battle in the war over freedom of expression in the West. On one side stand those who argue that freedom of expression does not confer a blanket permission to say, write, or draw words or pictures offensive to certain religious groups. The other side says that with actions like the one in the Netherlands, governments are sacrificing a fundamental right of a democracy and forcing citizens to censor themselves. They see in these government moves preventive surrender to violent and intolerant extremists whose views threaten the very concept of liberal democracy.

Nekschot is a provocateur. He says he took his first name, Gregorius, from the Roman Catholic pope who instituted the Inquisition, and Nekschot, which means "shot in neck," from a favorite execution method of fascists. His cartoons, which appear mostly on his own website, target extremists of all stripes, but most frequently Muslims. Nekschot also has mocked what he sees as the hypocrisy of Dutch politicians and the rigid views of Christian fundamentalists.

His arrest came three years after a complaint was filed against his work. The government says it took that long to track him down. It now alleges that eight of Nekschot's cartoons, since removed from the website, may violate the country's laws against discrimination and incitement to violence.

The case reportedly started in 2005 when Abdul Jabbar van de Ven, a convert to Islam who eventually became an imam, complained about the cartoons. Van de Ven had expressed happiness at the assassination of Dutch filmmaker Theo van Gogh by a Muslim extremist, and declared a wish for the death of another Dutch politician deemed anti-Islam. To critics, the decision to go after Nekschot for his cartoons and not Van de Ven for his statements offered proof that the government is headed in the wrong direction.

In the aftermath of Nekschot's detention, authorities revealed that the Dutch secret service has established a branch dedicated solely to examining cartoons published in the Netherlands. Presumably, the Dutch want to prevent the ugly riots that followed the September 2005 publication of Danish cartoons depicting the Prophet Muhammad. Just this month, a suicide bombing targeting the Danish Embassy in Pakistan killed at least six people.

Efforts to prevent trouble with short-fused zealots, however, go far beyond cartoons. Last December, a museum in The Hague canceled an exhibit by an Iranian artist who uses the pseudonym Sooreh Hera because, as the museum director explained, the works "elicit too many reactions

from people who are offended." Hera expressed astonishment at finding such obstacles in the West after leaving Iran. According to the daily *De Telegraaf*, the Dutch town of Huizen removed from City Hall abstract paintings vaguely depicting nude women "because of a request from a Muslim gentleman."

Limiting artistic expression to prevent outbreaks of violence is hardly unique to the Netherlands. In a well-publicized case, the Berlin Opera canceled the performance of Mozart's "Idomeneo" in 2006 after police warned that the staging could pose "incalculable risk." The opera included a scene in which Idomeneo, the king of Crete, carries the heads of Jesus, Buddha, Muhammad, and Poseidon, and places each on a stool.

The outcry over the cancellation reached all the way to Chancellor Angela Merkel, who said self-censorship "does not help us against people who want to practice violence in the name of Islam." The opera was eventually staged without incident.

One of the most significant victories for those who would limit freedoms came at the UN Human Rights Commission. In a stunning move, the agency earlier this year adopted a resolution ordering its expert on freedom of expression to guard against "abuses of the right of freedom of expression." The resolution was sponsored by the African Group and the Islamic Group, whose members routinely rank as "Not Free" in the analysis of watchdog group Freedom House.

European laws tend to be less absolute than the U.S. Constitution on the issue of freedom of speech. Europe also has a much larger population of activist Muslims, which means Europe will continue to see a tug of war between proponents of mutually exclusive views on freedom of expression. The case of Nekschot has spurred angry debates in the Dutch parliament, with loud expressions of opposition to the government's actions. Still, the case remains under investigation. Reported in: *Chicago Tribune*, June 29. □

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from the bench. . . from page 192)

to the convention site in comparison with past Democratic and Republican conventions, despite the restrictions.

Teresa Nelson, legal counsel to the ACLU in Minnesota, said no decision has been made on appealing the decision. She said the protest groups and ACLU were "very disappointed" that Erickson appeared to take the city's concerns "at face value." By restricting the timing and route of the parade, the groups are worried the city might risk the safety of the event. Nelson also said the judge's comparisons to actions at other conventions missed the point, in that Erickson should have merely considered whether the city's restrictions on the First Amendment were necessary in St. Paul. Reported in: *The Hill*, July 17.

libel

Ithaca, New York

A federal judge has dismissed a $1 million lawsuit filed by a Cornell University alumnus who claimed that the school libeled him in a 1983 *Cornell Chronicle* article reporting that he had been charged with third-degree burglary when he was a student. Back issues of the *Chronicle*, a newspaper published by the university's press office, are being digitized by the campus library.

Kevin Vanginderen, now a California lawyer, found the article through a Google search. After the school refused his request to remove the story, Vanginderen filed a suit claiming that the report was false and that its distribution on the internet caused "loss of reputation" and "mental anguish." He argued that making the article available on the Internet constituted republication, thus overriding the statute of limitations for filing charges.

However, Judge Barry Ted Moskowitz of the U.S. District Court for the Southern District of California granted the university's motion for dismissal June 3 under the state's "anti-SLAPP" statute barring "strategic lawsuits against public participation." Moskowitz noted that "the article . . . concerns a matter of public interest," and that "the truthful reporting of information in public official records regarding criminal proceedings against an individual [is] protected by the First Amendment regardless of whether the reporting is concurrent with the criminal proceedings or years later."

"I feel that this is a real victory for the library in terms of being able to make documentary material accessible," said University Librarian Anne Kenney. "I do share concerns that individuals might have about potentially embarrassing material being made accessible via the internet, but I don't think you can go back and distort the public record."

Moskowitz did not address the question of whether making older information available online constitutes republication. "It would be disastrous if every time we scan something, we had to take the same editorial responsibility as the initial publisher," Cornell Library Archivist Peter Hirtle said. "It reaffirms the important role libraries can play in promoting free speech and providing ready public access to information on the activities of government."

A second suit filed by Vanginderen, for $10 million, remains pending. In it, he claims that by submitting the original report and evidence of his arrest in open court, Cornell once again republished the information. Reported in: *American Libraries* online, June 13. □

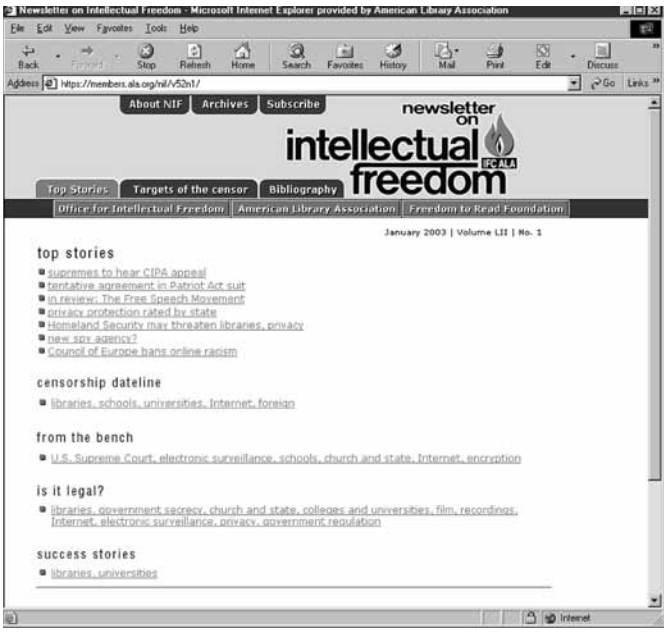
log on to

newsletter on intellectual freedom *online*

The Newsletter on Intellectual Freedom (NIF)—the only journal that reports attempts to remove materials from school and library shelves across the country—is *the* source for the latest information on intellectual freedom issues. *NIF* is **now available** both **online** and in **print!**

To celebrate the launch of the online version, for this first year only, a $50 subscription will entitle new and renewing subscribers to **both** the online and print editions.

The online version is available at www.ala.org/nif/. The *NIF* home page contains information on accessing the *Newsletter*, and links to technical support, an online subscription form, and the Office for Intellectual Freedom.



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intellectual freedom bibliography

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