

newsletter
on
intellectual
freedom



Editor: Judith F. Krug, Director
Office for Intellectual Freedom, American Library Association
Associate Editor: Henry F. Reichman, California State University, Hayward

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FBI probes library records

A Connecticut library sued the Justice Department to challenge an FBI demand for its user records, billing information, and Internet logs under authorization of Section 505 of the USA PATRIOT Act. The American Civil Liberties Union (ACLU), which joined the unnamed library in the lawsuit, said it was filed under seal August 9 with the U.S. District Court in Bridgeport.

The complaint focused on the FBI's use of an administrative subpoena, called a National Security Letter, to obtain library records without approval of a judge in an "investigation to protect against international terrorism or clandestine intelligence activities," read the FBI letter—released by the ACLU with a redacted public version of the complaint.

Because of a gag order imposed by the PATRIOT Act, the identity of the institution, the specific records being sought, the date of the request, and other details of the incident could not be disclosed.

The lawsuit asserted that Section 505 of the act violates the First, Fourth, and Fifth Amendments to the Constitution and sought relief from complying with the FBI demand, a permanent ban on the FBI's use of Section 505 subpoenas, immunity from PATRIOT Act-related penalties, and an emergency court order to lift the gag provision so the library could participate in public debate on the congressional reauthorization of the act.

"Our client wants to tell the American public about the dangers of allowing the FBI to demand library records without court approval," ACLU Associate Legal Director Ann Beeson said. "If our client could speak, he could explain why Congress should adopt additional safeguards that would limit PATRIOT Act powers."

The lawsuit said the Connecticut library, which "is a member of the American Library Association," "strictly guards the confidentiality and privacy of its library and Internet records, and believes it should not be forced to disclose such records without a showing of compelling need and approval by a judge."

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ALA, others file *amicus* in National Security Letters challenge

The American Library Association, the Freedom to Read Foundation, and four other groups representing authors, bookstores, publishers, and professors filed an *amicus* brief August 1 supporting a 2004 federal court decision that declared National Security Letters unconstitutional.

In *Gonzales v. Doe*, the U.S. government is appealing the earlier ruling that the secret administrative subpoenas—which can be used by the FBI to obtain transaction records from electronic communications service providers without judicial oversight—violate free-speech rights as well as the right to be free from unreasonable searches. The original lawsuit was filed by the American Civil Liberties Union on behalf of an Internet service provider that received one of the letters.

In their *amicus*, the groups pointed out that, although the original statute governing NSLs is aimed at phone companies and Internet service providers, it could apply to nearly all public and university libraries, as well as many bookstores. Further, they add, the USA PATRIOT Act “substantially expanded the government’s authority to issue NSLs in ways that gravely threaten constitutionally protected expressive activity.”

Other groups joining in the *amicus* were the American Association of University Professors, American Booksellers Foundation for Free Expression, Association of American Publishers, and PEN American Center. Reported in: *American Libraries* Online, August 12. □

ALA releases full report on law enforcement activity in libraries

The American Library Association ALA on August 26 released the full report of its survey measuring law enforcement activity in America’s libraries. Preliminary findings, released in June, revealed that at least 137 legally executed requests by federal and state/local law enforcement in both academic and public libraries have taken place since October 2001—sixty-three legally executed requests for records in public libraries and seventy-four such requests in academic libraries. The full report of survey findings includes contextual data including responses to interviews and an appendix containing the survey instrument.

Researchers developed a representative sample of more than 1,500 public libraries, of which 33 percent responded to the survey. Of the 4,008 academic libraries invited to participate in the survey, 23 percent responded.

The project was funded with support from the John L. and James S. Knight Foundation, the Carnegie Corporation of New York and the Ford Foundation. The study report can be found online at www.ala.org/oitp. □

poll suggests information shrinks PATRIOT Act support

Fewer than half of Americans know the purpose of the PATRIOT Act, and the more they know about it the less they like it, according to a poll released August 29. Fewer than half of those polled, 42 percent, are able to correctly identify the law’s main purpose of enhancing surveillance procedures for federal law enforcement agencies, according to the poll conducted by the Center for Survey Research and Analysis at the University of Connecticut.

Almost two-thirds of all Americans, 64 percent, said they support the PATRIOT Act. But support dropped to 57 percent among those who could accurately identify the intent of the legislation.

The survey was intended to take a closer look at the high levels of public support the PATRIOT Act has gotten in various polls, said Samuel Best, the center’s director. “The PATRIOT Act has been a very visible piece of legislation,” Best said. “We wanted to see if people had an understanding of the act that differentiated it from the war on terrorism generally.”

“Most people don’t distinguish the PATRIOT Act from the war on terror in general,” Best said.

The House and Senate have voted to extend provisions of the Act that were set to expire at the end of this year, making many of those provisions permanent. A conference committee is scheduled to try this Fall to work out differences in the House and Senate versions of the legislation.

Some provisions of the PATRIOT Act are supported by a solid majority, while others got far less support. The provision, that permitted federal agents:

- To use information collected in foreign intelligence investigations for domestic crime investigations was supported by 81 percent.
- To monitor names and addresses of Internet communications in criminal investigations was supported by 69 percent.
- To tap any telephone line a terrorist suspect might use rather than specifying particular phone lines was supported by 62 percent.
- To require libraries to turn over records in terrorism investigations unbeknownst to the patrons was supported by 53 percent.
- To require banks to turn over records to the government without judicial approval was supported by 43 percent.
- To conduct secret searches of Americans’ homes without informing the occupants for an unspecified period of time was supported by 23 percent.

The popularity of the law seems to dwindle for measures that intrude into Americans’ personal lives. “Once

religion and intellectual freedom: divine revelation in the marketplace of ideas

The following is the edited transcript of a program sponsored by the ALA Intellectual Freedom Round Table, the ALA Intellectual Freedom Committee, and the Division Intellectual Freedom Committees, at the ALA Annual Conference in Chicago on June 25.

Barbara Jones: I'm Barbara Jones, the chair of the Intellectual Freedom Round Table and university librarian of Wesleyan University in Connecticut. I would like to welcome you to Religion and Intellectual Freedom: Divine Revelation in the Marketplace of Ideas, sponsored by the Intellectual Freedom Round Table, the ALA Intellectual Freedom Committee, and the Division Intellectual Freedom Committees.

This program embraces some of the most difficult questions faced by Intellectual Freedom advocates: how can libraries serve both the religious and the secular demands made by members of their communities? Does demonstrating respect for religious life conflict with the separation of church and state?

We will first hear from Marianna Tax Choldin. Marianna is the Mortenson Professor Emerita at the University of Illinois at Urbana, Champaign. She will introduce our speakers. After Professors Marty and Jacoby have spoken, we will hear from Melora Ranney Norman, chair of the IFRT program committee who will introduce the last two speakers. We then will have a panel, followed by questions and answers. Again, thank you for coming.

Marianna Tax Choldin: It is with great pleasure that I introduce our first speaker, Martin Marty. Dr. Marty is the Fairfax M. Cone Distinguished Service Professor Emeritus at the University of Chicago where he taught chiefly in the divinity school for thirty-five years and where the Martin Marty Center has since been founded to promote public religion endeavors. Indeed, he is one of the most prominent interpreters of religion and culture today. If you aren't aware of it, have a look at the newsletter that comes out very often

from the Martin Marty Center, in which Marty and other distinguished colleagues comment on what's going on in religion. It's absolutely wonderful!

Author of more than fifty books, he's also a speaker, columnist, and pastor. His most recent book, *The Promise of Grace*, is an illustrated, centennial history of Grace Lutheran Church in Chicago. His other books include *When Faiths Collide*, about the collisions of faiths or the collisions of people of faith, which are among the most threatening conflicts today, and he was one of the editors of the Fundamentalism Project, which brought together scholars from around the world to write five volumes on the phenomenon of fundamentalism.

Our second speaker is Susan Jacoby. Susan, an independent scholar and historian, is the author of *Free Thinkers: A History of American Secularism*, and six other books. *Free Thinkers* was named a notable book of 2004 by the *Los Angeles Times* and the *Washington Post* and was cited as one of the best international books of the year by the *Times Literary Supplement* in England. She is the author of six other books including *Wild Justice: The Evolution of Revenge*, which was short listed for the Pulitzer Prize. Jacoby began her writing career at the *Washington Post*. Her articles and reviews have appeared in the *New York Times*, the *Los Angeles Times*, *Newsday*, *American Prospect*, the *Nation*, *Vogue*, and *AARP The Magazine* and *AARP Bulletin*. She is also director of the Center for Inquiry-Metro New York, a rationalist research and advocacy organization. Please join me in welcoming Martin Marty and Susan Jacoby.

Martin Marty: Dear friends, my thesis, comes down to this: If you care about intellectual freedom, don't trust the religious, and if you care about intellectual freedom, don't trust the nonreligious.

So on the positive side, a certain kind of religious voice, expression, movement, and a certain kind of nonreligious voice, movement, in coalition produced many of the liberties we have and many of the assurances for future liberties. Religion as such, of course, has always been a big topic whenever intellectual freedom comes up. It didn't always come up in all aspects of world affairs. When we were beginning, a colleague and I, to make a six-year

(PATRIOT Act . . . from previous page)

people see these things hit increasingly close to home, they become more and more troubled," Best said.

Three-fourths said they think that law enforcement will frequently or occasionally use the law to investigate crimes other than terrorism. Almost as many, 72 percent, said they expect it will be used to investigate legitimate political and social groups. People are evenly divided on whether the law has prevented terrorist attacks.

While numerous polls have indicated widespread support for the PATRIOT Act, Best said his research suggests "people are pretty torn on where they stand."

The results are based on polling of 800 adults from August 4 to 22 and have a margin of sampling error of plus or minus 3.5 percentage points. Reported in: *San Francisco Chronicle*, August 29. □

study of militant fundamentalisms around the world for the American Academy of Arts and Sciences, we liked to quote Admiral Stansfield Turner, who had been head of the CIA at the time of the Iranian revolution.

On *Issues and Answers*, February 4, 1979, he was asked, “How could the CIA have missed this revolution?” He said, “Well, we paid attention to everything that matters—we knew what they wore in Iran, we knew cinema, we knew banking, we knew universities, village life. We paid attention to everything. The only thing we paid no attention to at all was religion, because everyone knows religion has no power in the modern world.”

Six years later, my colleague said, “I was teaching at a little college in Chicago and last week I met with Colin Powell. I often meet with the State Department. I’m going to tell you, today the State Department has got religion! They got religion because, count today’s newspaper, I’m sure there are ten, twelve, fifteen stories informed by religion, both in the healing dimension and in its killing dimension being so often intertwined.”

In our nation, religion is probably more controversial than it has been in sixty or seventy years, as is the role of religion and intellectual freedom. So we have to revisit it from scratch. I’m preparing for the newsletter four little snips that would confirm something of this thesis.

The first is from George Santayana, who in character and opinion of the United States in 1910, tried to account for liberties in America, out of which came freedom of speech, freedom of religion and freedom of expression of all sorts. He said, it tends to come this way: Picture two sets of people: on the one hand are people he called Rabid and Pensive Apostles of Liberty which meant, he said, “Liberty for themselves to be just so and to remain just so forever. Together, the most viable defiance of anybody who might ask them for the sake of harmony to be a little different?”

He was thinking here of Anne Hutchinson and Roger Williams and other colonial dissenters who didn’t come to the colonies in order to produce religious freedom except for themselves. Santayana asked, “How did these freedoms come about?” You also need, he said, “English liberties.” English liberty fit very well because he’s speaking here of the Enlightenment, of the framers of the Constitution, our Adams and Jeffersons and Madisons and so on—he said “they learned that while they fought for liberty, they also knew a certain point at which they lived with” what he called “a certain vagueness of soul.” Try to pin Benjamin Franklin down religiously; he’s got “vagueness of soul” all the way.

Do you believe in the divinity of Jesus? “Well,” he said, “I notice that a lot of people who believe in the divinity of Jesus really do good things and a lot of people who don’t believe in the divinity of Jesus do really good things. So it can’t be the divinity that did it.” He once more wrote, “I’m an eighty-two-year-old man and I will soon have a very easy method of finding out the truth of that proposition.” That’s known as “vagueness of soul” and something that

was needed at the time when religion conflicted between the Rabid and Pensive Apostles and that wonderful coalition, I would argue, helped produced the liberties off of which we’ve lived.

But my second quotation is from Hannah Arendt on revolution. She’s writing more about revolution than we are; we’re only concerned today with intellectual freedom and the place religion plays with it. She says, “A few words need to be said about the not infrequent claim that all modern revolutions are essentially Christian in origin, the revolution assures its liberty.” Even when their professed faith is atheism, there’s a big debate going on in the EU, in Europe today. When you remove all reference to Christianity, are you still living off ideals it produced?

“Secularization on the other hand,” Arendt says, “is a separation of religion from politics, and the rise of a secular realm with a dignity of its own is certainly a crucial factor in the phenomenon of revolution.” It may ultimately turn out that secularization, and the contents of Christian teachings, which constitutes the origin of these changes, produces this revolution which is refuted by the fact that no such revolution was ever made in the name of Christianity prior to the modern age. So the best one could say in favor of this theory is that it needed modernity to liberate the revolutionary germs of the Christian faith.

I studied struggles for freedom in many places and it’s often an intra religious change. I was in South Africa the year before the change came and the South African Dutch Reformed Synod, after long studies, said “We taught you wrong.” Somebody said that the day they said this, the regime stood no chance of survival because they then taught liberties and freedoms. But Hannah Arendt, I think, says, “Before you want to claim the religious contribution, you at least ought to quote send a card of thanks to modernity or whatever word you want to use for it.”

But, you still need more than just two poles; you need a good deal of internal diversity and there comes number three, Voltaire and James Madison. James Madison argued that liberty stood its best chance, and I would argue it still does, in a highly diverse and pluralist nation. Many of the liberties we have come about because there were so many different religions and so many different philosophies, and he had to find a way to live with them. Hence, the First Amendment of the U.S. Constitution. Jefferson thought you needed a petite little rural thing to have freedom. Madison said, “No, y’all come.” And he quoted Voltaire; “If in England one religion only were allowed, the government would become arbitrary. If there were two, they would be at each other’s throat. But as there is such a multitude, they all live happily and in peace.”

They didn’t live quite that happily or that much in peace, but another way to put it is—if a society is one religion, they’ll kill everybody else; if it has two, they’ll kill each other. Look at the map today, anywhere you’d like, if you have more, they have to find a way and freedoms come

with that. Madison, in the Tenth Federalist Paper, said this: "In a free government, the security for civil rights must be the same as that for religious rights. It consists of a multiplicity of interests and in the other, in the multiplicity of sects. The degrees of security in both cases will depend on the number of interests and sects."

You librarians, I know, these days in many cases are bewildered by and besieged by diversity, the fact that so many different religions and so many different groups would like to make their claim for privilege, for monopoly, for whatever. I would just say I'd prefer that any day to a place where we have homogeneity and a few little dissenters running around. When the community can amass a single point of view, that's when you really have trouble. So if I were a creative trouble maker, I'd try to stimulate that diversity.

Finally, number four of my quotes comes from John Courtney Murray, a Jesuit, in his book *We Hold These Truths*, from 1960. He is the pioneer who helped produce what in the Second Vatican Council came to be the Declaration of Religious Freedom—the change in which Catholicism literally turned around in its understandings of freedoms and liberties; Murray was the intellect behind it. "The United States," he says, "is a good place to live. Many have found it even a sort of secular sanctuary. But it's not a church, the United States is not a church, it's not a church whether high, low or broad. It is simply a civil community whose unity is purely political, consisting in agreement of the good of the human at the level of performance without the necessity of agreement on ultimates."

"The fact," he says, "may be embarrassing to the high-minded believer, but it's nevertheless a fact that the development of religious freedom in society bears the distinct relationship to the growth of unbelief and indifference. Our historical good fortune lay in the particular kind of unbelief that American society has known. It was not continental laicism, superficially ideoclerical, it was not fundamentally anti-religious, it was not fundamentally militant in its spirit or active in its purpose to destroy what is regarded as hateful. Unbelief in America has been rather easygoing, the product more of a naive materialism than of any conscious conviction. American unbelief is usually respectful of belief or at least respectful of the freedom to believe."

What he is arguing and what I'm trying to say throughout is that you're better off with diversity than with homogeneity or duality, and America is moving into duality these days. You're better off with diversity, but don't trust any dominant religion. It isn't going to yield more than it needs to and I would argue that if the unbelief that he describes does turn into an aggressive version, then the religionists get their back up and poor librarians are caught between the two along the way.

So some comments to take off from these. We in the United States have many problems in many locales, and assaults on intellectual freedom will focus on media, schools, but in a sense libraries, especially. I think that's

easy to document. The dream is, I think what John Courtney Murray said, "Not that we have to agree on our philosophy or on our religion, we're not looking for articles of truth, we're looking for articles of peace." One of the terms by which citizens allow other citizens to live by the freedoms that are assured for them.

We have today Pensive and Rabid Apostles of Liberty and I think you have to say they are on both sides, the aggressively religious and the aggressively nonreligious. The reasons for the new assertiveness are many. Let me just tick off a few: The end of millennium devastation of the ideologies of the past century. Between 1989 and the end of the century came the end of the big "isms" of the period—Fascism, Naziism, Maoism, millenniumism, etc., collapsed within a several year period and there was a kind of devastation in the landscape. People are looking for new things to believe.

Secondly, the competition to fill this laboratorial landscape with one or another competing visions, you could call it a market. Next, in a time when there is a great accent on individual expressive autonomy, we're all for it, yet there are huge impulses to get together against that. We like to quote Harold Isaacs, "Around the world there is a massive, convulsive ingathering of peoples into their separatenesses and over againstnesses to protect their pride and power in place from the real or presumed threat of others who are doing the same."

Fourth, I think that technology has helped because it gives formerly powerless groups great access to power. The Internet and other ways you can quickly organize beyond merely a local community and then you suddenly get power. I think many of the groups in America today who put most pressure on libraries, schools, and so on are people who thirty years ago had a real case. I call it the politics of resentment. They were divided and demeaned. They were hillbillies, holy rollers, back woods, or whatever and they rebelled. Then, very suddenly, they noticed how easy it was to acquire power and the politics of resentment became the politics of will to power and with that then a kind of a desire to want to run things. And, if that's linked up with local, state, or national politics, many of them would go for broke. We're seeing a lot of that today, and libraries are in the middle of that.

Religions of many sorts are going all over the world and, therefore, I can't conclude without reminding that there is no way to talk about the future of intellectual freedom by avoiding the issue of religion. The world is turning more, not less, religious. The enlightenment, the people of two centuries ago, the compliant and friendly, tolerant people are on a defensive. In 1950, every seventh person in the world was Muslim, today every fifth is. That doesn't mean they are all enemies of freedom. It does mean they are all religious and they're going to interact with world politics and world affairs in a different way.

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tiny trackers: protecting privacy in an RFID world

The following is an edited transcript of a program sponsored by the ALA Intellectual Freedom Committee, the ALA Office for Information Technology, and the LITA Technology Policy and Access Committee at the ALA Annual Conference in Chicago on June 26. Speaking were Jim Lichtenberg, president of LIGHTSPEED, LLC, based in New York City; David Molnar, a graduate student in computer science at UC-Berkeley; and Jackie Griffin, director of Library Services, Berkeley Public Library.

Jim Lichtenberg: *As President of LIGHTSPEED, based in New York City, Jim Lichtenberg provides management consulting in business and organizational development, concentrating most recently on RFID. His focus is to help organizations, whether in the library, corporate, or not-for-profit world, productively and profitably engage with the new information technologies. He contributes regularly to Library Journal, Publisher's Weekly, and Forward on these issues, and is a frequent industry speaker. A member of numerous publishing associations, he serves as Chair of the RFID working group sponsored by ALA and the Business Industry Study Group (BISG). He was Vice President of the Higher Education Division of the Association of American Publishers and received his BA in English literature from Harvard and an MA in sociology from the New School University's graduate faculty. He is currently an active professor of information technology at Polytechnic University in lower Manhattan.*

It is really a pleasure to be here, or rather, maybe I should say to be back. I feel that I am now one of a group of traveling RFID players, and some of my fellow actors are here. I think my job today is to provide an overview and a platform, and then these two experts from different points of view can give you a sense of RFID on the ground, if you will.

Loving *Alice in Wonderland* and, having just learned from Judith Krug that it was a banned book, I feel very proud about having this particular photograph up here. I think this picture is really iconic in terms of RFID and RFID policy and privacy for a number of reasons. One is that we are talking about changes in dimensions with RFID, and the other thing is that we are following a new technology down a rabbit hole and we are not quite sure where it is going.

It has been helpful to me to think a bit about RFID in terms of *Alice in Wonderland*. Because it is, I believe, a truly transformational technology. There are going to be some bumps that we have to get over for sure but, once we get there, it is going to be pretty amazing. It will be a sort of wonderland.

But I would like to put it in a certain context because why people are so fascinated, but simultaneously terrorized, by RFID is a really interesting question. It seems to

me it is for the following reason: this is the leading edge of a much more profound transformation in this society.

The last twenty years have been pretty big. We have integrated the Internet, new telephones that will do anything, flat screen television. But in the next twenty to twenty-five years, it is going to be even more intense and NBIC is not a television network with a hiccup. What it stands for is Nano-Technology, Bio-Technology, Information Technology, and Cognitive Sciences. So, my thought is that RFID is not, and the issues around it are not, isolated at all, but it is part of a larger evolution which is occurring due to the convergence of the sciences, which are working together and interacting in ways that will truly change the world. Flying here, I was reading *Scientific American* and there were a couple of things that were truly relevant. This is from an editorial in *Scientific American*, quoting a book called *Fantastic Voyage: Live Long Enough to Live Forever* by Rodale, 2004. It says, "The rate of technical progress is doubling every decade. Because of this exponential growth, the twenty-first century will equal twenty thousand years of progress at today's rate of progress. Within a quarter of a century, non-biological intelligence—computers and all that, right, silicone-based life, as they call it—non-biological intelligence will match the range in subtlety of human intelligence, and then surpass it because of the continuing acceleration of information-based technologies as well as the ability of machines to instantly share their knowledge.

Bio-technology such as designer drugs and genetic engineering will halt the aging process. That sounds pretty good. Nano-technology, such as nano-robots, will repair and replace cell tissues. In other words, you can have little robots coursing through your body fixing up the DNA where it went awry. Boy, could something be mischievously used with that!

Well, I do not know how you feel about that, but I have some issues. And, in fact, this is Phillip Bond who was, until recently, the Undersecretary of Commerce for Technology and he said people are going to be fearful, people are fearful. Accelerating technological change means accelerating moral and ethical challenges as well. It means that the margin for error is much smaller. And, in a sense, that is the key issue, and it is the issue that brought the book publishing value chain (libraries, book publishers, distributors, researchers) all together around RFID because there is really a creative tension that we have to, somehow or another, live with between benefiting from this technology, or these technologies, and the need to protect privacy.

The one thing I will say, however, is that change is inevitable. It is going to happen, and the good news for this community is that libraries have been on the forefront of technological change and your relevance to your community will be, in large part, not just with RFID, but in general, helping the community understand, embrace, and move forward with the whole variety of technological changes.

In the issue of privacy, it is not only protecting who, but it is also protecting what. I am sure you have all seen these amazing stories in the press about identity theft. The Bank of America lost 30,000 names or 130,000 names. City Financial and UPS succeeded in having a box get lost with 100,000 tapes of people's private information and Choice Point, which is a huge, behind-the-scenes processor of information for credit cards and so forth, actually sold 100,000 names and all the information to the Nigerian mafia. They said the Nigerians were so subtle in their approach, they had no idea. Whatever.

It is not like we live in a world of perfect data. A recent study showed that 80 percent of medical bills have errors, probably in the amount they are charging you, 60 percent of retail invoices have errors, 20 percent of packages (UPS, FedEx, and so forth) are returned due to errors. One out of every five packages is addressed wrong. Then, we have identity theft on the individual level where we are careless about our credit card receipts, and the times we write down our social security number, and one thing and another. So the issue of protecting privacy and protecting data is really a generic issue. It is not just an RFID issue, although RFID has its own interesting set of dimensions. And the question really is, how safe is your wallet?

My point here is simply that RFID technology occurs in a changing social and political context, and you have this very volatile combination of future shock which I think we are all experiencing, even without even knowing it. The exposure of our personal identity is through many, many different things, not just RFID logos and data mismanagement, and nothing today is more fundamental to privacy than information security. It is really a two-edged sword. It is not just your name being exposed, but all of this other data that surrounds your name. It seems to me that, as librarians and the whole publishing value chain moves forward with RFID, we really need to make our case carefully. Otherwise, like Alice, people will misunderstand us and we will end up looking a bit out of proportion.

One of the neat things about RFID is we are talking about a technology of physical things. After all the talk in the last ten years about digital this and digital that, we are back to atoms. It is really very refreshing. But there is a connection because, from one point of view, you can say that RFID is self-reporting metadata placed on physical objects. In other words, the object tells you what it is. Think, easy pass, which is what we call the automotive plaque, the automatic toll taker in the East. There is a little chip in there and, as you go through the tollgate, it says, hi, I'm Jim's car, you can take \$3.50 out of that account. Self-reporting metadata.

Moreover, what the pundits are saying and the people who look for it are saying is what we are creating with RFID is an Internet of things. It connects computers to objects that self-identify and, therefore, can talk to each other. So, it is putting information plus communication on

any physical thing, and I mean *any* physical thing. It could be in your jacket, in your shoe, on your Coca Cola can, on your computer, whatever. It is really amazing. Imagine, on a philosophical level, a world in which all inanimate objects can, from one sense or another, have the capacity to talk.

I have a four-year-old grandson and we watch *Finding Nemo* an awful lot. It is a fabulous movie with wonderful minor characters. There is a great little crayfish that talks French that I'm just crazy about, but there is this group of seagulls and whenever they see a piece of food, they say, "Mine!" That is what the RFID world is going to be like. All these seagulls saying, "Mine," "Mine," "Mine," and we are going to have to deal with all of that data. But that is another story for another day.

So, the basic elements—you probably know this, but just to make sure we are on the same page—there is a chip containing information plus an antenna. There is a device that can read that chip, there is something that holds that little thing together and makes it a tag, and then there is some information which is put onto the chip. It could be a barcode number, it could be a random number, it could be an electronic product code (EPC).

The tag is an inch-and-a-half across. This is a tag that would typically go on a box of books. As you can see, the chip lives in the middle. It is surrounded by this spider web of antennas and there is some packaging material. What happens in the case of this kind of chip is that, when it moves into a field of radio waves, the electromagnetic energy travels into the antenna, activates the chip, which then broadcasts back whatever information is on it. So, that's what we are talking about. This is a radio technology begun in World War II as giant boxes in airplanes and has now been reduced to something that you could put on the tag of your shirt and not even know it is there.

Imagine that a box or a book or whatever has a tag on it that has some kind of identifier. In the case of libraries, very often, it is a random number so a guy in a pork pie hat in a black Buick cannot know what you are reading. That goes to a reader which gets the information, puts it into a local computer system, like your ILS system, your database, but then it can go out on the Internet to other databases to wherever you want. So, in fact, the information on the tag can travel pretty broadly, which is one of the reasons people have been concerned about privacy.

What is so cool about RFID are these three things: it identifies not just a class of objects, like a book called *Moby Dick*, published by Houghton Mifflin, but this particular copy of *Moby Dick*, and it could even have information, like, that it was printed in 1975, blah, blah, blah, whatever you want. This Coke can, this right shoe that I am now wearing can have a tag. It is really individual. You do not need a line of sight, like you need with barcodes, and there is no human intervention necessary because, as the tag on the item passes in the area of a reader, it automatically, without anybody having to line up a reader to the barcode, tells the informa-

tion. So, you can imagine why companies like Wal-Mart, who is the big driver behind this, along with the Department of Defense, are so excited. They actually believe that they will save \$9 billion dollars by implementing RFID.

Uses of RFID in publishing, well, you are all both experienced and smart enough to figure out different ways, obviously, that this could be used: on cartons and skids of books, and you can see the different pathways that those would follow. In libraries, for variety purposes, which I won't go into, because there are others that will. Now, the booksellers, the retailers are waiting on the sidelines at the moment for a couple of reasons, but libraries are not. God bless you!

It is, in fact, the only successful consumer facing product use of RFID to date. More than 130 of that number may have risen already, and there is a whole variety of uses and experiences which these libraries have already had, and you are going to hear more about them. There was a survey done by a professor at Cal Poly of nineteen different libraries he talked to about when they would migrate to RFID. As you can imagine, a lot of people are thinking about it and, at the bottom, there was one library, goodness knows where it was, that said, never. So, there you are. But, "never" is losing by nineteen to one. So, I have a feeling you are going to see a lot more of RFID.

It has been a very exciting time for RFID, but we have reached that critical point where a certain amount of reality is beginning to creep into the technology, and at least one of the big corporate research companies has said, "Users are angry. They realize RFID has been represented as already in wide use, not exactly ready for takeoff, not exactly inexpensive, certainly not exactly, and able to easily solve the problems." So you should prepare. RFID users should prepare to go through the trough of disillusionment in this hype cycle, and it is going to take a year or two before things sort out. There is a curve that shows that technology takes off, and zooms up to a wide peak of inflated expectations, crashes through the trough of disillusionment, and eventually gets to what they call the slope of enlightenment and the plateau of productivity. You can tell consultants made this; they spend all day making up language like that.

We are at an early stage of acquisition of RFID. You have high start costs. The middleware, in other words, the software, that has to understand the data coming off your chips and off your readers, is still immature. Accuracy is lower than expected. Poor Wal-Mart, here they are all geared up to do it. Turns out, only 80 percent of the packages were read correctly as they entered the Wal-Mart stores. Eighty percent is pretty low. That is a big error rate. Even when they broke the packages down, they still were having problems with it. And standards, as you will hear from David are still in a state of flux, to put it mildly.

The grocery manufacturers in America, again, are talking about the benefits and costs. I like this phrase where they say, "While the vision for RFID is compelling, the eco-

nomics are currently tempering adoption," which is a way of saying that people are uncertain as to how they are going to make the money back once they make these huge investments. They rightly say we need to find ways to increase the value potential and decrease the overall costs.

In my optimistic view of the world I believe that in the next couple of years RFID is going to bounce around and then it is really going to take off, and is going to be very, very broadly used. The reason I think it is going to take off like that is the following: I have never seen a technology which had, right off the bat, so many amazing possible uses. Supply chain logistics, which is putting the tag on the box that goes to Wal-Mart or goes to any other place, into your library, whatever, anti-counterfeiting pharmaceutical companies are going to put it on drugs and drug packaging to make sure that that is the real Viagra, it is not counterfeit Viagra because it turns out that counterfeit Viagra is only 50 percent effective.

Then there is the question of freshness of food. At some point, the milk in your refrigerator is going to be able to talk to your refrigerator which will have a reader in it and say, "I've been in here for about two weeks and I'm changing color, don't you think we could do something?" Wear and tear on tires, security on passports. I am sure you read that whole brouhaha when the INS talked about putting it in passports. There is some concern that, if you were an American tourist in Cairo and you had an RFID passport in your pocket you could be identified. Well, if you cannot be identified in Cairo as an American tourist, there are other issues involved here, I think. Also, for any of you who might be afraid, all you have to do is wrap it in tinfoil, or wear one of those tinfoil beanies. Radio waves will not go through tinfoil, so you are as safe as can be. Health information, tracking livestock, alas Mad Cow is suddenly again with us and how do we know where they came from? They put RFID chips in the cows' ears. Tracking kids. Mad moms, where is the kid? That is a whole other issue.

Automatic cars, now. The high end cars are sold with RFID tags in them so, you don't have keys anymore. You walk by your car, it knows it is you. You get in and you push the button that says starter and away you go, your BMW is just cruising down the highway. YOUR BMW, I don't have a BMW.

One of the most interesting things I have heard is that, in law offices now, there are RFID tagging folders, so they can tell which case, without having to open the folder, that particular folder of briefs and papers are from. Marathon runners are using it because, as they cross the finish line, or actually, as they cross different points, with their RFID tag in their badge, like your badge for the ALA convention, it registers it. They know immediately what your time is. Someone was telling me, by the time they got to the finish line to see their daughter who had finished, her time was already up on the screen. That is how quickly it can be.

Soccer balls. Really bizarre. The major soccer leagues are putting them in the balls to tell whether or not it was a goal. Did it cross the plane of the goal? So, you have a radio wave across the plane of the goal. Goal! Or not goal, depending on whether it goes off or not. Just to show you how vast it is.

So, the bottom line is this. The full implementation of RFID will add a huge level of efficiency to any supply chain, and it will change the economics of every business it touches. And that is pretty scary, too. That is almost as scary as those robots in your blood stream. But, and this is a big but. There are so many different problems, standards, performance, these are the things that David will talk to you a bit about, including privacy, which is where we got involved in all of this. So, the question is, shall we dance with RFID, and I think libraries are basically saying yes. Why do you want RFID in libraries? You own and you need to track these billions of items, easy self-checkouts, self-check in, physical inventory lists on the shelves. And this is from Queens Public Library, which is doing an implementation in their 63 libraries. Apparently, they have the largest circulation in the country, this one system. That is really interesting. So, that is what an RFID chip looks like in a Queens Library book. The little inside white wafer in the middle of the Sony disk is, in fact, an RFID chip, so you can not only put it on books, but you can put it on other media types, obviously. This is a checkout place—that flat black panel on the left. In fact, if you go downstairs, you can see these. This is where you put your books, you swipe your card, your library card, the system recognizes you and automatically checks out the book and prints you out a receipt. It is very cool.

From Scholastic, which is pushing RFID in publishing, you will have increased visibility in terms of orders, you will have access to real time data, more data available than standard barcodings, and anti-theft, anti-counterfeiting. And, theoretically, if that box of tapes on the UPS truck from City Finance were RFID enabled, we would not have lost it.

I would like to close with just a couple of thoughts that may make your considerations about using RFID or implementing RFID a little more helpful. One thing to remember is that each implementation, I am discovering, is unique, and you do not want to start with technology. You want to start with your needs. How can you better serve your clients? How can you support your staff better? How can you better understand your processes? Where can you be more efficient? What new products or services might you provide? How can you do better against your competition? Now, normally with RFID, the way we think about the data is in one direction. In other words, you have a tag that has information on it. It tells what the book is. It passes by the reader. The information moves to the reader, then it moves to the middleware, then it moves to your system, your ERP or ILS, whatever it is. The first problem, the first issue is how to manage the data? That is important, and all of that,

obviously, is going to happen no matter what. But I would argue that the most important part of this data flow is the back flow. So, it is not just that you manage the data, but you begin to analyze it and apply some business intelligence to it, so you begin to see more clearly what your rules and procedures are and are they working, and are there ways you can put new rules in place that would allow your processes to work faster, to be newer, to be cheaper and better? And that is really where you are going to get your return on investment (ROI). That is your benefit. If you think of the data flow as forward and backwards, then I think you can understand a little more completely how this works.

(continued on page 315)

President Bush: schools should teach “intelligent design”

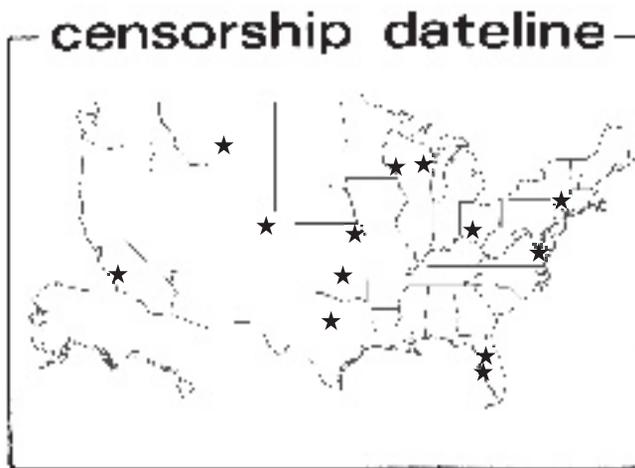
President Bush said August 1 that schools should teach “intelligent design,” a theory asserting that an intelligent agent helped shape the origins and history of the earth and life, in addition to evolution, the theory of life that enjoys overwhelming support from scientists.

Bush, who spoke in an interview with reporters from five Texas newspapers, said students should learn about intelligent design to understand the debate over creation-of-life theories. His support could help the efforts of Christian conservatives who have pushed for public schools to teach the theory.

“I think that part of education is to expose people to different schools of thought,” Bush told the reporters. “You’re asking me whether or not people ought to be exposed to different ideas, the answer is yes.” Intelligent-design theory holds that some biological systems are so complex that they could have arisen only through the action of an intelligent force—ostensibly divine—and not simply through Darwinian evolution.

Critics of the theory have described it as a more-sophisticated version of creationism and a way to insert religion into science classrooms. The National Academy of Sciences and the American Association for the Advancement of Science have said intelligent design is not based on scientific methodology and should not be taught alongside evolution in schools.

Lawrence M. Krauss, a professor of physics and astronomy at Case Western Reserve University, said introducing the theory into curricula would dilute science. “Teaching something that is not science in a science class under the guise of free speech is just the wrong policy,” Krauss said. He said the interview demonstrated Bush’s “complete lack of interest in and knowledge of science.” Reported in: *Chronicle of Higher Education* online, August 3. □



libraries

Ripon, California

Irma Slage has written a book about her psychic experiences and talked to audiences for years, inviting them to communicate with dead friends and relatives. But she could not foresee what would happen to her in Ripon: Her appearance at Memorial Library was canceled after the mayor said he would ask the City Council to pull funding for the library.

Slage was scheduled to speak September 17. About forty people eager to hear her showed up, only to find the program had been canceled. Some said they were upset that their rights to make up their own minds about the speaker were trampled because the mayor listened to a few people who made the program a religious issue.

Slage, a Livermore woman who says she has helped police investigate crimes and wrote the book *Phases of Life After Death*, said never before had one of her appearances been canceled. Her Ripon appearance, sponsored by Friends of the Ripon Memorial Library, was spiked by Natalie Rencher, director of the Stockton-San Joaquin County Library. Rencher canceled the program after hearing from Mayor Chuck Winn.

"I think it's wrong," June Porter of Ripon said. "The library belongs to the citizens of the county. I don't think that a handful of people should dictate what is at the library."

Objections to the program started when the *Ripon Record* newspaper ran a headline over a story about Slage's scheduled talk that said, "Talk to the dead during library program on Sept. 17." People wrote letters to the editor and contacted City Hall to complain. "That is just a very controversial thing that as a Christian I disagree with," said Tara Holland.

The incident has some members of the Friends, a non-profit group that raises money to help the library, concerned about funding. The library relies on the cities of Ripon and Stockton plus the county for operating expenses. The city gives an estimated \$115,000 per year to the library, Winn said. The city also used \$1.6 million in redevelopment money to buy a building downtown for a new library, set to open next year.

Before Slage was scheduled to speak, Friends president Brigitte Long said she got a call from Winn, who told her that unless the program was canceled, the City Council would consider shutting off funds to the library. "He said, 'This isn't a threat.' But he said there would be consequences," Long said.

Winn doesn't disagree. "I told her that simply because of the strong feelings of the community members that I would go to the council members and initiate a motion to withdraw the funding from the city for the library if they pursue the program" he said.

Winn said he got two e-mails and a handful of calls objecting to the speaker. He said he believed their concerns represented those of the community as a whole. He also said he was worried that donations to the library project could shrink if the psychic was allowed to speak.

"I absolutely don't think it's a matter of censorship," Winn said. "The head librarian had every authority in the world to continue the program."

Long, on the other hand, said Friends of the Library owed it to donors to be clear about the definition of a public library. "Is this a public library if the city can censor programs?" she said. "I think it was very irresponsible of our mayor to just listen to this small group."

In her speeches, Slage talks about her experiences as a psychic, and typically ends her programs by inviting questions from people who want to communicate with someone who has died. "Truly, our intent was to make for an interesting afternoon," said Wendy Teval, a Ripon library assistant.

Slage said library staff made it clear that they felt bad about the situation. "They decided that due to the pressure of the church that is out there they would cancel it," Slage said, adding, "It's not doing God's work if you're not showing kindness and tolerance toward others. That doesn't sound very Christian to me."

"We live in America. We live in the year 2005," she said. "This should not take place."

Some people who showed up to hear Slage agreed. "Are they going to come down here and go through the books

on the shelf and make sure there's no reference to ESP and psychic abilities? It seems like a violation of the First Amendment," Porter said.

City Councilman Curt Pernice said he would not want a psychic to speak at the library, and he was particularly concerned that Slage offered to speak to dead people. "That's not censorship. That's just inappropriate," he said. Reported in: *Modesto Bee*, September 24.

Denver, Colorado

On a rainy Saturday, Miereya Gomez quietly thumbed through a book titled *Los Colores* as her two young sons carried comic books to their father in the children's section of the Central Public Library on the outskirts of downtown Denver. "They really enjoy it here," Gomez said as her husband read a Spiderman comic to three-year-old Israel, who listened intently as he hugged his father's knee. "We come here mostly for the kids, for books and movies—educational and entertainment—in Spanish and English."

Dozens of states have seen soaring growth in Spanish-speaking populations in recent years and hundreds of libraries have tried to keep pace by stocking up on books, magazines, and movies. But the growth has been controversial in some places, with critics saying taxpayer money shouldn't be spent on a population that can include illegal immigrants or on proposals that promote languages other than English.

In Denver, where the foreign-born population tripled between 1990 and 2000 largely because of Mexican immigrants, the public library system is considering reorganizing some of its branches to emphasize bilingual services and material. Similar efforts have been made by libraries across the country, from the Queens Borough library in New York, whose Web site is offered in English, Spanish, Chinese, French, Russian, and Korean, to the large Chinese-language collection at the San Francisco library. Interest in foreign-language material is also expanding inland.

"The interest is in rural areas and cities that aren't the usual Spanish areas, like New York or Miami, but in North Carolina, Illinois, and the Midwest," said Carmen Ospina, editor of *Critica*, a magazine for librarians that highlights Spanish-language material. She said questions about how to start Spanish-language collections have come from librarians in Belton; Missouri; Nashville; Georgia; and towns she had never heard of.

The plan being considered by the Denver Public Library (DPL) system—the largest in Colorado—has come under scrutiny, however. Rep. Tom Tancredo (R-CO) sent a letter to Denver Mayor John Hickenlooper this summer asking whether the library was considering Spanish-only branches or converting to Spanish-language material at the expense of English material. Tancredo, an outspoken critic of U.S. immigration policies, said he had been contacted by concerned librarians and patrons.

"When you have a strong cultural identity and there aren't set incentives to become American, it creates a lot of tension and divides the community," said Tancredo's spokesman, Will Adams.

Those concerns were echoed by Michael Corbin, a radio talk show host who helped organize a protest outside Denver's central library after sexually graphic content was found in some Spanish-language adult comic books that have since been removed. "The library issue kind of borders on multiculturalism, and I don't think we should be catering to any particular group," Corbin said.

Said Bob Copley, Sr., co-founder of the Colorado Minutemen: "Here we're being asked to bring another culture in, but it's coming in largely illegally."

The sexually explicit Spanish-language comic books removed from Denver library shelves are called *fotonovelas*. They were flagged by talk-radio host Peter Boyles in August. The KHOW-AM Web site had the headline: "Shocking Content Found on Denver Public Library Shelves." After the radio program, the library received a steady stream of calls, said Diane Lapierre, director of strategic planning for the library.

The books were in the library system for at least thirteen years, Lapierre said. Boyles' program marked the first time their content has been questioned, she said.

The books, between fifty and hundred pages, are in the adult section of branch libraries, she said. However, they were available for anyone to check out. The library has 6,569 *fotonovelas* among its twelve branches, said Mike Eitner, a library supervisor.

Mayor John Hickenlooper sent a letter to library commissioners, asking them to speed up an investigation into the books. Hickenlooper said that of the 300,000 titles purchased by the library last year, a few "items slip through that raise public concern."

"I've been assured by the library commission that the matter will be dealt with swiftly. Given the limited nature of the library's resources, these items are troubling, and we can only assume they were purchased in error," Hickenlooper said in a statement.

Lapierre said the books were pulled from half a dozen branches and will be reviewed by library officials.

"We're trying to build a library that serves a wide range of interests, a very diverse community, which Denver is," said Jo Sarling, the DPL director of access. "We have never had a request to reconsider any of these titles. We have never had anyone complain about them with the exception of people saying 'Can you get more?'"

However, critics allege the material contained inside the *fotonovellas* depicts pornographic activity and graphic violence toward women. "The ability for a child to be able to walk in and check this stuff out is outrageous," said Corbin. He and others said to use taxpayer money on material that is obviously offensive is revolting itself. They believe the DPL's decision to spend more resources to

attract Spanish-speaking customers amounts to a misplacing of taxpayer dollars.

"They do not have a right to access our taxpayer-funded library or to dictate its policy and tell us through the library what books are going to be in," he said.

"You always hear they want to come and work," said Robert Copley, Jr., of Sovereignty, Colorado. "Well, they also want to come and kill and destroy wages and just demean our quality of life."

That offended Gabriella Casillas, who works for a Denver immigration rights attorney. She said the novellas have given people a reason to attack immigrants, "It's the library where people come and learn. They want to talk about porn. What about soap operas? It's the same thing just in a different language."

Denver library officials said they're not considering Spanish-only branches, but are simply looking to accommodate a city where 35 percent of residents are Hispanic. About 40 percent of the material borrowed from Denver libraries is for children and the use of adult books is decreasing. Meanwhile, about 48 percent of Hispanic households in Denver are families with children, while only 15 percent of white households are families with children, according to the library. Reported in: *Rocky Mountain News*, August 5; 9 News, August 8; *Salt Lake Tribune*, September 5.

Manatee County, Florida

It started with an outcry over nude sketches placed near a children's area at Manatee County's Island Branch Library in Holmes Beach. In response, librarians cleared out exhibits and displays in all county public library branches. For seven months, display cases have been sitting empty. Even innocuous rock collections and quilts are not allowed until the county decides what's appropriate for the exhibits.

"The guild isn't happy," said Robin Adorna, a member of the Manatee Patchworkers Quilt Guild, which has displayed work at the library for more than a decade. "It's holding back many artists in the area from displaying their work."

Instead, the dozen or so empty displays in Manatee libraries feature a small note of thanks for twenty years of "wonderful, beautiful, and informative" exhibits. The note says displays aren't allowed because of "circumstances beyond our control."

The culprit: a long-gone display of nude pastels by local artist Ginger White, accidentally placed near a children's section in December. After seeing the art, parents complained. County commissioners took note. And a county attorney began drafting new rules for library displays. Librarians removed the old displays to wait for new guidelines. The cases remain barren, waiting for County Commission approval of a policy that regulates what they can show.

In asking for new rules, commissioners in February passed a resolution saying the displays should contain

either work of Manatee County residents or items "deemed by staff to be relevant in some way to the history, industry, culture, or geography of Manatee County." The idea is to set detailed criteria for selecting artwork and displays, said Assistant County Attorney Rob Eschenfelder, who is drafting the new rules. The rules should be ready to present to the library's board in August, he said.

"They just want tightened-up policies so not just anyone can put stuff up," Eschenfelder said.

Howard Simon, the executive director of ACLU Florida, said the rules reek of political meddling. "Why isn't the policy adopted to trust the professionalism of librarians?" he asked. "I certainly hope they won't open the door for politics and bias to intrude upon judgments made by librarians."

County officials say the situation has no connection to what's going on in Hillsborough County, where county commissioners voted to ban expressions of gay pride after a library exhibit of gay authors stirred controversy. Reported in: *Sarasota Herald-Tribune*, July 25.

Marion County, Florida

The Marion County Public Library System will perform in-depth reviews of two more books in its collection—*Abortion: A Positive Decision*, by Patricia Lunneborg, and *My Two Uncles*, by Judith Vigna. The reviews were triggered by Brian Creekbaum, a library patron who headed an informal citizens group that received the 2001 Intellectual Freedom Award from the Florida Library Association for resisting library censorship in Marion County.

In explaining why he filed Statements of Concern on the two books, Creekbaum was careful to point out that his filings state he is not seeking or recommending any change in the access status of the books. "I'm not challenging books," he said. "I'm challenging the politicians running our public library to respect the freedom of library patrons to read books that contain views those politicians don't like."

Abortion: A Positive Decision is a pro-choice feminist counseling book whose author writes in the preface, "Abortion is not the lesser of two evils. Abortion is profamily, prolife, moral, and good." *My Two Uncles* is a gay-positive picture book with text geared for young children in which a father explains homosexuality to his daughter. "Sometimes a man loves another man in the way a married couple love each other," her father tells her. "Women who love each other like that are called lesbians. It's the way they are, just as Mommy and I are they way we are." Creekbaum says the books don't contain any sexually explicit text or images.

County Commissioner Randy Harris, who serves as Chairman of the Republican Executive Committee of Marion County, has been a vocal critic of the library collection and has spearheaded a five-year long battle to censor it. Harris pushed for a takeover of library policymaking from

the library advisory board and abolishment of that board, making Marion County's one of the few public libraries in Florida to operate without a citizen advisory board. Shortly thereafter, commissioners voted in new policies effective August 1, giving them the final say on questioned library material. Commissioners also created an unusual and controversial restricted access area and gave themselves sole authority for deciding which books to put in it.

Creekbaum's filings extensively quote Harris and others, many with current or past affiliations with the political party organization headed by Harris, publicly objecting to library material dealing with such hot-button social issues as abortion and homosexuality. "I think we'll learn a lot about this new regime by seeing how these books are handled." "I expect these books to be appealed to the Board of County Commissioners no matter what the library director decides," Creekbaum said.

The filings by Creekbaum followed the August 8 filing of a Statement of Concern on Vladimir Nabokov's novel *Lolita* by Terry Blaes, another supporter of the freedom to read, who is also a former chair of the library advisory board Harris and other commissioners abolished. Reported in: press release, September 8.

Columbus, Georgia

The Muscogee County Library Board voted July 28 to back out from its contract to purchase a \$250,000 metal sculpture for the new Columbus Public Library. Board member Jimmy Elder proposed the withdrawal in response to community objections to the work's \$250,000 price and the choice of Albert Paley of Rochester, New York, rather than a local artist.

Before the vote, Brinkley Pound, one of the two board members who opposed the motion, questioned the decision's financial impact. "Who pays?" she asked. "I do not know," responded board Chairman Tom Wade, who said later that attorneys will seek an honorable withdrawal that is respectful of the artist.

At its June 14 meeting, the Columbus city council recommended that the library investigate using private funds instead of tax dollars for the sculpture. However, the library board voted July 18 to return the matter to the council, asking the body to release \$250,000 in sales tax funds for the purchase. The following day, the city council denied that request by a 9-1 vote.

Paley said he had been asked three weeks previously to put the project on hold for two months, but added, "There are no negotiations going on. We're still working on the sculpture." Paley said that in his forty years of making public art, "This is the first time anything like this has happened. I've never been late on a contract. I've never failed to perform. Politicians, the last thing they want is controversy. Good art creates controversy." Reported in: *American Libraries* Online, August 5.

Oklahoma City, Oklahoma

The commission that sets policy for the Metropolitan Library System in Oklahoma City voted 10-7 August 25 to move "easy, easy-reader, and tween" books containing "sensitive or controversial" themes to a special collection available only to "adults in authority." The action was taken despite the recommendations of library staff, whose report advised against segregating materials because the idea originated "in response to the original customer request to limit children's access to 'homosexual themed books.'"

In response, library Director Donna Morris said the staff would do its best to "follow the directives of the commission."

State Rep. Sally Kern (R-Oklahoma City), who spearheaded in the Oklahoma house last spring a nonbinding resolution favoring such restrictions, issued a statement August 29 thanking the "metro area mayors who appoint the commissioners for their support in this effort" and castigating the seven dissenting commissioners as "not understand[ing] the communities they live in or respecting the values of the majority of the people they represent."

Announcing that she was forming a nonprofit group for library accountability, Kern went on to say, "There needs to be followup on this situation. We're not looking to ban any books. We just think the books should be easily identifiable to parents who may not want a child to read those materials."

Library commission members did not address which titles are to be reshelved, leaving that determination to a yet-to-be-formed subcommittee charged with following guidelines based on "good judgment and community standards." However, the prince-meets-prince picture book *King and King* was at the heart of the original complaint from a constituent that drew Kern's attention. The same title motivated the introduction last spring of acquisitions-oversight legislation in Louisiana and the U.S. House of Representatives. Reported in: *American Libraries* Online, September 2.

Granbury, Texas

A book in the Acton Middle School (AMS) library has one Granbury grandmother seeing red. The book, *Detour for Emmy*, by Marilyn Reynolds, recounts the choices that the sexually active title character must make after an unprotected encounter with her boyfriend that leads to teen pregnancy.

Caroline Sanders's thirteen-year-old granddaughter recently brought the book home from the library. "I read a couple of pages, and it talks very vividly about the sexual encounters of a fifteen-year-old," she said. "Maybe I am living in the dark ages, but I don't think it is appropriate for a thirteen-year-old to read that."

AMS librarian Linda Goodgion spoke to the grandmother about the book, and says there's no way to censor what stu-

dents check out. "I understand why she is upset, and I think she did an excellent job of filtering what her granddaughter is reading," she said. "I have to have faith in their (students) ability to choose what meets their family's standards. I can't go out there and say 'you can't take this book.'"

With such a diverse student body at the middle schools, from seventh-grade to freshmen, Goodgion has the job of selecting books for two very different groups. "I have a responsibility to select books for students that are older in age, interest, and maturity," she said. "I also have books that have been and are bestsellers on the Christian book-lists. I encourage my younger girls to read those."

"This particular book was an award winner, and it was purchased by all the standards that I know to use as a librarian. It was purchased with an older group in mind."

Sanders says the book does not belong in a middle school library. Period. "Even if my granddaughter were a freshman, I wouldn't want her reading it," she said.

Detour for Emmy was cited as one of the American Library Association's Best Books for Young Adults in 1993. "It was written by a woman who works in an alternative school and the purpose is to try to dissuade youngsters from going that way (teen pregnancy)," Goodgion said.

But Sanders says she would not consider her granddaughter a young adult at age thirteen. "She is naïve and from the name of the book and the front of the book, she thought it would be a good book to read," Sanders said. "When we took it away from her, she thought she had done something wrong."

Sanders took the book to AMS principal Bobby Mabery, who is reviewing the book. Goodgion said the book will remain in the library until the matter is settled. "We have a policy on challenged material. The person has to read the entire book and then quote what they believe is unacceptable," she said.

Sanders is ready to take action to get the book removed, but is concerned with what else might be in the library that she would deem inappropriate for young teenagers. "I don't know how much good it's going to do to remove that one book," she said. "Yeah, I don't think they should be reading it, but there is no telling how many more there are like it." Reported in: *Hood County News*, September 28.

Chesapeake, Virginia

After receiving complaints from two patrons in mid-July, the Chesapeake Public Library (CPL) moved a painting of a nude from an area near the building's main entrance to a wall on the opposite side of the facility, behind a row of stacks. Local artist Karen Kinser's "Morning Dreamer" depicts a woman, one of whose breasts is visible, reclining in bed; it had been on display for two weeks before the complainants—a mother and a tutor who works with students at the library—objected to its placement in an area where children could see it as they entered the building.

Explaining that the July 13 decision to relocate the sixteen-by-eighteen-inch painting was hers, director Margaret Stillman said that "Morning Dreamer" was "just taken out of the pathway to the children's room." She added, "We have a very keen sense of intellectual freedom tenets that are critical to a free library system, but we always apply common sense."

"Why is one art-ignorant person allowed, and even encouraged, by the public library management to dictate what should or should not be shown in our city's public library?" Kinser responded, characterizing the incident as censorship. *Norfolk Virginian-Pilot* columnist Kerry Dougherty pointed out that the state seal of Virginia features the Roman goddess Virtus standing, with one breast exposed, over the body of a defeated enemy. "The truth is, the people who are disturbed about nudes are adults," Svetlana Mintcheva, arts program director for the National Coalition Against Censorship, told the newspaper.

The other paintings on display at CPL by Kinser remained near the entrance through July 31, when the exhibit had been scheduled to end. The objection was the first Kinser experienced there in the eight years she has been displaying her work at CPL. Reported in: *American Libraries Online*, August 5.

Onalaska, Wisconsin

When does good information become too much information? And how much reliable information about sensitive topics should be in elementary school libraries?

Those questions have framed a debate in the Onalaska School District about *It's So Amazing! A Book about Eggs, Sperm, Birth, Babies, and Families*, by Robie Harris and illustrator Michael Emberley. The book brought parent complaints about its frank yet kid-friendly discussion of reproduction topics, including sexual intercourse, masturbation, abortion, and homosexuality, which led to two hearings before the Educational Materials Reconsideration Committee this summer.

As a result, the book now resides in the reference section of the Northern Hills Elementary school media center. Students may still check out the book but some restrictions apply, said Kathy Brose, library media center director. Only third-, fourth-, and fifth-graders may check it out and it only can be taken overnight. Books in general circulation—where *It's So Amazing!* was until this year—can be checked out by all ages for up to two weeks.

"I think the best place for this book in general is on the shelves where it was," Brose said. But considering the "time and energy" spent debating the book, she said she now agrees "the best solution for this book at our school is in the reference section."

Onalaska resident Penny Nelson raised the issue after she found the book in her fourth-grader's backpack. She turned to page 28, which "illustrated a man and woman

in bed together, kissing,” according to minutes of a June 7 Educational Materials Reconsideration Committee meeting. “This book has too much detailed information for a young child to read and understand without a parent or adult present to help explain,” she said at the July 11 meeting.

At both meetings, Nelson expressed her support for the book as a “well-written” source of information, but questioned its appropriateness for students in grades 1–4, who haven’t had the district’s human growth and development unit, which typically is offered in fifth grade.

At the July meeting, the committee voted 5–3 to keep the book on the general circulation shelves. Nelson was considering filing an appeal, said superintendent John Burnett. However, Burnett said he spoke separately with Nelson, Brose, and school principal Curt Rees. Nelson said she preferred the book be shifted to the library’s reference section, and “they both agreed that was an acceptable compromise.”

Burnett then had Fran Finco, director of instruction, contact reconsideration committee members about the compromise. “We’ve been able to get in touch with seven committee members so far,” Burnett said, “and all have agreed that it’s consistent with the original motion.”

In general, Brose said it’s best for parents to be open with children about books they find objectionable, and communicate their concerns to the child and the school’s media generalist. “But,” she added, “please convey to kids that it may be appropriate for another child, even if it’s not for you.” Reported in: *La Crosse Tribune*, September 22.

schools

Overland Park, Kansas

Five books were being removed this fall from the Blue Valley School District’s high school curriculum, including two that had been the targets of parents. *This Boy’s Life*, by Tobias Wolff, and *Fallen Angels*, by Walter Dean Myers, were among the titles that Blue Valley removed at the start of this school year. They were two of fourteen books challenged in January by a group of parents and community members concerned about allegedly inappropriate content.

The August 8 decision culminated a two-year debate over the novels and plays used in Blue Valley communications arts classes. The five titles were removed because a special review committee decided they were no longer the best fit for the curriculum, said Verneda Edwards, director of curriculum and instruction. No titles, she added, were removed because of violence, language, or sexual content.

A parent leading the challenge was nonetheless pleased. “It’s a small step in the right direction, and we hope that there will be many more steps like this made,” said parent

Janet Harmon, who delivered the petition against the fourteen books to the school board.

Also starting this year, the district posted information online about potentially controversial content contained in books on classroom reading lists.

The book debate in Blue Valley began two years ago when Harmon and her husband challenged *This Boy’s Life* because of foul language and references to alcohol and sexual activity. The district denied the couple’s request, but later altered its policy for selecting novels and launched a review of all titles used in communication arts classes. In January, before the review was completed, Harmon and other parents challenged the fourteen titles.

The action in Blue Valley affects only books used in classrooms, not library holdings.

Fallen Angels, a story about the Vietnam War, was replaced by *Going After Cacciato*, by Tim O’Brien, which also focuses on the Vietnam War but has a higher literary value, Edwards said.

This Boy’s Life was removed because it did not fit that well into the contemporary communications class where it was being taught. Most of the stories in the class focus on the work environment and leadership, Edwards said, but *This Boy’s Life* is a memoir that focuses on the experiences of a boy.

Seven books were added to the curriculum, and *The Red Badge of Courage*, by Stephen Crane was restricted to junior-level advanced placement classes.

“There was a lot of discussion around these novels, and it took a great deal of time,” Edwards told Blue Valley Board of Education members. Still to come is the approved reading list for middle school classes.

The yearlong review was conducted by the district with a group of from twenty-five to thirty high school communication arts teachers. The group also developed new statements, or rationales, on why each book is on the approved list. The rationales provide information on the novel’s plot and how it connects to the curriculum.

And for the first time, the rationales also contain a new section, called “A Note on the Text,” alerting parents about any sensitive or objectionable material. The district will post the rationales online for parents or students to read.

“This is huge. This is great, especially if they are publicized online,” Harmon said. “This was our goal from the beginning, just to let parents know what their children are reading.”

Kerry McGuire, a junior at Blue Valley North High School, organized a counterpetition supporting the district and the books in the curriculum in February. “I guess I have to say if they (the books) were truly taken off because they no longer fit the curriculum, that’s their prerogative,” McGuire said. She said she would be disappointed if the books were taken off because of pressure from the parent group.

Harmon said she and other concerned parents would continue working “to see that the best and the highest qual-

ity books are taught and used.” Reported in: *Kansas City Star*, August 9.

Overland Park, Kansas

After months of debate over science and religion, the Kansas Board of Education has tentatively approved new state science standards that weaken the role evolution plays in teaching about the origin of life. The ten-member board must still take a final vote, expected in either September or October, but a 6–4 vote August 9 that approved a draft of the standards essentially cemented a victory for conservative Christian board members who say evolution is largely unproven and can undermine religious teachings about the origins of life on earth.

“We think this is a great development . . . for the academic freedom of students,” said John West, senior fellow of the Discovery Institute, which supports intelligent design theory.

Intelligent design proposes that some features of the natural world are best explained as products of a considered intent as opposed to a process of natural selection.

The board is sending its drafted standards to a Denver-based education consultant before a final vote. If they win final approval, Kansas will join Minnesota, Ohio, and New Mexico, all of which have adopted critical analysis of evolution in the last four years.

The new science standards would not eliminate the teaching of evolution entirely, nor would they require that religious views, also known as creationism, be taught, but it would encourage teachers to discuss various viewpoints and eliminate core evolution theory as required curriculum. Critics say the moves are part of a continuing national effort by conservative Christians to push their views into the public education process.

“This is neo-creationism, trying to avoid the legal morass of trying to teach creationism overtly and slip it in through the backdoor,” said Eugenie Scott, executive director of the National Center for Science Education.

Kansas itself has been grappling with the issue for years, garnering worldwide attention in 1999 when the state school board voted to de-emphasize evolution in science classes. That was reversed in 2001 with new members elected to the school board. But conservatives again gained the majority in elections in 2004, leading to the newest attacks on evolution. The science standards the board is revising act as guidelines for teachers about how and what to teach students.

In May, the board of education sponsored a courtroom-style debate over evolution that saw lawyers for each side cross-examining “witnesses” and taking up issues such as the age of the earth, fossil records, and beliefs that humans are too intricately designed to not have a creator. The hearings came eighty years after evolution was the subject of the famous “Scopes” trial in Tennessee in which teacher John Thomas Scopes was accused of violating a ban against teaching evolution. Reported in: CNN.com, August 11.

colleges and universities

Green Bay, Wisconsin

A decision to pull a piece of art from a University of Wisconsin-Green Bay (UWGB) exhibit has spurred activism on the part of students and discussion about First Amendment issues across the campus and in the community. The art in question is a sheet of mock postage stamps by artist Al Brandtner showing President Bush with a gun pointed at his head, captioned “PATRIOT Act.” Some say it advocates assassination. Others say it’s free expression. UWGB Chancellor Bruce Shepard says it’s not appropriate for the school’s gallery.

Shepard consulted with other chancellors in the UW System, the school’s legal counsel and System President Kevin Reilly before stopping the piece from being hung in the exhibit “Axis of Evil: The Secret History of Sin” in the Lawton Gallery.

“This is an exhibit that UWGB sponsors, and it’s done with taxpayers’ money. When we do this, we get to decide what we show and what types of messages we want to send out,” Shepard said. “I don’t want the reputation of UWGB to represent advocacy of assassination.”

When the item was featured in an exhibit at Columbia College in Chicago, Secret Service agents attended the opening in early April to inspect Brandtner’s work.

About thirty students, rallied by art and photography major Erica Millstaugh, protested outside the gallery during an opening reception September 15. “For us to not do anything would just be completely apathetic and not right, and we want people to know that we do care,” said Millstaugh, a Green Bay Southwest High School graduate who transferred to UWGB from UW-Stout last year. “We want people to know that we’re disappointed and we’re upset about it.”

The decision raises free speech issues, said Millstaugh, who obtained permission from Brandtner to use the image and prepared T-shirts and brochures for the protest of the school’s decision. “We as art students feel that it’s irrelevant whether we support the actual image or the idea behind it. We just feel that any art is valid and the Constitution and the First Amendment of the Constitution give us the freedom of speech and freedom of expression.”

Shepard said the decision was not a form of censorship. “It would be censorship if we told students that they couldn’t wear T-shirts with this picture on it. But because it’s in the gallery and paid for with taxpayers’ money, we can decide what hangs there,” he said. “The piece won’t be hung up. Any reference to the piece that’s in the gallery is left up to the gallery director.”

That’s a good compromise, said UWGB art curator Stephen Perkins, who arranged to bring “Axis of Evil” to the Lawton Gallery. Perkins met with the chancellor and legal counsel and was told the artwork would not be in the show. “My response at the time was that I wouldn’t condone censorship and we’d have an empty gallery,” Perkins

said. Eventually he changed his mind. Because Shepard already had approved displaying an accompanying book on the exhibit, the image of PATRIOT Act in the book will be displayed in lieu of the framed piece.

“We get to show the work and get beyond this one fixation and concentrate on the rest of the show,” Perkins said. “It’s a win-win for the Lawton Gallery. The chancellor’s action actually is encouraging discussion.”

UWGB senior Stephanie Pasyak, 25, saw little difference between the banned image and some of the other potentially offensive pieces. She said she didn’t think Shepard’s decision was fair. “If you’re going to have that (happen), why not ban something with a cuss word in it?”

The decision to pull the image from gallery walls isn’t one Pasyak agrees with, despite the fact that she’s a Bush supporter. “I’m a fan of George Bush,” she said. “(But) I don’t think it’s offensive. It’s someone’s take on the political world today. Everyone has their own ideas of art.”

To an extent, Brandtner said, he was glad Shepard had pulled the piece, because the action generated so much dialogue and debate. But he wasn’t prepared for the onslaught of attention that this and other gallery showings have created, he said. “All of the sudden, I was receiving e-mails and phone calls from all over the country,” Brandtner said, referring to a previous showing. “It’s been an amazing kind of ride. I’m still completely flabbergasted.”

Eric Ugland, an attorney and assistant professor of media law at Marquette University, said the Bush artwork does not represent a direct threat on the president’s life and is protected under the First Amendment as free speech. “It’s one thing for someone to say they’re going to kill the president. It’s another thing for someone to say killing the president would be a good idea,” Ugland said. “Anybody who sees this as an incitement to assassinate the president is clearly reading too much into it. It (the artwork) is a statement along the lines of burning an effigy of the president,” Ugland said. “It’s in the great American tradition of criticizing our American leaders.”

According to Ugland, the chancellor was probably within his rights in yanking the controversial artwork, because the facility is owned and operated by the university. But Ugland said that doesn’t make the chancellor’s decision correct. “In my opinion it’s just a horrible precedent,” Ugland said. Reported in: *Green Bay Press-Gazette*, September 17.

publishing

Philadelphia, Pennsylvania

Following an outcry from social conservatives, Haworth Press announced in mid-September that it had canceled the publication of an edited volume on homosexuality in classical antiquity. The conservative activists had complained that one of the book’s chapters—an essay by Bruce L. Rind,

an adjunct instructor in psychology at Temple University—amounted to a defense of present-day sexual relationships between men and adolescent boys.

This was not the first time that Rind’s work has come under fire. Six years ago, he and two colleagues were denounced by Congress for writing a paper that, in its critics’ eyes, soft-pedaled the long-term traumatic effects on children of sexual abuse.

The canceled book, *Same-Sex Desire and Love in Greco-Roman Antiquity and in the Classical Tradition of the West*, had been scheduled for publication in November by Harrington Park Press, an imprint of Haworth. The same material was to have been released simultaneously as a special issue of *The Journal of Homosexuality*, which is also published by Haworth.

The press has not made the full text of the book available, but earlier this year, extended abstracts of the volume’s fifteen chapters appeared on Haworth’s Web site. Most of the essays appear to be straightforward exegeses of gay themes in classical art, poetry, and mythology. But Rind’s essay, “Pederasty: An Integration of Cross-Cultural, Cross-Species, and Empirical Data,” seems to have been written in a different vein. Like the early-twentieth-century French novelist André Gide, Rind argues that sexual relationships with older men are a time-honored way for adolescents to grow into mature masculinity.

“In ancient Greece, samurai Japan, and numerous other cultures,” Rind writes in his abstract, “pederasty was seen as the noblest of human relations, conducive to if not essential to nurturing the adolescent’s successful intellectual and physical maturation.” In the abstract’s conclusion, Rind contrasts his model of pederasty with “the highly inadequate feminist and psychiatric models.”

On September 19, the conservative Web site WorldNetDaily denounced Haworth’s plan to publish the book, warning that “the mainstreaming of ‘adult-child’ or ‘inter-generational’ sex, as it is euphemistically called by its supporters, is the next big ‘sexual liberation’ movement on its way.”

David Kupelian, managing editor of WorldNetDaily, said that he had learned of Rind’s essay from a reader’s tip. Kupelian said that he and his colleagues had not read the entire text of Rind’s essay. Rather, they had read only the four-paragraph abstract that appeared on Haworth’s Web site.

Two days after WorldNetDaily’s condemnation, the press announced that it had canceled the book. Kathryn Rutz, Haworth’s vice president for editorial development, said that five of the press’s top officials had made the decision. The press received approximately twenty messages of complaint in the two days after the WorldNetDaily attack, Rutz said. She added, however, that “it is likely that this would have come up later in the production process, even without the input of outside correspondents.”

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from the bench



U.S. Supreme Court

Many people associate tenure with being the ultimate protection of freedom of expression for university faculty. But professors at public colleges—arguably even those without tenure—may have a more powerful protection: the First Amendment. Courts have interpreted the First Amendment to offer broad protections to public employees—especially with regard to what employees of public colleges say and write.

A case before the U.S. Supreme Court, however, could limit those rights—even though the case has nothing to do with higher education. The case involves a dispute over statements made by Richard Ceballos, a deputy district attorney in Los Angeles. Ceballos was demoted and transferred after he told his supervisors that he believed a deputy sheriff had made false statements in seeking a warrant. Ceballos then sued and as his suit has gone through the judicial process, it has taken on much broader issues than whether Ceballos was treated unfairly. Some of the issues concern the immunity of state and local governments from being sued.

But one issue central to the Ceballos case is whether public employees have the right to speak out on matters of public concern. The U.S. Court of Appeals for the Ninth Circuit ruled that they have such a right. But when the Supreme Court agreed last year to hear the case, academic groups grew worried that the justices could reverse the

Ninth Circuit's decision in a way that could seriously hurt public college faculty members.

Of particular concern to faculty members is that the statements Ceballos made that apparently angered his superiors related directly to his work. If Ceballos loses in the Supreme Court, some fear, public college faculty members could lose protection to take controversial stands about their areas of scholarly expertise.

“The most valuable contributions that most university scholars and teachers make to public debate and understanding typically derive from their academic disciplines or fields of expertise,” says a brief recently filed with the U.S. Supreme Court by the American Association of University Professors (AAUP) and the Thomas Jefferson Center for the Protection of the First Amendment. “Thus, any suggestion that ‘matters of public concern’ many not encompass job-related expression of professors would undermine the special protections the Court has given academic freedom for the past fifty years.”

The brief says that backing the Los Angeles district attorney's office would thus create a “perverse irony” for public college faculty members: “Constitutional protection for a professor's speech would now extend only to those public statements on which the speaker was least well informed, while denying such protection to statements reflecting the speaker's academic expertise (and, thus, his or her responsibilities as a public employee). Such a result seems not only unimaginable in practical terms, but totally at variance with everything this Court has said about academic freedom.”

The AAUP brief notes that the principle of First Amendment protection for faculty members has been central to a number of legal victories for professors whose statements offended their bosses or local politicians. Any “retreat” from such protection, the brief says, “could be truly frightening not only for the academic freedom of outspoken professors, but equally for students and for the larger society that now benefits from the First Amendment protections that scholars enjoy to speak publicly within their areas of expertise.”

The arguments put forth against the Ninth Circuit's decision don't focus on public colleges or academic freedom, so it is hard to figure out how much these issues will affect the case. All that is certain is that there was enough support on the Supreme Court to review the case.

Donna Euben, counsel of the AAUP, said that while the association hopes that the Supreme Court affirms the Ninth Circuit's ruling, it was important to set these issues before the justices on the chance that they rule the other way. In such a circumstance, she said, the AAUP would hope that the Supreme Court would make “a narrow ruling,” based on “the specific facts and circumstances of this particular case,” rather than the sort of broad ruling that could undermine academic freedom. Reported in: insidehighered.com, August 31.

schools

Sacramento, California

Reciting the Pledge of Allegiance in public schools was ruled unconstitutional September 14 by a federal judge who granted legal standing to two families represented by an atheist who lost his previous battle before the U.S. Supreme Court.

U.S. District Court Judge Lawrence Karlton ruled that the pledge's reference to one nation "under God" violates school children's right to be "free from a coercive requirement to affirm God." Karlton said he was bound by precedent of the U.S. Court of Appeals for the Ninth Circuit, which in 2002 ruled in favor of Sacramento atheist Michael Newdow that the pledge is unconstitutional when recited in public schools.

The Supreme Court dismissed the case last year, saying Newdow lacked standing because he did not have custody of his elementary school daughter on whose behalf he sued. Newdow, an attorney and a medical doctor, filed an identical case on behalf of three unnamed parents and their children. Karlton said those families have the right to sue.

Karlton, ruling in Sacramento, said he would sign a restraining order preventing the recitation of the pledge at the Elk Grove Unified, Rio Linda, and Elverta Joint Elementary school districts, where the plaintiffs' children attend. The decision set up another showdown over the pledge in schools.

The Becket Fund, a religious rights group that is a party to the case, said it would immediately appeal the case to the San Francisco-based U.S. Court of Appeals for the Ninth Circuit. If the court does not change its precedent, the group would go to the Supreme Court.

"It's a way to get this issue to the Supreme Court for a final decision to be made," said fund attorney Jared Leland. Reported in: *San Francisco Chronicle*, September 14.

Sterling, Virginia

A federal appeals court panel on August 10 upheld a Virginia law that requires public schools to lead a daily recitation of the Pledge of Allegiance, rejecting a claim that its reference to God was an unconstitutional promotion of religion.

A suit filed by Edward Myers of Sterling, a father of three, raised the objection to the phrase "one nation under God." Myers, a Mennonite, argued, "The combination of God and country approaches a civic religion that is in competition with my religion."

But the panel of the United States Court of Appeals for the Fourth Circuit ruled that the pledge is a patriotic exercise, not an affirmation of religion similar to a prayer. "Undoubtedly, the pledge contains a religious phrase, and it is demeaning to persons of any faith to assert that the words 'under God' contain no religious significance,"

Judge Karen Williams wrote. "The inclusion of those two words, however, does not alter the nature of the pledge as a patriotic activity."

Myers's lawyer, David Remes, said the panel had failed to examine the pledge's effect on children. "The problem is that young school children are quite likely to view the pledge as affirming the existence of God and national subordination to God," Remes said. Reported in: *New York Times*, August 11.

colleges and universities

Carbondale, Illinois

Southern Illinois University at Carbondale cannot deny official university recognition to a campus Christian group, according to a preliminary injunction issued by the United States Court of Appeals for the Seventh Circuit. University officials had revoked the Christian Legal Society's university privileges last semester after deciding that the group's stance on homosexuality violated anti-discrimination laws.

The appeals court has not issued a final ruling, however. A three-judge panel of the court was scheduled to receive briefs from both sides in the dispute. The injunction, issued in late August, allows the Christian group to continue operating on the campus pending resolution of the case.

The central question in the case, *Christian Legal Society v. James E. Walker, et al.*, is whether the group's free-association rights trump the university's anti-discrimination and affirmative-action policies. Lawyers for the Christian group contend that the First Amendment protects the group's right to pick its voting members and leaders based on religious criteria. The group requires its members to obey biblical tenets regarding morality and sexuality, including the beliefs that homosexual conduct and premarital sex are immoral.

In contrast, Southern Illinois maintains that the group has an obligation to follow the university's rules, as well as state and federal laws regarding anti-discrimination, as a condition for official recognition. But in its preliminary ruling, the appeals court criticized Southern Illinois for failing to clarify which law the group had violated.

David French, president of the Foundation for Individual Rights in Education, a watchdog organization, said he was somewhat optimistic about the Christian group's chances of winning the case. But he added that the strong dissenting opinion filed by one of the court's judges in the preliminary ruling meant the case was far from resolved.

The Christian Legal Society, which has chapters at 125 law schools, is well acquainted with the arguments against its organization. During the past two years, five

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libraries

Boston, Massachusetts

Boston libraries plan to post pictures of the area's worst sex offenders so patrons and staff can keep an eye on them. The move is raising concerns with civil liberties groups who say the policy is intrusive.

The policy comes after officials say they received complaints that a purported sex offender was lingering in the children's section of a library branch. Police want librarians to call them when they think something's amiss. Authorities say they want to make sure the offenders aren't violating their parole or probation conditions.

Sex offender information booklets will be given to each of the city's twenty-seven library branches. Reported in: www.eyewitnessnewstv.com, August 16.

church and state

Washington, D.C.

The Bush administration on August 22 suspended a federal grant to the Silver Ring Thing abstinence program, saying it appears to use tax money for religious activities. Officials at the Department of Health and

Human Services (HHS) ordered the group to submit a "corrective action plan" if it hopes to receive an expected \$75,000 grant this year.

In a letter to the program director, Harry Wilson, associate commissioner of the Family and Youth Services Bureau, concluded that the project funded with federal dollars "includes both secular and religious components that are not adequately safeguarded."

The action came three months after the American Civil Liberties Union (ACLU) filed a lawsuit against HHS, accusing the administration of using tax dollars to promote Christianity. In documents filed in federal court in Boston, the ACLU alleged that the activities, brochures, and Web site of Silver Ring Thing were "permeated with religion" and use "taxpayer dollars to promote religious content, instruction and indoctrination."

Teenage graduates of the program sign a covenant "before God Almighty" to remain virgins and earn a silver ring inscribed with a Bible passage reminding them to "keep clear of sexual sin." Many of its events are held at churches.

In filings with the Internal Revenue Service, the organization describes its mission as "evangelistic ministry" with an emphasis on "evangelistic crusade planning."

Representatives of the Pennsylvania-based nonprofit describe Silver Ring Thing as a "faith-based" group but dispute charges it has commingled its public funds with religious activities. "Any religious teaching that goes on is separate in time and place from what the government is funding," said Joel Oster, senior litigation counsel at the Alliance Defense Fund, which is representing the Silver Ring Thing. "They offer a religious program and they offer a secular program; kids can choose which one they want to go to."

In an advertisement on its Web site for a set of educational materials on DVD, Silver Ring Thing promises: "A secular program is also in development."

The ACLU declared a partial victory but said it will continue to monitor the group's activities. "We're really pleased the government has recognized Silver Ring Thing was misusing public dollars to promote its own faith over all others," said senior staff attorney Julie Sternberg. "It's improper for the federal government to underwrite a national roadshow designed to convert teenagers to a particular faith." Reported in: *Washington Post*, August 23.

schools

Cupertino, California

An elementary school teacher who sued the Cupertino Union School District last fall, saying his employer tried to limit his instructional materials because he was a Christian, has resigned from his job just days after reaching a legal settlement.

Stephen J. Williams, who taught fifth grade at Stevens Creek Elementary School, resigned August 15 and was packing up with his wife and two infant children for a move to Bend, Oregon, Williams said.

Jeremy Nishihara, a spokesman for the school district, confirmed that Williams had tendered his resignation but had no further comment in the case, which received national attention.

Some of the materials Williams used in teaching U.S. history included a list of various religious clauses found in state constitutions and in the Declaration of Independence and George Washington's prayer journal. When some parents complained and district officials asked Williams to drop the use of some documents with religious references, Williams sued the district in federal court, saying that his constitutional rights were being violated.

On August 18, Williams withdrew his complaint in exchange for the district stating that teachers are able to use instructional material with religious content, under certain conditions. There is no financial settlement involved in the agreement.

"My wife and I have been praying about it for a while," Williams, thirty-nine, said about his decision to resign. He does not have a job lined up in Oregon and said it is unlikely he will return to teaching in public schools. Reported in: *San Francisco Chronicle*, August 18.

Ojai, California

Parents of three elementary school students filed a lawsuit in September against the Ojai Unified School District alleging a teacher made the students read a book that contains graphic language, violence, and explicit sexual content, and then faced retaliation from school officials for complaining about it.

In a lawsuit filed September 14 in Ventura County Superior Court, the parents alleged they never gave permission for their children, who were in the fifth grade at the time, to read the book *Please Stop Laughing at Me*, by Jodee Blanco.

After they complained in March, they and their children were harassed and retaliated against by teachers and others at San Antonio Elementary School, according to the lawsuit. The harassment and retaliation got so bad that the three students had to transfer in May before the end of the school year.

The plaintiffs' lawyer, Cathy Jones, said she tried "over and over and over again" to settle the suit. She asked school officials to simply apologize and pay her legal fees. "Everybody was just going to go their merry way," Jones said. "They wouldn't even do that. They ignored me."

The thirty-page lawsuit was filed by parents Jeff and Rosalyn Luttrull; Tom and Becky Collins; and Betty Craven. It seeks unspecified damages.

It alleges the girls and the parents were subjected to harassment and retaliation, sex discrimination, violation of civil rights, intentional infliction of emotional distress, negligence, and civil conspiracy.

It names as defendants the school district and its board, Superintendent Tim Baird, Principal John LeSuer and teachers Linda McMichael, Jenna Miller, and Sandra Hansen. Baird's secretary said that nobody from the district would comment on the suit.

The lawsuit states that in March, McMichael segregated the girls in her class and formed a "book club." The club was only assigned to read *Please Stop Laughing at Me*, which describes the author's experiences from fifth grade to her senior year of high school, when she was bullied and tormented constantly.

McMichael also made the girls participate in chapter discussions with her each Wednesday after lunch while the boys in the class went into the library for thirty minutes. The reading group discussions turned into talks about bullying, social pressure, drug use, and sexual education. Several excerpts from the book, which uses explicit language, were noted in the lawsuit.

"With trembling fingers, I unbutton my blouse. I'm self-conscious without my bra, which is more a contraption than a garment of clothing, with its labyrinth of belts, buckles, and straps. He sees me fumbling to unhook it and says reassuringly, 'Don't be afraid, nothing you can show me will make me stop being your friend.' Finally, the loosened bra falls to my waist and I am standing there, my hideousness in plain view. He smiles, and then to my utter surprise, says 'Pou einai to problema. Where is the problem?'"

The parents said they took their concerns to Baird. According to the suit, he agreed the book wasn't appropriate for fifth-graders and that it would no longer be taught in the district. He then told the parents to "move on," "get over it," and "if you can't trust the teacher, take your kids and leave," according to the suit.

Parents twice called the superintendent's office in March or April to request being put on the agenda for the next school board meeting. The parents were told the agenda was "set and closed" for a period of one year, the lawsuit states.

Jeff Luttrull and Jones went to the board May 17 to talk about the book and harassment of the students. The two were "repeatedly interrupted" by board president Kathi Smith and not permitted to continue their remarks, the suit alleges.

Also, the students who complained were confronted by McMichael and told they had "ruined" the book club and were troublemakers and had social problems, the lawsuit states. McMichael allegedly said the girls were told the book club was to address social problems and they would grow up to have "bad friends."

Jones said one of the girls, who changed to a special needs charter school in the district, is still being harassed

and retaliated against by school officials. Reported in: *Ventura County Star*, September 16.

Dover, Pennsylvania

Sheree Hied, a mother of five who believes that God created the earth and its creatures, was grateful when her school board voted last year to require high school biology classes to hear about “alternatives” to evolution, including the theory known as intelligent design. But eleven other parents in Dover were outraged enough to sue the school board and the district, contending that intelligent design—the idea that living organisms are so inexplicably complex, the best explanation is that a higher being designed them—is a Trojan horse for religion in the public schools.

With the new political empowerment of religious conservatives, challenges to evolution are popping up with greater frequency in schools, courts and legislatures. But the Dover case, which began September 26 in U.S. District Court in Harrisburg, is the first direct challenge to a school district that has tried to mandate the teaching of intelligent design. What happens here could influence communities across the country that are considering whether to teach intelligent design in the public schools, and the case, regardless of the verdict, could end up before the Supreme Court.

Dover, a rural, mostly blue-collar community of twenty-two thousand that is twenty miles south of Harrisburg, had school board members willing to go to the mat over issue. But people here are well aware that they are only the excuse for a much larger showdown in the culture wars.

“It was just our school board making one small decision,” Hied said, “but it was just received with such an uproar.”

For Hied, a meter reader, and her husband, Michael, an office manager for a local bus and transport company, the Dover school board’s argument—that teaching intelligent design is a free-speech issue—has a strong appeal. “I think we as Americans, regardless of our beliefs, should be able to freely access information, because people fought and died for our freedoms,” Hied said.

But in a split-level house on the other side of Main Street, at a desk flanked by his university diplomas, Steven Stough was on the Internet late the other night, keeping track of every legal maneuver in the case. Stough, who teaches life science to seventh graders in a nearby district, is one of the eleven parents suing the Dover district. For him the notion of teaching “alternatives” to evolution is a hoax.

“You can dress up intelligent design and make it look like science, but it just doesn’t pass muster,” said Stough, a Republican whose idea of a fun family vacation is visiting fossil beds and natural history museums. “In science class, you don’t say to the students, ‘Is there gravity, or do you think we have rubber bands on our feet?’”

Evolution finds that life evolved over billions of years through the processes of mutation and natural selection,

without the need for supernatural interventions. It is the foundation of biological science, with no credible challenges within the scientific community. Without it, the plaintiffs say, students could never make sense of topics as varied as AIDS and extinction.

Advocates on both sides of the issue have lined up behind the case, often calling it *Scopes II*, in reference to the 1925 *Scopes Monkey Trial* that was the last century’s great face-off over evolution. On the evolutionists’ side is a legal team put together by the American Civil Liberties Union (ACLU) and Americans United for Separation of Church and State. These groups want to put intelligent design itself on trial and discredit it so thoroughly that no other school board would dare authorize teaching it.

Witold J. Walczak, legal director of the ACLU of Pennsylvania, said the plaintiffs would call six experts in history, theology, philosophy of science, and science to show that no matter the perspective, “intelligent design is not science because it does not meet the ground rules of science, is not based on natural explanations, is not testable.”

On the intelligent design side is the Thomas More Law Center, a nonprofit Christian law firm that says its mission is “to be the sword and shield for people of faith” in cases on abortion, school prayer, and the Ten Commandments. The center was founded by Thomas Monaghan, the Domino’s Pizza founder, a conservative Roman Catholic who also founded Ave Maria University and the Ave Maria School of Law; and by Richard Thompson, a former Michigan prosecutor who tried Dr. Jack Kevorkian for performing assisted suicides.

“This is an attempt by the ACLU to really intimidate this small-town school board,” said Thompson, who will defend the Dover board at the trial, “because the theory of intelligent design is starting to gain some resonance among school boards across the country.”

The defense plans to introduce leading design theorists like Michael J. Behe, a professor of biochemistry at Lehigh University, and education experts who will testify that “allowing students to be aware of the controversy is good pedagogy because it develops critical thinking,” Thompson said.

The case, *Kitzmiller et al v. Dover Area School District*, will be decided by Judge John E. Jones, III, of the United States District Court, who was nominated by President Bush in 2002 and confirmed by a Senate vote of ninety-six to zero. The trial was expected to last six weeks and to draw news coverage from around the world.

The legal battle came to a head on October 18 last year when the Dover school board voted six to three to require ninth-grade biology students to listen to a brief statement saying that there was a controversy over evolution, that intelligent design is a competing theory and that if they wanted to learn more the school library had the textbook *Of Pandas and People: The Central Question of Biological Origins*. The book is published by an intelligent design

advocacy group, the Foundation for Thought and Ethics, based in Texas.

Angry parents like Stough, Tammy Kitzmiller, and Bryan and Christy Rehm contacted the ACLU and Americans United. The eleven plaintiffs are a diverse group, unacquainted before the case, who say that parents, and not the school, should be in charge of their children's religious education.

Mr. Rehm, a father of five and a science teacher who formerly taught in Dover, said the school board had long been pressing science teachers to alter their evolution curriculum, even requiring teachers to watch a videotape about "gaps in evolution theory" during an in-service training day in the spring of 2004.

School board members were told by their lawyer, Thompson, not to talk to the news media. "We've told them, anything they say can be used against them," Thompson said.

The Supreme Court ruled in 1987 that teaching creation science in public schools was unconstitutional because it was based on religion. So the plaintiffs will try to prove that intelligent design is creationism in a new package. Richard Katskee, assistant legal director of Americans United, said the *Pandas* textbook only substituted references to "creationism" with "intelligent design" in more recent editions.

Thompson said his side would prove that intelligent design was not creationism because it did not mention God or the Bible and never posited the creator's identity. "It's clear they are two different theories," Thompson said. "Creationism normally starts with the Holy Scripture, the Book of Genesis, then you develop a scientific theory that supports it, while intelligent design looks at the same kind of empirical data that any scientist looks at," and concludes that complex mechanisms in nature "appear designed because it is designed."

A twist in the case is that a leading proponent of intelligent design, the Discovery Institute, based in Seattle, removed one of its staff members from the Dover school board's witness list and opposed the board's action from the start. "We thought it was a bad idea because we oppose any effort to require students to learn about intelligent design because we feel that it politicizes what should be a scientific debate," said John G. West, a senior fellow at the institute. However, Professor Behe, a fellow at the institute, is expected to be the board's star witness.

Parents in Dover appear to be evenly split on the issue. School board runoffs are in November, with seven candidates opposing the current policy facing seven incumbents. Among the candidates is Rehm, the former Dover science teacher and a plaintiff. He said opponents had slammed doors in his face when he campaigned and performed a "monkey dance" when he passed out literature at the recent firemen's fair.

But he agrees with parents on the other side that the fuss over evolution has obscured more pressing educational

issues like school financing, low parent involvement, and classes that still train students for factory jobs as local plants are closing.

"There's no way to have a winner here," Rehm said. "The community has already lost, period, by becoming so divided." Reported in: *New York Times*, September 26.

Odessa, Texas

When the school board in Odessa, the West Texas oil town, voted unanimously in April to add an elective Bible study course to the 2006 high school curriculum, some parents dropped to their knees in prayerful thanks that God would be returned to the classroom, while others assailed it as an effort to instill religious training in the public schools. Hundreds of miles away, leaders of the National Council on Bible Curriculum in Public Schools notched another victory. A religious advocacy group based in Greensboro, N.C., the council has been pressing a twelve-year campaign to get school boards across the country to accept its Bible curriculum.

The council calls its course a nonsectarian historical and literary survey class within constitutional guidelines requiring the separation of church and state. But a growing chorus of critics says the course, taught by local teachers trained by the council, conceals a religious agenda. The critics say it ignores evolution in favor of creationism and gives credence to dubious assertions that the Constitution is based on the Scriptures, and that "documented research through NASA" backs the biblical account of the sun standing still.

In the latest salvo, the Texas Freedom Network, an advocacy group for religious freedom, released a study that finds the national council's course to be "an error-riddled Bible curriculum that attempts to persuade students and teachers to adopt views that are held primarily within conservative Protestant circles."

The dispute has made the curriculum, which the national council says is used by more than 175,000 students in 312 school districts in 37 states, the latest flashpoint in the continuing culture wars over religious influences in the public domain.

The national council says its course is the only one offered nationwide. Another organization, the Bible Literacy Project, supported by a broad range of religious groups, expects to release its own textbook in September.

According to Charles Haynes of the Freedom Forum, which published "The Bible and Public Schools: A First Amendment Guide" five years ago, "The distinction is between teaching the Bible and teaching about the Bible—it has to be taught academically, not devotionally."

The National Council on Bible Curriculum in Public Schools says its course "is concerned with education rather than indoctrination of students."

"The central approach of the class is simply to study the Bible as a foundation document of society, and that

approach is altogether appropriate in a comprehensive program of secular education,” it says.

Elizabeth Ridenour, a commercial real estate broker who said she formed the nonprofit organization in 1993 after deciding that she had long been “duped” into believing the Bible could not be taught in public schools, said the course has stayed within legal limits. “Our teachers are not to say, ‘This is the truth,’ or that the Bible is infallible,” she said. “They are to say, ‘This is what the Bible says; draw your own conclusions.’”

But in Odessa, where the school board has not decided on a curriculum, a parent said he found the course’s syllabus unacceptably sectarian. He has been waging his own campaign for additional information on where it is being taught.

“Someone is being disingenuous; I’d like to know who,” said the parent, David Newman, an associate professor of English at Odessa College who has made a page-by-page analysis of the 270-page syllabus and sent e-mail messages to nearly all 1,034 school districts in Texas.

The Texas Freedom Network, which commissioned its study after the vote in Odessa, is sharp in its criticism. “As many as fifty-two Texas public school districts and 1,000 high schools across the country are using an aggressively marketed, blatantly sectarian Bible curriculum that interferes with the freedom of all families to pass on their own religious values to their children,” it said.

In one teaching unit, students are told, “Throughout most of the last two thousand years, the majority of men living in the Western world have accepted the statements of the Scriptures as genuine.” The words are taken from the Web site of Grant R. Jeffrey Ministries’ Prophecy on Line.

Apart from a showcase school in Brady, Texas, the national council does not disclose the schools using its course because it wants to spare them the disruption of news media inquiries, Ridenour said. Only a summary of the course is available on the Internet, and printed copies cost \$150.

A highly critical article in *The Journal of Law and Education* in 2003 said the course “suffers from a number of constitutional infirmities” and “fails to present the Bible in the objective manner required.” The journal said that even supplementary materials were heavily slanted toward sectarian organizations; 83 percent of the books and articles recommended had strong ties to sectarian organizations, 60 percent had ties to Protestant organizations, and 53 percent had ties to conservative Protestant organizations, it said.

Among those included are books by David Barton, on the council’s advisory board and the vice chairman of the Texas Republican Party, who favors “biblical inerrancy,” said William Martin, a Rice University historian and the author of the book *With God on Our Side: The Rise of the Religious Right in America*.

Ridenour said the course was revised early this year. But the freedom network’s study concludes that the cur-

riculum’s section on science teaches creationism with no mention of evolution.

The course’s broad statements about the Bible being the blueprint for the nation are askew, said Haynes of the Freedom Forum, part of a nonpartisan ecumenical group promoting the Bible Literacy Project textbook. “If the Bible is a blueprint for the Constitution,” he said, “I guess they haven’t read it,” referring to the Constitution.

Some of the claims made in the national council’s curriculum are laughable, said Mark A. Chancey, professor of religious studies at Southern Methodist University in Dallas, who spent seven weeks studying the syllabus for the freedom network. Chancey said he found it “riddled with errors” of facts, dates, definitions and incorrect spellings. It cites supposed NASA findings to suggest that the earth stopped twice in its orbit, in support of the literal truth of the biblical text that the sun stood still in Joshua and II Kings.

“When the type of urban legend that normally circulates by e-mail ends up in a textbook, that’s a problem,” Chancey said.

Tracey Kiesling, the national council’s national teacher trainer, said the course offered “scientific documentation” on the flood and cites as a scientific authority Carl Baugh, described by Kiesling as “an internationally known creation scientist who founded the Creation Evidence Museum in Glen Rose, Texas.”

The battle of the Bible course is not over in Odessa, where John Waggoner, a real estate appraiser, presented petitions with six thousand signatures in support of the Bible class—many of them on printed forms of the National Council on Bible Curriculum in Public Schools—to the school board of Ector County at its April meeting. The assistant superintendent, Raymond Starnes, said he wanted to examine the Bible Literacy Project’s textbook before recommending one for the 2006 school year. Reported in: *New York Times*, August 1.

colleges and universities

Murrieta, California

A private Christian school in California and a group representing religious schools are suing officials at the University of California system, saying the university discriminates against students from high schools that present Christian viewpoints, including the teaching of creationism.

The lawsuit, which was filed in federal court in Los Angeles on August 25 argues that five students at Calvary Chapel Christian School, located in Murrieta, are unable to apply to the university because several courses they have taken at the school—courses in subject areas required for admission to the university—have been refused certification by university officials for having a Christian slant. The

university's actions, the suit alleges, violate the constitutional rights of the students and of Christian schools.

"This is an unfortunate attempt on the part of the University of California to secularize private Christian schools by discriminating against a Christian viewpoint," Robert H. Tyler, a lawyer for the school, said. The lawsuit was jointly filed with the Association of Christian Schools International, a group that represents four thousand religious schools nationally.

Ravi Poorsina, a university spokeswoman, said in a written statement that the university had not yet reviewed the case and could not comment on the suit's specifics. In the statement, Poorsina said the university "fully recognizes" the right of private schools to select course material and that not all courses should be geared to satisfying university requirements. "However, those courses submitted for satisfaction of university entrance requirements must meet university academic standards," the statement said.

According to the 108-page complaint, which names the system's Board of Regents and five university officials as defendants, the university rejected biology and physics courses at Calvary Chapel Christian School and other Christian schools because the courses included the use of textbooks published by A Beka Book, Inc., and Bob Jones University Press, two Christian publishers.

On the Bob Jones University Press Web site, a biology textbook is described as focusing on "biblical integration" while teaching about cellular biology, genetics, and other subjects. It also "presents Christian positions on biotechnology, abortion, evolution, homosexuality, ecology, disease, and drugs."

In an e-mail message cited in the lawsuit, a university admissions official wrote that the content of courses that use textbooks from the two publishers is "not consistent with the viewpoints and knowledge generally accepted in the scientific community."

The university also disqualified courses at Calvary Chapel Christian School in history, literature, and government studies.

Susan A. Wilbur, the university's director of undergraduate admissions, wrote to school officials in October 2004 to explain why the university had rejected a class called "Christianity's Influence in America." Wilbur wrote that the focus of the course was "too narrow" and specialized, and that students who take these courses "may not be well prepared" for success at the university.

Tyler, who works with Advocates for Faith and Freedom, a California-based legal group, and who has children who attend Calvary Chapel Christian School, said the university was unfairly singling out conservative Christian viewpoints. The lawsuit says that the university grants approval to courses at other schools that include viewpoints of other religions, such as Buddhism or Judaism, or that have ethnic or cultural focuses.

"It appears that they allow kids to learn everything but Christianity," Tyler said.

Poorsina denied that the university had targeted Christian viewpoints and said the course requirements are only intended to ensure that students are prepared to attend the university. "They are not directed at any specific group," Poorsina said. Reported in: *Chronicle of Higher Education* online, August 29.

Boulder, Colorado

Another stage in the University of Colorado's long process of reviewing Ward Churchill is done—and his lawyer is claiming that it was a victory for the controversial professor. The university, citing confidentiality rules, is not commenting on the review by a faculty panel of a series of misconduct allegations against Churchill, who teaches ethnic studies at the Boulder campus. Likewise, Churchill's lawyer is not releasing a report that Churchill received from a faculty panel August 22—so characterizations of the report's findings cannot be confirmed.

But David Lane, Churchill's lawyer, told Colorado reporters that the report was a "victory for Professor Churchill" in that there were no conclusive findings of wrongdoing. Lane told the reporters that the panel could not determine whether seven allegations were valid and asked that another panel review them—and the panel decided that two other charges did not deserve further investigation. The allegations that are going forward for additional review, Lane said, involve charges of plagiarism or misrepresentation of work. Churchill has repeatedly denied that he committed any scholarly misconduct and has accused Colorado officials of investigating his academic work to punish him for his political views—and especially for the furor over his statements about 9/11, in which he compared victims in the World Trade Center to "little Eichmanns."

Lane said that one charge that is not being forwarded for additional review concerns allegations that Churchill has misrepresented himself as being an American Indian. Churchill has always said that he is a Native American, but as the controversy over the professor has grown in the last year, several newspaper reports—with backing from some Indian groups—have questioned his ethnicity. Lane said that he was pleased that the committee had rejected these charges.

The reason that the faculty committee could not reach conclusions on most of the charges against Churchill, Lane said, was that most committee members were scientists and did not feel able to judge the plagiarism issues. (At many universities, research misconduct panels are dominated by scientists because most of the cases they review involve science.)

While Churchill's lawyer is declaring victory—and the committee's findings assure that Churchill cannot be fired by Colorado at this time, and likely in the months ahead that the additional review will take place—it is far from clear that any victory will be a lasting one.

The charges on which most academic experts believed that Churchill was most vulnerable to a finding that could lead to a dismissal from his tenured post are those that remain under review. And many academic experts believe that those charges are strong.

Churchill has been a popular speaker on college campuses and an activist on Native American issues for years. And some scholars have, for years, questioned some of his research. But the investigations into him did not begin in full force until this year. His comments about 9/11, which had been posted online, were publicized widely before a speech he was scheduled to give at Hamilton College. The speech was called off due to threats of violence, but the furor over Churchill never subsided.

Many Colorado politicians demanded that the university fire Churchill, and the university appointed a special panel to explore whether his statements were grounds for dismissal. That panel found that his statements—however offensive to many people—were protected by the First Amendment. But that panel said that other charges did merit investigation and, if true, could be grounds for dismissal.

The apparent delay in reaching a conclusion on the misconduct allegations has not stopped Churchill's critics from continuing to demand his resignation. An editorial in the *Rocky Mountain News* called the university's review process "preposterously complex" and "ludicrously protracted."

The editorial urged the university committee to review a series of articles published by the newspaper in June. "There investigators will discover chapter and verse on how Churchill gradually appropriated a 1972 environmental document as his own, how he invented facts surrounding the 1836 epidemic among the Mandan Indians, how he misrepresented the Dawes Act, and how he reproduced as his own parts of a 1992 essay by Professor Fay Cohen—just to mention four examples of academic misconduct." Added the editorial: "By all means, let the academics double-check the research. It's sound, and it points in but one direction. Churchill must go." Reported in: insidehighered.com, August 23.

Minneapolis, Minnesota

Facing a lawsuit charging it with intermingling church and state, the University of Minnesota has dropped plans to offer a set of courses on the intersection of faith and health.

The Freedom From Religion Foundation, a Wisconsin nonprofit group, had sued the university in March, saying that its involvement in the Minnesota Faith Health Consortium, a partnership with Luther Seminary, which is affiliated with the Evangelical Lutheran Church of America, and Fairview Health Services, a health care organization, entangled the public institution inappropriately with the promotion of religion. Among the group's goals, according to its Web site, were increasing understanding of the links between religious faith and health, and "enhancing leadership capacity to link faith and health."

In July, the university withdrew from the consortium, but the Freedom From Religion Foundation pressed its lawsuit because Minnesota continued to plan to offer the Faith/Health Clinical Leadership program, a set of three courses jointly sponsored by the university, the seminary and Fairview. Materials promoting the program described it as a "pioneering effort" to "prepare students from a variety of professional backgrounds for a role in faith/health leadership."

Course materials described one of the three courses, "Healer's Journey," for instance, as letting students "reflect on their own personal, professional, and spiritual values as a means of assisting others to use their own spiritual background for enhancing their own well-being and healing."

In discussions with lawyers for the foundation, Minnesota officials first reworked the name and proposed content of the course. But after continued negotiations, the university confirmed in a letter to the foundation's lawyers that it would not offer the course, which led the Freedom From Religion Foundation to declare "complete victory."

"We have halted a serious First Amendment violation, a partnership between a public university and religious organizations to promote religion to students and patients that was intended to serve as a national model," said Annie Laurie Gaylor, the foundation's co-president. In return, the foundation dropped its lawsuit.

In an interview, Mark B. Rotenberg, Minnesota's general counsel, said that the university believed strongly that "mingling faith indoctrination or religious indoctrination or advocacy does not mix with a public institution," and that "it is certainly true that reasonable people, including the foundation here, could see a potential church-state difficulty with the course."

But Rotenberg said that it was never clear that the proposed course would have dealt with religion in an unconstitutional way, because its curriculum had never been finalized. "We'll never know exactly," he said. "Until a professor finalizes the syllabus, walks into the classroom, and starts teaching, a university cannot be certain, nor should it dictate, what will happen in that classroom."

Rotenberg also played down the meaningfulness of what the university had given up. "We agreed that we wouldn't offer that particular course under that particular title," he said. "We don't see this as a watershed event or a concession of our academic freedom to engage in wide ranging research or outreach related to faith-based care." The university plans to continue to focus some work in its medical center on "end of life and elder care," he said, and "faith based systems play a large role in care of the elderly and the chronically and terminally ill."

"The University of Minnesota comes out of this without any more legal restrictions on its ability to engage in teaching, research and outreach than we had before the case started," Rotenberg added.

Gaylor, co-president of the Freedom From Religion Foundation, said the university risked future legal action

if it tried to offer any kind of course that “crossed the line into promotion of religion.” “Let’s face it: This course was never taught only because we sued,” she said.

“And we would go back and reinstate our lawsuit if they did under some other name what we sued to stop them to do.” Reported in: *insidehighered.com*, September 12.

St. Louis, Missouri

Three online term-paper companies are under fire for selling a college student’s manuscript without her permission. The lawsuit filed in early September in U.S. District Court in St. Louis, seeks more than \$100,000 in damages from *doingmyhomework.com*, *freeforessays.com* and *freefortermpapers.com*. It could open a wave of complaints against sites that offer essays, papers, and research without the approval of the works’ authors.

The complaint alleges that simple Internet searches on plaintiff Blue Macellari’s name resulted in links to the three sites where her paper on South Africa’s economic development was housed. The lawsuit—filed pro bono by intellectual property attorneys at McDermott Will & Emery—names the sites’ registrant Rusty Carroll and his company R2C2, Inc., as well as the ISP hosting the document clearinghouses, as violating copyright laws and consumer fraud and deceptive business practices statutes.

Macellari, a graduate student at Duke University and Johns Hopkins University, is also suing the sites on allegations of defamation, invasion of privacy and wrongly suggesting she submitted her manuscript to the sites or sought their sites’ services.

The ISP is liable on a number of theories, including copyright infringement and inducement, similar to those used to argue against file-sharing in *MGM v. Grokster*, contended Macellari’s attorney Evan Parke. The ISP supports other sites that offer term paper related services, Parke told us. “They know or they should have known about the activities that were taking place” on hosted sites, he said.

Macellari is not sure how her paper—written in 1999 while she studied in South Africa—wound up in the term paper companies’ databases. The document was posted online briefly at a Web site owned by Mt. Holyoke College, which Macellari attended as an undergraduate. According to the complaint, she placed the paper on the Web for an unrelated class project on Web site development in 2000. Attorneys don’t know how long the document remained on the school’s server, but it isn’t there now.

On defendants’ sites, the paper carries a copyright symbol and the disclaimer that it’s the property of the site on which it’s found. The complaint alleges that the sites in question link to other online destinations that offer similar services and the defendants get revenue through an informal affiliate program.

This isn’t the first time Web-based term-paper companies have encountered legal trouble. Boston University

filed a federal lawsuit against eight companies in seven states in 1997. The complaint alleged the sites devalued the school’s degree programs. But a judge threw out the case. Higher-education law experts said they were unaware of cases similar to Macellari’s.

Plagiarism crusader John Barrie called the case merely the tip of the iceberg. Countless cheating sites exist and many share documents, he said: “If they’ve misappropriated one, they’ve misappropriated many. We’re at the cusp of this problem exploding.” It’s peculiar that lawyers have targeted Carroll, a seemingly small-time operator, he said. Several suits have been filed in which creators claimed to have found their intellectual property on someone else’s site, litigated, and won a handsome sum.

A 2003 case against Legg Mason earned Lowry’s Reports a \$17.5 million award. “This is just the beginning,” Barrie warned: “There are thousands of Legg Masons out there just waiting to happen.” Barrie’s company, iParadigms, helps schools fight cheaters. His Turnitin service—which determines text originality based on internal database and Internet searches—receives about 40,000 student papers daily. About 30 percent are plagiarized in some way. Reported in: *Washington Internet Daily*, September 6.

broadcasting

Washington, D.C.

An outspoken anti-pornography advocate has been hired by the Federal Communications Commission (FCC) to advise the agency on consumer issues involving the cable and broadcast industry, which has been under scrutiny for airing racy material. Penny Nance, who previously ran the Kids First Coalition, which advocates on the issues of adoption, crime, pornography, abortion, and computer safety, has been hired as a part-time advisor in the FCC’s Office of Strategic Planning and Policy Analysis, an agency spokesman said.

Nance, a self-described religious conservative, has testified before Congress and has been interviewed on cable television about Internet child pornography.

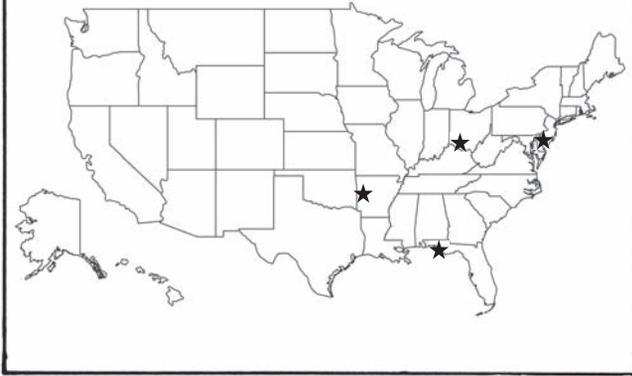
An FCC spokesman was unable to say when she was hired or what her specific duties would be beyond providing advice and acting as a liaison to Congress, public interest groups, and the industry. Her new job was first reported by *Mediaweek*.

The FCC this year has not yet proposed any fines against broadcasters though complaints are pending. In 2004, under then-FCC Chairman Michael K. Powell, the agency proposed fines totaling almost \$8 million.

One of the most recent complaints was that ABC failed to censor a swear word during one broadcast of a Live 8

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success stories



libraries

Fayetteville, Arkansas

The Fayetteville School Board rescinded its earlier action to restrict access to three challenged library books and authorized the creation of a committee to review the district's book selection policy during a special meeting September 15. In a 4-3 vote, the board took back its action in May that placed *It's Perfectly Normal*, *It's So Amazing*, and *A Teenage Guy's Guide to Survival* on restricted shelves in parent libraries in the schools where the books are housed.

The action means the three books will be returned to general circulation shelves with some limits on student access, based on a review committee's recommendations.

The vote came after the district's attorney, Rudy Moore, Jr., said restricting student access to the books was indefensible based on his review of case law, including a Cedarville case that was decided in 2003 by U.S. District Judge Jimm Larry Hendren of Fayetteville. In that case, Hendren ruled that "even a minimal loss of First Amendment rights is injurious to students" and that such restrictions have a "stigmatizing effect" on students, Moore said.

"It will be difficult to defend the restrictions placed on the books in May," he told the board.

The Cedarville case was brought by parents of a student after the school board voted to restrict access to

the Harry Potter series by requiring parental consent to check out the books. Moore said the case is viewed as a "hallmark case" on the issue of restricting student access to library books.

Some board members wanted to delay any action on the three books to allow more time to consider Moore's remarks. Board member Tim Hudson made the motion to rescind the earlier board vote and to follow the review committee's recommendations on the three books. Board members Tim Kring, Steve Percival and Susan Heil supported the motion.

The board in May took a recommendation from the superintendent to put the books in the parent library, which restricted student access. Several librarians who also spoke during Thursday's meeting said the parent libraries in each school were never intended as a restrictive repository for books. Those libraries were set up as mandated in the parent involvement act of 2003, said Cassandra Barnett, a librarian at Fayetteville High School.

The law requires school libraries to have material on responsible parenting available, but "nowhere does it say that a parent library be restricted," Barnett said.

The challenges were submitted by Laurie Taylor, a Fayetteville mother of thirteen- and twelve-year-old daughters. On her written complaint forms, she indicated she wanted all three books withdrawn from student access. Since, Taylor has submitted a list of more than fifty books she finds objectionable in school libraries, citing the books as too sexually explicit and promoting homosexuality.

She also has filed two more formal complaints asking the district to reconsider the books *Push and Deal With It!*, *A Whole New Approach to Your Body, Brain, and Life as a Gurl*.

"I keep hearing this is not about banning books," Hudson said, adding, "Every piece of paper coming before us, the patron has asked that all the books be withdrawn back from all students. It does have to do with banning and censorship," he said.

The board authorized Superintendent Bobby New to organize a "small working committee" of four librarians, one principal, one central office administrator, one high school student and one parent to review the current policy, parts of which have been in place for thirty years.

The proposal asks the committee to develop a process to allow parents to review new books before they are placed on the shelves and to determine whether the books are appropriate for their children.

The committee is also charged to develop a mechanism for the review of a group of books. The current policy is structured to handle the review of a single title.

"The policy is fundamentally sound and we just need to review it again," Percival said. "We're not throwing out the old policy." He said he wanted to consider revisions to include parents based on the number of comments he received from parents who want more involvement.

After the meeting, Taylor said she had “no idea what just happened. There was no decision about a single book. It’s frustrating.” She added she thought Percival’s proposal for a committee review of the proposal was “a genuine attempt to empower parents.” Reported in: *Arkansas News Bureau*, September 16.

Cherry Hill, New Jersey

A flap over a popular teenage book turned into a very civil affair at the July 27 meeting of the Cherry Hill Public Library’s board of directors. Ellen Schwartz, the Cherry Hill mother of a thirteen-year-old girl, sought to have *We All Fall Down*, an at-times violent novel by the late Robert Cormier, removed from the library’s young adult section, claiming its “deplorable” content was unfit for young minds.

Schwartz appealed to Mayor Bernie Platt, who intervened with the board on her behalf. Platt did not attend the board meeting, instead sending Anthony Bucchi, his deputy chief of staff. “The mayor wanted the board to make sure we’re doing everything on the same level” with regard to accepted book selection policies, Bucchi said.

It was the first official challenge to a book on Cherry Hill Public Library shelves in about a decade, said Barbara Shapiro, the library’s director. “I’ll admit I didn’t read the whole thing,” Schwartz told the board at the meeting. Afterward, she admitted that if she had, she might not have objected so strenuously. The book was written for teens, but deals with mature subject matters such as alcoholism and divorce.

The board took the challenge from Schwartz and Platt seriously, and moved the meeting from its board room to a larger space, anticipating a crowd that never materialized. Shapiro and four board members, including President Stephen Barbell, explained to Schwartz the process of book selection and said it was probably time to once again review certain policies, but not because of the challenge.

No board member sought to uphold Schwartz’s request to have the book moved out of the teen section of the library, so the matter was dismissed.

Published in 1991, *We All Fall Down* was included on the American Library Association’s “Best Books for Young Adults” list. It’s on many high school reading lists around the country. “It is a very well-respected book, as is the author,” said Beverley Becker, associate director of the ALA’s Office for Intellectual Freedom in Chicago. But, Becker said, the book also has held down number thirty-five on the top one hundred most-challenged books of the 1990s, as reported to the ALA.

“It always gets more complicated when you’re talking about children,” Becker said, “but if this mom doesn’t want her daughter to read this, that’s between her and her daughter.” Reported in: *Courier-Post*, July 28.

Upper Arlington, Ohio

Two free newspapers distributed in Upper Arlington library lobbies are not obscene and are not harmful to juveniles, according to a preliminary report presented at a library board meeting July 12. The *Gay People’s Chronicle* and *Outlook Weekly* will continue to be distributed at the libraries. But a separate legal opinion by the Franklin County prosecutor’s office said that all free publications could be removed from the lobbies and put behind a counter.

The report was prepared by library board president Mark Magill and trustee Dan Boda, who held a public hearing five days earlier on whether the two lesbian, gay, bisexual, and transgender papers should be removed from the Columbus suburb’s library system. Led by resident Mark Bloom and Upper Arlington council member Tim Rankin, a small group wanted the papers taken out of the libraries, where many free publications are available to be picked up.

The board meeting drew a much smaller crowd of about forty people, compared to the over one hundred twenty attending the public hearing. Boda recapped the nature of the hearing. “Even though almost all of the forty-two people [speaking at the hearing] addressed the *Gay People’s Chronicle* and *Outlook*,” he said, “we are forming a policy that addresses all aspects of all the free material available at our libraries.”

Two issues were examined by Magill and Boda: if the two gay publications should be immediately removed for being first, pornographic or second, harmful to juveniles. Boda said that after consulting with the city’s prosecutor’s office, they determined that the two papers “were neither.” They “don’t fit any of those definitions,” he said.

Franklin County Prosecuting Attorney Ron O’Brien’s office wrote an opinion on the matter’s legal aspects for the library. Written by First Assistant Prosecuting Attorney Patrick E. Sheeran, the document has three main findings. First, if and when the board decided to take any action, “materials may not be totally banned unless they are found by the board to be obscene.” The second finding was that, “Access to such material may not be restricted unless the board finds them to be, or tending to be, materials that are harmful to juveniles.” The third finding states, “The Upper Arlington Library Board may constitutionally avoid making such determinations by removing all materials from the foyer and restricting them to library patrons who request them.”

The legal brief, which cites precedents in similar matters, also said, “The fact that some materials may be harmful to juveniles does not authorize a library from an outright prohibition of those items. In fact, the Supreme Court has held to the contrary: a total ban is not constitutionally permissible.” Reported in: *Gay People’s Chronicle*, July 22.

retail

Pensacola, Florida

Wal-Mart lifted a local manager's ban on selling the *Pensacola News Journal* newspaper at area stores, a company spokeswoman said July 26. The ban was imposed in response to a column the manager considered derogatory to the retailer.

Columnist Mark O'Brien wrote in June 19 editions that Pensacola should "be more than the Wal-Mart kind of town we're becoming—cheap and comfy on the surface, lots of unhappiness and hidden costs underneath." O'Brien then cited a *New York Times* report that Georgia's health care program included more than 10,000 children of Wal-Mart workers, costing taxpayers nearly \$10 million a year. He noted the *Times* report was cited in *The World Is Flat*, a book by columnist Thomas Friedman about the global economy.

"We did make an error in judgment by removing the papers from our stores," Wal-Mart Stores, Inc., representative Sharon Weber said in an e-mail from company headquarters in Bentonville, Arkansas. "They should be available in our stores by the end of the week."

"I am unaware of any prior instance in which a book or periodical was removed from our shelves because it was critical of our company," she wrote. Weber declined to discuss any possible disciplinary action against Pensacola district manager Bob Hart, who issued the ban.

"There are lots of different ways to disagree with people; this wasn't necessarily one of them," said *News Journal* executive editor Randy Hammer. "I'm just glad for our readers that they'll be able to get the newspaper where they want it."

In a column published Sunday, Hammer wrote that he, too, sometimes disagrees with O'Brien but defended the columnist's right to express an opinion. Hammer said that in a conversation with Hart, the Wal-Mart manager had said he'd be willing to talk about lifting the ban if the newspaper fired O'Brien.

"I might understand it if Wal-Mart said I ought to fire Mark because what he said wasn't accurate," Hammer wrote. "But that isn't the case." Reported in: Associated Press, July 27. □

(censorship dateline . . . from page 284)

The decision to cancel was not easy, Rutz said. "There was vigorous discussion, to be sure," she said. "Issues on the table included freedom of speech, consequences of negative publicity, personal objections to the subject matter, and resistance to what might appear to be caving in to a particular group with its own right-wing agenda." (WorldNetDaily's conservatism is high-octane. In addition

to its campaign against Rind's essay, the site has prominently suggested that Hurricane Katrina was divine retribution for the Bush administration's support for the Israeli withdrawal from the Gaza Strip.)

"For the record, we do not in any way support or endorse the practice of pedophilia, pederasty, or any form of child abuse," Rutz said. She noted that Haworth is the publisher of the *Journal of Child Sexual Abuse*, the *Journal of Religion and Abuse*, and the *American Journal of Pastoral Care and Counseling*. "Part of our mission is to support a literature that uses good science to heal and to help," she said. "This is, in fact, one of the reasons we publish *The Journal of Homosexuality*. This journal is very important to us, and we are privileged to provide a venue for research and scholarship that reflects humanity's extraordinary diversity."

Rutz emphasized that the press's acquisitions process is unusual. "Our journal, imprint, and book-series editors are not Haworth employees, but are usually faculty on the front lines of individual disciplines," she said. "Editors under contract submit, and we publish."

Because of that structure, Rutz said, it is not terribly rare for Haworth to cancel a publication late in the production process. "Most recently we chose not to proceed with publication of an acquired book about parental-alienation syndrome," she said, "because the subject area was such a hot button among many of the scholars with whom we work."

The canceled book was edited by Vernon Provencal and Beert C. Verstraete, professors of classics at Acadia University, in Nova Scotia. The general editor of *The Journal of Homosexuality* and its associated books is John P. De Cecco, a professor emeritus of psychology at San Francisco State University.

"I've been publishing since 1981," said Amy Richlin, a professor of classics at the University of California at Los Angeles and a contributor to the volume, "and I've never anticipated something like this happening to me with a reputable press. If they're going to allow themselves to be held hostage to the radical right, then they should get out of the publishing business."

Richlin's contribution to the canceled volume explores how activists of the pre-Stonewall era, in the 1950s and early 1960s, used the examples of classical Greece and Rome as they constructed arguments for gay rights.

In 1998, Rind and two colleagues published an article in the *Psychological Bulletin*, a journal of the American Psychological Association, in which they reviewed 59 previously published studies of college students who had been victims of child sexual abuse. In their analysis, Rind and his colleagues found that not all of the students had suffered lasting psychological harm, and that 42 percent of the male students retrospectively viewed their sexual experiences with adults as "positive."

The paper came under immediate and heavy criticism from other scholars of sexual abuse. Among other things,

scholars objected that studies of college students were not the best way to capture the full range of experiences of abused children. The following summer, after a campaign by talk-radio hosts, the paper was denounced in unanimous resolutions by both houses of the U.S. Congress.

One of Rind's most persistent scholarly critics is Steven J. Ondersma, an assistant professor of psychiatry at Wayne State University and the editor of the journal *Child Maltreatment*. Ondersma said that he had no particular quarrel with the methodology or findings of Rind's analysis. In fact, he said, it has been long established that many victims of child sexual abuse do not suffer lasting maladjustment.

Ondersma strongly objects, however, to certain recurrent language in Rind's writing that seems to suggest that adult-adolescent sexual conduct should be viewed as normal. "I make a distinction, as many others do, between wrongness and harmfulness," Ondersma said. "For example, imagine adults who give children some cocaine just for fun, to see what it will do. That's a pretty heinous, awful thing, and I sure hope those folks go to court for something like that," whether or not those particular children suffer lasting psychological or medical harm.

Likewise, Ondersma said, with adult-adolescent sexual conduct: It is so intrinsically risky that it is always wrong.

In a 2001 paper that replied to one of Ondersma's critiques, Rind and his colleagues argued that "the victimological perspective has dominated almost all research in this area for the past quarter-century. Victimology has its place but contains a heavy degree of ideology. Researchers should not feel obligated to restrict design, analysis, and interpretation to a victimological perspective, but rather they should consider other models."

Other critics of Rind's work have pointed to a 1995 essay of his published in *Paidika*, an obscure, explicitly pro-pedophilic journal. In that article, Rind called for the abolition of age-of-consent laws. One condemnation of that essay appeared in Haworth's own *Journal of Child Sexual Abuse* in 2002. Reported in: *Chronicle of Higher Education* online, September 26.

government

Washington, D.C.

The Defense Department has removed messages containing political commentary from a Web site designed for people to show their support for U.S. forces serving in Iraq and Afghanistan. Most of the postings at americasupportsyou.mil express love and encouragement—"The greatest nation in the world is kept that way by men and women like you," reads one message from a family in Maryland—without partisan asides. But among the 60,000-plus messages were at least a few dozen—located using the site's search function—that

equated troop support with backing the Bush administration's political goals. Still others lambasted Democratic politicians including Senators John F. Kerry and Edward M. Kennedy.

A message sent by Stephanie A. Chalkey of Oceanside, California, "aka: Proud Republican," said: "I thank you Mr. President for all you have done and standing up to the one's [sic] who don't believe in you. My theory is that if they don't like it here; we will pay their way out. Can you put that in the budget? :-)"

Another by Jan Stout of Las Cruces, New Mexico, said: "I show my support verbally in public and by donations to the RNC and reelect George W. Bush campaigns." Both of these messages, visible on the site two weeks ago, are now gone.

The decision to remove such messages reflects a policy posted on the site that warns readers that political speech will be barred. "We are not including messages with political commentary—pro or con," said Allison Barber, deputy assistant defense secretary and creator of the Web site. "Frankly, this a site to support the troops and thankfully, our men and women in the military volunteer to defend our country no matter who is in political office."

Previously, the staff used its judgment to decide which messages would be published, Barber said in an interview conducted before the policy was displayed on the site. The messages are reviewed by college interns, but Barber said full-time staff members decide which ones will be posted online.

Since the new policy was adopted, many messages, including all those found by washingtonpost.com using search terms such as "George Bush," "RNC," and "John Kerry," have been removed. Posting political content on a taxpayer-financed, government-run Web site may not violate any rules, several experts said, but they warned that it creates an image problem.

The military "should not be seen as promoting a political agenda," said Larry Noble, head of the Center for Responsive Politics and former general counsel for the Federal Election Commission. Jonah Seiger, co-founder of ConnectionsMedia.com, which develops online campaign strategies for Democratic candidates, said posting political messages on the site could amount to tacit endorsement.

The Hatch Act forbids federal employees from supporting candidates and being politically active in their workplace, but experts said it is unclear how it would apply to messages from the public on sites such as americasupportsyou.mil. Nevertheless, "It's questionable if a government-sponsored site is expending both taxpayer money and government employee time solely to burnish one party at the expense of another," said Larry Purpuro, founder of RightClick Internet strategies, which develops online strategies for Republican campaigns.

Barber, the chief of Defense Department communications, launched the site last November. It attracted mass attention when President Bush urged people to leave messages there during a speech he gave at Fort Bragg, N.C., in

late June. According to the Web site, people have so far left more than 127,000 messages, of which more than 60,000 have been edited and published. The site also displays hundreds of messages from U.S. service people back to their supporters. Reported in: *Washington Post*, August 4.

broadcasting

Billings, Montana

At least one TV station has asked the Montana Democratic Party to change its ad criticizing Republican Senator Conrad Burns for what the party called an “improper relationship” with a GOP lobbyist under federal investigation. Monty Wallis, president and general manager of KTVQ-TV in Billings, said he asked Democrats to change a line referring to \$136,000 they claimed Burns received from lobbyist Jack Abramoff. The ad may be pulled if they do not, he said.

Wallis said Federal Election Commission records show the money, donated to Burns’ campaign, came from a number of sources, not just from Abramoff. He said he wants the record set straight. “We want to make sure we’re not disseminating information that’s written in such way that it really is not correct,” Wallis said.

The Montana Broadcasters Association voiced similar concerns and told members in an e-mail they were not obligated to run the TV spot, which began airing state-wide August 8. The Burns campaign and the National Republican Senatorial Committee have said the ad is false and are asking TV stations to stop airing it.

Dennis McDonald, chair of the Montana Democratic Party, said he had heard rumors that a TV station was asking the ad be changed, but had not “seen anything in writing and nothing official.” Democratic Party officials stood by the TV spot and said its central premise remained unchallenged.

“Whether it says ‘associates’ or not, the fact is that Jack Abramoff—who is embroiled in a criminal probe—drove \$136,000 into Conrad Burns’ campaign coffers and got Burns to work for special interests in Michigan when he should have been working for Montana’s families,” Montana Democratic Party spokesman Tim Tatarka said.

The ad criticized Burns for what it said was his vote to give one of the nation’s wealthiest American Indian tribes \$3 million from a federal program intended for cash-strapped tribal schools. The Michigan tribe was a client of Abramoff’s, who is now under investigation for possibly bilking his Indian clients. The ad urged voters to call Burns and “tell him to start working for Montana.”

Burns has said the aid to the Michigan tribe was requested by that state’s congressional delegation as part of the 2004 Interior Appropriations Bill. The legislation received bipartisan support in the U.S. Senate, passing

87–2, Republican Party officials said. Reported in: *Billings Gazette*, August 9.

New York, New York

A local affiliate of the Fox television network rejected a campaign advertisement for a Democratic politician that lampooned President George W. Bush by superimposing his head on a naked torso. The ad, produced by Brian Ellner, an openly gay candidate for Manhattan borough president, opened with a close-up of Bush’s face and zoomed out to show the torso from the hips up, with a voice-over saying, “New Yorkers know the emperor has no clothes.” Ellner also introduced his male partner during the thirty-second commercial.

A spokeswoman for Fox’s WNYW/Channel 5 affiliate said the channel was not running the ad, but declined to say why. A spokeswoman for sister cable network Fox News Channel said: “The decision was made at the station level.”

“This is censorship and it’s un-American,” Ellner said. “It’s either anti-gay because I introduce my partner, or it’s anti-free speech because I criticize the president.” A spokesman for his campaign said no other network had refused to carry the ad, which ran as part of a \$300,000 media campaign on various channels including the ABC and NBC network-owned stations Channel 7 and Channel 4.

Ellner said WNYW representatives told his campaign officials that the ad was rejected because Fox viewed it as disrespectful to the office of the president. “Fox claims that this ad is disrespectful to the president. What is truly disrespectful to Manhattan voters is to deny them the chance to hear a serious message from a candidate for public office,” Ellner said.

Part of Rupert Murdoch’s News Corp. empire, Fox News is the leading cable news channel in the United States, operating under the slogan “Fair and Balanced.” According to an annual report by a research arm of the Columbia University Graduate School of Journalism, its audience is increasingly more Republican than viewers of other cable channels. Reported in: *Washington Post*, September 6.

galleries and museums

New York, New York

DC Comics has ordered a New York gallery to remove pictures which show Batman and Robin kissing and embracing. The Kathleen Cullen Fine Arts gallery was told it would face legal action unless it removed watercolors of the superheroes by artist Mark Chamberlain.

“DC Comics wants me to hand over all unsold work,” said Cullen. Arts Web site Artnet was also told to remove the series of semi-naked images of Batman and Robin from its Web site.

The color pictures, which depict the superheroes in a number of homoerotic poses, were put on display in the gallery in February. Seven images from the collection were subsequently displayed on the Artnet site. Artist Chamberlain's works have been exhibited in numerous Manhattan galleries since 1991, with collections entitled Neo-Erotic and Gender Tennis among others. Reported in: BBC News, August 19.

Cincinnati, Ohio

In an action the Cincinnati Film Society called "censorship," the Cincinnati Art Museum denied permission to screen the sexually explicit movie "9 Songs." The film, by British director Michael Winterbottom, features several sex acts. The museum canceled the screenings, set for August 27–September 7, because it determined "elements of the film (border) on the pornographic. It would not fit the film program or the audience we are trying to serve," museum spokeswoman Cindy Fink said.

"In some ways, I can understand the museum's position," said film society spokeswoman Sandy Eichert. "But it put us in a bad position because of having to switch everything around."

Fink said this was the first time the museum has blocked a movie the society wanted to show. Reported in: *Cincinnati Enquirer*, August 18.

foreign

Melbourne, Australia

A Muslim Ph.D. candidate at Monash University in Melbourne, Australia, was questioned July 21 about his reading material by an Australian Federal Police officer who came to the student's home. The officer asked why the student, identified only as Abraham, was interested in books about terrorism, some of which he had bought and some of which he had borrowed from the library.

The books were on the university's recommended reading list for students majoring in politics with a concentration in martyrdom and terrorism, Abraham said in a July 26 radio interview aired by the Australian Broadcasting Corporation (ABC). He added, "My studies were involved in obviously preventing these actions from occurring and they're drawing a linkage with that and saying okay, well, you might be a terrorist."

The incident led Abraham's professor, anti-terrorism expert David Wright-Neville, to warn two hundred students in his terrorism studies course that government intelligence might monitor them. "These books were not bought under the counter in a brown paper bag. [Abraham] was drawing on mainstream research and scholars," Wright-Neville said.

"Students have a right to go about their studies and their research without that sort of interference into their private affairs," Wright-Neville told ABC radio, adding that law enforcement needs to trust that the Monash University community "would obviously work cooperatively with the authorities" if they were suspicious about any student. Reported in: *American Libraries Online*, July 29.

Middlesex, Great Britain

Britain's Middlesex University canceled an event featuring a controversial Muslim organization and suspended the student leader whose group was to sponsor it. The incident has drawn particular attention because it followed by just a few days a speech in which the country's education minister told university heads that they should be more vigilant in combating extremists and should "identify and confront" people on their campuses who pose extremist threats.

Keith Shilson, president of Middlesex University's Students' Union, was disciplined after he refused to rescind an invitation to Hizb ut-Tahir, a group that Prime Minister Tony Blair announced in August he was seeking to ban.

"The government has not had the decency to write to us and inform us on what basis they are planning on banning our organization," said Taji Mustafa, a spokesman for the group, which he described as nonviolent. "This is an unjust action."

The National Union of Students has included Hizb ut-Tahir on its "no platform list" since last year, meaning that no union officers are permitted to speak on the same platform as a member of the group.

As the new academic year began, Middlesex's student union was pressed to clarify its position on the group. "Students asked me if I would put out a statement saying that we opposed this government ban, which I did," Shilson said, adding that the government had produced no evidence of links to terror or incitement to racial hatred by Hizb ut-Tahir.

As the union prepared to vote on the matter, it invited a representative of Hizb ut-Tahir to speak. "The idea was that students could ask their questions and could put their fears to rest or not, so that when we had the meeting the following week, they could say they were fully informed," said Shilson.

But on September 19, Shilson was called into a meeting with Michael Driscoll, Middlesex's vice chancellor, who instructed him to cancel the session. The following day, after he refused to do so, Shilson was suspended from the university and escorted from the campus.

Driscoll would not comment, and Middlesex's press office issued just two terse statements, confirming that it instructed the student union to cancel the event and noting that "the planned meeting is now not going to

take place.” Shilson said that he is seeking legal advice on his situation, which he characterized as a matter of free speech. Reported in: *Chronicle of Higher Education* online, September 23. □

(from the bench . . . from page 286)

other higher-education institutions have tried to deny recognition to its chapters for similar reasons, according to Gregory S. Baylor, the director of the group’s Center for Law and Religious Freedom. In response, the group has sued each of those institutions. Law schools at the University of Toledo, Washburn University, and Ohio State University, ultimately granted official recognition to the Christian Legal Society, and the lawsuits were dropped. Two other cases, at the University of California Hastings College of Law and Arizona State University, are still pending. The Southern Illinois case is the first to reach the appellate-court level.

“There’s a growing tension between theologically conservative religious organizations and the greater push at universities towards sexual-orientation nondiscrimination rules,” said Baylor. “These cases are a manifestation of that tension.” Reported in: *Chronicle of Higher Education* online, August 30.

Topeka, Kansas

Washburn University did not violate the U.S. Constitution in placing a sculpture that some deemed anti-Catholic on its campus, a federal appeals court ruled in late July. The sculpture, a bronze bust called “Holier Than Thou,” depicts a scowling Roman Catholic clergyman whose headgear, some viewers say, resembles a penis. Washburn displayed the piece during the 2003–04 school year after local volunteers selected it for the university’s annual outdoor art exhibit.

Thomas O’Connor, a biology professor at Washburn who has since retired, and Andrew Strobl, who was a student at the time, filed a lawsuit, arguing that the public university had violated their rights under the Establishment Clause of the First Amendment by placing a statue that was critical of Roman Catholicism on its grounds. The U.S. District Court in Kansas City, Kansas, rejected that claim in February 2004. Washburn did not violate the Constitution, the district court ruled, in part because the sculpture enhanced the university’s educational experience and could not be seen to have the primary effect of criticizing a religious group.

In a decision filed July 28, a three-judge panel of the U.S. Court of Appeals for the Tenth Circuit upheld that ruling. “Regardless of whether the statue sends an

anti-Catholic message, any reasonable observer viewing it in context would understand the university had not endorsed that message,” Judge Michael R. Murphy wrote in the appellate panel’s opinion.

The artist, Jerry G. Boyle, wrote on the base of the sculpture that it represents his experience of being “scared to death” entering the confessional booth for the first time at age seven.

A spokesman for Washburn, David G. Monical, said the appeals court’s decision vindicated the freedom of universities to exchange diverse ideas and artistic points of view. “We were pleased they upheld the ruling of the lower court and recognized that there had been no intention to harm or wrongdoing on the university’s part,” Monical said. Reported in: *Chronicle of Higher Education* online, August 2.

Austin, Texas

The University of Texas at Austin may bar a commercial online dating service’s unsolicited e-mail messages from the campus network, a federal appeals court ruled August 2. The dating service, run by White Buffalo Ventures LLC, had challenged the university’s ban, saying that it violated the company’s constitutional right to freedom of speech. Texas filtered out about 55,000 e-mail messages from a White Buffalo dating service, LonghornSingles.com, in 2003.

White Buffalo, based in Austin, also argued that a federal antispam law overrides the university’s policy of blocking unsolicited e-mail messages. The company said that because its messages included information required under the federal law—such as how a recipient could ask to be removed from the company’s mailing list—a state university had no right to stop the messages from reaching students, professors, and staff members.

But a unanimous three-judge panel of the U.S. Court of Appeals for the Fifth Circuit, in New Orleans, ruled that the university did not violate White Buffalo’s free-speech rights. The panel also said that the federal antispam law, known as the CAN-SPAM Act, does not pre-empt the university’s policy of blocking commercial e-mail messages.

Judge Jerry E. Smith, writing for the court, said, “We have little problem affirming the proposition that, to keep community members from wasting time identifying, deleting, and blocking unwanted spam, UT may block otherwise-lawful commercial spam (as long as the blocks are content- and viewpoint-neutral).”

Joining him in the opinion were Eugene W. Davis and Harold R. DeMoss, Jr. The decision, which upheld a lower-court ruling issued in March 2004, could stymie White Buffalo’s efforts to continue operating dating services at several other universities. Reported in: *Chronicle of Higher Education* online, August 4. □

(is it legal? . . . from page 294)

concert, an event aimed at drawing attention to poverty in poor nations. Reported in: *Los Angeles Times*, August 9.

broadband

Washington, D.C.

On August 5, the Federal Communications Commission (FCC) issued a release announcing its new rule expanding the reach of the Communications Assistance to Law Enforcement Act (CALEA). The ruling is a reinterpretation of the scope of CALEA and will force Internet broadband providers and certain Voice-over-IP (VoIP) providers to build backdoors into their networks that make it easier for law enforcement to wiretap them. The Electronic Frontier Foundation (EFF) has argued against this expansion of CALEA in several rounds of comments to the FCC on its proposed rule.

CALEA, a law passed in the early 1990s, mandated that all telephone providers build tappable into their networks, but expressly ruled out information services like broadband. Under the new ruling from the FCC, this tappable now extends to Internet broadband providers as well.

Practically, what this means is that the government will be asking broadband providers—as well as companies that manufacture devices used for broadband communications—to build insecure backdoors into their networks, imperiling the privacy and security of citizens on the Internet. It also hobbles technical innovation by forcing companies involved in broadband to redesign their products to meet government requirements.

“Expanding CALEA to the Internet is contrary to the statute and is a fundamentally flawed public policy,” said Kurt Opsahl, EFF staff attorney. “This misguided tech mandate endangers the privacy of innocent people, stifles innovation, and risks the functionality of the Internet as a forum for free and open expression.”

At the same time, the Department of Justice (DOJ) is asking airlines to build similar backdoors into the phone and data networks on airplanes. EFF and the Center for Democracy and Technology (CDT) submitted joint comments to the FCC arguing against the DOJ’s unprecedented and sweeping new technology design mandates and anticipatory wiretapping system. Reported in: *Electronic Frontier Foundation*, August 5.

access to information

Washington, D.C.

The Associated Press and other news organizations are encouraging Attorney General Alberto Gonzales to rescind

a policy restricting public access to government information. The change was put in place by Gonzales’ predecessor, John Ashcroft, shortly after the attacks of September 11, 2001.

“Where agencies were once encouraged to disclose unless disclosure would do harm, they are currently encouraged to withhold if there are legal grounds for doing so,” Tom Curley, AP president and chief executive officer, said in a letter to Gonzales. “We think this change was a terrible mistake.”

Gonzales said he would reconsider the Freedom of Information Act (FOIA) guidance established by Ashcroft.

Deanna Sands, managing editor of the Omaha, Nebraska, *World-Herald* and president of the Associated Press Managing Editors Association, also sent a letter to Gonzales encouraging him to change the policy because Americans “deserve a more responsive government.”

Jay Smith, president of Cox Newspapers, Inc., and chairman of the Newspaper Association of America, applauded Gonzales’ willingness to review the FOIA policy. “I’m heartened that you may share my view,” he wrote.

Lucy Dalglish, executive director of The Reporters Committee for Freedom of the Press, said her organization is preparing a letter that will be endorsed by some thirty journalism organizations. “We looked at his statement as an invitation to make suggestions for improving the situation,” Dalglish said.

During the Clinton administration, federal agencies were urged to resolve FOIA requests by erring on the side of releasing, not withholding, government information. Ashcroft changed that policy by making federal agencies carefully consider national security and law enforcement concerns before releasing information. His memo said information sought under FOIA should be released “only after full and deliberate consideration of the institutional, commercial, and personal privacy interest that could be implicated by disclosure of the information.”

More than 4 million FOIA requests were made to the federal government last year by the public and the media. Many requests drag on for years without resolution. President Bush said last spring he would look at ways to speed FOIA responses, conceding that there is “suspicion” his administration is too security-conscious.

Curley said the Ashcroft guidance “has been a major contributor to the troubled relations between this administration and the news media.” The American Society of Newspaper Editors said Ashcroft’s policy “is at odds with the intent and spirit” of the FOIA law.

“As journalists, we rely upon the Freedom of Information Act to inform the citizenry, and for that reason, we applaud your decision to review Justice Department guidance,” said a letter signed by Rick Rodriguez, ASNE president and executive editor at the *Sacramento Bee*, and Andrew Alexander, chairman of the ASNE Freedom of Information Committee and Washington bureau chief for Cox Newspapers. Reported in: *Washington Post*, July 28.

privacy

Washington, D.C.

The Transportation Security Administration violated the federal Privacy Act by creating a database of aviation passenger records that merged airline records with commercial data in an improper way, government auditors said July 22. The violation did not result in the inappropriate release of personal data or wrongly prevent anyone from boarding a plane, the Government Accountability Office report said. But it still violated the law, the report said, because the database included biographical information on forty-three thousand passengers from private companies, contrary to the agency's promise not to collect and store commercial data. The database was used to test a new screening system known as Secure Flight that is due to be introduced by early next year.

The agency issued a revised Privacy Act declaration to make public the way it uses the data in testing Secure Flight. Such disclosures are required by the 1974 privacy law. Secure Flight, as planned, should enhance the government's ability to find terrorists while reducing the frequency that passengers are delayed simply because a name is similar to that of a terror suspect on the watch list.

Security agency officials did not dispute the findings, but some in Congress called them disappointing because they followed a similar privacy violation in which airlines turned over passenger data to government contractors.

"Careless missteps such as this jeopardize the public trust and DHS' ability to deploy a much-needed, new system," Senator Susan Collins (R-ME) wrote to Secretary Michael Chertoff of the Department of Homeland Security. Reported in: *New York Times*, July 23.

video games

Aurora, Illinois

Before an audience of schoolchildren from Aurora, Governor Rod Blagojevich on July 25 made Illinois the only state in the nation to prohibit the sale or rental of violent or sexually explicit video games to minors. Within an hour, several retail associations filed a lawsuit in U.S. District Court in Chicago challenging the constitutionality of the Safe Games Illinois Act.

Speaking at the Eola Road branch of the Aurora Public Library, tucked in the midst of Chicago's two most populous suburbs, Naperville and Aurora, the governor said the law was designed to be a tool that parents could use to keep their children safe.

"Parents don't need government to raise their kids. That's their job. But government can help them protect their children from influences they may not want their kids exposed to," said Blagojevich. The law subjects store

clerks to criminal charges and fines of \$1,000 for allowing anyone younger than eighteen to buy or rent video games intended for adults. The law also requires retailers to place parental-warning labels on video games with violent or sexually explicit content.

Other cities and states have attempted similar legislation, only to have courts strike it down as unnecessarily restrictive of free speech. Attorney Katherine Fallow represents the Entertainment Software Association, the Video Software Dealers Association and the Illinois Retail Merchants Association, which sued the governor. Fallow predicted that the Illinois law also would be declared unconstitutional.

"We don't believe any of these laws can be constitutional, which is what every court that has addressed this issue has said," Fallow said.

Blagojevich said he came up with the idea for the legislation last fall after learning about an Internet video game called "JFK Reloaded," in which the player assumes the role of Lee Harvey Oswald and must assassinate the president.

The governor's initiative is consistent with similar legislation proposed by lawmakers in other states and the federal government. Most recently, U.S. Sen. Hillary Rodham Clinton (D-NY) has spoken out against the violence and sex found in some video games.

Blagojevich said such games are as potentially harmful to children as alcohol, cigarettes, or pornography, and their sale or rental should be regulated just as restrictively. "These are the games that undermine the values that we as parents want to teach our children, the values that we find in the Bible," Blagojevich said. "We are teaching them with these games the very things we would put them in jail for as adults."

The governor said he knew that the law would face a court challenge. "This won't be the first time since I became governor that I've been sued," he said. "We believe we are on fine footing as far as doing what is right for parents, doing what is right for families."

Matthew Ryan, senior counsel in the governor's office, said the Illinois law is constitutional because it was written with recent court decisions in mind. What differentiates the Illinois law is that it clearly defines what is considered violent or sexually explicit, and it does not take effect until January 1, giving retailers ample opportunity to prepare for it, Ryan said.

Ryan also said a 2003 Iowa State University study provides new evidence that exposure to violent video games is harmful to children. The study found that in frequent players, exposure to video games increased aggressive thoughts, feelings, and behaviors while decreasing helping behaviors.

Fallow said the courts have consistently rejected similar arguments in the past. "Every single government defendant has raised that argument in every single case, and every single court has held it is not sufficient to warrant this kind of [free-speech] restriction," Fallow said.

In 2001, Judge Richard Posner of Chicago wrote the opinion for the U.S. Court of Appeals for the Seventh Circuit that struck down a similar ordinance in Indianapolis that targeted violent and sexually explicit video games at arcades. In the opinion, Posner noted that violence can be found in works of art and literature throughout the ages, Fallow said.

After the lawsuit, Indianapolis was ordered to reimburse the video-game industry \$318,000 for lawyers' fees and other costs, according to media reports. Reported in: *Chicago Tribune*, July 26.

copyright

New York, New York

Three authors filed suit against Google September 20 contending that the company's program to create searchable digital copies of the contents of several university libraries constituted "massive copyright infringement." The lawsuit, filed in U.S. District Court in Manhattan, is the first to arise from the Google Print Library program, the fledgling effort aimed at a searchable library of all the world's printed books.

Google intends to make money from the project by selling advertising on its search pages, much as it does on its popular online search-engine site.

The plaintiffs, who are seeking class-action status, also include the Authors Guild, a trade group that says it represents more than eight thousand published authors. Listed as plaintiffs in the suit are Daniel Hoffman, a former consultant in residence at the Library of Congress and the author of many volumes of poetry, translation and literary criticism; Betty Miles, an author of children's and young adult fiction; and Herbert Mitgang, the author of a biography of Abraham Lincoln, as well as novels and plays. Mitgang is a former cultural correspondent and editorial writer for the *New York Times*.

Each of the plaintiffs claim copyright to at least one literary work that is in the library of the University of Michigan, according to the suit. Michigan is one of three universities, along with Harvard and Stanford, that agreed last year to let Google create searchable databases of their entire collections. The New York Public Library and Oxford University also entered into agreements with Google, but only for the works in their collections that are no longer covered by copyright.

Paul Aiken, executive director of the Authors Guild, said the organization did not know whether Google had yet copied any of the works by the plaintiffs. But he noted that they were seeking an injunction against copying and a declaration that the program violates copyright law, as well as damages from any violations so far.

The suit contends that Google knew or should have known that the Copyright Act "required it to obtain

authorization from the holders of the copyrights in these literary works before creating and reproducing digital copies of the works for its commercial use and for the use of others."

Google has said from the beginning that its program is covered by the "fair use" provision of the copyright law, which allows limited use of protected works. In a statement issued in response to the suit, Google also said its program respected copyrights.

"We regret that this group has chosen litigation to try to stop a program that will make books and the information within them more discoverable to the world," the statement said. "Google Print directly benefits authors and publishers by increasing awareness of and sales of the books in the program. And, if they choose, authors and publishers can exclude books from the program if they don't want their material included. Copyrighted books are indexed to create an electronic card catalog and only small portions of the books are shown unless the content owner gives permission to show more."

Google temporarily suspended its library project in August to give authors and other copyright holders until November to opt out by telling it that they did not want certain works to be copied.

But Aiken said that offer turned longstanding precedents in copyright law upside down, requiring owners to pre-emptively protect rights rather than requiring a user to gain approval for use of a copyrighted work.

Some aspects of the Google Print program have encountered relatively little opposition, particularly one that invites publishers to submit their books to Google for scanning and inclusion in the Google search engine. Most of the large commercial publishing houses have submitted books to Google for scanning, in the hope that the program will lead users to find and buy their books more easily. Reported in: *New York Times*, September 21.

obscenity and pornography

Miami, Florida

When FBI supervisors in Miami met with new interim U.S. Attorney Alex Acosta this summer, they wondered what the top enforcement priority for Acosta and Attorney General Alberto Gonzales would be. Would it be terrorism? Organized crime? Narcotics trafficking? Immigration? Or maybe public corruption?

The agents were stunned to learn that a top prosecutorial priority of Acosta and the Department of Justice was none of the above. Instead, Acosta told them, it's obscenity. Not pornography involving children, but pornographic material featuring consenting adults.

Acosta's stated goal of prosecuting distributors of adult porn has angered federal and local law enforcement

officials, as well as prosecutors in his own office. They say there are far more important issues in a high-crime area like South Florida, which is an international hub at risk for terrorism, money laundering, and other dangerous activities.

His own prosecutors have warned Acosta that prioritizing adult porn would reduce resources for prosecuting other crimes, including porn involving children. According to high-level sources who did not want to be identified, Acosta has assigned prosecutors porn cases over their objections.

“Compared to terrorism, public corruption, and narcotics, [pornography] is no worse than dropping gum on the sidewalk,” said Stephen Bronis, a partner at Zuckerman Spaeder in Miami and chair of the white-collar crime division of the American Bar Association. “With so many other problems in this area, this is absolutely ridiculous.”

But not everyone agrees. With the rapid growth of Internet pornography, stamping out obscene material has become a major concern for the Bush administration’s powerful Christian conservative supporters. The Mississippi-based American Family Association and other Christian conservative groups have pressured the Justice Department to take action against pornography. The family association has sent weekly letters to U.S. attorneys around the country to pressure them to pursue the makers and distributors of pornography.

“While there are crimes like drugs and public corruption in Miami, this is also a form of corruption and should be a priority,” said Anthony Verdugo, director of the Christian Family Coalition in Miami. “Pornography is a poison and it’s addictive. It’s not a victimless crime. Women are the victims.”

The federal government generally has not pursued pornography and obscenity for at least a decade. The Clinton administration declined to prosecute cases, and no book stores, video stores or Internet sites—except those involving children engaging in sex—were closed.

Former Attorney General John Ashcroft, a Christian conservative who stepped down last December, also disappointed social conservatives by not prosecuting porn during his tenure. In the wake of the September 11 terrorist attacks, Ashcroft placed his focus on anti-terrorism efforts.

But the social conservatives have gained traction with new Attorney General Gonzales, a close associate of President Bush. In May, Gonzales established an Obscenity Prosecution Task Force under the office’s criminal division.

The task force, headed by Deputy Chief for Obscenity Richard Green, will work closely with Bruce Taylor, senior counsel to the criminal division’s assistant attorney general. Taylor is one of the founding members of the Justice Department’s National Obscenity Enforcement Unit back in the 1980s. He reportedly has prosecuted more than one hundred state and federal obscenity cases and is the pros-

ecutor who went after *Hustler* publisher Larry Flynt in the early 1980s. He won that case and Flynt spent six days in jail, but the case was overturned on appeal.

The task force, according to a Justice Department news release on May 5, will be “dedicated to the investigation and prosecution of the distributors of hard-core pornography that meets the test for obscenity, as defined by the United States Supreme Court.”

In its 1973 landmark ruling on the subject, *Miller v. California*, the Supreme Court laid out a three-pronged test to separate obscenity from protected First Amendment speech. What the ruling said, essentially, was that if the material is offensive and prurient and has no artistic value, it is obscenity. The court left it up to local juries and communities to make the determination.

The Obscenity Prosecution Task Force will pull together prosecutors from sections covering organized crime and racketeering, asset forfeiture, money laundering, computer crime, and intellectual property. They will be joined by prosecutors from the High-Tech Investigative Unit, which has computer and forensic experts. The focus will be on Internet crimes as well as on “peer-to-peer” distribution of pornography, according to the news release.

Acosta, a Miami native who formerly held a high-level position in the Justice Department, is having a hard time persuading other law enforcement officials in South Florida, including his own assistant U.S. attorneys, to join the anti-porn crusade. Sources say Acosta was told by the FBI officials during July’s meeting that obscenity prosecution would have to be handled by the crimes against children unit. But that unit is already overworked and would have to take agents off cases of child endangerment to work on adult porn cases. Acosta replied that this was Attorney General Gonzales’ mandate.

Acosta’s meetings with other law enforcement agencies also were not particularly fruitful, sources said. Criminal defense attorneys and an American Civil Liberties Union spokeswoman say they are appalled at the Justice Department’s plan to prioritize the prosecution of obscenity when narcotics trafficking, public corruption, and fraud are rampant in South Florida.

Lida Rodriguez-Taseff, a spokeswoman for the American Civil Liberties Union and a partner at Duane Morris in Miami, said, “It’s amazing that we’re wasting our resources on the morality police instead of battling organized crime, illegal drugs, corruption, and undocumented immigration. I can’t even believe this.”

Rodriguez-Taseff said she doubted that Acosta’s anti-porn initiative would get off the ground, in part because it could end up discriminating by targeting South Florida’s large gay community. “We are far too diverse a community for any such prosecution effort,” she said.

Previous efforts by South Florida law enforcement to prosecute sexually explicit artists have fallen flat. Fort

Lauderdale attorney Bruce Rogow successfully defended 2 Live Crew, the racy rap group that was charged with obscenity by former Broward Sheriff Nick Navarro in the 1990s.

"I'm not surprised that this is happening, because these things go in cycles and this is a conservative environment," Rogow said. "But I think law enforcement has lost its enthusiasm for these types of cases."

But not Sharp of the Family Association. He said any prosecutors who object to prosecuting obscenity don't understand the law. "Most attorneys have been led to believe that what is illegal is not illegal in terms of obscenity," Sharp said. "They have a misconception of what should be prosecuted. They think because it's consenting adults, it's not illegal."

Sharp said the initiative is necessary because local law enforcement and city attorneys get "crushed" by high-powered lawyers hired by adult book stores or video stores when there are efforts to shut those establishments down. "You need the federal government to assist," said Sharp, who takes credit for closing six adult bookstores in his hometown in Mississippi.

But should porn be a priority in a place like Miami, where serious crime is rampant? "It's all part of the same thing, of the organized crime syndicate," Sharp said. "It has an effect on children." Reported in: law.com, August 30. □

(FBI probe . . . from page 267)

The FBI's power to use National Security Letters was challenged in September 2004 when a federal district court judge struck down Section 505 as unconstitutional. The Department of Justice has appealed the ruling.

The FBI and the department have been reluctant to provide information about the number of times Section 505 has been used to obtain library records. However, a 2005 national survey of academic and public libraries commissioned by the American Library Association's Office for Information Technology Policy indicated that at least 137 legally executed requests by federal, state, and local law enforcement agencies have taken place since October 2001, 63 in public libraries and 74 in academic libraries. The survey was prompted by the release of an October 15, 2003, Justice Department memo that acknowledged provisions of the PATRIOT Act could be used to obtain information about innocent people, which runs counter to previous assertions that it can only be utilized against suspected terrorists and spies. In addition, former Attorney General John Ashcroft hinted in January that the PATRIOT Act had been used at a New York City library in connection with the arrest of Mohammed Junaid Babar in 2004.

"We thought this was going to be a problem and here it is a problem," said Alice Knapp, director of public services at the Ferguson Library in Stamford and president of the Connecticut Library Association. The professional organization represents more than one thousand library staff, donors, patrons and trustees in the state. "During the course of public debate about this, I think people used the word 'ludicrous' and 'baseless hysteria' to describe our opposition. What this really indicates is that the concerns that librarians have regarding the rights of patrons' privacy are justified."

Librarians have long opposed Section 215 of the PATRIOT Act, a provision that eases FBI access to library users' information. The provision invades privacy and undermines public institutions, librarians say. Critics say agents can demand records without establishing "reasonable grounds" that the target is a criminal. Rather, the provision requires "relevance" to anti-terrorism efforts.

The revelation that the FBI demanded records from a Fairfield County institution has caused a buzz among librarians, according to Greenwich Library Director Mario Gonzalez. "It's closer to home and it makes us stop and think and see what impact this law has on local libraries," said Gonzalez, a member of the Connecticut Library Association. "A lot of people are very concerned about it and want to know what develops out of this."

The American Civil Liberties Union (ACLU) on August 25 said that the FBI is demanding records "from an institution possessing a wide array of sensitive information about library patrons. . . ." That information includes library patrons' borrowing and Internet usage records.

Under the PATRIOT Act, officials at the affected institution—a member of the American Library Association, according to the ACLU—are prevented by a gag order from saying FBI agents approached them. Those under investigation also never know they're being tracked.

The American Library Association has argued since 2001 that Section 505 of the PATRIOT Act gives the FBI overly broad authority to use a National Security Letter (NSL), an administrative subpoena which requires no judicial oversight, to secretly obtain the electronic library records of any person—whether or not that person is suspected of a crime—without any standard for protecting individual privacy. Records searched could include all the Web sites visited and all the e-mail sent and received by anyone who used the library's computers. Such open-ended fishing expeditions expose all library users to the search and seizure of their records and to the invasion of their privacy. A gag order accompanies the NSL that prevents its recipient from disclosing that a demand for records has been received.

"The Connecticut case illustrates exactly why ALA continues to fight sections of the PATRIOT Act that allow the government to secretly search the records of ordinary citizens without any judicial oversight," said ALA Immediate

Past President Carol Brey-Casiano. “Despite the Justice Department’s repeated assertions that it has no interest in Americans’ reading records, this case again proves that the government is demanding patron information from America’s libraries,” she continued.

In 2004, a U.S. District Court judge held that NSLs gave the FBI unchecked authority to obtain records from electronic communications service providers, including libraries, “without any judicial oversight or opportunity for challenge.” In striking down the provision, the judge found that the secret administrative subpoenas violated the Fourth Amendment because they “effectively bar or substantially deter any judicial challenge to the NSL.” It further found that even if judicial review were provided, the gag order violated the First Amendment because it represented “a prior restraint on speech that was sweeping in scope” and appeared to apply “in perpetuity.”

The ACLU, together with the unnamed targeted library, filed a lawsuit seeking to lift the gag order and, thereby, open a public debate on the controversial provision. The lawsuit named U.S. Attorney General Alberto Gonzales, FBI Director Robert Mueller and an FBI official whose identity remains sealed.

The lawsuit, *ACLU v. Gonzales*, was filed August 9. In an emergency hearing August 31, Judge Janet C. Hall heard arguments in U.S. District Court in Bridgeport, Connecticut, on whether to lift the gag order preventing an unnamed library in the state from identifying itself as the recipient of a national security letter under the PATRIOT Act.

The ACLU argued that the gag order violated the library’s constitutional right to free speech and asked that it be lifted so the client could participate in the debate over the PATRIOT Act’s renewal when Congress considers its reauthorization bills. Although the hearing was expected to take place behind closed doors, Judge Hall insisted it be held in open court. The unnamed plaintiff was not present in the courtroom but could monitor the discussion through an electronic hookup, the judge said.

Hall also ordered a number of previously sealed legal papers to be made public, including three affidavits—one filed by an unnamed librarian representing the client in the case—and a legal brief. “I believe that members of the public have a right to know that their library records are subject to what I believe are unconstitutional government searches,” said the unnamed representative. “Because of the gag, I am afraid that if I publicly discuss the NSL power I will subject both [name redacted] and myself to serious sanctions, including possible imprisonment.”

On September 9, Judge Hall lifted the gag order. The ruling would have allowed the American Civil Liberties Union to identify the library that had received the request for records. However, Hall stayed the order until September 20 to allow the government a chance to appeal.

The government had argued that revealing the library’s identity could jeopardize an investigation into terrorism by tipping off suspects. But the judge rejected the prosecutors’ contention that the gag order blocked only the library’s identity and not its ability to speak out about the PATRIOT Act.

“Considering the current national interest in and the important issues surrounding the debate on renewal of the PATRIOT Act provisions,” the judge wrote, “it is apparent to this court that the loss of Doe’s ability to speak out now . . . is a real and present loss of its First Amendment right to free speech that cannot be remedied.”

Hall also noted that the national security letter statute “has the practical effect of silencing those who have the most intimate knowledge of the statute’s effect and a strong interest in advocating against the federal government’s broad investigative powers.”

On September 20, a three-judge panel of the U.S. Court of Appeals for the Second Circuit in Manhattan granted the Department of Justice’s September 16 request for a full stay during its appeal of Judge Hall’s decision to lift the gag order, pending an expedited appeals process that would allow the court to hear formal arguments from both sides in late October.

“Absent a stay, this appeal is moot,” said Judge Sonia Sotomayor during the questioning. The court speeded up the schedule for the appeal, calling for the government’s brief by September 27 and a response brief due October 4 from the ACLU. The court also said it might reconsider the schedule if it appeared Congress could finalize its reauthorization of the PATRIOT Act before the appeal was decided. Reported in: *American Libraries* Online, August 26, September 1, 8, 15, 22. □

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(religion . . . from page 272)

In the southern world, Christianity is growing that way. There are three thousand nominally fewer Christians in the Northern world in the last twenty four hours, there are eighteen thousand more in sub-Saharan Africa alone everyday and that's the trend of the world. We in the United States are in a sense caught between these two worlds as we move into globalization and see our own regionalizations change. The message, therefore, has to be—deal with it.

You're not going to get rid of it. You're going to have to see how you can encourage the kinds that in the right kind of coalition with the non-religious can help assure these liberties with what Santayana called a certain vagueness of soul and moral youth that renders cooperation is what we have to seek in many ways. We believe the printed word can be a great contributor to that but it doesn't take care of itself along the way. Not all religious looking things are necessarily religious. I think I can successfully defend the proposition that the big fight about the Ten Commandments in Alabama and the Supreme Court and the Texas Courthouse lawns is not about religion at all, it's about who belongs here and who doesn't.

I was down there with Judge Roy Moore at the time when somebody said "Who could be against eight or nine of the Ten Commandments, but number one up there says there is only one God and I'm it and you're really out. What about these auto makers in Alabama, Mississippi who are Hindu, Buddhist, Shintu. They come from Japan. What about them and their children? They're hearing that somebody else is right."

Judge Moore said, "Alabama is not a Hindu state, it's a Christian state. In other words, there are more of us, we've been here longer, we have our way, and you don't belong."

I think we have to recognize that, in a lot of cases, religion is used against itself. I said, "There is in the religions a tremendous desire once you have this opening that I've described for expressions of freedom and many of the great advocates of freedom in modern times have done so, been so on religious grounds." Martin Luther King and Dorothy Day, for examples. It's interesting to me to see how Jimmy Carter has gone into Africa and various other nations and dealt with the religions there to bring these things about.

So the issue is you can't get rid of it, you have to find ways in which you can stimulate the people there who might make for the new possibility. It isn't easy today to make sense of what this parallel faith system is about. I've used the word "enlightenment" several times and to many of the religious people and many of the heirs of the enlightenment, the enlightenment is not quite the assured thing we thought it was two centuries ago. We're finding that it came with presuppositions too. Very often, when you hear the non-religious say that the religious come with a ideology and we don't, I can only say that you heard a reference that I taught in a divinity school alongside history and all the rest. We

always said that one of our missions in life was to give every student a metaphysical crap detector, that is, they could go out in a kind of sense and whenever we open our mouths we have some kind of a belief system behind there. You smoke it out and you can deal respectfully with the other. I think that's what we're very busy doing these days as we're seeking this, what John Courtney Murray called "articles of peace." That will never happen while people sit back and figure that once a page has been printed it's done its work, once an image has been projected, it will do its work. It takes living, breathing people and today that means educators, mass communicators and librarians. Thank you.

Susan Jacoby: First, let me say how truly honored I am to be speaking before the American Library Association. I don't think it's possible for me, as a writer, to give enough credit to public libraries for what they've done for me since I was seven years old. From the very small library in my home town of Okemos, Michigan—where I first read the Bible, by the way—to that towering institution, the New York Public Library, which provides special facilities for writers working on books, I owe this country's public library system many of the happiest and most productive hours and years of my life. Thomas Paine famously wrote that "my own mind is my own church"—a sentiment to which I subscribe—but I would add that for me, a library is the closest thing to a sanctuary that I ever expect to enter.

Two questions were raised in the advance program for today's panel discussion: "How can libraries serve both the religious and secular demands made by members of their communities?" and "Does demonstrating respect for religious life conflict with the separation of church and state?" In this context, it's far from irrelevant that I owe my real introduction to the Bible to a public library. I was raised a Roman Catholic and attended parochial schools from first through eighth grades. Now the Catholic Church, at least in the era before the Second Vatican Council, regarded too much individual Bible-reading as a dangerous thing. This was indeed one of the issues involved in the Reformation (as Protestants call it) or in the heretical schism (as it was called by priests of my youth, and for all I know, may still be called privately by Pope Benedict XVI, the former Joseph Ratzinger, who has a good deal in common with pre-Reformation theologians).

In any case, most of what Catholics of my generation learned about the Bible was filtered through priests and nuns. I wanted to read the Bible for myself and since, for reasons lost in the mists of time, we did not have a Bible at home, I started my reading of the King James version in the Okemos Public Library when I was in the sixth grade. I was especially curious about the Old Testament, which was virtually ignored in Catholic school. Actually reading the Bible—as opposed to hearing selected and selective Bible stories—was a turning point in my young life. While I grew to love the Bible deeply as literature, this literature set me on a path away not only from Catholicism but from religion in general.

The Book of Job made the biggest impression: I'm hardly the first person to have concluded, after reading, "The Lord giveth and the Lord taketh away," that frequently the Lord took away altogether too much and was behaving like a capricious bully. For all I know, the next person who picked up that Bible in the library may have concluded that the Book of Job offers the perfect argument in support of unquestioning faith.

I doubt that in a roomful of librarians, it's necessary to belabor the point that libraries are in no way responsible for what any reader takes away from a book. In my view, libraries should not be expected to meet the religious demands of their communities: their mission is to serve their entire community by making good books of all kinds available to anyone who wants to read them. By definition, in a country whose Constitution mandates the separation of church and state, public libraries are secular institutions precisely because they are publicly supported. The religious needs of communities should be met, and are being met, by religious institutions.

The second question—does demonstrating respect for religious life conflict with the separation of church and state?—is a more complicated one, because we need to explore just what "demonstrating respect" might mean. And we must define what kind of religion we're talking about. I should stress that not all religions wish to impose their view of truth on the rest of society; there is an enormous division in the United States today not so much between religion and secularism, or even among religious denominations, but between those who believe that their particular version of religion represents absolute truth—sometimes called fundamentalists—and those who believe that there are many equally valid ways for human beings to approach God. For the most part, the religious impulse to censor comes from the fundamentalist True Believers—whichever religion they formally profess.

The first thing to be said on this score is that public libraries—like public schools—cannot help but undermine the more insular faiths by the very opportunity they offer the young to acquaint themselves with competing ideas. In Chaim Potok's novel *The Chosen*, the son of a Hasidic rabbi begins his journey away from the world of ultra-Orthodox Judaism in—where else?—a branch of the Brooklyn public library, where he discovers Freud and Marx and a whole world of literature outside, and often contradictory to, the Torah.

Indeed, the very act of using a public library is considered a traitorous act, and rightly so, by religious groups that do not want their children exposed to outside ideas. The author Pearl Abraham, in a wonderful little novel titled *The Romance Reader*, describes growing up as the daughter of a Hasidic rabbi in a small town in the Catskills. "I haven't had a fat book to read since school ended," the child narrator complains. "Miss Dinkels said to get a library card this summer. She said I could have the librarian call home to confirm my address, or I could ask my dad for an [electric]

bill. She didn't understand what I was laughing at, picturing myself calling Father 'Dad' and imagining what he would say about a library card."

This girl wants to read not Freud but the romance novels of Barbara Cartland and Victoria Holt, which also have a subversive impact in a culture in which men and women are not supposed to touch each other unless they are married—and even then, only at specified times of the month.

Given the fact that reading has consequences for the development of young minds—one of the stupidest adages in the world is the one that goes, "no girl was ever ruined by a book"—it is not surprising that public libraries, like public schools, are approached by all kinds of community groups, as well as individuals, who wish to censor their contents. Of course, not all of these would-be censors have religious motives. One need only recall the incessant attacks on *The Adventures of Huckleberry Finn*—which has probably received more attention than any other American novel from the thought and language police of different generations—to understand that there are many motives behind the impulse to censor.

Here I can't resist a brief digression, and I hope you will indulge me, on the origins of the word "censor." The first censors were Roman magistrates, beginning around 440 BCE, charged with a peculiar mixture of duties involving counting the populace and determining who was qualified to receive state contracts for such projects as aqueducts and roads. It is out of the latter function that the moral dimension of censorship, as we understand it today, grew. Determining who was qualified to hold high rank involved overseeing what was known as the *regimen morum*—control of public morals. The censor determined who was morally fit, for example, to feed the holy geese on the grounds of the Capitol. Of course, the functions of independent censors were circumscribed as the Roman republic gave way to rule by the emperor. This was inevitable, since people who took the *regimen morum* seriously could hardly have failed to pass judgment on, let us say, such exemplars of later Roman morality as Caligula and Nero.

This digression actually has a point—that religiously motivated censors have never regarded censorship as a bad thing, because they see themselves as fighting to uphold a public moral standard based on moral certainty. It is certainly fair to say that American religious groups, past and present, have played a more active role than other factions in society in attempting to censor the contents of libraries. And libraries, like schools, are very much on the front lines of the culture wars at times—and the past twenty-year period has certainly been one of those times—when the battle between religion and secularism, or, as I have already mentioned, between the more open and close-minded factions within our religious denominations, is at its hottest.

When I was beginning the research for my book, *Freethinkers*, I was interested in exploring the impact of the Comstock Laws on the circulation of controversial books,

such as Walt Whitman's *Leaves of Grass*, in libraries in the last quarter of the nineteenth century. I soon found that informal censorship efforts, exercised by local branches of national organizations such as the Women's Christian Temperance Union (WCTU) had much more of an impact. The WCTU, the largest women's organization in America by 1890, is best known today for its campaign on behalf of Prohibition. However, this organization was also extremely active in promoting censorship of books. The group worked closely with Protestant ministers right from the start and sponsored annual "Mother's Meetings" in which women discussed books certified as "pure" by the organization's committee on literature. A 1900 recommended reading list for mothers (fathers were presumably left to make up their own minds) included the works of Louisa May Alcott, Charles Dickens and Walter Scott—along with heavily expurgated editions of Shakespeare. Contemporary authors deemed unsuitable for the WCTU recommended list included, not surprisingly, Twain, Theodore Dreiser and Walt Whitman.

Although the American Library Association did not take the forthright stands against censorship that it has in America for the past seventy years—for one thing, there was no body of First Amendment law to back up those who resisted censorship—it is quite clear that many local libraries resisted all sorts of censorship demands from powerful, often religiously motivated, community groups. By 1883, for example, both the Boston and Cambridge public libraries had removed Walt Whitman's *Leaves of Grass* from restricted shelves open only to scholars and placed them on the open shelves. And this was only a year after the Boston district attorney had pressured one local publisher into withdrawing a new edition of the book—the first unexpurgated edition to have been issued by a publisher rather than underwritten by Whitman himself.

However, it must be said that many local librarians—quite apart from whatever stances are taken by the national organization—are both vulnerable and responsive to local censorship pressures. In my experience, librarians are especially leery of any books and magazines that directly attack religious institutions and some are quite willing to exercise self-censorship – always more insidious and dangerous in its effects than censorship from the outside. While libraries are much more resistant to censorship of sex-related materials today than they were fifty years ago, not much has changed in the area of religion.

I'm going to give you a personal example of my experience with this type of censorship. In 1948, a writer named Paul Blanshard wrote a highly controversial book titled *American Freedom and Catholic Power*. The book, which originated as a series of articles for *The Nation* magazine—then as now a *bête noire* of conservatives—mounted a strong attack on the church's use of its political power to promote laws that made Catholic doctrine the standard for all Americans, most notably in such matters as birth control and divorce. (I should note that this was before the emergence

of the current alliance between the Catholic hierarchy and fundamentalist Protestants on issues of sexual morality.)

Since the church at the time was lobbying hard to obtain tax money for parochial school programs, Blanshard argued that "mutual silence about religious differences is a reasonable policy in matters of personal faith; but when it comes to matters of political, medical, and educational principle, silence may be directly contrary to public welfare." Noting that any critic of church policies would inevitably be branded "anti-Catholic" by the hierarchy, Blanshard took care to distinguish between the Catholic laity and the institutional church.

"The American Catholic people themselves have no representatives of their own choosing, either in their own local hierarchy or in the Roman high command," he noted. In 2002, the distinguished writer Garry Wills—a practicing Catholic—pointed out that the Vatican's response to molestation scandals—in which Rome disagreed with the American bishops' decision to turn over accused pedophile priests to civil authorities—involved many of the same conflict-of-loyalty issues that Blanshard had raised in 1948. In other words, Blanshard's book—whether one agreed with it or not—was a work of substantial public importance. But the American Catholic hierarchy, especially in New York, where the powerful Cardinal Francis Spellman was in his heyday, reacted as if no one had the right to criticize the church in print. And many local libraries went along with this.

In 1948, the *Nation* was banned from all of the high school libraries of New York City and Newark, New Jersey, as well as many local branch libraries. I should point out that in this regard, libraries were quite in line with other institutions. The *New York Times*, for instance, refused to advertise Blanshard's book on grounds that it constituted "an attack upon faith—not upon church." Since the book eventually became a bestseller in spite of the refusal of craven publications to review it or advertise it—partly as a result of Cardinal Spellman's intemperate attacks, which were reported in the news columns and alerted potential readers to the existence of the book—both the libraries and the *Times* emerged with egg on their faces.

About a year ago, I had reason to recall this chapter in the history of religion-motivated censorship in my dealings with library officials in a suburban New Jersey county that shall remain nameless. Until recently, I was director of the New York office of the Center for Inquiry, an international organization, based in Buffalo, NY, that I can best describe as a "rationalist think tank." Think the opposite of the Discovery Institute—which promotes the teaching of "intelligent design" with big money from the Christian Right—without the big money. In fact, resisting attacks on the teaching of Darwinian evolution is one of our issues. We publish a magazine called *Free Inquiry*, whose contributors include, among others, such prominent figures as Richard Dawkins, Peter Singer, Steven Pinker, and Christopher Hitchens.

These are people with quite different political views, but they share a negative view of the influence of right-wing religion on public life and scientific research. As a magazine of opinion, *Free Inquiry* is no different from *National Review* on the right or *The Nation* on the left. Yet when two of our members offered to donate a free subscription to their local library in New Jersey, the offer was turned down by a librarian who told them—unfortunately for her, in writing—that the magazine was out of synch with the values of the community. I wrote a sharp letter to the head of the county library system, pointing out that this sort of decision paralleled the actions of New Jersey library officials regarding the Blanshard book in the 1940s and suggesting that he might want to think twice about repeating this type of self-censorship in 2004. He reversed his subordinate's decision—I suspect because he was afraid of bad publicity.

Was this a case of censorship or selectivity? Libraries cannot of course subscribe to every magazine of interest or buy every book. But when, as a matter of policy, whether formal or informal, a librarian deliberately excludes material simply because it might offend particular religious groups, he is in effect saying that challenges to religion have no place in public libraries.

In the current climate, there are two areas in which libraries are being subjected to intense pressure from religiously motivated groups. One involves access to pornography on the Internet—a subject I'll return to later—as well as books that touch on hot-button sexual issues like homosexuality (especially gay marriage) and sexual activity among teenagers.

A second focus of religious censorship efforts is evolution. After my lectures, librarians in many areas of the country have told me that they are under intense scrutiny from anti-evolution fundamentalists in their communities. In this regard, those who oppose Darwin's theory of evolution by means of natural selection have become much more sophisticated. They don't try to get scientific books about evolution out of libraries; instead, they try to get religiously based books promoting the theory of intelligent design into libraries—and, more important, to have those books classified not as works of religion or philosophy but as scientific works.

I should emphasize here that the proponents of intelligent design, unlike creationists who literally believe the universe was created in the biblical six days, allow that there is evidence of evolution in nature. In fact, they argue that the complexity of evolution itself proves that an Intelligent Designer must be responsible for everything in the universe. This idea of Intelligent Design, by the way, has nothing to do with the question of whether it is possible to believe both in Darwinian evolution and God: in fact, many people, including scientists, do believe both in evolution and in a god who set the process in motion. But this latter group of believers does not suggest that evolution “proves” anything about the existence of God; rather, they argue, as did the late Stephen Jay Gould, that faith

and science belong to separate intellectual and emotional spheres. Or, to paraphrase Jesus, they render unto science that which belongs to science and unto God that which belongs to God.

The intelligent design view—which is emphatically not accepted by the general scientific community—belongs not in the science section of libraries but in the religion or philosophy section. The books published with support from the Discovery Institute no more have a legitimate place in science sections than Mary Baker Eddy's *Science and Health with Key to the Scriptures* belongs in the medical section. This matter of classification is no small thing, as the proponents of intelligent design know very well. If they can succeed in pushing their books into the science section of libraries, and their ideas into the science curriculum of public schools, they will have succeeded in masking theology as science.

Finally, I would like to touch briefly on the Internet pornography issue. I'm a First Amendment absolutist, so, like the ALA, I am opposed to the imposition of filtering mechanisms that will surely restrict the access of researchers to legitimate scholarly Web sites as well as pornographic sites. But while I know that this is a subject for another panel—and I'm fully aware of the pressures libraries are under to keep up with new technology—I think libraries would do well to take a look at the access issue in terms of their larger mission. I'm not at all convinced that libraries should be offering anything more than very limited Internet access—perhaps no more than thirty minutes a day—to elementary or high school students.

As someone who uses the Internet for much of my research—but who grew up learning to do real research in books—I would suggest that you are not doing your communities a great service by putting more of your resources into expanded Internet access. Kids who learn how to do research in books can always learn how to use the Internet for research purposes, but the reverse isn't true. And from what I see in my branch library, most kids are using the library computers not to access pornographic Web sites or to do real research but to play video games and e-mail their friends. Limiting students' computer time might have the rare effect of pleasing two normally antithetical groups—would-be censors and those who are genuinely concerned about promoting high intellectual standards among the young.

In conclusion—and to return to the real subject of this panel—I am quite aware that on a daily basis, many librarians are approached by angry citizens who have picked up a book that offends them and believe that it should be removed from the shelves. These books can be anything from the young adult novels of Judy Blume to Philip Roth's *Portnoy's Complaint* (which a librarian in Arkansas recently told me is still aggravating certain readers who consider it anti-Semitic). I don't know what a librarian can do except just say no to these demands—as well as point out that every reader is free to stop reading a book he or she doesn't like.

But I do have one suggestion. There's a quote from Franz Kafka that should be prominently posted at every library checkout desk, and perhaps it might be useful to have this observation printed on little cards that librarians can hand out to outraged censors-manqués. "I think we ought to read only the kind of books that wound and stab us," Kafka wrote to a friend in 1904. "We need the books that affect us like a disaster, that grieve us deeply, like the death of someone we loved more than ourselves, like being banished into forests far from everyone . . . A book must be the ax for the frozen sea inside us."

Melora Norman: I'm Melora Ranney Norman, outreach coordinator at Maine State Library and past chair of IFRT. I would now like to introduce our responder panel of Mike Wessells and Doug Archer. Mike Wessells is the regional library manager for the Timberland Regional Library System of Washington State and a fundamentalist Pentecostal pastor. Mike is a past chair of IFRT and has also served on the ALA's Intellectual Freedom Committee. Doug Archer is the reference and peace studies librarian at the University libraries of Notre Dame and an ordained minister of The Church of the Brethren. Doug is a member of the IFRT Board and editor of the IFRT Report. Please join me in welcoming Mike Wessells and Doug Archer.

Mike Wessells: Thank you, Melora. To be accurate, I guess I should be described as an Evangelical rather than a fundamentalist. I saw Dr. Marty reaching out to correct so I'll do it ahead of time! I'm very pleased to be a part of this panel. It's sort of humbling to be here between two such scholars. I thought I would start with a couple of stories. One of them is about my mom. She is eighty-five years old, a Professor Emerita of Modern Dance who still teaches and performs at age eighty-five and one would describe as being evangelistic for modern dance. Another is a wonderful volunteer at our Library who runs the outreach program to seniors in large print. She is ninety-six years old and runs that entire program. She is an evangelist for libraries and for library service to seniors. My late dad worked as a press secretary for governors of the state and was an evangelist for politics being something that was essentially very good. He had the hardest road to hoe of all of them.

And you begin to wonder why is it that some evangelism seems to be perfectly okay and other evangelism seems to be dangerous? Doesn't take long to look at the bloody record of religious evangelism and the things that have happened in the name of religion—how many people have been put to death for their views about modern dance? Very few. The old joke that I'm sure you've heard—how do you know that a Unitarian is angry at you? The answer: he'll burn a question mark on your lawn. But the humor derives in part, of course, from the peaceful nature of the Unitarian faith in general and from the horrible image of someone burning a religious image on a lawn to make a point. It's easy to see that religion is one of those arenas where danger seems to lurk and it's very easy, when one sees something

dangerous, to stereotype it, to draw it in blacks and whites rather than grays.

So I'll mention another couple of stories of people I know, one of whom is a fellow who has been out of work for the last couple of years and is straining to keep things together. What he does in his spare time is go around to bakeries and takes day old bread, and delivers it to poor people here and there around the community. That's important to him from a religious standpoint. Others mow lawns and do repairs for people because their religion drives them to do good. Certainly, I would never try to claim that all good people are religious, that's already been pointed out. That certainly is not the case. But just to say that, like all other belief systems, religion covers a spectrum.

One of the things that public libraries do is cover a spectrum of beliefs, a spectrum of attitudes, a spectrum of values, and the most divisive values are those that are the most deeply held. Religion after all is not on par with who's your favorite baseball team—well, except in Chicago I suppose, and maybe in New York, or what's your favorite color. Religion is a driving force for all the decisions that are made and whether it is an overt driving force in the public sphere it's certainly going to be a driving force in the things that people do in the public sphere. The value of libraries in the public sphere is their ability to affirm in some way everyone in the community. If there are culture wars, then the library is the neutral ammunition dump for everyone. We can provide something to everyone.

But in order to affirm everyone, we have to be able to be offensive to everyone in some fashion, and it's important to remember that we also have to be offensive to ourselves. My mother used to say, "I'm tolerant of everything except intolerance," and I used to think—wow, what a spiffy thing to say until I thought deeply about it and realized—well of course, everyone is tolerant about things that don't touch their deepest, strongest, personal beliefs and if your strongest personal belief is tolerance then it's hard to be tolerant of those who are intolerant.

It's hard as librarians to be tolerant of those who would come tell us how to run our libraries and especially tell us the way to run our libraries is to restrict certain materials or not purchase certain other materials, that we don't know what the values of our community are and shouldn't be allowed to reflect those values. We have to be able to be offensive, we have to be able to be offended, we have to be able to tolerate intolerance as one of the ideas that we have available in the public library. We have to realize that the First Amendment certainly covers those who would petition government for their redress of grievances, which for those of us that are in some way government funded libraries we are government and therefore we are being petitioned for redress of grievances by censors.

We have to be willing to serve those areas of the community that seem to be the most opposed to us because they are a part of our service population and certainly though we

might say it's not necessary for the public library to meet the religious needs of the community, I think it's the public library's place to be able to at least partially meet the needs of every part of our community, all of the needs that deal with any kind of an intellectual sphere. So to some extent it is part of our chore, our job, our mission in life to serve the needs of the religious portion of our community that are there.

I think that one of the things that sometimes draws the anger of people is for somebody to come in and say, "I'm better than you are and therefore you should cater to what I think. I'm better than those other people over there; therefore you should cater to what I think." Librarians of course are going to resist that particular idea, but they need to reflect that idea somewhere in the collections in whatever form that idea might take.

I've heard of those who are offended when somebody comes up and says, "I'm going to pray for you that you'll be more like me." They don't put it quite that way but that's basically what they are saying. "I'm going to pray for you that you be more like me." And I trust that when you hear something like that you'll parse that out and just set aside the business about—I'll be more like you because my experience of some of my colleagues has been when they say in any way shape or form, "I'll pray for you" what they mean is I will care about you before God, and whether or not you choose to follow the route about whether there's God to be cared about for, the route of caring is one that's important and sometimes in our hearts if not with our minds we can respond to—I will pray for you by saying "Yes and I pray for you that you will continue to look for truth because there is always more of it to be found." And because there is that's why some of the greatest heroes in the world are librarians. Thank you.

Doug Archer: I think we have had ample evidence presented to us that religion can be both friend and foe of intellectual freedom. To begin with I'd like to reflect just for a moment on the meaning of the term religion because I want to make sure I'm not restricting our thoughts to organized religion. There are all kinds of religion: there's organized religion and unorganized religion, disorganized religion, dysfunctional religion and then there is unbelief. There are people who don't believe the traditional forms of religion but have their own approaches to ultimate reality, so when I talk about religion, please forgive me, I'm going to use that term to cover everyone who is concerned about ultimate truth, and that takes in most everybody in one way or another.

My contention is that religious freedom and intellectual freedom share common ground, common roots, a common concern and can share common cause. Common ground—gee how do you distinguish between religious and intellectual freedom in the broadest sense? Of course we can distinguish between the formal organized practice of organized religion from intellectual freedom and a pursuit of ideas. But when we talk about religion in that broader

sense, how do we possibly draw lines between one person's religious beliefs and one person's philosophical opinion and one's attitude towards what makes life meaningful, how the values of the artistic life are presented?

There is a great overlap between the two; I can't draw a line between them. It's no accident, I believe, that intellectual freedom expressed through the freedom of the press, freedom to speak, freedom to assemble is right there in the First Amendment with freedom of religion. I think they are first cousins, if not fraternal twins.

If we go back to colonial America and the English experience, we will find common roots for both intellectual and religious freedom. I have to give a nod to the colonial Anabaptists for having called for a religious freedom in Germany in the 1500s, but they didn't get very far. So I'm going to move to England in the 1600s where we have two figures. The circles I run around in when I'm not a librarian—I grew up with the American Baptists by the way and am a member of the Church of the Brethren now. I'm still a member of the Roger Williams Fellowship; many of you will know about Roger Williams, founder of Rhode Island, first advocate of religious freedom in America, sometime Baptist preacher, he was one and then wasn't. He is kind of the patron saint of religious freedom in America. He's the first, in a political sense, who argued for freedom of religion for everyone, including the Native Americans. He published his major writing in 1644, called *Bloody Tenant of Persecution*, when he was calling for a free colony, which became Rhode Island.

The one person that we in library land tend to think about as our patron saint of intellectual freedom is John Milton; the *Aeropagitica* is the first major work in English that calls for press freedom; we quote it. It was written in 1644. Both of these folks started out as Anglicans and became Puritans. They went to the same college at the same time and unlike, President Bush and Senator Kerry, they knew each other and apparently influenced each other. Evan Gousted in his biography of Williams notes that "Williams tutored Milton in languages, specifically Dutch, when he was back in England in the 1640s, making his claim for a colony, that Milton housed Williams at the same time, and their writings were written during that period and were published in the same year." I can't help but believe there was some dinner table conversation, but I can't prove it. There is a task, a project for someone who has the literary analytical skills to track down those common roots and nail them down.

The one big difference between the two is that Milton was arguing for press freedom so that dissenters could print, and he was thinking Puritan religious dissenters, and Williams was arguing for religious freedom for everyone in his potential colony. The founders of our country, a century later, built on those insights and a lot of the experience between Williams and Milton and their persecution based on religious attitudes and press suppressions, and founded a country that includes a healthy respect for human nature.

Now, those founders were from a variety of religious traditions. Most of them were from the Judeo-Christian tradition, but you had a little bit of everything. You had staunch Anglicans and Presbyterians and Catholics; you also had free thinkers and Deists, you had a real variety of people in that convention that drew up the Constitution.

When I said they had a healthy respect for human nature, they knew within that mixed body of the potential for good and evil of human beings. They came up with a document that is incredibly optimistic and pessimistic at the same time. The Constitution is incredibly optimistic in its view of people because it believed that people could actually govern themselves. That was a radical thought at that time. They were revolutionary in that sense. On the other hand, they were, some of them at least, real pessimists. They got their position in by putting in lots of checks and balances, including a check called the First Amendment which is meant to limit the ability of people to determine what other people can think, say, believe and print. They didn't trust anyone or any group to censor or control what other people think or believe.

Now I believe religion and intellectual freedom have a common concern. We both deal with truth. Religion deals with, in its various forms, ultimate reality, what is true about who we are and what we want to be as human beings. Librarians are concerned with truth in the sense that we provide a venue, a place in which people can search for truth. We take no stand on what the truth is. Our stand is to provide a place for people to explore what it might be. John Swan wrote an article in the *Library Journal* in 1986 titled "Untruth or Consequences," arguing that we're not concerned with which positions are true on any given issue but rather that we provide the resources to our fellow citizens so they can choose.

So we have, in a sense, a common concern and we have a common cause in that. We're talking now about ourselves as being a civil society, religions and every group—organized, disorganized, or unorganized wants to be able to be known, wants to be able to share their information, to have people understand them and to understand others, either because they want to convert them or because they want to simply understand them. Libraries provide the one place, that free market of ideas, where everybody's opinion about who they are, what they want to be and what they would like to ask other people to be, to be there to compete with each other without any interference by anyone else. You can go in and you can get that resource, you can read it and you can make up your own mind. This free market is the heart of a diverse, vibrant democracy and one of the points we can make to our citizens and neighbors is that religion has thrived in it rather than being hindered. If people are of a religious motivation and are concerned about what's in the library just point out how religion has thrived in this free market.

Here are some practical tips to offer: One of them is—yes, we can meet the religious information needs of our communities in the sense that we can provide resources where people can find out about each other and say who they are—just as cooks and pet keepers, cat lovers and dog lovers, Republicans and Democrats, Socialists and Anarchists can have their views on the shelf for other people to read. In that sense, religion is no different than any other topic except the point that Mike and everybody has made that it is deeply held, people care but they care about many things and what we do is provide a place where people can communicate with each other in a civil manner.

Mike, in another presentation, I'm going to quote you now, made the point that, and he's been known to tell his neighbors that he doesn't really care if Satan is in the library as long as Jesus is in the stacks. Your view and my view are both sitting there for anyone to share and compare. I have a son-in-law who's a hard-nosed truth teller. He's a preacher and we're not of the same persuasion. He went to the local public library to find information about a jazz musician, he happens to be a percussionist, and he couldn't access the man's Web site because it was filtered, and believe me, he believes in intellectual freedom. He wants to find that site.

And so another suggestion would be that because people are interested in sharing their views, we need to communicate the fact that to do so we need to provide space for everyone's views, to give space to all that each may be heard. It's as simple as that. It's a question of civility. We can either have a civil society in which views are shared and we can have those discussions or we end up with the equivalent of civil war. Another point, censors are people too, they're citizens. They have a right to want to censor. We may not like it but we can accept that. We don't have to accept their argument, we don't have to agree with them but we should be willing to listen to them.

Most challenges are not organized in the first place. There are some groups out there, and we know about them or you can contact the OIF and find out about them, but most challenges start out when somebody gets ticked off and the first thing to do is not to call the library board and not to call the press but to simply sit down and hear the person's concern and explain to them that the reason this book is in the library is because somebody wants to read it and you have another book that other people can read. Make your own choice, decide for your own family and often times those kinds of challenges and, those kinds of responses allow people to be understood and we avoid the fire that follows.

A couple of things to close. Build collections with everything, represent every possible point of view that you can within your budget. Go out and seek out the different positions, make friends and allies. Contact those different groups, however they're organized or disorganized, make contact ahead of time, build bridges rather than be firefighters. □

(tiny trackers . . . from page 276)

The metaphor I like to use, in closing, is that of a glass bottom boat. If you are in the water, or you are sailing on the water, you can sort of guess about the fish that are down there and what the reefs look like, and so forth. But if you have a glass bottom boat, you can actually see them. It seems to me that, as time goes by and these RFID systems become really up and running and useful, it will be like a glass bottom boat that will allow you to understand exactly what is going on and how you can survive and thrive in a time of real challenges.

That was my message. It is not about the tags, it's not about the readers, it's not about the technology, although all that is important, it's about transparency, it's about being able to see below the surface, it's about what you learn from the data in this time of challenges.

So, thank you very much.

Jackie Griffin: *Jackie Griffin is Director of the Berkeley Public Library whose Board of Trustees voted to adopt an RFID system in April 2004. Her career began as a reference librarian in the Zion Benton Public Library, Zion, Illinois, and then she began moving west. She worked as a Branch Manager for King County Library in Washington and as Acting Director of the Eugene Public Library in Oregon. She is very active in the library community with a special concern for intellectual freedom issues. She is currently a member of the California Library Association Assembly. She also serves on CLA's Finance Committee and on its Intellectual Freedom Committee. She is a past member of PLA's Intellectual Freedom Committee.*

I'm going to talk to you about the times of real challenges. I was thinking of just titling my talk, "A Cautionary Tale" but I have decided not to. Once again, I am Jackie Griffin. I am from the Berkeley Public Library in Berkeley, California, and I do want to thank the Intellectual Freedom Committee and all of those other committees who are having us here today.

The other day, a woman came into my office at the library and said roughly, "I don't understand it. You were an early opponent of the PATRIOT Act and vocal, you're an advocate for intellectual freedom, and here you're advocating this incredible invasive and privacy invading technology. How do you justify that?" That's how people in Berkeley talk. And I think that is exactly what I want to talk to you about today, is incredible mixture of information and misinformation that we have about RFID I am going to do this in a very personal way. I am just going to tell you about what we have done in Berkeley, how our process has gone, how it has not gone.

When Jim was saying that every installation is unique, I was thinking, and, yes, some are more unique than others, so I do not believe that any of you will have my exact experience, for which you can be eternally grateful! I believe there are any number of bay area libraries who are just sort

of sitting there saying, "as soon as Berkeley gets done with that, we'll just do RFID."

Berkeley is the home of the Free Speech Movement, the place where politics is always in the forefront, and the fight for freedom from governmental interference is almost a hobby for everyone. The conversation about RFID is being waged vociferously there.

Last week, there was a rally at City Hall just before the City Council meeting. There were stilt walkers and unicyclists and a band all to make sure the City Council did not approve the library's tax increase, if we were going to implement RFID. There were more performers than there were audience members.

Over the last several months, I have been in the newspaper, I have been on Web sites. People have said that I am both John Ashcroft's tool and George Bush's toy. I cannot even tell you what that feels like. At last week's City Council meeting, there was a group of people who are now calling themselves the Berkeleians Organized for Library Defense. Originally, they were BOLD. They are now super bold. I do not understand what happened to make them super bold, but they have escalated and they asked that we not get our tax rate increased. The only thing standing between us and massive layoffs is that tax rate increase, and they are asking that we not get it until we tear the tags out of 500,000 books, CDs, and DVDs.

RFID was approved by the Library Board over a year ago, so all of this was relatively late in coming. I do not know where they were a year ago, but they are there now.

But, this illustrates how really important it is that we be aware of what we are doing when we adopt new technology, that we think about the consequences of what we do, and I have to say that, today, my discussion with you is about how we did not do those things, and how we escaped—and in very real ways, we have escaped—and how you can avoid our errors.

I want to start by talking about five years ago, when I was the Acting Director in Eugene, Oregon. I do not know if any of you know Eugene. It is a town of about one hundred thousand people. It is a university town. It is a very liberal town. They were building a brand new library that was going to double the size of the building, but without any increase in operating funds to staff that building. So, we started to look at ways that we could use technology to supplement our staff. We needed to do it with technology because we had money in our capital budget that we did not have in our operating budget.

At the time, we had heard that there were libraries in Sweden that were using automated check-in systems, but those companies were not interested in coming to the United States or working with us. So, we did some more research and Technologic in Minneapolis, Minnesota, who was working on check-in systems. We invited them to talk to us, and they did. Eventually, we decided to purchase a barcode system. At that time, RFID was much more expensive. It

was well over \$1.00 per tag and we could not justify that expense. After I left the state—I want to emphasize this—I was not in the state when Eugene decided to go to an RFID product. Then I came to Berkeley. Berkeley is a university town of about 100,000 people. It is pretty liberal and very involved in the Free Speech Movement. They were building a building that was going to double the size of the building and they did not have any increase in operating funds in order to staff that building. And I thought, this is really weird, I've already done this.

But that was not our only issue. The other issue is costs in California—are any of you here from California? You can all speak to the fact that our costs, particularly our retirement costs, but also our workers' comp costs are killing us, and we have to find a way to move beyond that. Berkeley has very, very good benefits for staff; we pay 365 days of workers' comp. claims, which makes us possibly the best place for workers' comp in the country. It also means we pay enormous insurance costs.

We worked very hard, long before I got there, the Staff Safety Committee worked very hard to keep injuries down and to find ways to stop people from being injured, but we are in a repetitive motion kind of industry and people get

hurt. So, we set out to find out how could we cut down our staffing costs on the double-sized building, but, at the same time, how could we stop people from getting hurt, both because it is inhumane for people to get hurt in their jobs, and also because we needed to find a way to limit that cost. We started visiting other libraries. We looked at the way technologies work. Of course, I already had some knowledge of self-checks and so on. We went to visit San Jose Library, which is using and trying to move to entire self-check using barcode readers. We also went to Santa Clara City Library where they have RFID self-check. They are not trying to move people to total self-check, but they are using it, and I think now they have about 30–40 percent self-check.

We got very excited and very interested about those products. In fact, we got so excited and so interested about those products that we have made those peoples lives a living hell! I want you to know that if there is anything at all that you need to know either about self-check or RFID, San Jose and Santa Clara are very, very, very good at this and they can answer all of your questions.

We got very interested in RFID relatively quickly. It looked like the right product at the right time. We started out with the idea that we would look at check-ins but realized quickly that we also wanted to go to the self-checks. We began to interview vendors. We asked five of the major vendors to come and talk to us. We thought about ways that we could do this. We were very involved, and at the same time, I was extremely involved in working against the PATRIOT Act. I was very active in the California Intellectual Freedom Committee and, for California, we were working with the ACLU. I was interviewed by newspapers and television and radio and the BBC. The reason that I'm telling you this is because every single day of my life, I was thinking about governmental interference into privacy, every single minute of my life, pretty much. That was the most important thing I was thinking about, and it never occurred to me once that we were looking at a product that might have some repercussions in that area.

We started to put together an RFP while I was not thinking about privacy issues. Lee Tien from the Electronic Frontier Foundation heard that San Francisco Public was thinking of adopting RFID and went to the papers. He said this was a huge invasion of privacy, this will damage what we do, this will allow the government more interference into people's private reading habits. We invited Lee to come and talk to us at the library, about what his concerns were. He did and we put together a staff committee to examine RFID. We called it STEEP. We can't remember why we called it STEEP. Anyway, Lee from EFF came to talk to STEEP about RFID.

Anti-RFID peoples' concerns in terms of privacy tend to be in two places strongly. The first is that the signal can be read and it makes it much easier for someone to tell what it is that someone is reading by reading the tag. The second

**READ
BANNED
BOOKS**

thing is that the tag itself can be used as a tracking device. The third concern, and it continues to be one of Lee [Tien]'s major concerns, is that libraries are a beloved public institution and any time we accept technology, it becomes seen as a benign technology.

I don't believe we have that kind of influence. I would like to have that kind of influence because I think we would have more money if we did. I think large manufacturers of technology would give us money.

Anyway, his concerns were very real. However, in the process, we realized that the decisions we were already making made us feel fairly comfortable about where we were. We were only putting barcodes—we had decided already only to put barcodes—on new tags. My suggestion to you is that, when you are adopting RFID, take the kindness of strangers because, at this point, great things started to happen. The first was that Deirdre Mulligan from the Samuelson Clinic on Public Policy and Technology (UC-Berkeley) called me on the telephone. She was about to leave on maternity leave, but said, "Before I go, is there anything I can do to help you?" and I said, "I don't know". So, she invited me to come out, and I sat down with her and one of her students who is a former librarian. They had us walk through every scenario that I could think of. What if an FBI agent is standing outside the door with a scanner? What would they be able to read? What does that mean? What does it mean to be able to track someone? Do you carry a library book with you? What does it mean if you use RFID parts, say, smart cards? Does that make a difference, because people carry their library cards with them everywhere? So, we did that kind of thinking and that kind of examining.

Shortly thereafter, David Molnar called and said, "Hi, I was wondering if I could come and talk to you about RFID because I'm working on it for my Ph.D. and I thought you might be able to help me." I have no idea if we helped David at all, but David helped us extraordinarily. I have to stress that neither the Samuelson Law Clinic nor David has ever taken a position one way or another on RFID and, as far as I know, certainly not with us. They did not recommend to us either to do it or not to do it, or what vendor to use if we did, but they were incredibly helpful. David talked to any vendors who would talk to us, worked with our staff, and both the students at Samuelson and David vetted our RFP when we actually went out with it. They also helped us design questions that would help us find out the privacy considerations that vendors were giving to RFID.

At the same time, San Francisco Public was going through very public difficulties about RFID. They held panels, they had public meetings. One thing that we were struck by, even at that time, was that one vendor made themselves available to David, made themselves available to us, asked us questions, asked us how they could help us make things more private. Their representative attended the

meetings in San Francisco, so when we actually did submit our RFP and we submitted our recommendation to the Library Board, we recommended, on the basis that only one vendor had actually responded to our privacy concerns, and that way, either we choose Check Point, or that we wait until the other vendors caught up.

One thing I do want to say to you is that, when you are working with your vendors, exert your economic muscle with them. They are not going to pay attention to this otherwise. I had one vendor, when I was saying to him how much difficulty we were having, he said, "Oh, this was just a tempest in a teacup." And I said, yes, it is, and it is my teacup, and it is really windy in here and we really need some help. So, I cannot stress this too much. The one thing I have learned is that technology will only meet our needs as much as we are willing to say that we cannot go here. If you cannot help us to make this okay, then we cannot buy this technology now.

The other thing we started doing is to articulate the intellectual freedom reasons for choosing RFID. Berkeley is a well-supported library and is well loved by the community. The year after Prop 13 passed, they passed a separate library tax that has supported the library and kept it out of the general fund for years, so I cannot say we are like any other California libraries. But, nevertheless, rising retirement costs, rising benefit costs, in general—two years ago, our benefit costs were 39 percent of salary, this year they are 54 percent of salary, and in two years, they will be 59 percent of salary, so, we literally cannot go on as we have. Last year, we have been holding staff positions vacant as they emptied and, last year we cut our hours at our four branches at Central Library by about 25 percent. We cut our book budget by about 25 percent. To me, these are very real intellectual freedom issues.

Berkeley is very much a community of haves and have nots. We have very well educated professors in the university community. We also have a very, very poor community, and about 30 percent of Berkeley residents do not have computers in their homes. In addition to that, in the last two generations, no student in a Berkeley elementary school, except for 1 of the 11 elementary schools, has had a school librarian. So, for most kids, the public library is where they get their first exposure to research, where they get their first exposure to organized searching on computers, to evaluating good and bad Web sites. When we are not available, that is an intellectual freedom issue. When 30 percent of the kids in Berkeley do not have access to a computer because we are open fewer hours, that is an intellectual freedom issue. Every hour that we are not open, as far as I am concerned, is a digital divide and an intellectual freedom issue.

We started articulating that as a response that, yes, there may be some risks in RFID, but we will work to minimize those risks, but here are some other things to concern yourself with, too, and to weight against those. This fall,

as we fully implement RFID, we will be able to reopen on Sundays. We will be able to almost return our book budget to our former level. All of these are outcomes from implementing RFID and not having to fill vacant staff positions for repetitive tasks.

So, that is where we are. We have just about completely implemented RFID. We are waiting eagerly to finish off our media. We think we are weathering the storm and the outcry against it, but what I have learned this year is, when you look at a new technology, think about it all the time in terms of where are our privacy concerns? Where will this affect our ability to preserve our patron's privacy? Think about how you implement it, and what you can do to lessen it. On our Web site, we have our five best practices. Those include not using smart cards, only putting a barcode on the item, not allowing patrons to search by barcodes, nor do we allow our staff to release barcode information to any patrons unless they are already on their card, not using wireless technology until we are sure, if we are ever sure, that we can maintain patron privacy, to continually remind vendors that they have a responsibility to privacy concerns and to continue to develop technology in a way that preserves privacy, and, finally, to continue to search out best practices and to implement those as they come. Those are on our Web site at the Berkeley Public Library. Also, there is an FAQ on RFID and why we are using it.

David Molnar: *David Molnar is a graduate student in computer science at U.C. Berkeley. David's research interests, have led to a research project on RFID privacy which he conducted with many others involving security and privacy issues related to RFID in libraries and other settings. He is also a prolific writer on privacy and other topics. David has written several articles on RFID privacy, and is co-author of a chapter on RFID privacy which will be appearing in a forthcoming Addison-Wesley book, RFID Privacy, Security, and Applications. His paper on RFID policy and security in libraries can be found on the Berkeley Web site: www.csberkeley.edu. David graduated from Harvard with an AB cum laude in computer science, which he earned in June 2003 and he is currently pursuing his Ph.D. in computer science at the University of California Berkeley. He is a National Science Foundation graduate fellow and former Intel open collaboration research fellow.*

Well, Jim told you about the big picture, the 20/20 picture, and Jackie has told you about the view on the ground. I'm going to tell you a little bit about some of the nitty gritty technical details that I hope will sharpen the discussion and let us figure out exactly what it is we are talking about here.

I'm going to talk a little bit about how RFID works, although Jim has already covered that, and I'm going to talk about some of the security and privacy issues that we have identified in the course of looking at RFID deployment, both current deployments in the Bay Area and proposed

deployments. The thing is, RFID privacy, all the way down, getting rid of all these issues, is still a research problem, but there are things you can do and my goal in this talk is to give you some tools for thinking about this issue and evaluating the risks in RFID so you can make your own decision with your community about this issue.

To review, RFID stands for Radio Frequency Identification. These are passive tags in the library setting. They have no power source. They are powered by the reader, and because of that, they only carry a small amount of data. How much depends on the type of tag. It may be read only or it may be you can write to it a couple of times, but a common feature is that power goes over the air and stored data comes back. So, the key question is, what is on this tag? In almost every deployment I am aware of, a barcode, like your standard library barcode is written to the tag. Some vendors also have what they call a security bit, and the idea is that the RFID tag is used both for inventory and self-checkout, and for security.

One of the reasons you might want to go to RFID is so you can stop using magnetic strips. In that case, you erect big exit gate readers and they have to know somehow which books have been checked out and which have not. Some vendors record that information on a bit on the tag itself. It gets flipped to one when it is checked out, zero when it is not. It is not used by every vendor, but it is something that is sometimes on the tag. Beyond that, the extra information is a choice that you make together with your vendor. You can imagine putting the title or the ISBN or the shelf location on this tag, but you do not have to. It is something you can talk about with your vendor.

The other thing that is interesting in this phase is that books are starting to come with RFID enabled. In the Netherlands, there is a book publisher that you tell you want the books shipped and you want this range of identifiers and they will do it. Then, as Jim pointed out, commercial publishers are still two years away from putting in tags of their own.

So, these are things to look out for. There are also issues that if you do consortium barcoding or if you have some sort of standardized IDs, you want to figure out where that come from and how does that get on the tag. When you are discussing RFID in your library, you want to say, well, what is going to be on this tag and how does it interact with my ILS.

From a privacy point of view, the key question is who can read this tag? We already talked about what is on it and what they can get if they read it, the next question is who can read it? The first thing you will need to read one of these tags is an RFID reader and, as to their particular type, they have this frequency called 13.56 megahertz, and the first thing to know is that the read range of this is fairly low. The longest observed range I have seen so far is about three feet, but it depends on the size of your antennae. So, you are not going to get a situation where people just walk by

someone's home from forty feet away and scan everything that they have in there.

But, what you do have is an issue where readers can be ambiguous. These things look like store security gates. They look like the kind of readers you already have. So, what people will talk about and what the people are worried about is, what if you have people installing readers for other reasons? Maybe Starbucks puts them in because they want to track people who are trying to make off with merchandise. Maybe the airport puts them in because they want to get information about who is going through the security checkpoint. Maybe people offer money to buy the readings from these readers.

Actually in the supply chain area, there is this thing called the EPC Discovery Services where Verizon will pay you money to take your RFID reading so they can get a global view of what is going where. That has not happened in the library case yet, but it is something where the economics can be there. It is something to be aware of. The bottom line is that, for today's tags, today's generation of tags used in libraries, anyone who buys a reader can read them. I can read them. I have. You can, too. This is the privacy issue because then someone can come up and read these tags and get the information on them.

The other thing about this is sort of a security issue. I mentioned that some of these tags can be re-written, and we mentioned there is a security bit in some cases that can be written as you check the book in and out. The key question you need to ask of your vendor is how is the writing controlled? Can anyone write a tag or can only I write a tag? There is a particular way of getting around this called locking a tag, and some of the standards support this thing where you can lock the tag and then afterwards no one can ever write it again. That is great, if you use it.

So, Oakland Caesar Chavez Library, I went there, I have an RFID reader. Their tags were not locked, so it is possible for someone to build a device that would go through the library and overwrite the tags with garbage. I did not do that. But it was possible for someone to do that. Worse, you could do that and then lock the tags so they could not overwrite the garbage with the real thing. You have to worry about this issue when you are talking to your vendor. You have to say, look, is this writable and, if it is, how do I make sure that I am the only one who can write it? What is the process to look like?

The other thing is a little more subtle. I mentioned there is a security bit that encodes the circulation status. Is it lockable? Can I take that security bit and can I lock the data page it is on? Because if that is true and that happens, I can make it so you cannot check out the book. Or, I have discovered that some vendors have an extra extension to a standard that means you have a special password for reading and writing the locked bit. Well, when that happens, you need to ask your vendor, "is this extension proprietary? If

I want to move from you to a different vendor, am I up a creek because I cannot buy readers that support this extension?" These are things you need to know about from a security point of view and also from the standards locking point of view.

Getting back to the privacy issue, I mentioned that the main thing that most deployments have is a barcode. The big thing that everyone always says when we discuss this is, "Oh, it is just a barcode. What could you do with a barcode?" The good news is, unless you have the ILS database, you cannot match the barcode to the book title to the patron. But, the bad news is you have to protect that database. You already have to do this, but it becomes even more important when you use RFID, and that is because of adversary. The person who is reading these tags can keep the database around forever. So, if they ever get access to your back end database, they can go back in time and figure out what they have seen. So, you have to be very careful with this database. All the things that you are doing for destroying data after a patron returns a book become even more important.

Even the barcode itself has some issues. First of all, some libraries have unique prefixes. If I see a particular book, I do not know what the barcode maps to, but I know it is from Oakland Library or Berkeley Library, and I can use that to make decisions about the person. I think they are probably liberal; they are from Berkeley, 90-something percent voted for Kerry. You can make inferences like that.

The other thing is the identifier never changes. It is a static identifier. This allows you to do tracking. You can link different sightings of the same book. So, not only is this tracking where people go, but you can actually track movements of the book from person to person. You can imagine a video camera, a surveillance camera in a store combined with the RFID reader at the store gate saying, "Oh, this is the same person, same book, two different people, maybe they are related, maybe they have the same interests."

The other thing that comes up is something we call hot listing. With the hot listing, you know in advance which books you are interested in. Maybe it is almanacs, maybe it is the Koran, whatever it is you want to know about. Remember, the barcode is not changing. The barcode is on the library tag. So, what you do is you go to a library and you pick up a book and you read the barcode. You now know that History of Islam or information about birth control has this barcode. If you see it again, you know which book it is and which library it comes from. This takes manpower, but the database does not expire. You can do it incrementally. So, I have a database of a couple of barcodes from local area libraries that I happen to have, and that is just me.

The thing people have talked about in the literature and talked about with vendors is encryption. When you are

talking to a person about encryption, you want to be very, very careful and ask them exactly what they mean. Because there are at least three different meanings that I have seen used. One meaning is, there is a proprietary standard. Our standard is not open. We are the only people who make readers, but the key thing of this meaning is that there is no difference between libraries. A library that has this kind of reader and a different library that has the same kind of reader, they can read each other's tags, or maybe there is something in the software that prevents it, but there is actually nothing in the chip itself. The thing there is that does not really provide you with any long-term protection because you can reverse engineer standard or you could be a reader. These companies exist to sell readers to people. There is a secondary market in them. So, that is not long-term protection.

The other thing that comes up is encrypting the data of a per library key. There was a proposal from a company called Flash Scan; the idea was that the data itself would be encrypted and then you would write this encrypted piece of data, but, if you are not careful, you have static data. It is encrypted, no one can read it, but it is still static and it still allows you to do the tracking and hot listing we discussed because it is the same piece of data all the time. Maybe I cannot figure out what the name is or what the actual barcode is, but I can tell if it is the same thing twice.

The third thing is that sometimes people talk about a password to read the tags. This sounds great, but now you have to ask how the reader knows which password to use? Where does the password come from? Who picks it? Is it the same password for every tag? Because then, if someone eavesdrops or finds that password, you are back to square one. Or, is it a different password for every tag? If it is a different password for every tag, how does the reader know which password to use? The main thing here is that you want to ask for details from your vendor or from whomever you are discussing this with before you can make sense of this issue.

I also want to talk about something that has come up a number of times, including in our discussions with Berkeley. What about re-writing tags at checkout? The hot listing issue comes up because the identifier is static over all time. This means I can walk into a library, I can read the barcode, then if I see you ten years later with the same barcode, I know what book it is. One approach is to re-write the tag every checkout. I write a random identifier and I remember what the barcode was, but I gave you a session identifier or a per checkout identifier. This seems to fix

most of the hot listing issues, but no one sells it yet, as far as I know, and there are some robustness issues. If a patron walks out of a library without being properly checked out, they do not get the benefit of this protection. Worse, if they just take the library book back and don't properly check it in, the chip does not have the barcode on it anymore. It has something different. There are some engineering issues that would have to be worked out here.

More seriously, we discovered when we looked at some of the standards used for these chips that, no matter what you do at this data level, even if you re-write the identifier, some of these chips have a static identifier burned into them at the time of manufacture. So, there is one particular standard, it has what is called a manufacturer tag ID, it has a 64 bit that must be unique for every chip. It is burned into it at manufacture time and, even better, the standard says the chip must tell you where the identifier is on demand. That is part of the standard. It means that anything you do about that level, anything you do with the data, any encryption, any re-writing is absolutely useless if you happen to have that kind of chip. The reason I am harping on this is if you are a library and you are trying to figure out what is the best RFID system from a privacy point of view, you do not want to implement a heavyweight solution or be the guinea pig for a solution and then find out later that something else about the chips at a lower level totally undermines everything you have done. The bottom line is it is a multi-layer problem. You need to ask about every single piece.

As I have been saying, my recommendation is to ask questions of the vendor; ask these very basic questions and get specific details: Who can read the tags? What do they need to read the tags? How can I stop an adversary, someone not in the library, from reading the tags? Who can write the tags? How do I stop a vandal from writing the tags without permission? And privacy and these security issues should be part of your RFP questions. They should be something on which you have to get direct, clear answers from your vendors.

The other thing I would suggest is to familiarize yourself with the technology. You can actually get a test kit. You can visit a library with RFID and you can check out their books. There are two pieces to such a test kit. One is a piece of software called RF Dump. It reads out the data in a nice way and displays it in a nice way. It automates some of the tracking that I have talked about, in a nice way, and it is free. You can go download it. Then, you need an RFID reader of the same kind of the tags. There

are different types of RFID tags. You need to check that the library you are going to visit that has the same as the RFID reader you have bought. There are RFID readers that you can get that fit in a laptop for about \$200 to \$300. So, you can inexpensively get this test kit and go check it out yourself.

The bottom line, again, is, if there is a stag identifier, whether it is a barcode, an encrypted barcode, if it is a manufactured ID, that is a privacy risk because of the tracking and hot listing issues. It is going to become more of a risk because readers are becoming cheaper and more common. The other thing is, even if you change the data, there may be a static identifier at a lower level of the tag. You need to ask your technical people and ask your vendors about this issue.

The other thing I would suggest is you could minimize the data on the tag. Do not put the title, do not put the

author, do not put in the ISBN because if it is done currently or today, that is data that is exposed to any other reader. You want to limit the disclosure as much as possible. Then, of course, you have to protect your bibliographic database. If you are thinking about RFID, now might be a good time to go back and take a look at that database. Who could have access to it? Is it connected to the outside network? Where are the threats for that?

Finally, getting rid of the tracking/hot listing thing is still a bit of a research problem. I do not know of anyone today who can sell you a system that will do everything. There are things you can do to minimize the risks, but it is not completely done yet.

So, that is what I had to say. You all have my paper on the subject and my e-mail. I welcome any questions that you might have.

Thank you. □

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