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Sanders introduces freedom to read protection act

Rep. Bernie Sanders (I-VT) introduced the "Freedom to Read Protection Act"—HR 1157—on March 6. HR 1157 would return the standards for the FBI to obtain FISA court orders and warrants to investigate library patrons and bookstore customers to those in force before passage of the PATRIOT. Under Sanders's bill, the FBI would still have access to these records with a court-ordered search warrant, but some type of reasonable cause would be required, not the lower standard created by the USA PATRIOT Act.

HR 1157 also calls for public reporting to determine how provisions of the USA PATRIOT Act are being implemented, in order to better assess civil liberties implications.

At a March 6 press conference, Sanders said: "Under Section 215 of the USA Patriot Act, the person whose records are being searched by the FBI can be anyone. The FBI doesn't even have to say that it believes the person is involved in criminal activity or that the person is connected to a foreign power. This is not acceptable. The legislation we are introducing today will go a long away in protecting the basic freedoms of every American."

Three of the bill's cosponsors also spoke at the press event. Reps. Peter DeFazio (D-OR), Sheila Jackson-Lee (D-TX) and Raul M.

Grijalva (D-AZ) each spoke about the civil liberties issues and privacy problems caused by the expanded FBI law enforcement powers created by the USA PATRIOT Act. Rep. Grijalva, whose wife is a librarian and whose daughter is a library school student, said that the chilling effect on library users and the other privacy problems raised by certain provisions of the USA PATRIOT Act, shake the "soul and essence of civil liberties." As the Newsletter went to press, fifty-eight Democrats and five Republicans—Representatives Ron Paul of Texas, C.L. Otter of Idaho, Donald Manzullo of Illinois, Jeff Flake of Arizona, and Roscoe Bartlett of Maryland—have cosponsored the bill.

Trina Magi, past president of the Vermont Library Association and an instrumental leader in getting thirteen towns in Vermont to pass civil liberties resolutions about the USA PATRIOT Act, also spoke. "These provisions…already existed prior to the [PATRIOT] Act . . . and required probable cause and judicial oversight. Now the USA

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Nancy C. Kranich, Chair*

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corporatization constricting radio

Music played a crucial role in the national debate over the Vietnam War. By the late 1960's, radio stations across the country were crackling with blatantly political songs that became mainstream hits. After the National Guard killed four antiwar demonstrators at Kent State University in Ohio in the spring of 1970, Crosby, Stills, Nash and

Young recorded a song, simply titled "Ohio," about the horror of the event, criticizing President Richard Nixon by name. The song was rushed onto the air while sentiment was still high, and became both an antiwar anthem and a huge moneymaker.

A comparable song about George W. Bush's rush to war in Iraq would have no chance at all today. There are plenty of angry people, many with prime music-buying demographics. But independent radio stations that once would have played edgy, political music have been gobbled up by corporations that control hundreds of stations and have no wish to rock the boat. Corporate ownership has changed what gets played and who plays it. With a few exceptions, the disc jockeys who once existed to discover provocative new music have long since been put out to pasture. Stations now operate from play lists dictated by Corporate Central—lists that some describe as "wallpaper music."

Recording artists were seen as hysterics when they complained during the 1990's that radio was killing popular music by playing too little of it. But musicians have turned out to be the canaries in the coal mine—the first group to be affected by the 1996 Telecommunications Act that allowed corporations to gobble up hundreds of stations, limiting expression over airwaves that are merely licensed to broadcasters but owned by the American public.

When a media giant swallows a station, it typically fires the staff and pipes in music along with something that resembles news via satellite. To make the local public think that things have remained the same, the voice track system sometimes includes references to local matters sprinkled into the broadcast.

What William Safire has described as the "ruination of independent radio" started with corporatizing in the 1980's but took off dramatically when the 1996 law increased the number of stations that one entity could own in a single market and permitted companies to buy up as many stations nationally as their deep pockets would allow.

Under the old rules, the top two owners had 115 stations between them. Today, the top two own more than 1,400 stations. In many major markets, a few corporations control 80 percent of the listenership or more.

Liberal Democrats are horrified by the legion of conservative talk show hosts who dominate the airwaves. But the problem stretches across party lines. Representative Mark Foley, Republican of Florida, was finding it difficult to reach his constituents over the air since national radio companies moved in, reducing the number of local stations from five to one. Senator Byron Dorgan, Democrat of North Dakota, had a potential disaster in his district when a freight train carrying anhydrous ammonia derailed, releasing a deadly cloud over the city of Minot. When the emergency alert system failed, the police called the town radio stations, six of which are owned by the corporate giant Clear Channel. According to news accounts, no one answered the phone at the stations for more than an hour and a half. Three hundred people were hospitalized, some partially blinded by the ammonia. Pets and livestock were killed.

The perils of consolidation can be seen clearly in the music world. Different stations play formats labeled "adult contemporary," "active rock," "contemporary hit radio" and so on. But studies show that the formats are often different in name only—and that as many as fifty percent of the songs played in one format can be found in other formats as well. The point of these sterile play lists is to continually repeat songs that challenge nothing and no one, blending in large blocks of commercials.

Senator Russell Feingold of Wisconsin has introduced a bill that would require close scrutiny of mergers that could potentially put the majority of the country's radio stations in a single corporation's hands. Testimony offered in support of the legislation by singer and songwriter Don Henley, best known as a member of the Eagles, the rock band, recalled the Congressional payola hearings of 1959–60, which showed the public how disc jockeys were accepting bribes to spin records on the air. Now, Henley said, record companies must pay large sums to "independent promoters," who intercede with radio conglomerates to get songs on the air. Those fees, Henley said, sometimes reach $400,000. Reported in: *New York Times*, February 20. ☐

scholars' group warns of increasing threats to academic freedom

The climate for academic freedom has worsened severely since September 11 because of a mix of new government policies and decisions by university administrators, the American Studies Association said in a statement released in early February. The group cited restrictions on scholarly research and intimidation of students who protest a potential war in Iraq as evidence of an environment restricting free speech on American college campuses.

Amy Kaplan, president-elect of the association and an English professor at the University of Pennsylvania, said the group had been discussing the issue since the fall and had released the statement in the hope that academics and students will "work to keep intelligent debate open and alive."

"There's a danger in equating the questioning of the administration with being un-American and antipatriotic," Kaplan said.

The statement, “Intellectual Freedom in a Time of War,” warns that legislation such as the USA PATRIOT Act, which gives law-enforcement officials more tools and authority to track suspected terrorists, and Immigration and Naturalization Service rules that require colleges to track all of their international students, endanger the intellectual freedom inherent in a democracy. The association argues that such laws and federal rules impede scholarly endeavors and intimidate many international students, especially those of Middle Eastern descent.

“Free and frank intellectual inquiry is under assault by overt legislative acts and by a chilling effect of secrecy and intimidation in the government, media, and on college campuses,” the statement says. “This atmosphere hinders our ability to fulfill our role as educators: to promote public debate, conduct scholarly research, and most importantly, teach our students to think freely and critically and to explore diverse perspectives.”

Glenn Ricketts of the National Association of Scholars argued that the statement failed to cite specific instances of ideological suppression. He called the American-studies group’s response to antiterror-related legislation affecting colleges as a “kind of knee-jerk charge of McCarthyism.” He also called on faculty members who agree with the association’s statement to engage in “rigorous debate” in their campus communities instead of “name calling.”

“It seems like these people don’t like criticism,” Ricketts said. “They respond by branding their critics as McCarthyites.”

The American Studies Association’s statement also criticizes Campus Watch, an online project sponsored by the Middle East Forum, a pro-Israel research organization based in Philadelphia. The association’s statement says that Campus Watch equates “criticism of the government with being anti-American and anti-patriotic.” Campus Watch has been accused of publishing lists of faculty members and students who are critical of U.S. foreign policy, although officials of the Middle East Forum deny doing that. Reported in: *Chronicle of Higher Education* (online), February 7. □

editors and scientists call for caution in publishing research

Thirty-two journal editors and biologists released a statement February 15 that calls for greater caution in reviewing and publishing scientific results that could be misused or dangerous. The group released its statement at the annual meeting of the American Association for the Advancement of Science.

The question of when and how to publish scholarly information that could be used by terrorists or others seeking to do harm has intensified since the September 11 attacks and the anthrax attacks that followed. Some government officials have threatened to impose restrictions, and scientists and publishers have discussed crafting their own approaches, in part to ward off such intervention. The statement is one such effort. The statement says that some information is unethical to publish, but it does not define what experiments or facts would fall into that category.

“This is a truly gray area,” said Ronald M. Atlas, who presented the statement at the conference. Atlas is president of the American Society for Microbiology and a professor of biology and dean of the graduate school at the University of Louisville.

“We’re not proposing something radical,” added Atlas. Instead, the editors and researchers call on journal editors to consider how publishing can affect security, and to begin educating scientists about the potential societal impacts of their work. When editors conclude that papers may result in greater harm than benefit to society, the reports of such studies should be modified or not published, the statement says.

The microbiology society has already modified two papers that caused concern during review, Atlas said. In one, editors reworded introductory statements that had called attention to the dangers posed by the topic of the paper. In the other, they deleted a section that had contained what Atlas called “cookbook detail,” giving instructions on how to make a hazardous agent more dangerous.

Some journals, including those published by the microbiology society, have already established procedures for finding problematic papers, and those procedures could serve as models for journals just beginning to grapple with security issues. The microbiology society’s eleven journals ask peer reviewers to alert editors to possibly dangerous papers, and urge editors to contact the society’s publications board if they need further guidance.

Some journals, such as *Science* and the *Proceedings of the National Academy of Sciences*, have recruited security experts with whom they can consult, if necessary.

John D. Steinbruner, a professor of public policy at the University of Maryland at College Park, called the editors and scientists’ statement “a very, very important development,” adding that it is “the first step in trying to exercise prudential judgment.” To ensure that publication does not endanger security, he said, a review process that looks at social implications of scientific work is necessary. “That process does not yet exist,” he said.

John H. Marburger, III, director of the White House Office of Science and Technology Policy, expressed support for the editors’ efforts. In a prepared statement, he said, “This step provides assurance that the publishers are alert to the possibility that terrorists might exploit research results, and are prepared to take action.” Reported in: *Chronicle of Higher Education* (online), February 17. □

Resolution on the USA PATRIOT Act and Related Measures That Infringe on the Rights of Library Users

The following resolution was approved by the ALA Council at its Midwinter Meeting in Philadelphia on January 29.

WHEREAS, The American Library Association affirms the responsibility of the leaders of the United States to protect and preserve the freedoms that are the foundation of our democracy; and

WHEREAS, Libraries are a critical force for promoting the free flow and unimpeded distribution of knowledge and information for individuals, institutions, and communities; and

WHEREAS, The American Library Association holds that suppression of ideas undermines a democratic society; and

WHEREAS, Privacy is essential to the exercise of free speech, free thought, and free association; and, in a library, the subject of users' interests should not be examined or scrutinized by others; and

WHEREAS, Certain provisions of the USA PATRIOT Act, the revised Attorney General Guidelines to the Federal Bureau of Investigation, and other related measures expand the authority of the federal government to investigate citizens and non-citizens, to engage in surveillance, and to threaten civil rights and liberties guaranteed under the United States Constitution and Bill of Rights; and

WHEREAS, The USA PATRIOT Act and other recently enacted laws, regulations, and guidelines increase the likelihood that the activities of library users, including their use of computers to browse the Web or access e-mail, may be under government surveillance without their knowledge or consent; now, therefore, be it

RESOLVED, That the American Library Association opposes any use of governmental power to suppress the free and open exchange of knowledge and information or to intimidate individuals exercising free inquiry; and, be it further

RESOLVED, That the American Library Association encourages all librarians, library administrators, library governing bodies, and library advocates to educate their users, staff, and communities about the process for compliance with the USA PATRIOT Act and other related measures and about the dangers to individual privacy and the confidentiality of library records resulting from those measures; and, be it further

RESOLVED, That the American Library Association urges librarians everywhere to defend and support user privacy and free and open access to knowledge and information; and, be it further

RESOLVED, That the American Library Association will work with other organizations, as appropriate, to protect the rights of inquiry and free expression; and, be it further

RESOLVED, That the American Library Association will take actions as appropriate to obtain and publicize information about the surveillance of libraries and library users by law enforcement agencies and to assess the impact on library users and their communities; and, be it further

RESOLVED, That the American Library Association urges all libraries to adopt and implement patron privacy and record retention policies that affirm that "the collection of personally identifiable information should only be a matter of routine or policy when necessary for the fulfillment of the mission of the library" (ALA Privacy: An Interpretation of the Library Bill of Rights); and, be it further

RESOLVED, That the American Library Association considers sections of the USA PATRIOT Act are a present danger to the constitutional rights and privacy rights of library users and urges the United States Congress to: (1) provide active oversight of the implementation of the USA PATRIOT Act and other related measures, and the revised Attorney General Guidelines to the Federal Bureau of Investigation; (2) hold hearings to determine the extent of the surveillance on library users and their communities; and (3) amend or change the sections of these laws and the guidelines that threaten or abridge the rights of inquiry and free expression; and, be it further

RESOLVED, That this resolution be forwarded to the President of the United States, to the Attorney General of the United States, to Members of both Houses of Congress, to the library community, and to others as appropriate. □

libraries warn of FBI spying

Several libraries in California have begun to warn book lovers that the U.S. government may be monitoring their reading habits in a sweeping effort to crack down on terrorism. "It's only been recently that people have become aware just how pernicious it is," said Anne Turner, director of libraries in Santa Cruz, a coastal city south of San Francisco. She added: "Our board decided to take a public stand" and posted warnings at its branches as of Friday [March 7].

President Bush signed sweeping anti-terror legislation, the USA PATRIOT Act, into law in October 2001 in reaction to the September 11 attacks. Section 215 allows the FBI, with search warrants, to go into libraries and bookstores and demand circulation records or receipts of anyone connected to an investigation of spying or international terrorism.

Libraries and library associations across the country have complained about the new rules for some time and one, at least, had started posting warnings at its branches. "Warning: Although the Santa Cruz Library makes every effort to protect your privacy, under the federal USA PATRIOT Act (Public Law 107–56), records of the books and other materials you borrow from this library may be obtained by federal agents," the Santa Cruz warning reads. "That federal law prohibits library workers from informing you if federal agents have obtained records about you."

Turner said she knew of no incidents where the FBI sought records at her ten libraries over the past year. But a

recent study found that FBI agents had visited 85 academic libraries.

The FBI measures also have spurred criticism abroad, and earlier this year, Europe's largest security and human rights watchdog, the OSCE, criticized the United States for spying on book buyers and library patrons.

Judith Krug, director of ALA's Office for Intellectual Freedom, said she opposed posting signs in libraries because such warnings could undermine the belief that people have a right to privacy. "My concern with posting signs is that you can terminate the user's expectation that what they read in libraries is protected by statute," she said. "I think there are more effective ways [than signs] to raise awareness about the need to change this particular section of the PATRIOT Act changed." Reported in: Reuters, March 11. ☐

Vatican supports Harry Potter

Harry Potter gained the Vatican's seal of approval February 3 when an official said the books helped children "to see the difference between good and evil."

"I don't think there's anyone in this room who grew up without fairies, magic and angels in their imaginary world," Father Peter Fleetwood told reporters.

Some religious groups have accused the books of glamorizing magic and the occult. Fleetwood was answering questions following the release of a 92-page Vatican document which examines the growing—and for the Church, troubling—appeal of New Age religions and practices. These may include strands of various religions, including worship of nature, cosmic religiosity, pagan rituals and beliefs, astrology, and alternative health practices.

In the unusually self-critical study, the Vatican admits that the "immense" popularity of the New Age movement suggests the Catholic Church does not always provide the answers to today's spiritual questions. "The success of New Age offers the Church a challenge," the document states. "People feel the Christian religion no longer offers them—or perhaps never gave them—something they really need."

Criticisms of New Age beliefs contained in the document do not, it seems, apply to the magical practices described in the Harry Potter series of adventure stories. Magicians and witches, Father Peter said, "are not bad or a banner for anti-Christian ideology." He said British author J. K. Rowling was "Christian by conviction, is Christian in her mode of living, even in her way of writing." Reported in: BBC News, February 3. ☐

Al-Jazeera wins anti-censorship award

Al-Jazeera, the Arab TV satellite channel whose war coverage has angered the U.S., has been awarded a prestigious prize for upholding freedom of expression. The Qatar-based channel won the award for the best circumvention of censorship at *Index on Censorship*'s third annual Freedom of Expression Awards March 26.

"Al-Jazeera's apparent independence in a region where much of the media is state run has transformed it into the most popular station in the Middle East," said the panel of judges. "Its willingness to give opposition groups a high-profile platform has left it with a reputation for credible news among Arab viewers. But that same quality has enraged Arab governments and the U.S.—which have sought to have the station more closely controlled."

The executive director of al-Jazeera's London bureau, Muftah Al Suwaidan, said the station was "proud" to receive the award from "such a prestigious organization, which has as its core concern the well being and the development of our profession, and the maintenance of professional integrity."

"Since its inception, al-Jazeera has been at the forefront of the struggle to maintain free, independent and balanced reporting," said Al Suwaidan. "Different people have different views but the common denominator should always remain the right of people to know and the freedom of all to express themselves."

Al-Jazeera caused a furor when it broadcast shocking images of Iraqi and American victims of the conflict, including pictures of captured U.S. soldiers and of the head of a child, aged about 12, that had been split apart, reportedly in the U.S.-led assault on Basra in southern Iraq. However, subscriptions to the Arabic language channel in Europe have doubled since the war began, indicating there is considerable demand for an alternative to western news channels. Reported in: *The Guardian*, March 27. ☐

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libraries

Cedarville, Arkansas

A dozen national groups and author Judy Blume asked a federal judge March 3 to return J. K. Rowling's Harry Potter books to the library shelves of a western Arkansas school district. The Cedarville school board voted to remove the books in June.

"It is incredible that school officials have censored books that are exciting a whole generation of kids about reading," said Chris Finan, president of the American Booksellers Foundation for Free Expression (ABFFE).

The Cedarville school board censored the Potter books when a parent complained that they show "that there are 'good witches' and 'good magic.'" She also claimed that the books teach that "parents/teachers/rules are stupid and are something to be ignored."

The books are kept on a restricted shelf. Students must have their parents' permission to borrow them. The school board ignored the recommendation of a committee of students, parents and librarians that voted 15-0 to continue to permit unrestricted access. In July, one of the parents on the committee joined his wife and son in filing a lawsuit that accused the school board of violating the First Amendment right to free speech and to receive information. Attorneys for the family submitted a motion for summary judgment, urging the judge to make a decision based on the facts that had been presented in documents submitted to the court. The national groups filed an *amicus* brief supporting the motion. The judge can either grant the request or order a hearing.

This is the first legal challenge to a restriction on the use of Harry Potter books in a public school. For the last four years, the Potter books have been the most frequently challenged books in the country. In addition to ABFFE and Judy Blume, the *amicus* brief was signed by the Freedom to Read Foundation, Americans United for Separation of Church and State, the Association of American Publishers, the Association of Booksellers for Children, the Center for First Amendment Rights, the Children's Book Council, Feminists for Free Expression, the National Coalition Against Censorship, Peacefire, PEN American Center, People for the American Way Foundation, the Student Press Law Center, and Washington Area Lawyers for the Arts.

Topeka, Kansas

A proposal to require that public libraries install computer filters to shield minors from Internet pornography would be costly and ineffective, opponents told a Kansas House committee March 11. The testimony before the state's Federal and State Affairs Committee came one day after proponents spoke for the measure. Among the supporters was a Topeka woman who said the Topeka-Shawnee County Public Library was not policing its computers and their use by minors.

Robert Banks, the Topeka library's deputy operations director, denied the woman's assertion. He said the library staff monitors the computer activities of children and adults and expels those who violate a posted policy on proper use.

"We have had people arrested in the past and will do so in the future," Banks said.

Some legislators agreed with opponents who said the bill was unnecessary. "It seems like the only problem—if there is a problem—is in Topeka," said Rep. Todd Novascone, R-Wichita. Novascone's observation was based on comments from representatives from Wichita, Dodge City, Alma and Pottawatomie County who said their libraries already had either Internet filters or policies on computer use or both.

Rosanne Goble, executive director of the Kansas Library Association, said Internet filters would cost $150 per computer and would take time and resources away from serving the public. Reported in: Associated Press, March 12.

schools

Dearborn, Michigan

There's no misunderstanding 16-year-old Bretton Barber's opinion of his nation's chief executive. "International Terrorist" were the words framing President Bush's picture on a black T-shirt the Dearborn High School junior wore to class on February 17. School officials told him to take it off, turn it inside out or go home. He went home. The next day he returned, with a different shirt. School officials

said they were worried about inflaming passions at the school, where a majority of students are Arab-American.

"I wore the T-shirt to express my antiwar sentiment," said Barber, a budding political advocate who joined the ACLU last year and had been to three antiwar demonstrations in the previous month. "In the morning, I got a lot of compliments and no negative feedback. But at lunch, the vice principal came and said I had to turn it inside out or go home. When I asked why, he said I couldn't wear a shirt that promotes terrorism."

Barber is steeped in civil liberties law, so his talk with the principal, Judith Coebly, revolved around the *Tinker* case, which dealt with students who wore black armbands to protest the Vietnam War. In that case, the court famously found that students did "not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," although educators may stop expression that substantially interferes with the functioning of a school.

"She immediately asked if I was familiar with the Supreme Court case, *Tinker* v. *Des Moines*," Barber said. "I said I was very familiar with it. She said it happened in 1969. And I said no, it happened in 1965, but it got decided in 1969. Then she quoted directly from the dissenting opinion, to say that the school has the right to control speech. I knew that wasn't how the case came out, but I didn't argue with her."

Bretton said he wanted to express his anti-war position by wearing the shirt, which he ordered on the Internet. "Bush has already killed over 1,000 people in Afghanistan—that's terrorism in itself," he said. He said he wore the shirt for a presentation he made that morning in English class. The assignment was a "compare and contrast" essay, and he chose to compare Bush with Saddam Hussein.

Dearborn Public Schools representative Dave Mustonen said students have the right to freedom of expression, but educators are sensitive to tensions caused by the conflict with Iraq. "It was felt that emotions are running very high," said Mustonen. "The shirt posed a potential disruption to the learning environment at the school. Our No. 1 obligation is to make sure we have a safe learning environment for all of the students."

About 55 percent of the district's 17,600 students are Arab-American. Imad Hamad of the American-Arab Anti-Discrimination Committee said officials took the right approach. Hamad said he hoped they would take it one step further and use the experience to educate students on how to exercise freedoms in positive ways.

"I see no winner here," Hamad said. "The school did the right thing to defuse any potential conflict among the student population. I assume they would do the same thing if another message was displayed that was offensive to a different culture."

Lindsey Hoganson, another 16-year-old junior, said students can handle discussions about today's political issues without passions rising. She disagreed with the school's decision to ban the shirt. "A lot of people are worried about the war. We talk about it at school a lot," she said. "Talking about it isn't going to disturb the learning environment, because the topic's already been brought up in school." Reported in: freedomforum.org, February 19; *New York Times*, February 26.

Cincinnati, Ohio

Paradise has been fatwa'ed in Cincinnati, at least according to the playwright Glyn O'Malley. His latest play, *Paradise* deals with suicide bombers and the conflict between Palestinians and Israelis. As a work in progress it was "killed before it was finished," he said.

Commissioned by the Cincinnati Playhouse in the Park, that city's principal institutional theater, the 50-minute play was to tour high schools beginning in March, but the tour was canceled after a protest by local Muslims. As a result, there has been a windstorm of controversy in Cincinnati. In response, the Cincinnati Playhouse scheduled a free public reading of the play. Ed Stern, the producing artistic director, announced that teachers, principals and leaders of Jewish and Muslim groups would be invited.

The play was inspired by the story of Ayat al-Akhras, an 18-year-old Palestinian suicide bomber who blew herself up last March in Jerusalem, killing three people, including herself and Rachel Levy, a 17-year-old Israeli. Both were high school seniors. Bert Goldstein, a director for the Cincinnati theater, had suggested the idea for the play to O'Malley, the author most recently of *Mama Love,* presented last year in Manhattan. After he submitted several scenes from *Paradise,* he was awarded the $5,000 Lazarus New Play Prize for Young Audiences.

In anticipation of possible criticism in dealing with such an incendiary subject, Stern presented an unrehearsed reading of the play December 16 for an invited audience: the playwright (who lives in New York); Stern and Goldstein, who was scheduled to direct the play; and several local people: Rabbi Robert B. Barr of Congregation Beth Adam; Elizabeth Frierson, a professor of Islamic history at the University of Cincinnati; and Majed Dabdoub, a structural engineer.

To the playwright's surprise, he said, Dabdoub was accompanied by ten other Muslims, and the discussion after the reading was filled with rancor. "It was hardly a debate," O'Malley said. "It was more like an attack, and I was the object of this fire. They said the play was worse than an F16 fighter-bomber in the damage that it would do and also that it was poison. The fact that I was called anti-Islam is very dangerous. People get killed for that."

"There was one man who said—chillingly—that suicide bombing was 'the same as "Give me liberty or give me death,"'" O'Malley continued. "To my mind there is nothing about adult men strapping bombs onto kids—male and female—and sending them off to kill themselves and murder others that resonates even remotely with Patrick Henry's now axiomatic saying about the American Revolution."

Rabbi Barr said the play was called racist and "a Zionist piece of propaganda." In an open letter he said that he had his own "issues with the play and was prepared to express them, but I was not prepared for the barrage of criticism that was heaped upon the author from the members of the Muslim community." He concluded: "Cincinnati's reputation as a community that tries to control the arts and allows bigots to dominate the discussion is accurate. Once again Cincinnati looks small, foolish and provincial."

In 1990 Dennis Barrie, the director of the Contemporary Arts Center in Cincinnati, was charged with obscenity for an exhibition of Robert Mapplethorpe photographs. The trial ended in Barrie's acquittal, but the city gained an image as a place that condoned censorship.

When he heard the reading of the play, Dabdoub said, it was as if "someone was slapping me in the face." He said the play was "one-sided, not balanced, not adequate to go to schools." One specific criticism was that before the Palestinian girl, named Fatima in the play, commits suicide, she put on a hijab, or headcovering. "The impression that leaves with the children is that when they see someone with a headcovering, then she is a terrorist," Dabdoub said. "I have two daughters, and they go to high school, and they wear headcoverings."

On the broader issue, he said: "Everybody is against suicide bombing. I can't imagine somebody blowing themselves up. When I see it on TV, I turn it off. Who is interested in seeing body parts? Why are we focusing on this? What is the message? To promote hatred? Are we trying to scare people in this country? We need to promote peace and not to promote war."

Humeidan, one of the other Muslims at the reading, said that it was a heated discussion. "People have very emotional ties to the Middle East," he said. "I felt that the concept of educating young people about the Middle East is very important. But the play had too many stereotypes and too many biases against the Palestinians in the version that was presented to us."'

The intention, O'Malley said, was to create "fictional characters driven by psychological, physical, emotional factors, not by religion." Through many drafts, he said, "I've worked to show the hard-line point of view from both sides of the conflict without justifying or condoning suicide bombing."

After the reading, Muslim representatives contacted the Human Relations Commission of Cincinnati and asked for a public hearing. The Muslims' "Fact Sheet on *Paradise*" said the play was hateful, deceitful, vengeful, spineless, and opportunistic: "It is based on a snapshot of history which does not tell the full story of crimes against Palestinians carried out by the Israeli government during the last 54 years of brutal occupation." The Human Relations Commission did not take any action and sent a message to Dabdoub saying, "We are not in the business of censorship."

Stern, who did not stay for the discussion after the reading, praised the play for giving "a human face" to what could be seen as a melodramatic situation. "People want heroes and villains," he said in a telephone interview last week. "Glyn created a human drama, with flawed human beings." Expressing his regret, he canceled the school tour. He said he was planning to have the public reading of the play "on our turf, under our control."

"We want to take works with social consciousness and resonance to students," he said. "I was naïve enough to think if we can do *Fires in the Mirror* [a play about Jewish-Black relations in Brooklyn by Anna Deveare Smit], we could do a play about the Palestinian situation."

In official statements, both the writers' group PEN and the Dramatists Guild of America deplored the cancellation of the play. Later, when Stern said he would give the play a public reading at the theater, representatives of PEN sent him a letter commending his decision.

"My play is about the extreme fundamentalist justifications on both sides for actions that are tearing up and killing people on both sides of the conflict in the Middle East," O'Malley said. "Real death. Real blood. Real loss. Real tragedy." In the play, the lives of the two girls (both 17 in this fictionalized version) are made parallel. Each has a dream of a career. Sarah, an Israeli who has spent the last three years in the United States, wants to be a photographer. Fatima is drawn to writing. There are three other characters: Sarah's mother, Fatima's cousin who wants her to join him in the United States and a Palestinian who helps strap the bomb on Fatima. "How many can I kill?" she asks, and adds, "I want you to put extra nails." She says she wants the maximum damage, "the most they have ever seen."

Both Dabdoub and Humeidan said they would have no objection to the play having a public reading at the playhouse, and if that were the case they would plan to see it again. "I don't have a problem with doing it in a theater," Dabdoub said. "It's a free country. The problem I have is to take it to schools. I'm not censoring anything. If I'm defending the rights of my children, is that extremist?" Reported in: *New York Times*, February 3.

Klein, Texas

Last October, Marla Dukler, a 17-year-old honor student, and sixteen other students at Klein High School asked the principal for permission to form a Gay-Straight Alliance, saying it would promote tolerance. In the months since then, neither the principal nor the school district in this affluent suburb north of Houston has given the students permission to form the club. Convinced that the school district is deliberately delaying a decision to prevent the club from being formed, Dukler and the American Civil Liberties Union sued the Klein Independent School District in Federal District Court in Houston, asking the court to order school officials to approve the club.

The lawsuit accuses the district of violating Dukler's First Amendment rights and the Equal Access Act, a federal law that bars schools from discriminating against clubs

based on the content of their speech. The suit was filed soon after the ACLU sued Boyd County High School in Kentucky, asking it to reinstate the Gay-Straight Alliance after the superintendent closed all clubs in the school. His decision to allow the club had set off large protests.

More than 1,200 Gay-Straight Alliances operate in high schools across the nation, but in conservative Harris County, some parents say they fear that a club in Klein High would promote homosexual sex. Dukler, who is on the varsity tennis team and on Klein High's state championship math team, denied that the club would promote sex.

"The club will be to talk about tolerance, to teach tolerance," she said. "It will try to make our school a little bit safer, try to make it bearable to walk down the hallway."

One day in December, she said, three boys sneaked up on her. "One shoved me into a wall of lockers, and the other two called me a dyke and a faggot. My leg was really bruised. There's verbal abuse everywhere." Her father, Malcolm Dukler, strongly supports her effort to start the club, saying, "The issue is the safety of our child."

David Feldman, the school district's lawyer, criticized the ACLU for filing the suit, saying, "Klein hasn't violated anything yet because no decision has been made on the club's application." Feldman said the district would announce a decision soon. He does not know, he said, whether the club will be approved. He said the public's feelings would not control the decision.

Lizbeth Johnson, the district's assistant superintendent for community relations, said many clubs, not just the Gay-Straight Alliance, were waiting for approval. "We've heard from more parents on this issue than on some other clubs," Johnson said. "We're getting responses both positive and negative."

District officials said the high school's principal, Pat Huff, would not comment, but Huff said earlier in January that he gave the Gay-Straight Alliance application to the superintendent "because of the controversial nature of the club" and because of the district's conservative population.

Huff said: "We're a little different than some of the other high schools maybe in the inner city that have allowed the club to go forward. It would be a different issue out here. I have to always be thinking about the people, our constituency."

David George, who is Dukler's lawyer and the president of the ACLU's Houston chapter, said the school district appeared to be trying to suppress an unpopular club. "The law doesn't say just because the average citizen of the school district is uncomfortable you get to ban it," George said. "The Equal Access Act is clear that students are allowed to have clubs, regardless of the viewpoint of the speech used. Klein High School is simply violating federal law."

While waiting for the court's decision, Dukler goes on with her life as a high school junior, studying for exams, playing in tennis matches and looking at colleges. She said she was heartened that 200 students had signed a petition supporting the club. Roughly 3,700 students attend Klein High. "I've spoken to people at other schools, and they told me there was harassment before the G.S.A. started," she said. "But when it got going and working, when these people spread the message about tolerance, a lot of the harassment stopped." Reported in: *New York Times*, February 2.

universities

Boston, Massachusetts

The alumni association at Tufts University has rescinded its decision to give a prestigious campus honor to a senior who participated in a noisy protest at a speech given by former President George H.W. Bush in February. The senior, Elizabeth Monnin, joined a group of students in protesting Bush at the annual Fares Lecture, which attracted a crowd of approximately 4,800, including prominent alumni and university trustees. Large crowds of students demonstrated outside the lecture hall, while inside, some students stood and turned their back on Bush, chanted over his words, blew whistles, and held up banners, including an American flag emblazoned with an obscenity.

Eventually security guards escorted out many of these students, including Monnin. It was at this point that witnesses say she flashed an obscene hand gesture at Bush. Monnin said that it was actually another student who made the gesture.

The incident sparked a heated debate on the campus about the appropriateness of the protest, and an open forum was held to discuss the lecture in greater detail. Meanwhile, the Tufts University Alumni Association decided not to give Monnin a Senior Award as planned. The award, which carries no monetary stipend, is given to a dozen seniors each year who display "academic achievement, wide participation in campus and community activities, outstanding qualities of leadership, and potential for future alumni leadership," according to Nancy A. Sardella, the university's assistant director for alumni relations.

Monnin, who is majoring both in women's studies and peace and justice studies, has made a name for herself on the campus as a political activist. She has worked with such campus organizations as the Tufts Feminist Alliance, Students for the Ethical Treatment of Animals, and Amnesty International. She was chosen as an Omidyar Scholar, which is a campus program supporting community-service work by students identified as leaders at the institution. She was also a finalist for the Wendell Phillips Award, which brings with it the honor of speaking at graduation.

According to Alan M. MacDougall, president of the alumni association, Monnin's behavior at the Fares Lecture was "distasteful and inappropriate."

“The award is given by the alumni association for qualities of leadership,” he said. “We felt strongly that one such quality is the ability to listen to the opinions of others. As a diverse association, including four generations of people from very diverse backgrounds, we have to be careful to listen to one another in order to get our work done. We felt she didn’t measure up to that standard.”

But Monnin sees the situation as one of censorship. “People in power don’t have to get out and rally to make their points,” she said. “They can do things like take an award away from a student who is making an argument they don’t support.” Reported in: *Chronicle of Higher Education* (online), March 25.

poetry

Washington, D.C.

The White House said January 29 that it had postponed a poetry symposium because of concerns that the event would be politicized. Some poets had said they wanted to protest military action against Iraq. The symposium on the poetry of Emily Dickinson, Langston Hughes and Walt Whitman was scheduled for February 12. No future date was announced.

“While Mrs. Bush respects the right of all Americans to express their opinions, she, too, has opinions and believes it would be inappropriate to turn a literary event into a political forum.’’ Noelia Rodriguez, spokeswoman for first lady Laura Bush, said.

Mrs. Bush, a former librarian who has made teaching and early childhood development her signature issues, has held a series of White House symposiums to salute America’s authors. The gatherings are usually lively affairs with discussions of literature and its societal impact. But the poetry symposium soon inspired a nationwide protest. Sam Hamill, a poet and founder of the highly regarded Copper Canyon Press, declined the invitation and e-mailed friends asking for anti-war poems or statements. He encouraged those who planned to attend to bring along anti-war poems.

Hamill said he received more than 1,500 contributions, including ones from poets W. S. Merwin, Adrienne Rich, and Lawrence Ferlinghetti.

“I’m putting in 18-hour days. I’m 60 and I’m tired, but it’s pretty wonderful,’’ said Hamill, based in Port Townsend, Washington, and author of such works as “Destination Zero’’ and “Gratitude.’’

Marilyn Nelson, Connecticut’s poet laureate, said that she had accepted the White House invitation and had planned to wear a silk scarf with peace signs that she commissioned. “I had decided to go because I felt my presence would promote peace,’’ she said. Reported in: Associated Press, January 30.

broadcasting

New York, New York

MTV refused to accept a commercial opposing war in Iraq, citing a policy against advocacy spots that it said protects the channel from having to run ads from any interest group whose cause may be loathsome. Nonetheless, viewers in New York and Los Angeles were able to see the rejected spot from Not in Our Name on MTV’s “Total Request Live” and “Direct Effect,” because its backers did an end-run around the channel by buying time on local cable providers.

Commercials for and against the war, with celebrities like Susan Sarandon, Janeane Garofalo and Fred Thompson, had been rejected by networks, cable channels and affiliates, before finding safer haven on regional cable operators like Time Warner Cable and Comcast. A commercial starring Martin Sheen, who plays the president of the United States on NBC’s *West Wing,* appeared in Washington and New York via local cable companies, without even trying any national buys.

The commercial rejected by MTV was directed by Barbara Kopple, winner of two Academy Awards for her documentaries. In the ad, young people speak to the camera about their opposition to a war, with scenes from recent antiwar marches interspersed through the spot. Although MTV included parts of the rejected commercial in one news segment on March 5, timed to coincide with youth protests, network executives said accepting money to show it would cross a line.

“The decision was made years ago that we don’t accept advocacy advertising because it really opens us up to accepting every point of view on every subject,” said Graham James, a spokesman at MTV in New York. (MTV also turned down an ad from the group True Majority that featured Garofalo.)

Most networks and cable channels share that view. For example, CNN, in accordance with its policy against advocacy ads related to regions in conflict, rejected ads from the governments of Saudi Arabia, Qatar and the United Arab Emirates, as well as a group trying to bolster support for Israel. But in times of crisis, when such policies block the plans of advocacy groups trying to influence events, the rules become more visible and the object of intense criticism.

“It is irresponsible for news organizations not to accept ads that are controversial on serious issues, assuming they are not scurrilous or in bad taste,” said Alex Jones, director of the Joan Shorenstein Center on the Press, Politics and Public Policy at Harvard. “In the world we live in, with the kind of media concentration we have, the only way that unpopular beliefs can be aired sometimes is if the monopoly vehicle agrees to accept an ad.”

Miles Solay, a youth representative of Not in Our Name, said, “From the very beginning, the antiwar movement has

had to buy some free speech." He added that even MTV's coverage of antiwar sentiment had not made up for what his group viewed as promotional segments on military life or an hourlong forum with Tony Blair, prime minister of Britain and President Bush's closest ally on Iraq. For the network to reject an anti-war spot when it routinely runs recruiting commercials for the military is inconsistent, Solay said.

"It's important for young people to be heard and have an outlet," Kopple said. She and the staff at her production company, Cabin Creek Center in New York, worked free to film and edit the spot.

Supporters of an invasion of Iraq have seen doors slammed on them as well. The Citizens United Foundation, a group that ran commercials in 1991 supporting the nomination of Clarence Thomas to the Supreme Court, made its own commercial supporting President Bush and a possible war in Iraq. Starring Fred Thompson, a former Republican Senator and an actor now appearing on *Law & Order,* the spot was produced to counter the celebrity factor of the Sheen spot and others from the antiwar camp.

When the group tried to buy commercial time during *Meet the Press* on the NBC affiliate in Washington, the affiliate declined, saying it had refused the Sheen commercial, and needed to be fair.

"It's wrong for them to reject Martin Sheen's ad and the Fred Thompson ad," said David N. Bossie, president of the Citizens United Foundation in Sterling, Virginia. "They should reserve their right to reject things," he added, "but they should not reject everything, just to protect themselves from having to make hard decisions."

Broadcast operations with blanket no-advocacy policies include CBS, ABC, NBC, and Fox Broadcasting, along with cable channels like CNN and MTV, a Viacom subsidiary. The policy at CBS protects the integrity of its news department, the public discourse and local sensibilities around the country, said Martin Franks, executive vice president. He added that local affiliates were free to accept such ads if they deemed them inoffensive to the community.

"How could you take an advocacy ad and have it reflect the values of the entire nation?" he asked. "On the CBS television network," he added, "we think that informed discussion comes from our news programming."

Fox News, a News Corporation sibling of Fox Broadcasting, said it reserved some flexibility in its decision making. "We evaluate everything on a case-by-case basis," said Kevin Brown, vice president for Eastern sales. Controversial commercials must be checked for accuracy and any legal liability they might create for Fox, he said.

Advocacy groups, however, have discovered one benefit of having their ads blocked: they often get news coverage for their causes by holding news conferences to denounce the rejection of their commercials. And Sen. Thompson was even invited onto *Meet the Press,* where the ad was shown in its entirety and he got to argue in favor of war in Iraq.

But the flurry of free news coverage is just a consolation prize, said Jones of the Shorenstein Center. "That's a game of very highly diminishing returns. Maybe that happens for a couple of days, and then it goes away." Reported in: *New York Times*, March 13.

t-shirt

Guilderland, New York

A father-and-son outing to a local shopping mall March 3 touched off a furor over freedom of expression stemming from the father's refusal to take off a T-shirt emblazoned with the words "Peace on Earth." Stephen Downs, 60, a lawyer who works for the state, and his son Roger, 31, said they went to Crossgates Mall to pick up the custom-made T-shirts at a store. The elder Downs also had the words "Give Peace a Chance" printed on the back of his shirt. His son's shirt read "No War with Iraq" and "Let Inspections Work."

They said they decided to wear the T-shirts over their turtlenecks, and headed to the food court to have dinner. Soon afterward, they said, security guards approached them while they were eating and requested that they take off the shirts. His son complied, but Downs did not. "I didn't think I had to," Stephen Downs said. "It seemed to me my First Amendment rights permitted me to wear the T-shirt." He was arrested by the local police and charged with trespassing.

Roger Downs said that his father, while not the type to join protests or demonstrations, felt strongly that individuals should be able to express themselves. "And his message was peace. I mean, 'Peace on Earth,' that's more of a Christmas card than an anti-war slogan."

Tim Kelley, director of operations for Pyramid Mall Management, which owns Crossgates Mall, said that security guards were responding to a complaint about Downs and his son. "The individuals were approached by security because of their actions and interference with other shoppers," he wrote. "Their behavior, coupled with their clothing, to express to others their personal views on world affairs were disruptive of customers."

But Kelley did not elaborate on who made the complaint, or what the disruptive behavior was. The Guilderland police chief, James Murley, said that the mall's management called him and asked if the trespassing charge could be withdrawn. He said that his officer did not want to arrest Downs and spent more than an hour trying to broker a truce between the two sides, even reading aloud from a section of the law on trespassing. "We could care less about what people are wearing—really, it's not our rules," he said. "But we are sworn to uphold the law." Officers arrested Downs only because he refused to leave private property when asked, Chief Murley said.

Roger Downs denied that he and his father had acted in a disruptive manner, saying that they did not pass out any fliers and spoke only to two people who approached them to compliment them on their T-shirts. "In this time when your voice seems to mean very little, this is a nice, quiet, passive

way of expressing yourself," he said.

News of the arrest struck a chord of outrage among antiwar demonstrators and civil libertarians. Soon, more than 150 people wearing T-shirts with antiwar slogans converged on Crossgates Mall to show support for Downs. The organizers said that one man was punched by a bystander who shouted, "Remember 9/11." No arrests were reported.

Though shopping malls are public gathering places, federal and state courts have ruled that they are privately owned companies that have a legal right to remove people who are disrupting their business. In recent years, some malls have prohibited outside activities, ranging from political candidates handing out fliers to reporters interviewing customers. Crossgates Mall has come under criticism in recent months after local news organizations reported that people displaying antiwar messages on their clothing were asked to leave the premises.

Arthur Eisenberg, the legal director of the New York Civil Liberties Union, called Downs's arrest an example of a shopping mall trying to censor the free-speech rights of its patrons. "We wonder where such censorship will end," he said. "Will the mall start prohibiting customers from wearing political buttons? Will it prohibit Sikhs from wearing turbans? The ultimate point is that we are a diverse society in which individuals hold diverse views."

Downs's arrest quickly led to hundreds of interview requests from the likes of Connie Chung, Bill O'Reilly, the BBC and News Australia. "I'm completely an accidental symbol," said Downs, a 60-year-old father of three from Selkirk, N.Y. "There are more committed people to the peace movement who deserve more credit, but my thing is that everyone has the right to speak out about it."

"It's funny," he said. "No one asked my opinion about anything before, and now suddenly the whole world wants to know." He said that even the conservatives on *The O'Reilly Factor* on Fox, though not agreeing with his antiwar position, were sympathetic. Reported in: *New York Times*, March 6, 7.

Internet

Orlando, Florida

A Florida-based Web hosting company knocked a small news site off-line after it posted controversial photos of captured American soldiers, stoking accusations that private firms are censoring free speech. For several hours on March 25, www.YellowTimes.org was dark, carrying the message "Account for domain YellowTimes.org has been suspended." Later in the day, there was sporadic access.

The move stoked fears that as more grisly images and accounts of war surface, independent news sites trying to establish a name for themselves will have to tone down their coverage so as not to alienate readers and the companies that keep their sites alive.

Erich Marquadt, editor of YellowTimes, said that Orlando-based Web hosting company Vortech, Inc. had first grounded the site after he posted six photos of American POWs plucked from news footage first aired by Qatar-based Al Jazeera television. U.S. television networks had been abiding by a U.S. Pentagon request not to show the footage.

"I think we were the first Web site to show the images," he said. "But the site was down a few hours later, without any warning." Marquadt said Vortech cited viewer complaints and argued the images constituted a breach of the firm's usage agreements. "They said we violated the adult content clause," he added.

"No TV station in the U.S. is allowing any dead U.S. soldiers or POWs to be displayed and we will not either. We understand free press and all but we don't want someone's family member to see them on some site. It is disrespectful, tacky and disgusting," read the email explanation sent to Marquadt.

Small Web-only news purveyors that promise a distinct brand of unsanitised news reporting are encountering more and more publishing constraints as their readership swells. Last year, the FBI asked operators of Web site Ogrish.com and its Virginia-based hosting company, Pro Hosters, to remove an unedited, four-minute video of the murder of *Wall Street Journal* reporter Daniel Pearl. Pro Hosters complied with the demand at first, but later reinstated the video, which remains archived on its site.

In March, Israeli army censors said they were working with Web site publishers and the country's ISPs to ensure that sensitive, war-related information, including the whereabouts of potential missile landings, is not published online.

"If you're a hosting company or an ISP and you pull stuff for editorial reasons, you are in danger of losing your legal protections. It's not a wise move," said Glenn Reynolds, a University of Tennessee law professor. User agreements are often broadly written, giving a Web hosting company or an ISP the recourse to remove a site that posts offensive or tasteless content on its network. Many ISPs and hosting companies have been loath to intervene in editorial decisions however, saying they do not want to play the role of judge and jury. But with public war sentiments running high, these firms may feel more pressure to come off the fence, industry observers said. Reported in: Forbes.com, March 25.

art

San Francisco, California

Staff members at the Alliance Française of San Francisco, a French language and cultural center, recently removed a sculpture that poked fun at the Bush administration from the center's February art exhibit. The sculpture, "The Crossing," depicts a bewildered-looking President Bush crossing the

Delaware River surrounded by some familiar people, including Vice President Dick Cheney wearing a clown's nose. Mounted on an orange highway cone with scurrying rubber rats on the sides, the satirical scene is topped by a Mr. Potato Head toy.

Nadege Leflemme, who is French and oversees cultural programs at the center, said members of the Alliance Française staff feared that Americans offended by the sculpture might challenge the center's nonprofit status and put it out of business. Though it receives some financing from France, the center is registered in the United States.

"Our board of directors, especially right now because of Iraq, has talked about not getting involved in politics whatsoever," said Leflemme, who has lived here four years. "I have plenty of people calling about input on the situation in Iraq, how we feel as French. We are not allowed to speak. Zip. The board said to keep a low profile and don't make waves."

But the president of the board, Thomas E. Horn, a San Francisco lawyer, denied that it had intended to censor the art exhibit and called the removal of the sculpture "a dumb thing to do." Horn, an American, said he was unaware of the incident until a reporter asked about it, and he suggested that the center's staff had overreacted. Not long ago, he said, a director, who is no longer at the center, "got into a little trouble" by writing an anti-Bush poem in the center's newsletter, which he said was different from exhibiting the politically charged works of independent artists.

"I am embarrassed by this," Horn said. "It won't happen again."

Two weeks before, Leflemme asked the sculpture's creator, Nancy Worthington of Sebastopol, Calif., to substitute an apolitical piece for "The Crossing." Worthington was among seventeen artists from the Alliance of Women Artists, a Bay Area group, who had been asked to participate in the exhibit, which opened February 1. Worthington, who had devoted the last two years to social-political commentary pieces about the Bush presidency, was so offended that she refused to exhibit another work.

Worthington said she was shocked by the reaction at Alliance Française because she had exhibited works in Paris and had found the French very responsive to her style of whimsy and biting commentary—something she calls "the art of dissent."

"What I really feel is cheated," Worthington said. "I make these works as a way to communicate with people. I don't expect people to agree, but I want to awaken something in them. That can't happen when the sculpture is sitting here instead of being shown."

Georgette Owens, a native of France and the exhibiting group's founder, said many of the artists understood why Worthington was upset, but they also appreciated the difficult situation of French people in this country. "I tried to calm Nancy down and assure her that everybody likes her artwork, but because of the diplomatic situation taking place right now, they are afraid of showing it," Owens said. "I don't think Alliance Française was at fault; they tried to be as diplomatic as they could."

Horn, the board president, who recently returned from a meeting in Paris of presidents from Alliance Française branches around the world, said anti-American feeling in France was much greater than any anti-French sentiment in San Francisco. Even if he were wrong, he said, it would not justify removing Worthington's sculpture.

"I am going to write a letter of apology and invite her to bring it back," he said. "The staff were doing their best. I hope the artist will cut them a little bit of slack." Reported in: *New York Times*, February 23.

foreign

Havana, Cuba

Calling it an issue of national sovereignty, the Cuban government has blocked a shipment of more than 5,000 books sent by the U.S. government to the island's growing network of independent libraries. The shipment consists of twenty titles, including John Steinbeck's *The Grapes of Wrath* and Stephen King's *The Shining*. Cuban authorities objected to the books because U.S. officials wanted to give them to dissidents, said James Cason, chief of the American mission in Havana. He quoted a Cuban official as saying, "It's not the books. It's who you're giving them to."

A senior Cuban official confirmed that the book shipment had been blocked. The books won't be seized or destroyed, but they won't enter the country, either, he said. Refusing the shipment "is our right as a sovereign nation," said the official, who spoke on condition of anonymity and declined to elaborate.

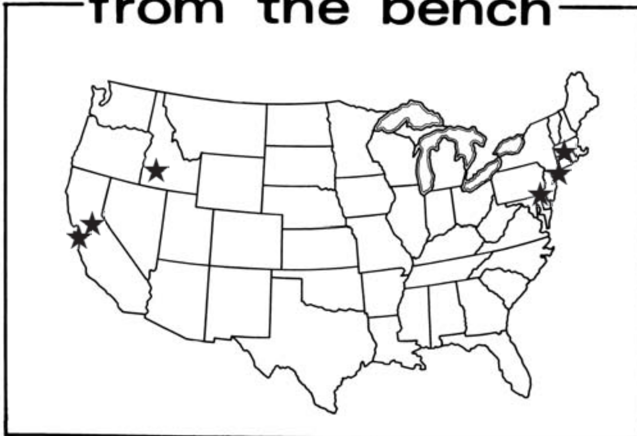
The dispute highlights a broader debate over Cubans' right to read what they want. For the last several weeks, the Cuban government has been selling hundreds of thousands of books to the public at rock-bottom prices, less than $1 for most titles. But U.S. officials—and dissidents—say Cubans still have no access to a broad range of books and literature. So the American mission decided to hand out 5,101 books.

The shipment, worth more than $68,000, also includes such titles as Carl Sagan's *Contact*, Groucho Marx's *Memoirs of a Mangy Lover*, Spencer Johnson's *Who Moved My Cheese*? and Martin Luther King's *Dreams for All People, Hope for All Time*.

Cason said U.S. officials have passed out books before with no complications. Thousands of books, in fact. But this time around, he said, Cuban officials suddenly deemed the books "subversive." "They're afraid of Groucho Marx, Carl Sagan and Martin Luther King," he said.

Dissident leaders complain that books and magazines that are critical of the socialist way of life are especially

(continued on page 125)



U.S. Supreme Court

Two visions of the Internet competed March 5 at the U.S. Supreme Court in an argument on whether the government can require public libraries to install filters as the price for receiving federal financing for Internet access.

In one vision, offered by Solicitor General Theodore B. Olson in defense of the Children's Internet Protection Act, the Internet was little different from a collection of books, although packaged and presented in a new format. "When libraries block Internet pornography from computer terminals, they are simply refusing to put on their computer screens the same material they do not put on their shelves," Olson said. Librarians have "from time immemorial" exercised discretion in deciding what to make available to readers, he added.

In the competing vision, the Internet was not an electronic version of an old-fashioned bookshelf, but something completely different and new, a public forum in a computer terminal, in the view of Paul M. Smith, arguing on behalf of the American Library Association, the American Civil Liberties Union and other groups that challenged the law on First Amendment grounds as soon as President Bill Clinton signed it in 2000.

A special three-judge Federal District Court in Philadelphia blocked the law from taking effect, declaring it unconstitutional on the ground that it induced libraries to violate the First Amendment.

"When a library buys books," Smith said, "it chooses the books one by one." But the Internet contains "all the content ever created under the sun," he said. To require libraries to deny access selectively to the Internet would be "the end of the public forum doctrine," he said.

Under the Supreme Court's First Amendment precedents, the government may not restrict speech in a public forum without a compelling interest and a policy narrowly tailored to serve that interest. But it was clear that these particular First Amendment precedents were not the only ones in play. In another line of cases, the court has also given the government considerable, although not complete, latitude in the types of speech it chooses to subsidize and in the strings it attaches to its largesse.

The government distributes more than $200 million a year in grants and subsidies that give public libraries discounted Internet access, and Olson suggested that a library system that wanted to offer unimpeded access could establish a separate operation that would not accept federal money. At the same time, he said, a library receiving federal money, as nearly all do, could not designate one of ten computer terminals in a branch as an unsubsidized unfiltered computer.

"The government can decide how it wants its money spent," he said.

The Children's Internet Protection Act is the latest in a series of efforts by Congress, dating from the mid-1990's, to shield children from sexually explicit material on the Internet. The court struck down previous laws that had criminal penalties intended to punish distributors of pornography, the decisions making clear that the justices attach a high value to speech on the Internet. But the flavor of this argument was quite different, indicating that the new law presents a more elusive set of First Amendment issues when the question is not one of criminal law but rather of carrot-and-stick.

The law requires that libraries block access by everyone, adults as well as children, to "visual depictions"—not text—of obscenity and child pornography. Children have to be shielded from a broader category defined as "harmful to minors," including graphic depictions that are "patently offensive" while lacking literary, artistic or scientific value. Adults who find blocked material can ask for the filter to be removed. There was debate over how specific the request has to be, whether the staff can refuse and whether the law inevitably imposes a stigma on requesting readers.

The record in the case, *United States* v. *American Library Association*, showed that the commercially available filters were blunt instruments that inadvertently blocked tens of thousands of Web pages. While Smith emphasized the excessive blocking, Olson emphasized how small a part that was of the entire Internet.

"Ten thousand pages erroneously blocked out of two billion is one two-hundredth of 1 percent," he said. Some justices indicated that they thought Olson was pushing his argument too far. At one point, the solicitor general said that if the government lost the case, librarians would soon be spending their money on lawyers rather than on books,

because authors would start suits to demand that their books be acquired.

"I would think that this case is about the Internet," Justice John Paul Stevens said. "It's not about books."

Justice David H. Souter appeared singularly unimpressed by Olson's insistence that filtering was no different from a library's traditional discretion over what to collect. When a library makes its choices, "somebody along the line knows what they've decided to buy," Justice Souter said, but when required to install Internet filters, "they are forced not to stock a lot of other material and they don't even know what it is."

While Smith emphasized the burden the law put on adults who have to request unblocking, Justice Stephen G. Breyer said: "What's the burden in asking? I grew up in a world where certain materials were kept in a special place." Requesting unblocking disrupts research, Smith replied, prompting Justice Sandra Day O'Connor to observe, "Looking for a book that might not be there is not atypical of what happens in research." Reported in: *New York Times*, March 6.

On February 11, a broad coalition of organizations representing publishers, booksellers, journalists, and authors, led by the Association of American Publishers (AAP), filed a friend-of-the-court brief asking the Supreme Court to affirm the ruling of a lower court and strike down the Children's Internet Protection Act (CIPA) as a violation of rights guaranteed by the First Amendment. The brief was filed in support of the challenge to CIPA brought by the American Library Association and the American Civil Liberties Union.

The brief argued that "The unavoidable suppression by filtering software of valuable, constitutionally protected expression, such as that created by many of amici's members, covering a vast range of essential subjects, from sexuality to politics, demonstrates that CIPA is not a narrowly tailored means of advancing Congress's goal of ensuring that library computers are not used to access unprotected sexual material." Congress cannot seek to achieve this goal, the brief states, by "using means that subvert the very purpose of offering Internet access to library patrons . . ."

Among the groups joining AAP on the brief were the American Booksellers Foundation for Free Expression, PEN American Center, the American Society of Journalists and Authors, the American Society of Newspaper Editors, the Authors Guild, the National Writer's Union, the Magazine Publishers Association, and the Center for Democracy and Technology. Reported in: AAP Press Release, February 11.

In a case balancing national security with civil liberties, the Supreme Court refused to interfere March 24 with a lower court ruling giving the Justice Department broad new powers to use wiretaps to prosecute terrorists.

The justices declined without comment to review a decision last November 18 in which a special federal appeals court found that, under a law passed after the terror attacks of September 11, 2001, the Justice Department can use wiretaps installed for intelligence operations to go after terrorists. That November decision was crucial, because for some two decades there was presumed to be a "wall" between wiretap operations for intelligence-gathering and wiretapping in the course of criminal investigations.

Obtaining permission for a wiretap to gather intelligence has generally been easier than getting authorization for a wiretap in a straightforward criminal investigation. Thus, prosecutors were admonished not to try to skirt the tougher standards for a wiretap in a criminal investigation by claiming it was actually to gather intelligence. The landscape changed with the passage of legislation, shortly after the September 11 attacks, broadening government surveillance powers. Justice Department investigators applied last May for permission to wiretap an individual who was identified in court papers only as a resident of the United States.

The department met resistance from the three-member Foreign Intelligence Surveillance Act Court, which exists solely to administer a 1978 law allowing the government to conduct intelligence wiretaps inside the United States. That court ordered the Justice Department to show that its primary purpose in applying for the wiretap was intelligence gathering and not for a criminal case. Moreover, the three-member court decreed that prosecutors in the Justice Department's criminal division could not take an active role in directing activities of the department's intelligence division.

Attorney General John Ashcroft appealed to the United States Foreign Intelligence Surveillance Court of Review, which had never met before and which exists, like the lower court, only to oversee the 1978 law. The court of review ruled in November that the lower court had erred when it tried to impose restrictions on the Justice Department. Furthermore, the court of review said, there never was supposed to be a "wall" between intelligence gathering and criminal investigations.

"Effective counterintelligence, as we have learned, requires the wholehearted cooperation of all the government's personnel who can be brought to the task," the review panel wrote. "A standard which punishes such cooperation could well be thought dangerous to national security."

The review panel criticized the lower court, declaring that it had improperly tried to tell the Justice Department how to do its business, in violation of the Constitution's separation of powers between equal branches of government. The Court of Review is made up of Judges Ralph B. Guy of the United States Court of Appeals for the Sixth Circuit; Edward Leavy of the Court of Appeals for the Ninth Circuit; and Laurence H. Silberman of the Court of Appeals for the District of Columbia Circuit. All were appointed to the panel by Chief Justice William H. Rehnquist of the Supreme Court.

Ashcroft praised the November decision as one that "revolutionizes our ability to investigate terrorists and prosecute terrorist acts." But the American Civil Liberties Union, the National Association of Criminal Defense Lawyers, the American-Arab Anti-Discrimination Committee and the Arab Community Center for Economic and Social Services, a Michigan-based organization, assailed the November decision.

"These fundamental issues should not be finally adjudicated by courts that sit in secret, do not ordinarily publish their decisions, and allow only the government to appear before them," the groups said in asking the Supreme Court to review it.

The ACLU and its allies had only friend-of-the-court status in the case, since technically the Justice Department was the only party. Thus, it was not surprising that the Supreme Court declined to review the lower courts' decision. Reported in: *New York Times*, March 24.

The U.S. Supreme Court on February 24 let stand an appeals-court ruling from last year that said a Tennessee government agency could legally issue tax-exempt municipal bonds to help build facilities at Lipscomb University, even though the institution is "pervasively sectarian." The court's action, which came without comment, ended a 12-year legal fight.

In 1991, Lipscomb, which is affiliated with the Church of Christ, applied for $15-million in bonds for campus projects, including a new library and athletics facilities, from a Nashville industrial-development board. The board approved the bond issue, prompting a lawsuit from a group of local taxpayers who argued that the bonds violated the First Amendment's prohibition of government support for religion.

The taxpayers said the bonds had an indirect effect on how much tax revenue the county government could collect since bond purchasers do not have to pay taxes on the interest income. A federal district-court judge ruled in favor of the plaintiffs in October 2000, agreeing that Lipscomb's religious mission is "so intertwined" with its academic mission that the two cannot be separated. The judge noted that Lipscomb's students must receive daily Bible instruction and attend chapel services, and that faculty and staff members must be members of the Church of Christ.

But the U.S. Court of Appeals for the Sixth Circuit overturned that decision last August. The court noted that the bonds are purchased by private investors and merely managed by a public board. Furthermore, the judges said that no state or local government tax revenues were spent as a result of the bonds.

The Supreme Court's decision not to hear the case means that the appeals court's ruling in favor of the university and the industrial-development board remains in place. Lipscomb's president, Stephen F. Flatt, said he was pleased that the legal battle over the bonds had ended. "It upholds our conviction that Lipscomb University enhances the educational and economic development of our community and region, which is what the bond program is designed to promote," Flatt said. Reported in: *Chronicle of Higher Education* (online), February 25.

A 1953 Supreme Court decision that is one of the cornerstones of national security secrecy policy relied on false government information, the Court was told in a startling petition filed February 26. The decision, *United States* v. *Reynolds*, is the judicial foundation of the "state secrets privilege." It provides the precedential basis for asserting that there are "military matters which, in the interest of national security, should not be divulged," not even to a federal court.

The *Reynolds* case originated over fifty years ago when the widows of three crew members who died in a 1948 crash of a B-29 Superfortress bomber requested accident reports on the crash. The Air Force denied the request and filed affidavits with the Supreme Court claiming that the withheld reports contained information about the aircraft's secret mission and described secret electronic equipment on board that had to be protected from disclosure. The Court, citing that claim, ruled in favor of the Air Force and established the state secrets privilege.

"But it turns out that the Air Force's affidavits were false," according to the new petition filed by the surviving widows or their heirs. The recently declassified Air Force accident reports contain nothing whatsoever about a secret mission or sensitive electronic equipment. "In telling the Court otherwise, the Air Force lied," the Petitioners said.

The petitioners want the Court to vacate the 1953 *Reynolds* decision. But they take no position on the body of law that derives from it. "Whether the legal principles established in *Reynolds* are right or wrong is for another day and another case."

"For petitioners, the only issue this Court must confront today is whether it will tolerate a fraud—a fraud that struck at the integrity of the Court's decision-making process and that cheated three struggling widows and their children out of that which was rightly theirs." Reported in: *Secrecy News*, March 4.

Supreme Court Justice Antonin Scalia banned broadcast media from an appearance March 19 where he received an award for supporting free speech. The Cleveland City Club usually tapes speakers for later broadcast on public television, but Scalia insisted on banning television and radio coverage, the club said. Scalia was given the organization's Citadel of Free Speech Award.

"I might wish it were otherwise, but that was one of the criteria that he had for acceptance," said James Foster, the club's executive director.

The ban on broadcast media, "begs disbelief and seems to be in conflict with the award itself," C-SPAN vice president and executive producer Terry Murphy wrote in a letter to the City Club. "How free is speech if there are limits to its distribution?"

The club previously gave its award to former U.S. Sen. John Glenn after his retirement in 1998 in recognition of his opposition to a constitutional amendment to flag-burning. The City Club selected Scalia because he has "consistently, across the board, had opinions or led the charge in support of free speech," Foster said. The proclamation applauds Scalia for protecting free speech in several Supreme Court cases, including voting to strike down a Texas flag-burning ban. Reported in: *Editor and Publisher*, March 19.

freedom of assembly

New York, New York

Antiwar demonstrators may not march past the United Nations complex or anywhere else in Manhattan, a federal judge ruled February 10. Agreeing with the city that a large, moving rally of 100,000 people or more raised serious security risks, the judge said the organizers would have to settle for a stationary rally five blocks north of the complex. In refusing to grant a parade permit, the city did not violate the demonstrators' First Amendment rights, the judge, Barbara S. Jones of U.S. District Court in Manhattan, wrote in her opinion rejecting their request for a preliminary injunction. She said that their free-speech rights were adequately protected by the city's counteroffer of a rally for 10,000 people at Dag Hammarskjold Plaza, at 47th Street, with overflow space as far north on First Avenue as needed.

Judge Jones said that the city had offered compelling reasons for not being able to guarantee the safety of marchers—or of the United Nations complex, where all demonstrations and parades have been banned since the terrorist attack that destroyed the World Trade Center. The judge noted that the city had presented evidence about two incidents: a failed plot to bomb New York landmarks, including the United Nations, and the case of a gunman who scaled the front fence at the United Nations in October and fired pistol shots through upper windows to protest human rights violations in North Korea.

Organizers of the umbrella group organizing the protest, United for Peace and Justice, began negotiating with the Police Department about three weeks earlier. They called the judge's decision an assault on their constitutional right to express opposition to a possible war with Iraq. The New York Civil Liberties Union filed an immediate appeal with the United States Court of Appeals for the Second Circuit.

"We know we have a right to march so we will continue to fight for that right," said Leslie Cagan, 55, a co-chairwoman of United for Peace and Justice. Cagan said the group had specifically requested a march because it was more meaningful than a rally. Noting that Secretary of State Colin L. Powell had recently made a case for war to the United Nations, she said she wanted marchers to pass by the complex because it "is also a symbol for the possibility of international cooperation, and that's what we want to be promoting."

But Judge Jones gave great weight in her opinion to testimony from Michael D. Esposito, an assistant police chief. He said that Cagan had not been able to give him a firm estimate of how many people would be attending the march, so he feared the department could not provide sufficient security. He said a stationary rally, in contrast, could be adequately policed, even if crowds of 100,000 or more gathered.

Judge Jones said that she was not willing to "second-guess" the chief's judgment, saying that "the court credits the city's assessment that the N.Y.P.D. could not responsibly plan security for a march of this magnitude with only the limited amount of information that the organizers have offered the N.Y.P.D. at this late point in the planning process."

Jeffrey D. Friedlander, the city's assistant corporation counsel, said he was gratified by Judge Jones's decision. "We will continue to work with the organizers so their voices can be heard consistent with the First Amendment and the interests and safety of the city," he said.

The Police Department's contention that it could not maintain safety at a traditional, peaceful protest march was rejected by a number of First Amendment experts who found the court's decision a bad precedent. Victor A. Kovner, a leading First Amendment lawyer and a former corporation counsel under Mayor David N. Dinkins, said it marked a "low moment in New York's history."

"Large marches are being held in cities throughout the nation and the world," Kovner said, "and it is incomprehensible that the finest police department in the world cannot accommodate a traditional peaceful protest. Given the wealth of precedents for peaceful marches, it is a highly disturbing precedent."

Cagan and others who support the effort to march said the city's denial of a parade permit had nothing to do with safety. At a news conference, City Councilman Bill Perkins said: "This is meant to send a message beyond New York City and it is going to have a chilling effect nationally. I think the Bush administration does not like political dissent and has influenced the Bloomberg administration to stop it."

Cagan said that the presence of two federal prosecutors at the hearing was a testament to that. The prosecutors, David Jones and Andrew O'Toole, assistant United States attorneys based in Manhattan, appeared before Judge Jones to voice the government's concerns about its treaty obligations to ensure access and safety at the United Nations.

"We had no idea that they were going to weigh in on this," Cagan said. "We think this is part of something unfolding nationally, a serious curtailing of civil liberties throughout this country."

Cagan and Donna Lieberman, the executive director of the New York Civil Liberties Union, noted that the city allowed cultural parades that attract just as many people as the protest march might. They cited the St. Patrick's Day Parade, which usually draws around 100,000 spectators. But Judge Jones found that these annual events involved months of planning, and that the police had substantial experience securing them. Reported in: *New York Times*, February 11.

church and state

Sacramento, California

Over the vehement objections of 9 of its 24 active judges, the United States Court of Appeals for the Ninth Circuit, in San Francisco, on February 28 essentially let stand a decision that the phrase "under God" in the Pledge of Allegiance is unconstitutional.

The deeply divided court declined a petition to review a 2-to-1 ruling in June by a three-judge appellate panel that had immediately prompted a huge public debate—and was stayed almost as quickly. Under that decision, schools may not require students to listen to the Pledge if it includes the words "under God."

Unless the Supreme Court takes action, that decision, amended by the original three-judge panel to specify that it applied only to public school students, will now become the law in nine Western states, affecting 9.6 million students. The full appeals court's decision not to take the case surprised legal experts, with some speculating that some of the votes against rehearing the case were simply cast to hasten Supreme Court review.

In a statement, Attorney General John Ashcroft indicated that the Bush administration would ask the Supreme Court to hear the case. "The Justice Department will spare no effort to preserve the rights of all our citizens to pledge allegiance to the American flag," he said. "We will defend the ability of Americans to declare their patriotism through the time-honored tradition of voluntarily reciting the Pledge."

Denials of petitions for full-court rehearings are generally dry, one- or two-sentence affairs. Not so here. Judge Diarmuid F. O'Scannlain, writing for six judges who favored full-court review, called the panel's decision "wrong, very wrong—wrong because reciting the Pledge of Allegiance is simply not a `religious act' as the two-judge majority asserts, wrong as a matter of Supreme Court precedent properly understood, wrong because it set up a direct conflict with the law of another circuit, and wrong as a matter of common sense."

"If reciting the Pledge is truly 'a religious act' in violation of the Establishment Clause," of the First Amendment, he continued, "then so is the recitation of the Constitution itself, the Declaration of Independence, the Gettysburg Address, the National Motto or the singing of the National anthem."

Judge Stephen Reinhardt, who was one of the two judges in the original majority, was the only judge to explain his vote against rehearing. Such explanations are uncommon, and Judge Reinhardt said he did so because he felt "compelled to discuss a disturbingly wrongheaded approach to constitutional law manifested in the dissent authored by Judge O'Scannlain," which had noted the exceptional "public and political reaction" to the original decision.

"We may not—we must not—allow public sentiment or outcry to guide our decisions," Judge Reinhardt wrote. "It is the highest calling of federal judges to invoke the Constitution to repudiate unlawful majoritarian action," he continued. "Any suggestion, whenever or wherever made, that federal judges should be encouraged by the approval of the majority or deterred by popular disfavor is fundamentally inconsistent with the Constitution and must be firmly rejected."

Judge O'Scannlain responded that his opinion "has nothing to do with bending to the will of an outraged populace, and everything to do with the fact that Judge Goodwin and Judge Reinhardt misinterpret the Constitution and forty years of Supreme Court precedent. That most people understand this makes the decision no less wrong."

The case arose from a suit brought by Michael A. Newdow of Sacramento, an atheist who had challenged the Pledge of Allegiance on behalf of his 8-year-old daughter over the objections of the child's mother, Sandra Banning, of Elk Grove, who has sole legal custody and has described herself as a Christian. Reported in: *New York Times*, February 28.

Westfield, Massachusetts

A federal judge ruled that officials at Westfield High School in western Massachusetts violated the free speech rights of six students by suspending them for a day after they distributed candy canes affixed with religious notes at the school. The students had been allowed to hand out the candy, but not the notes, which said the candy's J shape stood for Jesus. They filed suit in January. U.S District Court Judge Frank Freedman ruled that religious speech by students is constitutionally protected, although school-sponsored religious speech is not. Reported in: *New York Times*, March 19.

Internet

Philadelphia, Pennsylvania

A federal appeals court has again ruled that a law meant to safeguard children against Internet pornography is riddled with problems that make it "constitutionally infirm." A three-judge panel of the U.S. Court of Appeals for the Third Circuit ruled March 6 that the Child Online Protection Act (COPA) restricted free speech by barring Web page operators from posting information inappropriate for minors unless they limited the site to adults. The ruling upheld an injunction blocking the government from enforcing the law.

The court said that in practice, the law made it too difficult for adults to view material protected by the First Amendment, including many non-pornographic sites. The law, signed by President Clinton and endorsed by President Bush, has never been enforced. It is one of several relating to Internet decency that courts have struck down.

The American Civil Liberties Union, which initiated the legal challenge, praised the ruling. "It's clear that the law would make it a crime to communicate a whole range of information to adults," said ACLU associate legal director Ann Beeson.

Previously, the Third Circuit had ruled the law unconstitutional on grounds that it allowed the legality of Internet content to be judged by "contemporary community standards." On appeal, the Supreme Court said that evaluation standard alone did not make the law unconstitutional, and sent the case back for further evaluation.

In the March 6 opinion, the court said that in seeking to define material harmful to minors, the law made no distinction between things inappropriate for a 5-year-old and things harmful to someone in their early teens. The judges said that while the law sought to get around free-speech arguments by making the restrictions apply only to Web operators who posted material for "commercial purposes," it didn't address what level of profitability was required. The court also said screening methods suggested by the government, including requiring Web-page viewers to give a credit card number, would unfairly require adults to identify themselves before viewing constitutionally protected material, such as medical sites offering sex advice. Reported in: *Washington Post*, March 7.

newspaper

Boise, Idaho

The Idaho Supreme Court has completely reversed itself, upholding constitutional protection from damage claims for a newspaper that published part of a forty-year-old court file that said—perhaps inaccurately—a man had a homosexual affair with his cousin. The high court's February 14 decision for *The Idaho Statesman* in Boise was unanimous and erased its unanimous June 21 decision against the newspaper to keep Fred Uranga's invasion-of-privacy claim alive.

Justice Daniel Eismann, writing for the court, held that there is no invasion of privacy by the publication of information from a court record that is open to the public, no matter how old that record is. "There is no indication," Eismann wrote, "that the First Amendment provides less protection to historians than to those reporting current events."

"Uranga has not offered any standard by which to determine when a court record is too old or a particular fact in such record too insignificant for its publication to merit First Amendment protection," he wrote. Eismann was joined in the ruling by Justice Jesse Walters and Judges Roger Burdick, Gerald Weston and Randy Smith. Burdick, Weston and Smith sat in for Chief Justice Linda Copple Trout and Justices Wayne Kidwell and Gerald Schroeder.

Trout, joined by Kidwell, Walters, Eismann and Burdick, had written the June 21 opinion that supported Uranga. Schroeder did not participate in either ruling.

Uranga sued after the newspaper's 1995 publication of a story recounting the 1955 Boys of Boise homosexuality scandal. The paper included a photograph of a handwritten statement by one of the men eventually convicted. Melvin Dir's statement said he had an affair with a man who later killed himself because of the scandal. Dir's statement also said he had an affair with his cousin. Fred Uranga was the cousin, but Uranga's name never appeared in the story.

The district and appellate courts threw out Uranga's claim, citing First Amendment protections. But the original Supreme Court decision rejected that conclusion and ordered a hearing on the legitimacy of his allegations. Trout concluded that the news media responsibility to make the public aware of court activity was not compromised by denying absolute privilege to published material only tangentially related to a forty-year-old case.

Carolyn Washburn, the *Statesman's* executive editor, called the court's change of heart incredible. "It was comforting to know that the media or anyone else in the public who uses public records can have comfort in using what is in the public domain," Washburn said. "The media are not the only ones who use public records."

The 1995 story on what the newspaper called one of the nation's "most infamous homosexual witch hunts" was published in the midst of a statewide debate over a proposed ballot initiative banning state or local laws protecting homosexuals from discrimination. The paper called the 1955 scandal a cautionary tale.

Claiming the information in the statement was false and had never been introduced in any proceeding as evidence, Uranga demanded a correction. *The Statesman* declined, offering instead either to publish Uranga's rebuttal or explain his position along with a statement that the newspaper had no opinion on the truth of the court document. Uranga declined both and sued.

The state high court found no distinction between the Uranga case and U.S. Supreme Court cases cited by the *Statesman* as protecting publication of material from court records open to the public. "The examination of a public court record cannot be the basis of a claim for invasion of privacy by intrusion," the ruling determined. Reported in: freedomforum.org, February 17.

elections

San Francisco, California

A federal appeals court on February 6 reinstated the free-speech lawsuit by operators of vote-swapping Web sites suing California. The Web sites appeared before the Nov. 7, 2000, election as their operators in several states tried to create a system to allow users in one state to trade their vote for president to someone in another state. Many of the sites were aimed at supporters of Green Party presidential candidate Ralph Nader, who was seen as a threat to siphon votes from Democrat Al Gore in states where the race was expected to be close.

Three sites voluntarily shut down before the election under potential threat of litigation from California election officials, who said the sites were violating state laws barring vote swapping. Officials in Oregon also issued similar warnings.

A Los Angeles federal judge had dismissed the operators' lawsuit. The suit, backed by the American Civil Liberties

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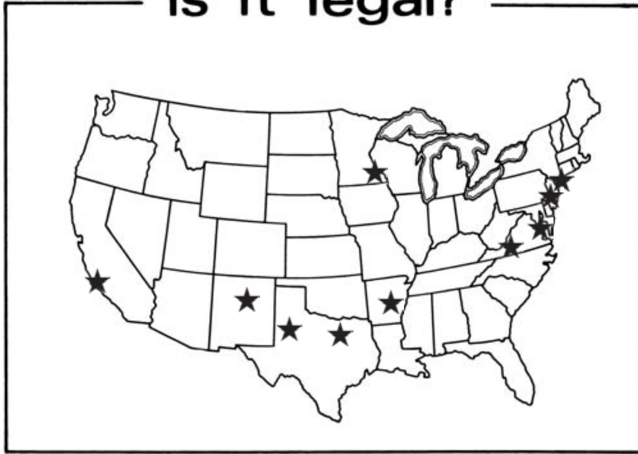

libraries

Minneapolis, Minnesota

A dozen female employees of the Minneapolis Public Library filed a federal lawsuit March 24 accusing the library of creating a hostile work environment by allowing unfettered Internet access by a menacing group of downtown library regulars who have threatened and harassed the women. The library's policies have attracted hard-core pornography users who monopolize the library's computers and "would react angrily and at times violently if any effort was made to interfere (with) or halt their access to pornographic materials," the women said in a lawsuit filed in U.S. District Court in Minneapolis.

Katherine "Kit" Hadley, who has been director of the Minneapolis Public Library for less than a month, said, "I can't comment because I'm so new. I do know the U.S. Supreme Court just heard oral arguments in a case about how these matters are handled. I'm sure we'll have to talk to our attorneys to see how that case might impact this one."

The women are seeking more than $450,000 each for humiliation, emotional distress and anxiety resulting from the hostile work environment. The women have complained about the problem since the late 1990s, but library officials indicated for years that security guards and staff "should not interfere in any fashion with what patrons were viewing on the terminals," the suit said.

The women say that policy attracted even more people "whose one and only interest was the viewing of obscene and pornographic images on the computers." The regulars who monopolized the computers to view pornography swore at the library staff and threatened them, the suit said. Some men masturbated while viewing the material, the suit also charged.

One of the women said she was followed downtown by one of the men, who also followed her home on the bus. He was later arrested for allegedly raping at knifepoint a girl whom he had abducted from a bus stop on the same bus line. Some of the other women also reported being threatened and followed by pornography users.

After library employees filed a complaint in May 2000 with the U.S. Equal Employment Opportunity Commission, the library made some changes, including setting time limits for the use of terminals and allowing security guards to confront patrons viewing obscene materials. Despite the changes, the women say they are still exposed to graphic sexual images from the Internet and to predatory behavior by a group of regular viewers. Library managers have been inconsistent in enforcing the newer measures, the women said in the suit. Reported in: *St. Paul Pioneer-Press*, March 25.

Santa Fe, New Mexico

A St. John's College Library visit by a former public defender was abruptly interrupted February 13 when city police officers arrested him about 9 p.m. at the computer terminal he was using, handcuffed him, and brought him to the Santa Fe police station for questioning by Secret Service agents from Albuquerque.

Andrew J. O'Conner, 40, who was released about five hours later, said, "I'm going to sue the Secret Service, Santa Fe Police, St. John's, and everybody involved in this whole thing."

According to O'Connor, the agents accused him of making threatening remarks about President George W. Bush in an Internet chat room. Admitting he talked politics face-to-face in the library with a woman who was wearing a "No war with Iraq" button, O'Connor recalled saying that Bush is "out of control," but that "I'm allowed to say all that. There is this thing called freedom of speech." He also speculated that the FBI might have been observing him because of his one-time involvement in a pro-Palestinian group in Boulder, Colorado.

Earlier on the same day O'Connor was questioned, officials at St. John's—as well as at the College of Santa Fe and Santa Fe Community College—issued warnings to students and faculty that the FBI had been alerted to the presence of "suspicious" people on campus within the past four weeks.

Concern about threats to individual privacy under the USA Patriot Act has prompted New Mexico legislators in both houses to propose resolutions urging state police not to help federal agents infringe on civil rights. The resolutions also encourage libraries to post prominent signage warning patrons that their library records are subject to federal

scrutiny without their permission or knowledge. Reported in: *American Libraries* online, February 24.

schools

Jacksonville, Arkansas

As Thomas McLaughlin tells it, the trouble began when his eighth-grade science teacher overheard him refusing to deny to another boy that he was gay. It got worse that afternoon, when his guidance counselor called his mother at work to tell her he was homosexual. "The assistant principal called me out of seventh period, asked if my parents knew I was gay, and when I said no, she said I had till 3:40 to tell them or the school would," said Thomas, a 14-year old student at Jacksonville Junior High School in Arkansas. "I was too upset to sit through eighth period, so I went to the guidance counselor, and she made the call. Later, the science teacher wrote me a four-page handwritten letter about the Bible's teachings on homosexuality, telling me I would be condemned to hell. I threw it out."

That was a more than a year ago. Since then, the McLaughlin family said, the school has continued to harass Thomas because of his homosexuality. The teachers and administrators who outed Thomas last year now want to silence him, the McLaughlins say, by telling him not to discuss homosexuality in school and disciplining him for doing so. They also say that a different assistant principal called Thomas to his office this year and made him read aloud a Bible passage condemning homosexuality.

The McLaughlins' account is the only one made public so far. The school district, citing student privacy rights, has not provided any details of its actions. The superintendent, Don Henderson, said that he could not respond to the accusations because the facts had not yet been established. Jay Bequette, the lawyer for the district, said he had no comment on the case.

Earlier this month, the American Civil Liberties Union, representing the McLaughlins, wrote to Dr. Henderson, accusing the school of violating Thomas's rights to free speech, equal protection and privacy, and asking for assurances by March 21 that there would be no further violations of Thomas's rights.

"Students should not be punished for being honest about their sexual orientation," Leslie Cooper, a lawyer with the ACLU's Lesbian and Gay Rights Project, said. "Jacksonville Junior High School has trampled on Thomas McLaughlin's constitutional rights."

On March 21, the A.C.L.U. deadline, the district released a brief statement on the case, saying: "Based on the information the district has received, the district is unable to substantiate, and therefore denies, the specific allegations set forth in the letter. The district denies that it intentionally violated the student's constitutional rights, and no disciplinary action has been taken because of the student's sexual orientation."

The statement went on to say that if school personnel had "advocated religious beliefs," as the ACLU asserted, "such action was not appropriate and is not condoned by the district." The district said it could not comment on a student's confidential disciplinary record without permission from the student and his parents, so without that permission, there would be no further comment.

Cooper said the ACLU would take the matter to court, if the school did not provide further assurances about protecting Thomas's rights. "Obviously, they have failed to meet our demands," she said. "We're pleased that they agree that religious preaching is not acceptable in school, but they failed to say that Thomas can speak about being gay."

Thomas said the issue of his sexual orientation first arose when a classmate asked if he liked a certain girl, and he responded that there was a reason he was not attracted to that girl or any other in the school. The other boy then asked if he was gay. "I said, if I am, I am, and if I'm not, I'm not," Thomas said. "The science teacher overheard us. He told me to stop talking about that stuff. The next thing I know, the assistant principal calls me out of class."

His mother, Delia McLaughlin, said she was shocked that afternoon to get a telephone call from the guidance counselor about her son's sexuality. "I remember she said he was having feelings for other males," McLaughlin said. "Those were the words she used. I was upset in the first place that I'm finding out my son's gay, but that it was a school administrator who told me, that was beyond my reasoning. Thomas didn't tell me about the Bible preaching until recently. That's what made me call the ACLU. We're Christians, but this isn't the school's business. It's something for us, the parents, to talk about." Reported in: *New York Times*, March 25.

Washington, D.C.

Schools that don't allow students to pray outside the classroom or that prohibit teachers from holding religious meetings among themselves could lose federal money, the Education Department said in February. The guidance reflects the Bush administration's push to ensure that schools give teachers and students as much freedom to pray as the courts have allowed. The department made clear that teachers cannot pray with students or attempt to shape their religious views.

"Public schools should not be hostile to the religious rights of their students and their families," Education Secretary Rod Paige said. "At the same time, school officials may not compel students to participate in prayer or other activities."

The instructions, released by the department on February 7, broadly followed the same direction given by the Clinton administration and the courts. Prayer is generally allowed, provided it happens outside the class and is initiated by students, not by school officials. The department, however, also offered some significant additions, including more details on such contentious matters as moments of silence and prayer in

student assemblies. And for the first time, federal funds are tied to compliance with the guidelines. The burden is on schools to prove compliance through a yearly report.

"Public school districts that accept billions of dollars each year in federal education funds should be expected to respect students' constitutional rights," said Rep. John Boehner (R-OH), chair of the House Education and Workforce Committee. "This is basic common sense."

"Even after repeated dissemination of guidelines, far too many school administrators still ignore their obligation to protect the religious-liberty rights of students," said Charles Haynes, the First Amendment Center's senior scholar. "Linking the guidelines to funding is a wake-up call that may finally push all schools to take the First Amendment seriously."

Bush and Congress ordered the department to release the new guidelines as part of an education overhaul signed into law last year. But one leading critic said what emerged is a partisan push for more school prayer, not an attempt at clarification.

"The Bush administration is clearly trying to push the envelope on behalf of prayer in public schools," said Barry Lynn, executive director of Americans United for Separation of Church and State. "Administration lawyers have selectively read case law to come to the conclusions they wanted, and school administrators should be aware of that. They took the Clinton-era regulations, which just stated what the law was, and turned them into a wish list of what this administration wants them to be."

In one significant change, teachers are permitted to meet with each other for "prayer or Bible study" before school or after lunch—provided they make clear they are not acting in their "official capacities." Also, students taking part in assemblies and graduation may not be restricted in expressing religion as long as they were chosen as speakers through "neutral, evenhanded criteria." To avoid controversy, schools may issue disclaimers clarifying that such speech does not represent the school.

Such school gatherings have been at the heart of recent court rulings. In 2000, the Supreme Court ruled that prayers led by students at high school football games are unconstitutional. Yet in 2001, the Supreme Court refused to hear a case involving protests over student-led graduation prayers.

"I'm very excited about the clarity, and very optimistic that these guidelines will go a long way in solving issues related to students' religious speech," said Mathew Staver, president of Liberty Counsel, which promotes religious expression. "We will use these actively in dealing with schools, and we'll use them in cases we're litigating as well."

Countered Lynn: "If some student decides to turn a school assembly into a church service, that school will be sued. This doesn't insulate schools from lawsuits. It stretches to the breaking point what the courts have said on the topic."

The guidelines say students may "read their Bibles or other scriptures, say grace before meals, pray or study religious materials with fellow students during recess, the lunch hour or other non-instructional time." Schools may impose some rules about those activities but cannot discriminate against prayer or religious speech in doing so.

If schools have planned moments of silence, students may pray or not pray, and teachers may not encourage or discourage praying, the guidelines say. Religion-themed homework or artwork must be graded on an academic basis, not favored or penalized because of its content.

"The guidelines do a better job of spelling out what's allowed in many cases, but in others, they may just cause more confusion," said Reggie Felton, lobbyist for the National School Boards Association. Giving teachers discretion to openly pray during breaks may cause problems, especially if it is not clear they are doing it outside their official roles, he said.

"I'm not suggesting that these are horrible guidelines," Felton said. "I'm just saying there are areas that will require more discussions with attorneys." Reported in: freedomforum.org, February 10.

universities

San Luis Obispo, California

Faculty members at California Polytechnic State University at San Luis Obispo are preparing to do battle over academic freedom and harassment as they face an engineering professor's proposal to ban the viewing of pornography on campus computers. Linda Vanasupa, the chair of the materials-engineering department, filed a resolution with the Academic Senate to prohibit using the university's computers or its Internet connection for viewing pornographic material. Academics and students would need permission from the university president to look at pornography online.

The resolution will need a committee's approval to reach the Senate floor for a vote. "I think there is enough support that it will get to the floor," Vanasupa said.

Unny Menon, a professor of industrial and manufacturing engineering and the chair of the Academic Senate, said that the First Amendment would lead many faculty members to vote against the resolution. But, he added, the resolution may also have a significant number of supporters.

"It is very hard to predict which way things would go," he said. "There's been no straw poll at all. . . . It is not as clear cut as some issues might be."

The resolution came in the wake of several recent scandals at Cal Poly. Last year, Robert Heidersbach, the former chair of the materials-engineering department and Vanasupa's former boss, left the university after he was convicted on a misdemeanor charge for misuse of a state computer, to which he had downloaded thousands of pornographic images. And according to the local newspaper, the FBI is investigating another former faculty member who allegedly used university computers to view child pornography.

"There is a lack of sensitivity around this issue, and to me that is a form of hostility," Vanasupa said. "In a nutshell, I'm really concerned about women and children and the type world that we are creating for them."

The language of Vanasupa's resolution, which would be added to the university's computer-use policy, states that people may not engage in the "transmission" of hate literature, obscenity, or sexually-explicit material. Those caught looking at pornography or hate literature "should be reported to the University Police Department," the resolution says.

The resolution makes room, albeit with conditions, for academics or students who study such material. "Faculty and staff who need to access hate literature, obscenity or pornography for bona fide work purposes may petition the University President for a waiver. All granted petitions and waivers will be readily available to the public and campus community under the California Public Records Act."

Paul J. Zingg, the campus's provost, said that Vanasupa's resolution "is fundamentally in opposition to the spirit of inquiry that is critical to the academy. You're basically looking at a judgment of prior restraint that would have a chilling effect on inquiry and discourse on campus," he said.

Zingg said that computer-use policies at Cal Poly already prohibit the viewing of child pornography and other legally identified forms of obscene material; the excessive personal use of state equipment; and the downloading of any images that could create a harassing or intimidating work environment. He said that he appreciates Vanasupa's attempt to deal with any hostility that she perceives on the campus, but that her resolution is too strict.

"Under Linda's additions, there's no room for discussion of context," he says. "There is an assumption of wrongdoing of the individual who downloaded that image." Reported in: *Chronicle of Higher Education* (online), February 21.

Tampa, Florida

The University of South Florida ended its tortuous relationship with Sami Al-Arian February 26 by firing the computer-engineering professor, who federal authorities allege is a terrorist leader. President Judy L. Genshaft said that Al-Arian had abused his position as a professor and misused the university.

"We have determined that USF must sever all ties to Sami Al-Arian once and for all," she said in a news conference held to announce the decision. "His use of this educational institution for improper, non-educational purposes will not be tolerated. No longer will he be able to hide behind the shield of academic freedom."

A Palestinian born in Kuwait, Al-Arian has lived in the United States since the mid-1970s and has worked at South Florida since 1986. In the fall of 2001, a controversy erupted after he was interviewed on television about his alleged terrorist ties. The professor was placed on paid leave. His firing came less than a week after police arrested the professor, charging him on February 20 with raising money to support the Palestinian Islamic Jihad. The fifty-count indictment alleges that Al-Arian used the university and two now-defunct entities, the World and Islam Studies Enterprises and the Islamic Committee for Palestine, as fronts for terrorist activities.

Genshaft said the indictment was "a confirmation of the thoughts we've had all along," but she emphasized that the firing was strictly an employment dispute, not a criminal matter. Genshaft first tried to fire Al-Arian more than a year earlier, but faculty members and academic organizations rallied to his defense. She said the professor would have been dismissed even without the federal indictment.

But the timing is no coincidence, said Elizabeth Bird, a professor of anthropology at South Florida who has been critical of the administration's handling of the case. "Of course they're connected," she said. "For many months, I've heard informally that people thought, If only the FBI would charge him it would make things easier. Without the charges, I think we'd still be in this stalemate."

The letter of termination the university hand-delivered to Al-Arian's lawyers cited the indictment heavily, saying that it provides new information that confirms the university's position. "The university cannot decide whether you are guilty of crimes," the letter says. "Rather, the university must decide whether there is just cause; namely, that it is more likely than not that there are sufficient facts to warrant the termination of your employment."

Al-Arian's case has become a battle cry for those worried about infringement on free speech and academic freedom. But Genshaft said he was being fired not for what he said, but for what she said he did: misuse his university position to raise money for terrorists. "It's using academic freedom and hiding behind that for destructive purposes," she said.

The American Association of University Professors has supported Al-Arian's right to defend his job and has raised concerns about how the university's procedures have threatened academic freedom and tenure.

"We're recognizing that it is a tough position for the University of South Florida, but we're still disturbed. This is a person who never had a hearing on the campus about the speech that they originally objected to," said Ruth Flower of the association, which could censure the university. "It's the due-process issues that have always engaged our concerns. The decisions are being made by the president, not with a council of peers as would be normal in an academic situation."

Flower said the association realizes that the indictment provides new information that may make it more difficult to defend Al-Arian's academic-freedom rights. "Those are the times when those rights really matter, when things are really tough," she said.

In a statement read by his daughter, Al-Arian called himself a political prisoner. "I'm crucified today because of who I am, a stateless Palestinian, an Arab and Muslim, and outspoken advocate for Palestinian rights," the statement said. "I'm a prisoner because of the hysteria engulfing this country in the aftermath of the 9/11 tragedy."

In addition to Al-Arian, seven other people were indicted in the case on racketeering charges. The lengthy indictment refers to several unindicted co-conspirators, and news reports are contending that one of those unnamed individuals has ties to academe. The *Cleveland Plain Dealer* reported that Fawaz Damra, the imam of the Islamic Center of Cleveland, is an unindicted co-conspirator who introduced Al-Arian at a controversial speech in 1991 and himself made anti-Semitic slurs at the event.

Damra has taught in recent years at two institutions in the Cleveland area, John Carroll and Cleveland State Universities. A spokesman for the Jesuit university said that John Carroll officials are "concerned about reports in the media that identify him as a co-conspirator" in the alleged terrorist activities of Al-Arian. But he added that the reports remain just that: unproven charges made in newspaper accounts, without confirmation by federal law-enforcement authorities. He said that when John Carroll hired Damra to teach this semester, it reviewed evidence that emerged about him in the fall of 2001, when the accusations against Al-Arian re-emerged.

At that time Damra "acknowledged that he had made" inflammatory statements about Israel and Jewish people, and "also stated that they no longer represented his views." Since that time, Damra had made himself an "emissary" of Islam to the students and staff of John Carroll, and to Christians and Jews in the Cleveland area. Reported in: *Chronicle of Higher Education* (online), February 27.

Philadelphia, Pennsylvania

A medical anthropologist who observed the transplant of an artificial heart into a man who died several months later is fighting legal efforts to force her to turn over her field notes and says she will go to jail rather than comply. Sheldon Zink, director of the program for transplant policy and ethics at the University of Pennsylvania's Center for Bioethics, originally faced a deadline of today to turn over her notes to lawyers in a lawsuit involving the use of the AbioCor artificial heart. Although the lawyers withdrew their subpoena for the documents they have not ruled out the possibility of reinstating it.

Zink's case had drawn national attention from anthropologists who were concerned that it may set a precedent in compelling scholars to make confidential research notes public. Some of her students and colleagues have started a Web site called FreeSheldon.org to publicize her case, and faculty members in anthropology departments at twenty universities have signed petitions supporting her decision not to comply with the subpoena. Others have written affidavits in her support.

"I understand the responsibility of just watching," Zink said in an interview. "I promised my subjects that I would never let anyone else read my field notes. I would not betray a trust in that way."

Zink acted as an ethnographic researcher observing a clinical trial of the AbioCor heart starting in February 2001. She watched as the clinical team at Hahnemann University Hospital was trained for transplantations, and she was in the operating room when one of the patients—James Quinn—received an artificial heart on November 5 of that year. Quinn, who was 51 years old when he received the heart, died nine months later. His widow has sued Hahnemann, as well as the maker of the artificial heart and the man who was originally appointed to serve as Quinn's patient advocate.

Lawyers for the former patient's advocate, as well as the hospital, now want Zink to turn over her research notes. Thomas P. Wagner, who represents the original patient's advocate, said Zink had "observed Quinn's care for a long time and what she knows could be of great relevance to the case." He said he withdrew his request for Zink's notes, however, "after we learned of her strong objections." He added: "We don't want to be hostile to her. We want to work it out." But he said if Zink won't cooperate in some way, he has not ruled out the possibility of reinstating the subpoena.

Zink's role in the artificial-heart experiment did go beyond that of anthropologist. The Quinn family asked her to be their patient's advocate during the last two months of Quinn's life. Zink said she was not paid in her role as patient's advocate and set aside her work as an anthropologist in the clinical trial while she was serving as advocate.

As far as the subpoena for her field notes, she said she would "fight this to the bitter end," even though "it terrifies me and I don't like to imagine myself sitting in a cell."

According to Zink, professors who head the ethics and public-policy committees within the American Anthropological Association are drafting statements supporting her. But Bill Davis, executive director of the association, said that Zink is "misrepresenting the association on this." He said none of the association's committees "has the authority to take a position on a public matter like this one." Ghita Levine, a spokeswoman for the association, said the organization lacks "a process for advocating for individual members."

But Davis said he did understand why anthropologists were concerned. His association has a code of ethics, he said, that says "it is the obligation of individual anthropologists to protect their research subjects from risk or harm that might come from information revealed to the anthropologist." Reported in: *Chronicle of Higher Education* (online), March 5.

Dallas, Texas

When the Latin American Studies Association held its International Congress in Dallas March 27–28, one group was absent: almost all of the 103 Cuban scholars who had registered to attend, including 40 invited to present papers. With only three weeks to go before the once-in-18-months gathering, only four or five of the Cubans had received an entry visa from the United States. This contrasted with previous congresses, when almost all Cuban scholars applying for a visa to attend the gathering received one. The group is the largest professional association of individuals and institutions engaged in the study of Latin America.

Arturo Arias, director of Latin American Studies at the University of Redlands, in California, and president of the Latin American Studies Association, said that he and many colleagues think the situation reflects a desire by the Bush administration to prevent dialogue between Cuban and American scholars. Visa denials "are being interpreted as ploys to deter academic exchanges," he wrote in an e-mail message.

Four of the 103 Cuban scholars planning to attend the congress had their visa applications rejected, apparently under a section of the Immigration and Nationality Act that allows the president to ban the entry into the United States of any foreigners whose presence "would be detrimental to the interests of the United States." The rest of the Cubans were left waiting without any response to their visa requests. Some of the Cuban scholars were required to undergo fingerprinting, and to pay an additional $85 fee for that purpose. Their American colleagues complain the fee is onerous, since Cuban faculty members earn, on average, the equivalent of about $200 a month.

Kelly Shannon, of the U.S. State Department's Bureau of Consular Affairs, denied that there was any new policy intended to keep out Cubans. The State Department will not comment on individual cases. But Shannon said that under the Enhanced Border Security and Visa Reform Act, which came into effect last summer, visa applicants from Cuba and six other countries designated as "state sponsors of terrorism" must undergo security checks by "federal U.S. law-enforcement and intelligence agencies and any other interested agencies." The authorities are under no obligation to either accept or reject a visa request within any time limit, Shannon added.

The David Rockefeller Center for Latin American Studies, at Harvard University, invited six Cuban scholars to visit Harvard after attending the Latin American Studies Association's meeting. But only one of them received a visa. "It's very difficult to organize meetings and events when we don't know when the scholar is coming" said Lorena Barberia, director of the Rockefeller Center's Cuba program. "And when you make arrangements at the last moment, costs go up." Reported in: *Chronicle of Higher Education* (online), March 5.

Lubbock, Texas

The U.S. Department of Justice is examining whether a Texas Tech University biology professor discriminated against a student's religious beliefs by refusing to write letters of recommendation for students who do not believe in the theory of evolution. The professor, Michael L. Dini, maintains on his Web site a page that outlines his policies for writing recommendations for students. On that page, he writes that students who request a recommendation for graduate school will be asked, "How do you think the human species originated?" "If you cannot truthfully and forthrightly affirm a scientific answer to this question," Dini writes, "then you should not seek my recommendation for admittance to further education in the biomedical sciences."

The Department of Justice sent a letter to the university on January 21 informing the university that it had received a complaint against both the university and Dini and requesting information about the university's policies toward teacher recommendations and any previous complaints about Dini.

Micah Spradling, a senior at Texas Tech, contacted the Department of Justice to complain about Dini after enrolling in a class taught by the professor. According to Kelly Shackelford, chief counsel at the Liberty Legal Institute, an organization based in Plano, Texas, that supported Spradling's complaint against Dini, Spradling needed a recommendation from a biology professor in order to attend medical school. Last fall, after spending a few days in a class taught by Dini and reading his Web site, Spradling, who does not believe in evolution, transferred out of Texas Tech and enrolled in Lubbock Christian University. There, he completed biology course work, received a recommendation from a professor, and re-enrolled at Texas Tech for the spring semester.

"This is such egregious conduct by a professor," said Shackelford. "It's religious discrimination, and it's the very antithesis of academic freedom."

But Cindy Rugeley of Texas Tech said the university strongly supports Dini. "Professors don't have to write recommendations at all, and we certainly don't tell them who they have to write them for," she said. "Furthermore, this student never even asked the professor for a recommendation. He never contacted a dean about this. Instead, he called the Justice Department." Rugeley said there are more than thirty other biology professors Spradling could have studied with and approached for a recommendation. She also maintained that this is not an issue of religious discrimination, but of science.

"He's not saying he wouldn't write a letter for a Christian," she said. "He's saying he wouldn't write a letter for someone who didn't believe in evolution."

Dini defended his practice on his Web site, writing of students applying to medical school, "How can someone who does not accept the most important theory in biology expect to properly practice in a field that is so heavily based on biology?" So much physical evidence exists to support evolution, Dini wrote, that "one can deny this evidence only at the risk of calling into question one's understanding of science and of the method of science. Good scientists would never throw out data that do not conform to their expectations or beliefs." Reported in: *Chronicle of Higher Education* (online), February 3.

Blacksburg, Virginia

Nine days after Virginia Tech's governing board established a controversial policy restricting political speech on its campus, the state attorney general's office declared that

the new rules violated constitutional rights to free assembly and free speech. The Board of Visitors subsequently scheduled a meeting to discuss the policy. In the meantime, the institution will disregard the new policy and continue to follow its old one.

The board's policy prohibited from meeting on the campus anyone who had ever participated in or advocated "illegal acts of domestic violence and terrorism." The policy also required that all requests for campus meetings be submitted for the president's approval thirty days in advance.

William H. Hurd, solicitor general in the Virginia attorney general's office, soundly rejected the language as well as the spirit of the policy in a four-page letter to the president of Virginia Tech and the head of the Board of Visitors. "The regulation is not limited to outside speakers or even to the use of meeting rooms," Hurd wrote. "It also applies to faculty and students and to the use of all locations on campus, including common areas where members of the university community often gather for informal discussions. This goes too far."

"Second," he continued, "even if the new regulation were limited to outside speakers, it would still be invalid. The regulation . . . also prohibits use of university facilities by those who 'have participated' in such acts in the past, regardless of whether the proposed meeting is intended to condone or condemn such activity or to talk about some entirely different topic."

"Third," he wrote, "even if the new regulation were limited to outside speakers wishing to advocate illegal acts of domestic violence or terrorism, the regulation would still run afoul of current Supreme Court jurisprudence," which holds that such speech is protected unless it directly incites violence.

Finally, Hurd concluded, "a university—of all places—should be willing, in the words of Thomas Jefferson, 'to tolerate any error so long as reason is left free to combat it.' For universities to prohibit the use of their facilities for constitutionally protected speech—based on the perceived illegitimacy or offensiveness of the viewpoint expressed—is contrary to the role of a university as a marketplace of ideas and violates the constitutional prohibition against viewpoint discrimination."

Lawrence G. Hincker, a Virginia Tech spokesman, said that "many of us are pleased with this result."

Charles W. Steger, the university's president, also emphasized the importance of free speech on a college campus. "As a university, one of our primary functions is to help students develop the capacity to think critically in order to evaluate new ideas, and we have the greatest confidence in our students' ability to do so," he said.

But John G. Rocovich, head of the Board of Visitors, said that he did not regret the board's having approved the measure and that he does not rule out the possibility of introducing a similar policy at a later meeting. "The idea, as a general proposition, is still a good one," he said. He added that the board would seek the attorney general's approval of similar resolutions in the future before voting on them.

The policy was approved by the Board of Visitors on March 10. At the same meeting, the Board of Visitors voted to change the university's antidiscrimination clause so that it no longer prohibits discrimination on the basis of sexual orientation. Those decisions were made at the same quarterly meeting at which the governing board effectively ended the use of affirmative action in admissions, hiring, and financial aid.

"That meeting was an unbelievable step backward," said Edd Sewell, who, as president of the Faculty Senate at Virginia Tech, is a nonvoting member of the Board of Visitors. "I have been reading a book about Germany in the 1930s, and I almost feel like I'm experiencing deja vu." Neither the resolution concerning political extremists nor the resolution about sexual orientation was listed on the agenda that was made available to board members before the meeting.

The resolution concerning political speakers on the campus followed a February speech given by a member of Earth First, an environmental group that advocates such tactics as preventing logging by sitting in trees or chaining oneself to a logging site. According to university spokesman Hincker, that speech raised the ire of a group of professors from the department of forestry. Furthermore, the member of the Board of Visitors who introduced the resolution, Mitchell O. Carr, is president of the Augusta Lumber Company, based in Waynesboro, Virginia, and is a former director of the National Hardwood Lumber Association.

The resolution read in part: "Be it resolved, no person, persons, or organizations will be allowed to meet on campus or in any facility owned or leased by the university, if it can be determined that such persons or organizations advocate or have participated in illegal acts of domestic violence and terrorism." While the resolution did not define domestic violence and terrorism, the Federal Bureau of Investigation's Web Site includes a spectrum of political groups in its description of domestic terrorism, including white-supremacy organizations and socialist organizations like the Workers' World Party and Carnival Against Capitalism. It also cites the Animal Liberation Front and the Earth Liberation Front, two groups whose representatives have spoken at Virginia Tech during the past two years.

In an editorial decrying the resolution, the student newspaper, *Collegiate Times*, described the measure's language as "irrefutably ambiguous," and says it "could be applied to many speakers and organizations that have visited Tech's campus in recent years."

The board also removed sexual orientation from the list of factors—including race, sex, and national origin—that the university will not use to discriminate against students, faculty members, and applicants. Reported in: *Chronicle of Higher Education* (online), March 13, 24.

press freedom

Washington, D.C.

Government agencies opened a package mailed between two Associated Press reporters last September and seized a copy of an eight-year-old unclassified FBI lab report without obtaining a warrant or notifying the news agency. The Customs Service intercepted a package sent via Federal Express from the Associated Press bureau in Manila to the AP office in Washington, and turned the contents over to the FBI.

FBI spokesman Doug Garrison said the document contained sensitive information that should not be made public. However, an AP executive said the package contained an unclassified 1995 FBI report that had been discussed in open court in two legal cases. "The government had no legal right to seize the package," said David Tomlin, assistant to the AP president.

The package was one of several communications between Jim Gomez in Manila and John Solomon in Washington, AP reporters who were working on terrorism investigative stories. It was the second time that Solomon's reporting was the subject of a government seizure. In May 2001, the Justice Department subpoenaed his home phone records concerning stories he wrote about an investigation of then-Sen. Robert Torricelli.

The Customs Service said its agents opened the package from Manila after selecting it for routine inspection when it arrived at a Federal Express hub in Indianapolis. Agents did not open an identical package addressed to AP's United Nations office. Both packages contained an FBI laboratory report on materials seized from a Filipino apartment rented by convicted terrorist Ramzi Yousef. The reporters were working on a research project that resulted in stories published last month about the government's concerns before April 19, 1995, that white supremacists might bomb a federal building.

"The job of Customs is to intercept smuggled contraband and collect import duties," said Tomlin, who is an attorney. "Customs has no authority to seize private correspondence where there's no suspicion it contains contraband. There certainly wasn't any such suspicion here."

Press freedom advocates criticized the agencies' seizure of the document. "It was really stupid of them to keep it," said Lucy Dalglish, director of the Reporters Committee for Freedom of the Press. "What they're trying to do is prevent you from reporting a story. That's censorship."

The AP inquired about the missing FedEx package last autumn when it did not arrive in Washington, and the courier suggested it might have fallen off a delivery van. FedEx later reimbursed AP $100 for the loss.

FedEx spokeswoman Sally Davenport said the company was unable to track the package after it arrived in Indianapolis and had no records showing that it was seized by Customs. If the company knows a package has been taken by Customs, FedEx policy is to notify the customer and provide a number to contact the agency, Davenport said. FedEx did send a letter of apology to the AP, she said.

In January, the AP was tipped that the package had been intercepted and that the FBI had requested an investigation to find out who had provided the lab report to the news service. A letter from the Philippine Department of Justice to the Philippine National Police about the document read, in part: "In view of the concerns raised by the FBI regarding this matter, may we request your good office to conduct a thorough investigation on the mishandling of such sensitive information?"

Customs has the legal right to examine packages sent from overseas at the point they arrive in the United States, in this case Indianapolis. The Customs Service (now the Bureau of Customs and Border Protection) said in a statement that the package addressed to Solomon was selected for "routine inspection" on September 19. Because it contained an FBI document, Customs called the FBI. Spokesman Dean Boyd said Customs routinely asks another agency about contents of an examined package that pertain to that agency.

"An FBI agent subsequently examined the file and requested that it be turned over to the FBI," the Customs statement said. "Based upon these representations by the FBI, Customs turned the file over." No warrant was issued, Customs and FBI both said. Customs said any notification to the AP was the FBI's responsibility.

Garrison, who works out of the FBI's Indianapolis bureau, said the package was sent to the FBI in Washington after an FBI agent in Indianapolis reviewed the document and said it contained some information that should not be made public. "From the FBI's perspective, if the document was a laboratory report that contained sensitive information that the laboratory thought ought to be controlled, they had an obligation to control it," Garrison said. "Generally speaking, we're more careful about the kind of information that's out there. We don't want criminals to get ideas as to how to cause more damage."

The AP said the information had been previously publicly disclosed in two court venues. The material included copies and photos of dozens of pieces of evidence gathered in the terrorism cases of Abdul Hakim Murad and Ramzi Yousef, including batteries, explosive devices, bomb fragments, a copy of a *Time* magazine, cell phones and phone books.

Murad and Yousef were sentenced to life in prison in a plot to blow up twelve U.S.-bound airliners flying out of Asia. Yousef was later convicted of masterminding the 1993 World Trade Center bombing.

The earlier incident involving Solomon's home phone records sparked a media outcry after Justice officials subpoenaed Solomon's phone records while trying to learn the identity of law enforcement officials who told the AP about a wiretap intercept of then-Sen. Torricelli of New Jersey. Solomon found out about the May 2001 subpoena in August when he returned from vacation and opened a notification letter from the government. The Code of Federal Regulations says the AP should have had the opportunity to challenge the subpoena. Reported in: *Washington Post*, March 13.

secrecy and surveillance

Washington, D.C.

Since the Sept. 11, 2001, attacks, the Justice Department and FBI have dramatically increased the use of two little-known powers that allow authorities to tap telephones, seize bank and telephone records, and obtain other information in counterterrorism investigations with no immediate court oversight, according to officials and newly disclosed documents.

The FBI, for example, has issued scores of "national security letters" that require businesses to turn over electronic records about finances, telephone calls, e-mail and other personal information, according to officials and documents. The letters, a type of administrative subpoena, may be issued independently by FBI field offices and are not subject to judicial review unless a case comes to court, officials said.

Attorney General John D. Ashcroft has also personally signed more than 170 "emergency foreign intelligence warrants," three times the number authorized in the preceding 23 years, according to recent congressional testimony. Federal law allows the attorney general to issue unilaterally these classified warrants for wiretaps and physical searches of suspected terrorists and other national security threats under certain circumstances. They can be enforced for 72 hours before they are subject to review and approval by the ultra-secret Foreign Intelligence Surveillance Court.

Government officials describeed both measures as crucial tools in the war on terrorism that allow authorities to act rapidly in the pursuit of potential threats without the delays that can result from seeking a judge's signature. Authorities also stressed that the tactics are perfectly legal.

But some civil liberties and privacy advocates said they are troubled by the increasing use of the tactics, primarily because there is little or no oversight by courts or other outside parties. In both cases, the target of the investigation never has to be informed that the government has obtained his personal records or put him under surveillance.

"When this kind of power is used in the regular criminal justice system, there are some built-in checks and balances," said David Sobel, general counsel of the Electronic Privacy Information Center (EPIC), which is suing the Justice Department for information about its secretive anti-terrorism strategies. "The intelligence context provides no such protection. That's the main problem with these kinds of secretive procedures."

The use of national security letters has been accelerated in part because Congress made it easier to use and apply them. The USA PATRIOT Act, a package of sweeping anti-terrorism legislation passed after the September 11 attacks, loosened the standard for targeting individuals by national security letters and allowed FBI field offices, rather than a senior official at headquarters, to issue them, officials said. The records that can be obtained through the letters include telephone logs, e-mail logs, certain financial and bank records, and credit reports.

The PATRIOT Act also significantly increased the amount of intelligence information that can be shared with criminal prosecutors and federal grand juries, giving authorities new powers in the war on terrorism. National security letters can be used as part of criminal investigations and preliminary inquiries involving terrorism and espionage, according to officials and internal FBI guidelines on the letters.

According to documents given to EPIC and the American Civil Liberties Union as part of their lawsuit, the FBI has issued enough national security letters since October 2001 to fill more than five pages of logs. There is no way to determine exactly how many times the documents have been employed because the logs were almost entirely blacked out.

The Justice Department and FBI refused to provide summary data about how often the letters were used. Several lawmakers have proposed legislation that would require the department to provide that kind of data. "In our view, the public is entitled to these statistics," said Jameel Jaffer, staff attorney for the ACLU's national legal department. "We have no idea how those are being used."

FBI spokesman John Iannarelli said, "It's safe to say that anybody who is going to conduct a terrorism investigation is probably going to use them at some point. . . . It's a way to expedite information, and there's nothing that needs expediting more than a terrorism investigation."

But a November 2001 memorandum prepared by FBI attorneys warned that the letters "must be used judiciously" to avoid angering Congress, which will reconsider Patriot provisions in 2005. "The greater availability of NSLs does not mean they should be used in every case," the memo said.

Beryl A. Howell, former general counsel to Sen. Patrick Leahy (D-VT) and a specialist in surveillance law, described national security letters as "an unchecked, secret power that makes it invisible to public scrutiny and difficult even for congressional oversight."

Under the Foreign Intelligence Surveillance Act (FISA), the government has the power to obtain secret warrants for telephone wiretaps, electronic monitoring and physical searches in counterterrorism and espionage cases. The Justice Department has expanded its use of such warrants since a favorable FISA court ruling last year, which determined that the Patriot Act gave federal officials broad new authority to obtain them.

The warrants, cloaked in secrecy and largely ignored by the public for years, have become a central issue in the ongoing debate over missteps before the September 11 attacks. The FBI has come under sharp criticism from lawmakers who say FBI officials misread the FISA statute in the case of Zacarias Moussaoui, the alleged terror conspirator who was in custody before the attacks. No warrant was sought in the Moussaoui case, and his computer and other belongings were not searched until after the attacks.

Even less well known are provisions that allow the attorney general to authorize these secret warrants on his own in emergency situations. The department then has 72 hours

from the time a search or wiretap is launched to obtain approval from the FISA court, whose proceedings and findings are closed to the public. Officials said that Ashcroft can use his emergency power when he believes there is no time to wait for the FISA court to approve a warrant. There are no additional restrictions on emergency warrants, other than the rules that apply to all FISA applications, officials said.

Ashcroft told lawmakers that Justice made more than 1,000 applications for warrants to the secret court in 2002, including more than 170 in the emergency category. In the previous 23 years, only 47 emergency FISA warrants were issued.

FBI Director Robert S. Mueller, III, in similar testimony to the Senate Judiciary Committee, said, "We can often establish electronic surveillance within hours of establishing probable cause that an individual is an appropriate FISA subject. We have made full and very productive use of the emergency FISA process."

Sobel and other civil liberties advocates said they are troubled by the aggressive use of emergency FISAs because it leaves the initial decision up to the attorney general and allows clandestine searches and surveillance for up to three days before any court review. Reported in: *Washington Post*, March 23.

Washington, D.C.

House and Senate negotiators have agreed that a Pentagon project intended to detect terrorists by monitoring Internet e-mail and commercial databases for health, financial and travel information cannot be used against Americans. The conferees also agreed to restrict further research on the program without extensive consultation with Congress.

House leaders agreed with Senate fears about the threat to personal privacy in the Pentagon program, known as Total Information Awareness. So they accepted a Senate provision in the omnibus spending bill passed in January, said Representative Jerry Lewis, the California Republican who heads the defense appropriations subcommittee.

Representative John P. Murtha of Pennsylvania, the senior Democrat on the subcommittee, said of the program, "Jerry's against it, and I'm against it, so we kept the Senate amendment." Of the Pentagon, he said, "They've got some crazy people over there."

The only obstacles to the provision becoming law would be the failure of the negotiators to reach an agreement on the overall spending bill in which it is included, or a successful veto by President Bush of the bill.

Lt. Cmdr. Donald Sewell, a Pentagon spokesman, defended the program, saying, "The Department of Defense still feels that it's a tool that can be used to alert us to terrorist acts before they occur." He said, "It's not a program that snoops into American citizens' privacy."

One important factor in the breadth of the opposition is the fact that the research project is headed by Adm. John M. Poindexter. Several members of Congress have said that the admiral was an unwelcome symbol because he had been convicted of lying to Congress about weapons sales to Iran and illegal aid to Nicaraguan rebels, an issue with constitutional ramifications, the Iran-contra affair. The fact that his conviction was later reversed on the ground that he had been given immunity for the testimony in which he lied did not mitigate Congressional opinion, they said.

The negotiators' decision was praised by Democrats and Republicans and by outside groups on the right and the left. Senator Ron Wyden, the Oregon Democrat who sponsored the Senate amendment, said, "It looks like Congress is getting the message from the American people loud and clear and that is: Stop the trifling of the civil liberties of law-abiding Americans."

Senator Charles E. Grassley, the Iowa Republican who co-sponsored the Wyden amendment, said: "Protecting Americans' civil liberties while at the same time winning the war against terrorism has got to be top priority for the United States. Congressional oversight of this program will be a must as we proceed in the war against terror. The acceptance of this amendment sends a signal that Congress won't sit on its hands as the TIA program moves forward."

Lisa Dean, director of the Center for Technology at the Free Congress Foundation, said, "I am thrilled to see Congress taking responsibility in oversight, given the depth of the debate on this issue."

Katie Corrigan, legislative counsel for the American Civil Liberties Union, said: "This is a positive first step toward protecting the privacy of Americans. Congress represents the people's interests and appropriately responded to broad public concern about a program that does not reflect the goals of making us both safe and free."

The negotiators' decision meant almost complete failure for a last-minute Pentagon effort to protect the program from the Wyden amendment by establishing advisory committees to oversee the program. The total information concept would enable a team of intelligence analysts to gather and view information from databases, pursue links between individuals and groups, respond to automatic alerts, and share information, all from their individual computers. It could link such different electronic sources as video feeds from airport surveillance cameras, credit card transactions, airline reservations and records of telephone calls. The data would be filtered through software that would constantly seek suspicious patterns.

The Defense Department had already begun to discuss the use of the system with the F.B.I. and perhaps other agencies. Now, without a new law specifically authorizing its use and a new, specific appropriation to pay for it, the program could not be used against United States citizens. But it could be employed in support of lawful military operations outside the United States and lawful foreign intelligence operations conducted wholly against non-United States citizens.

(continued on page 123)

libraries

Juneau, Alaska

An ongoing controversy that erupted over a May–July 2002 gay-pride exhibit at Juneau Public Libraries ended in February when officials announced they were installing two new display cases away from the lobby area in which nonprofit groups could mount exhibits. The library also released a new policy that promises the library "will not censor or remove a nonprofit group display because some members of the community disagree with its content" and recommends "any local group with an opposing viewpoint may book its own display."

The new rules no longer designate the library as exhibit cosponsor of displays appearing in cases at the downtown library entrance, as the discarded policy had. It also eliminates the clause bestowing "final aesthetic and content decisions regarding any exhibit" on library officials. Staff members had altered the gay-pride exhibit the day after it was assembled by Parents and Friends of Lesbians and Gays, working with PFLAG volunteers. At the time, Library Director Carol McCabe explained that workers removed images of people such as Florence Nightingale and John Nash—"Anyone where there was a discomfort level as to whether or not they were openly gay, we felt uncomfortable including."

By November, the library was holding a public hearing on a revised display policy that barred all exhibits except for ones the library assembled—a tack that Anchorage Mayor George Wuerch had unsuccessfully tried to take last summer. From the responses came the new policy, which earmarks the lobby display space for library use only. "We're trying to balance two important freedoms. One is freedom of speech, one is the freedom of choice," McCabe said

Deemed experimental, the new policy expires May 1, 2004, unless renewed in writing. Reported in: *American Libraries* online, February 17.

Fairfax, Virginia

Some six months after a Fairfax, Virginia, couple challenged the presence of eighteen books in the libraries of the Fairfax County Public Schools, the school board affirmed in a 7–1 vote March 10 that one of the contested titles, *Witch Baby*, by Francesca Lia Block, is suitable for elementary- and middle-school collections. The action supported Superintendent Daniel Domenech's recommendation to retain the book, as well as the placement of a young-adult sticker on its spine.

Richard and Alice Ess had contended that the book, which is the sequel to *Weetzie Bat*, was inappropriate for school-library collections because it contains a gay-positive subplot. "We now know the school system does not consider placement of fictional material advocating 'altermative' sexual orientations, even in the elementary schools, to be a mistake on their part," the local group Parents Against Bad Books in Schools reacted March 14. As to the addition of a young-adult label, the group countered, "If a book receiving a YA review is eligible for placement in the elementary and middle schools, there will be a flood of graphic material, bought with tax dollars, heading for pre-teen children."

Two months earlier, the board had revisited its policy on what constitutes a valid materials challenge in light of the Esses' mass complaint last October. Accordingly, board members modified their guidelines January 13 to give "priority" to future requests for reconsideration brought by the parent of a student who attends a particular school in which the challenged material is held. Reported in: *American Libraries* online, March 17.

broadcasting

Portland, Oregon

It didn't matter if the song was supposed to empower women or fight misogyny or be satirical—the raw language used by a feminist rapper was just as indecent as the party tunes she was criticizing, the Federal Communications Commission said when it fined a radio station for playing it. But the agency reversed itself in February and rescinded the $7,000 fine it imposed on KBOO-FM (90.7) in Portland, Oregon.

Broadcasters and free-speech advocates nationwide criticized the initial ruling, in May 2001, and accused the FCC of

trying to censor “Your Revolution” by poet and rapper Sarah Jones, which features such lyrics as “The real revolution ain’t about bootie size, the Versaces you buys or the Lexus you drives.” Jones said she was turning the sexual language of hip-hop on itself, and station officials said the words had to be considered in the context of the tune.

“It’s not a party song, it’s not pandering, it’s not gratuitous,” said Chris Merrick, station manager at community-sponsored KBOO, after the fine was imposed. “It condemns sexuality and condemns sexism, and that’s indecent?”

After hearing arguments from Jones and KBOO, the FCC determined that although the language was sexual and warranted scrutiny, it wasn’t “patently offensive” by community standards. It noted that Jones had been asked to perform the song at high school assemblies, for instance, and said “the sexual descriptions in the song are not sufficiently graphic to warrant sanction.”

Jones sued the commission with the help of the People for the American Way Foundation and KBOO-FM, arguing that “Your Revolution” is “a feminist attack on male attempts to equate political ‘revolution’ with promiscuous sex,” and as such, is not indecent. The FCC countered by saying the sexual references were designed to “pander and shock and are patently offensive.”

The FCC was supposed to respond within sixty days but did not do so. And after almost two years of silence about what the offending lyric was exactly, the FCC cited the verse “You will not be touching your lips to my triple dip of/ French vanilla butter pecan chocolate deluxe/ Or having Akinyele’s dream/ A six-foot b---job machine,” placing emphasis on the last line.

FCC Enforcement Bureau Chief David Solomon originally said that “Your Revolution” described sexual activity and that the matter warranted scrutiny. Later he said, “However, based on our review of the record developed in response to the Notice of Apparent Liability, we now conclude that the material is not patently offensive and [is] therefore not indecent.”

“While this is a very close case, we now conclude that the broadcast was not indecent because, on balance and in context, the sexual descriptions in the song are not sufficiently graphic to warrant sanction,” Solomon said. “For example, the most graphic phrase, ‘six foot b---job machine,’ was not repeated.”

“They wouldn’t tell me that [that line was what the indecency charge was for] for a long time,” Jones said. “I thought maybe it was [the lyric about a] VD shot. Or the word ‘douche.’ That’s how stupid it was to us. It was like a ‘name that indecency’ game show, trying to figure out what they’d think was indecent.”

Jones’ case received less attention than the FCC’s decision a month later to impose a fine also $7,000 on commercial radio station KKMG-FM in Colorado Springs, Colorado, for airing an edited version of “The Real Slim Shady.” In January 2002, the FCC rescinded the fine against the station and its parent company, Citadel Broadcasting Company. The Portland radio station will receive a refund for the $7,000 it paid as well. Reported in: *Los Angeles Times*, February 28.

university

Cincinnati, Ohio

The Vagina Monologues was performed at Xavier University in Cincinnati March 15–16 after the president of the Catholic institution gave in to faculty members and students who had vigorously protested his cancellation of the play March 11. The Rev. Michael J. Graham, Xavier’s president, withdrew the university’s imprimatur from the production, however, and the play was performed instead under the auspices of a course.

In a prepared statement, Father Graham said that the play, which deals with women’s sexuality, was called off because of “concerns about some of the language and themes” in it. “In choosing to cancel this production,” the statement read, “we believe the sensationalism surrounding the play stood in the way of our coming together to dialogue around the issue of violence against women,” one of the themes of *The Vagina Monologues*.

The effort to bring the play to Xavier was spearheaded by students who hoped to raise money for a local women’s shelter, as well as to promote awareness of violence against women. A rally on Xavier’s campus to protest the play’s cancellation drew more than two hundred students, faculty members, and supporters. Xavier’s Faculty Assembly voted to send a letter to Father Graham asking him to reaffirm the university’s commitment, as expressed in its mission statement, to free and open inquiry.

Father Graham said in his statement that he is “fully supportive of the principles of academic freedom. The points students and faculty have raised over the past several days, and how they relate to Xavier’s Jesuit, Catholic, and university identity, will continue—as they always have been—to be embraced and discussed by the entire campus community.”

The play was performed despite the president’s cancellation when Nancy Bertaux, a professor of economics at Xavier, offered to sponsor the performances as part of a course she is teaching. Father Graham agreed to the alternative billing, calling it “a legitimate exercise of academic freedom” that placed the play “in a suitable environment of debate and discussion.”

Patrick Reilly, president of the Cardinal Newman Society, a conservative Catholic organization based in Falls Church, Virginia, told a Cincinnati reporter that Father Graham, in his view, “has displayed a shocking level of hypocrisy, first by banning the play and now declaring that academic freedom supersedes the mission of the university.”

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newsletter on intellectual freedom *online*

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In an "action alert" on the Cardinal Newman Society's Web site, *The Vagina Monologues* is condemned for its "explicit discussions of sexuality and sexual encounters including lesbian activity and masturbation." "This kind of vulgarity," the alert states, "has no academic or social value to students at a Catholic college, and it's spiritually destructive." Reported in: *Chronicle of Higher Education* (online), March 17.

art

Pasco, Washington

The City of Pasco and artists Janette Hopper and Sharon Rupp have reached a final settlement in a lawsuit filed by the American Civil Liberties Union on behalf of the artists. Under terms of the settlement, the City issued an apology to the artists for "censoring their artwork" and further acknowledging it violated their First Amendment rights. The final settlement came after the U.S. Court of Appeals for the Ninth Circuit ruled in 2001 that the City of Pasco violated the rights of Hopper and Rupp when it excluded their works from a program to display art at the Pasco City Hall in 1996.

"We are very pleased to get the apology that the artists have long sought. It's not the business of government to censor art because some people may find the art controversial," said ACLU attorney Paul Lawrence of the firm Preston Gates Ellis, who represented the artists along with attorney Daniel Poliak.

The City of Pasco had agreed with artists Janette Hopper and Sharon Rupp to display their artwork publicly at the Pasco City Hall Building. The works were to be exhibited as part of a partnership between the City of Pasco and the Mid-Columbia Arts Council to display art works at Pasco City Hall on an ongoing basis. Hopper had been invited to exhibit a series of black and white linoleum relief prints, and Rupp had been invited to display several sculptures.

Hopper delivered her prints for display on February 7, 1996 but was told the next day by a representative of the Arts Council that City officials had prevented the Arts Council from hanging the pieces in the Pasco City Hall Gallery. Hopper's prints depicted Adam and Eve touring German landmarks and included some nudity. During ensuing conversations and correspondence, Hopper was informed by City officials that her art works were not shown because they were considered "sexual" and "sensual," and because the City feared the works might generate complaints from a local anti-pornography crusader.

Rupp's sculptures were displayed at the Pasco City Hall Gallery from February 8-15, 1996. On February 15, Pasco City officials ordered the Arts Council to remove them. Among the works was Rupp's satirical bronze sculpture titled "To the Democrats, Republicans, and Bipartisans," which showed a woman mooning her audience. During ensuing conversations and correspondence, Rupp was informed by City officials that the sculptures were removed because of their sexual nature and because the City had received complaints about the art display. Rupp was informed that the removal decision also was made because display of her work would make the exhibition a "political" one.

The City operated its public art program without a pre-screening process or any guidance as to what kind of work would be considered inappropriate. The City had previously exhibited other works of art with nudity and had no regulations barring works of art such as that submitted by Hopper and Rupp.

The Ninth Circuit found that the City violated the artists' rights to freedom of expression. In its ruling, the Court stated, "We do not endorse Pasco's cramped view of what constitutes censorship, and we find none of the city's reasons for excluding the art work compelling."

"The City of Pasco had decided to open City Hall as a public forum for art. The courts have said clearly that once government officials make such a decision, they cannot make choices based on the content of the art—whether it's controversial or offends someone's political sensibilities," said ACLU attorney Paul Lawrence. The City is paying the ACLU $75,000 for attorney fees and costs. Reported in: ACLU Press Release, March 3.

foreign

Cairo, Egypt

Egypt's highest court, the Court of Cassation, on March 18 acquitted a prominent Egyptian-American professor, Saad Eddin Ibrahim, of "undermining the dignity of the state and tarnishing its reputation," bringing to an end a three-year legal saga that many scholars and human-rights leaders say exposed the fragility of academic freedom in the Arab world's most intellectually prominent country.

The 64-year-old Ibrahim had been a professor of political sociology at the American University in Cairo for a quarter-century before his arrest in June 2000. The charges against him were related to his work at the Ibn Khaldun Center for Development Studies, which he founded, an independent research institute that focused on controversial political and social issues in an effort to promote human rights and democracy in Egypt. The center was shut down by the Egyptian government following Ibrahim's arrest.

"Thank God, thank God!" Ibrahim exclaimed in a courtroom that echoed in joyous pandemonium following the verdict. "I feel grateful, thankful, and determined to carry on my agenda," he said later, in a telephone interview. "The acquittal was totally based on legal grounds—this is the highest court in the land, and it has a history of independent integrity with no political influence, unlike the lower State Security

Courts, which are ultimately used for punishing political dissidents."

Ibrahim, who is a dual Egyptian and American citizen, was convicted in July 2002, for the second time in a year and a half, by a State Security Court, which is normally reserved for trying Islamic militants. He was sentenced to seven years in prison after a retrial, by order of an appellate court, which ruled that the conviction in his first trial was "politically motivated." He was released from prison in December, pending the second retrial, which has now concluded.

Ibrahim's case drew international attention to Egypt's judicial system from the European Union, the United States, and international human-rights groups. Amnesty International adopted Ibrahim as a "prisoner of conscience."

In a statement released by the U.S. Embassy in Cairo, the U.S. ambassador to Egypt, David Welch, said, "We're very pleased that this long ordeal is now over and Dr. Ibrahim is free to continue his work and receive the medical attention he needs. Today's decision by the Court of Cassation demonstrates why this judicial body is so respected."

Ibrahim suffers from a neurological disorder that was exacerbated by a series of mild strokes he suffered during fourteen months of imprisonment. He said he plans to travel to Switzerland or the United States to seek medical treatment. He added that he looked forward to resuming his research and teaching duties at the American University in Cairo (AUC).

"I never left AUC, and AUC never left me," he said. "AUC stood by me all the way through. They have asked me to resume teaching any time I want, and I will be teaching during the new academic year."

"We are absolutely delighted at the turn of events and we look forward to having him back in the classroom at AUC," said Tim Sullivan, provost of the American University in Cairo. Reported in: *Chronicle of Higher Education* (online), March 19.

Paris, France

In what might end a three-year legal fight, a Paris court on February 11 threw out accusations by French human rights activists who said Yahoo! Inc. should be held legally responsible for auctions of Nazi paraphernalia that were once held on its Web site. The court ruled that Yahoo! and its former chief executive, Tim Koogle, never sought to "justify war crimes and crimes against humanity"—the accusation leveled by human rights activists, including Holocaust survivors and their families.

The case was initiated in 2000, when France's Union of Jewish Students and the International Anti-Racism and Anti-Semitism League sued Yahoo! for allowing Nazi collectibles, including flags emblazoned with swastikas, to be sold on its auction pages. The case led to a landmark ruling in France, with a court ordering Yahoo! to block Internet surfers in France from auctions selling Nazi memorabilia. French law bars the display or sale of racist material.

Yahoo! eventually banned Nazi material as it began charging users to make auction listings, saying it did not want to profit from such material. The company insisted the decision had nothing to do with the proceedings in France. The company even asked a federal judge in California to affirm that U.S. companies could not be regulated by countries that have more restrictive laws on freedom of expression. The judge agreed.

Still angry at Yahoo!'s attitude, French Holocaust survivors and their families launched a second attack and were joined by a group called the Movement Against Racism and for Friendship Between People. The parties sued for one symbolic euro. But the Paris court said that "justifying war crimes" means "glorifying, praising, or at least presenting the crimes in question favorably." Yahoo! and its auction pages did not fit that description, the court said. Reported in: *San Jose Mercury-News*, February 11. ☐

(is it legal? . . . from page 118)

The negotiators did agree to extend from 60 to 90 days the time the Defense Department would have to provide a detailed report to Congress, including its costs, goals, impact on privacy and civil liberties and prospects for successes against terrorists. Unless that report was filed, all further research on the project would have to stop immediately. But President Bush could keep the research alive by certifying to Congress that a halt "would endanger the national security of the United States."

Senator Wyden's curb on the program slid through the Senate with no overt opposition, and among the House-Senate negotiators it found no vocal opposition, either, making it an almost incidental decision in a conference fighting over billions of dollars for thousands of programs.

Senator Patrick J. Leahy of Vermont, the senior Democrat on the Judiciary Committee, said, "If there is one thing that should unite everybody, from the very conservative member to the very liberal member, it is a concern that our own government should not spy on law-abiding citizens."

Publicly, most of the criticism of Total Information Awareness had come from Democrats. Except for Senator Grassley, Republicans had been silent in public, unwilling to attack a project of a Republican administration. But as Senator Wyden noted, no one from either party had been ready to speak up in its favor. Reported in: *New York Times*, February 12.

Washington, D.C.

A draft policy from the Bush administration on the release of previously classified documents is being met with relief by historians and proponents of a more open government.

"There was some concern, given the secretive nature of this administration, that they would undertake wholesale changes to classification policy," said Steven Aftergood, director of the program on government secrecy at the Federation of American Scientists. "That does not appear to be the case, based on this draft."

The draft, in fact, merely revises Executive Order 12958, which former President Bill Clinton created in 1995. The order has prompted the release of close to a billion pages of historically valuable, previously classified documents, according to Bruce Craig, director of the National Coalition for History.

The revisions would preserve a process, established in the 1995 executive order, that requires the government to automatically make public any 25-year-old document that was previously classified and does not contain information critical to national security. However, the draft would delay those documents scheduled to be released this spring until the end of 2006, Aftergood said. After that, 25-year-old documents that are not specifically exempted would be automatically declassified.

Aftergood said that despite the overall openness of the administration's draft policy, it does make a number of "gestures" toward increased secrecy. For instance, under the draft policy, it would be easier for the government to reclassify information that has been previously declassified but might not have made its way into the public domain.

The draft is circulating among government agencies but will not be open to public comment. The full text of the draft is available online at the Web site of the Federation of American Scientists. Reported in: *Chronicle of Higher Education* (online), March 18.

New York, New York

In a last-minute proposal to settle a dispute over spying on terror suspects, New York city officials said in federal court January 29 that the police promised to adopt new guidelines to protect civil liberties if the court lifted a twenty-year-old order that limited police surveillance and undercover operations. But, in final arguments before Judge Charles S. Haight, Jr., of United States District Court in Manhattan, civil liberties lawyers rejected the offer, calling it an empty gesture.

"What they say they will do is entitled to no consideration in this matter," Jethro M. Eisenstein, one of the lawyers, told the judge. The arguments came on a motion by the city to do away with most of the provisions of a consent decree that ended a 1971 suit over harassment of political advocacy groups by the Police Department's "red squad," as it was then known. The judge gave no timetable for his decision.

The city had asked to be relieved from the limits of the decree, known as the Handschu agreement. The police said it has made it impossible for them to follow terror leads, because it requires evidence of a crime to initiate spying. The city's offer was made in an affidavit from David Cohen, a former CIA official who is now the Police Department's deputy commissioner for intelligence. Judge Haight indicated interest in the promise, which Gail Donoghue, the city lawyer arguing the case, re-iterated in court.

Eisenstein said the lawyers would consider the offer as part of a settlement, but only if it could be enforced by the court. The city's corporation counsel, Michael A. Cardozo, gave no indication the city was interested in such an agreement.

Paul G. Chevigny, a law professor at New York University who argued against the city's motion, said, "What is really the difference is the question of whether these guidelines should be enforced by a federal court or not." Reported in: *New York Times*, January 30.

child pornography

Washington, D.C.

The Senate moved February 24 to crack down on child pornography with a bill drawn to strengthen bans on using minors in obscene material while dealing with the Supreme Court's constitutional problems with an earlier version. The bill, passed without dissent, was in response to a court ruling last April that struck down a 1996 law that specifically prohibited virtual child pornography. The court said banning images that only appear to depict real children engaged in sex was unconstitutionally vague and far-reaching.

Sens. Orrin Hatch (R-UT) and Patrick Leahy (D-VT), the chair and top Democrat on the Senate Judiciary Committee, sponsored the new measure, which Hatch said "strikes a necessary balance" between protecting children and defending First Amendment free speech rights. "I've worked very hard to digest the relevant legal issues and make the 'Protect Act' square with the law," he said. The bill passed 84-0.

Specifically, the bill prohibits the pandering or solicitation of anything represented to be obscene child pornography. Responding to the court ruling, it requires the government to prove beyond a reasonable doubt that a person intended others to believe the material was obscene child pornography. The bill, which still requires House action, also plugs a loophole where pornographers could avoid prosecution by claiming that their sexually explicit material was computer-generated and involved no real children. Under an affirmative defense provision, the defendant would be required to prove that real children were not a part of the production.

The bill narrows the definition of "sexually explicit conduct" for prosecutions of computer-created child pornography and requires people who produce sexually explicit material to keep more extensive records so that they can prove that minors were not used in its making. It creates a new crime—the use of child pornography by sexual predators to entice minors to engage in sexual activity or the production of new child pornography—and increases penalties for child pornographers.

Leahy said he was worried that some provisions of the bill would be challenged in court. "The last thing we want to do is to create years of legal limbo for our nation's children," he said. Leahy mentioned language that would allow prosecution of anyone who "presented" a movie intended to cause another person to believe that a minor was engaging in sexually explicit conduct. By that definition, he said, a movie theater presenting the movies *Romeo and Juliet* or *American Beauty* would be guilty of a felony.

The Supreme Court, in its 6-3 ruling last April, said that by expanding child pornography prohibitions, the 1996 legislation went too far in chipping away at First Amendment rights. Congress had justified the wider ban by saying that, even when children were not used in simulated pornography, real children could be harmed by feeding the prurient appetites of pedophiles or child molesters.

Bill Lyon of the Free Speech Coalition, an adult entertainment trade group that challenged the 1996 law, said the Hatch-Leahy bill appeared "much more confined to the specific area of child pornography." The original bill, he said, "went way beyond protecting kids and was really a covert attempt to destroy the entire adult entertainment industry." Reported in: *Washington Post*, February 25. ☐

(from the bench . . . from page 108)

Union, seeks damages on allegations that California violated their constitutionally protected speech. The operators also seek an injunction barring California from taking similar action in the 2004 general election. A federal judge had barred their damages claims and refused to promptly entertain the operators' bid to prevent California from blocking their Web-based vote-swapping plans for the 2004 election.

The U.S. Court of Appeals for the Ninth Circuit, however, ordered the suit to go forward. The San Francisco-based appeals court ruled that failing to resolve the dispute may result in "chilling" the Web operators' protected speech in the next election.

During the 2000 election, many of the Web sites sought to have Nader supporters cast their votes for Gore in states where the presidential race was expected to be close. In exchange, Democrats agreed to vote for Nader in states where Republican George W. Bush was expected to win. Organizers hoped the trades, not sanctioned by the campaigns, would help Gore in swing states and give the Green Party the 5% of the national vote it would need to win federal campaign money. Reported in: freedomforum.org, February 8. ☐

(Freedom to Read act . . . from page 89)

PATRIOT Act expands these powers unnecessarily, and threatens the civil liberties of people who have committed no crimes."

Emily Sheketoff of ALA's Washington Office spoke on behalf of the American Library Association and emphasized the chilling effect these new powers have on library users. She added: "Democratic government requires public accountability and Congress has the responsibility to provide oversight and seek accountability about how these extraordinary powers are being used."

Also speaking were Linda Ramsdell, a bookseller from Hardwick, Vermont, and president of the New England Booksellers Association and Chris Finan from the American Booksellers Association.

"All of us are concerned about terrorism and all of us are determined to do all that we can to protect the American people from another terrorist attack," Sanders added. But, the threat of terrorism must not be used as an excuse by the government to intrude on our basic constitutional rights. We can fight terrorism, but we can do it at the same time as we protect the civil liberties that have made our country great." Reported in: ALA Washington Office Newsline, March 7. ☐

(censorship dateline . . . from page 102)

scarce. "All schools in Cuba have libraries. Books are there. What isn't there is freedom to read any book you want," said Ricardo González, a Havana journalist who ran a library before closing it to start a magazine.

Cuban President Fidel Castro disputed such criticism in 1998, saying that a lack of resources—and not censorship—limited the number of books available in the country. That single statement, González said, triggered what has become one of the fastest-growing elements of Cuba's civil society: Dissidents began putting small, independent libraries in their homes. The idea was to lend books to neighbors for free and make available a range of publications covering everything from Marxism 101 to theories about capitalism, democracy and open markets. The movement quickly spread, and there are now 103 independent libraries in ten of the country's fourteen provinces, said Gisela Delgado, national director of the opposition's library project.

Nelson Valdés, a sociology professor and Latin America expert at the University of New Mexico, says Cuba is more tolerant of criticism than some people realize. "Numerous anti-government books" have been sold at government book fairs, he said. And more than two hundred nongovernmental groups have sprung up, all sanctioned by the government. Reported in: *Dallas News*, February 28. ☐

Library Bill of Rights

Adopted June 18, 1948.
Amended February 2, 1961, and January 23, 1980,
inclusion of "age" reaffirmed January 23, 1996,
by the ALA Council.

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.

III. Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.

IV. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.

V. A person's right to use a library should not be denied or abridged because of origin, age, background, or views.

VI. 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.

intellectual freedom bibliography

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