newsletter on intellectual freedom

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library censorship becomes campaign issue

Journalists and bloggers scrutinizing Republican Vice-Presidential candidate Sarah Palin's record of public service made national news out of a 1996 library incident in Wasilla, Alaska, where Palin was then mayor. The story that emerged—in countless reports, from the blogosphere to the *New York Times*—paints Palin as a would-be censor and then-city librarian Mary Ellen Emmons as nearly losing her job for disagreeing.

An article in the September 4 *Anchorage Daily News* tried to clarify the 12-year-old story by looking at its own coverage of the incident, saying, "Back in 1996, when she first became mayor, Sarah Palin asked the city librarian if she would be all right with censoring library books should she be asked to do so." The report continued that "according to news coverage at the time, the librarian said she would definitely not be all right with it." Emmons then received a letter from Palin, the *News* continues, telling her she was going to be fired because she did not fully support the mayor. Emmons, however, was said to be popular with the public and, after a wave of support, kept her job. She resigned in August 1999, two months before Palin was voted in for a second mayoral term.

The account quoted Anne Kilkenny, a Wasilla housewife who often attended council meetings and has become nationally known as a Palin critic. Like many Alaskans, Kilkenny calls the governor by her first name. Describing the 1996 Council meeting, she recalled that "Sarah said to Mary Ellen, 'What would your response be if I asked you to remove some books from the collection?" Kilkenny said. "I was shocked. Mary Ellen sat up straight and said something along the line of, 'The books in the Wasilla Library collection were selected on the basis of national selection criteria for libraries of this size, and I would absolutely resist all efforts to ban books.'" Palin didn't mention specific books at that meeting, Kilkenny said.

To make matters murkier, Emmons was unavailable for comment, although she did tell ABC News September 10 that "I simply do not recall a conversation with specific titles." Palin did not publicly address the current controversy. Reporters and bloggers relied on local reports written at the time along with comments from other Alaska librarians who remembered the incident.

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EPA reopens five shuttered libraries

The five Environmental Protection Agency (EPA) libraries whose closures in 2006 as part of a cost-cutting measure by President Bush elicited a storm of controversy reopened September 30. In a Report to Congress submitted in March, the agency had committed to reopening the facilities by that date.

The reopened facilities are the Region 5 library in Chicago, Region 6 in Dallas, Region 7 in Kansas City, and the EPA Headquarters Repository and the Chemical Library in Washington, D.C. The final two now share a common space, but the EPA has taken steps to ensure that services will not be diminished, including the hiring of a chemical librarian with a science background. The agency also announced that it will enhance service at its Region 3 satellite library at Fort Meade, Maryland, through the addition of on-site professional staff.

In a September 24, 2008, Federal Register notice, the EPA said the reopened facilities "will be staffed by a professional librarian to provide service to the public and EPA staff via phone, e-mail, or in person . . . for a minimum of 24 hours over four days per week on a walk-in basis or by appointment."

The agency has also launched a "National Dialogue on Access to Environmental Information" to seek input on developing a strategy to ensure greater access to environmental information.

The American Library Association (ALA)was among those who had challenged the closings of the libraries. "We are glad to see that the EPA has reopened these five libraries," said ALA President Jim Rettig. "We hope that the federal government has obtained a better understanding of the importance of federal libraries through this difficult battle."

"We want to express our thanks to Congress for conducting the needed oversight and demanding that these EPA libraries not be closed," added Rettig. "The American public will benefit by having important environmental information and library services made available to them again." Reported in: *American Libraries* online, October 3. □

Internet boosts students' appreciation for First Amendment

Researchers at the Knight Foundation found in 2005 that American students didn't know too much about the First Amendment and generally held the provision in low regard. An overwhelming majority of the 100,000 students surveyed thought flag burning was illegal, and more than half thought the government could restrict indecent material on the Web. After reading the text of the First Amendment, one in three said it went "too far."

But the Internet is slowly changing the way students approach the First Amendment. According to a trio of social science professors who've studied the Knight Foundation data, students who regularly access the Internet value free speech over their non-wired classmates by a significant margin. Their new book, *The Future of the First Amendment: The Digital Media, Civic Education and Free Expression Rights in the Nation's High Schools*, lays out these facts:

- Frequent users of online news sources were 12 percent more appreciative of their First Amendment rights than those who don't get news online.
- Students who blog to publish their own content show even higher levels of support.
- Seventy-three percent of chat-room users agree that music lyrics should be allowed, even if deemed offensive, compared with 65 percent of those who don't use chat rooms. Reported in: First Amendment Law Prof Blog, August 19. □

textbook council accuses publisher of being politically correct on Islam

A new report issued by the American Textbook Council says books approved for use in local school districts for teaching middle and high school students about Islam caved in to political correctness and dumbed down the topic at a critical moment in its history.

"Textbook editors try to avoid any subject that could turn into a political grenade," wrote Gilbert Sewall, director of the council, who railed against five popular history texts for "adjust[ing] the definition of jihad or sharia or remov[ing] these words from lessons to avoid inconvenient truths."

Sewall complains the word jihad has gone through an "amazing cultural reorchestration" in textbooks, losing any connotation of violence. He cites Houghton Mifflin's popular middle school text, *Across the Centuries*. It defines "jihad" as a struggle "to do one's best to resist temptation and overcome evil."

"But that is, literally, the translation of jihad," said Reza Aslan, a religion scholar and acclaimed author of *No god but God: The Origins, Evolution, and Future of Islam*. Aslan explained that the definition does not preclude a militant interpretation.

"How you interpret [jihad] is based on whatever your particular ideology, or world viewpoint, or even prejudice is," Aslan said. "But how you define jihad is set in stone."

Aslan said groups like Sewall's are often more con-

cerned about advancing their own interpretation of Islam than they are about defining its parts and then allowing interpretation to happen at the classroom level.

Sewall's report blames publishing companies for allowing the influence of groups like the California-based Council on Islamic Education to serve throughout the editorial process as "screeners" for textbooks, softening or deleting potentially unflattering topics within the faith.

"Fundamentally I'm worried about dumbing down textbooks," he said, "by groups that come to state education officials saying we want this and that—and publishers need to find a happy medium."

Maryland state delegate Saqib Ali refrained from joining the fray. "The job of assigning curriculum is best left to educators and the school board, and I trust their judgment," he said. Reported in: *New York Examiner*, June 10. □

British libel laws violate human rights, says UN

Britain's libel laws have come under attack from the United Nations committee on human rights for discouraging coverage of matters of major public interest. The use of the Official Secrets Act to deter government employees from raising important issues also has been criticised.

The intervention by the UN comes in the wake of international disquiet over the use of British courts for "libel tourism," whereby wealthy plaintiffs can sue in the high court in London over articles that would not warrant an action in their own country.

The criticisms are made as part of the committee's concluding observations on the report submitted by the United Kingdom on civil and political rights. UN member states are required to submit reports on human rights in their jurisdictions every three years.

The committee warns that the British libel laws have "served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work, including through the phenomenon known as libel tourism."

The case that has provoked the most concern is that of an American researcher, Dr. Rachel Ehrenfeld, who was sued in London by a Saudi businessman and his two sons over a book that sold 23 copies over the Internet into the United Kingdom, where it was never officially published. One chapter of the book was available online.

The action led to the New York state legislature passing legislation to protect writers and publishers working there from defamation judgements in any country that does not give the same same freedom of speech rights as New York and U.S. federal law.

The committee's report highlights the grey area created by the Internet whereby alleged libel can be read in different countries. There is a risk, warns the committee, that restrictive libel laws could affect legitimate international discussion, contrary to article 19 of the covenant on civil and political rights, which guarantees the right to freedom of speech "regardless of borders."

The UK government has been urged to consider "a so-called 'public figure' exception" that would require a would-be claimant to prove actual malice by a publisher or author.

This would apply in cases involving public officials and prominent public figures, as currently exists in the United States, where a public figure can only sue for libel if he or she can demonstrate malice, recklessness or indifference to the truth and that the statement is false.

On the Official Secrets Act, the committee "remains concerned" that powers under the act have been "exercised to frustrate former employees of the crown from bringing into the public domain issues of genuine public interest, and can be exercised to prevent the media from publishing such matters." The committee found the act is used even when issues of national security are not involved.

The 2006 Terrorism Act's "broad and vague" definition of the offence of "encouragement of terrorism" also was criticised by the committee.

Media law specialist Mark Stephens, of the legal firm Finers Stephens Innocent, said: "I think it is quite remarkable that the UK government has drawn these deficiencies in our libel laws to the attention of the United Nations, while at the same time libel lawyers in this country have remained insouciant to the deficiencies highlighted by the UN." Reported in: *The Guardian*, August 14. □

censorship dateline

libraries

Beardstown, Illinois

Despite some recent controversy, the novel *Nineteen Minutes* will remain on the shelves of the Beardstown High School library. The school board voted unanimously September 24 to follow the recommendation from the library committee and return to the library the novel, which, according to a detractor, has some "R-rated" content. However, the book will be held in the high school section of the library and may only be checked out with a high school parent's permission.

One person who attended the school board meeting voiced his opposition to *Nineteen Minutes*. "I wish we had conferenced earlier, so this issue could be resolved without causing so much controversy and division in this community," said Beardstown minister Robert Schoolcraft. "The school board has spoken, and I respect their opinion, and I just pray that they respect my opinion as well.

"I do wish the consent form would be revised to read something to the effect 'that some books may include what some persons consider to be pornography,'" added the Rev. Schoolcraft.

School board President Don Schaefer had a different view of the controversial novel. "When you start removing books from a library, where do you stop?" said Schaefer. "We have nine different languages spoken in this district, and possibly some are not Christian. If someone objects to the Christian books we have, where do you stop?"

Parent Stephen Griffin had requested that *Nineteen Minutes*, by Jodi Picoult, be removed permanently from the junior/senior high school library's shelves. His junior high school daughter had checked out the book. He cited sections of the book that describe sex, use foul language and other "R-rated" content.

Griffin said his then-seventh-grade daughter brought the book home from school last year, and he was disturbed to find it contained the "f-word" more than 40 times in varying contexts and "seemed to have somewhat of a preoccupation with penis size and penis envy," Griffin said.

Griffin asked the committee if the book were a movie, wouldn't it be rated R and would the board want that movie to be able to be checked out by young students? He told the board he felt the book was widely checked out with "prurient interests" and argued the novel sends students mixed messages.

He asked the board if it puts restrictions on words students can say and the length of skirts girls can wear, why it would not put a restriction on the content in its library.

"Censorship already exists," he said. "This is a moral decision."

"It is not a question of will we censor, but a question of on what level," he continued. "I'm not trying to get this book burned or banned from the public library, but removed out of the school because the school should have higher standards."

Sue Reichert, the district librarian and member of the six-member review committee that read and evaluated the book, argued that the committee found the book too valuable to the current anti-bullying curriculum to be removed from the library.

The librarian also said that, since the book is more than 400 pages long, Griffin's claim that it is widely checked out was false, because students rarely check out such lengthy books without being forced. She presented the book's check-out as evidence. It indicated that the book had only been checked out twice, once by Griffin's daughter.

Griffin approached the board with *Nineteen Minutes* for the first time in March. He also brought the novel, *The Day After Tomorrow*, by Robert A. Heinlein, to the board's attention. He requested both be reviewed for removal from the school library.

The Day After Tomorrow, although deemed a "great suspense dark thriller which meets the expectations of an action packed adventure with plenty of intrigue" by the committee in their report, was removed.

The report stated the book did contain murder, conspiracies and passionate romance. The committee did not find the book "lewd" or "graphic," but "rather very adult in nature" and, because the library already had a large selection of other valuable science fiction and spy literature, the committee elected to remove the book from the high school's circulation and donate it to the public library.

Nineteen Minutes had been out of circulation since it was first brought up for review in March.

Picoult is a widely published author known for her

novels that frequently address volatile contemporary issues for teenagers. *Nineteen Minutes* is about a 17-year-old high-schooler who is verbally and physically abused by classmates. In the climax, the youth shoots some of his classmates and later commits suicide in jail.

In an e-mail to Beardstown school board member Steve Patterson, Picoult shared some of her thoughts on the issue. "I always give the same advice to parents: Read it first yourself and then decide if your child is emotionally ready to handle the content," wrote Picoult. "That's what I do with my own children. There is no 'one age' for a kid to start reading my books, because every child is different and can handle emotional content at a different time."

Reported in: *Cass County Star-Gazette*, September 25.

St. Louis, Missouri

In the quiet stacks of the St. Louis County libraries, two sides of a classic culture war were duking it out. A local group wanted the libraries to make it more difficult for teens to have access to some books they think are unsuitable for reading without parental consent. The libraries said that to comply with the group's requests would constitute censorship, and maintain that they already have a process in place to review materials.

The local group, organized into a loose coalition by a local chapter of Citizens Against Pornography, began questioning books found in all county library branches in August after Ellisville parent Laura Kostial approached some of the anti-pornography group's members. Kostial had visited the Daniel Boone branch several times with her 12-year-old daughter and found material she thought "shocking."

Kostial said she hadn't seen books aimed at teens with "erotic" passages at the county's Daniel Boone Library before a visit last year. The books in question range from nonfiction titles such as *The Little Black Book for Girlz: A Book on Healthy Sexuality* and *Growing up Gay in America* to contemporary series like the Gossip Girl books and the series of books with a protagonist named Alice by Phyllis Naylor (*Alice on Her Way* is one of them).

Of the Alice series, Kostial said: "These books start out as being geared for second-graders. By the time she's in middle school, there is stuff that just isn't for the eyes of an 11-year-old. You look at the cover and there's this little blonde-haired girl with braces smiling. It's just too sexually explicit."

The group objects to passages in the books that range from suggested sexual activity to detailed descriptions of sex acts. Many are fiction. Some are nonfiction guides.

Carl Hendrickson, chairman of the local Citizens Against Pornography group and former Republican state representative, said his group is requesting the libraries do one or all of the following:

- Establish an adult advisory committee to screen the books before they are placed in the libraries.
- Construct a system by which parents would authorize their children to check out objectionable material.
- Set up a ratings system that would alert parents the material can be considered objectionable.
- Remove the books in question from the teen section and transfer them to an adult section.

Library administrators maintain that anybody who wants to challenge the library's collection can submit a materials reconsideration form, and that to remove the books from their current location would constitute censorship. In addition, members of its teen advisory board are aware—and displeased—with the request to restrict titles from their access.

"If a book is classified as a teen book by outside sources, there is no point in trying to restrict it from us," says David MacRunnel, 15, of Creve Coeur.

"We are a library and we have to serve all the citizens," said Charles Pace, the director of the St. Louis County Library. "We don't act in the place of the parent. Whether I personally agree with an item or not is beside the point. It's about having access."

Tim Wadham, the library's assistant director of youth and community services, said the groups are "continuing to escalate" their attacks on the library. "These folks are trying to create a scandal where there is absolutely none," Wadham said. "It has become clear these folks are getting guidance on a national level."

John Splinter, the St. Louis regional director of the National Coalition for the Protection of Family and Children, said he had been contacted by the local Citizens Against Pornography group about getting involved with the issue.

"I want to give the library people a full opportunity to be good citizens and do the right thing," he said. "On the other hand, if we don't see some changes, then the coalition will get involved with this, and we fight pretty hard. We've been around long enough to have had an effect on these issues."

The South St. Louis County–based Citizens Against Pornography, along with other concerned citizens, first appeared before the St. Louis County Library Board at its August 18 meeting. The group presented a petition bearing signatures of about 150 citizens. The petition called on trustees to establish a seven-person "Adult Advisory Committee" to provide input and advice to the board "regarding the appropriateness of material for young readers." The seven-person committee would be chosen by the library board from each of the county's seven county council districts.

As evidence of its case, the anti-porn group submitted seven examples of sexually explicit excerpts drawn from young teen books currently available on St. Louis County Library shelves. "We're afraid that parents and grandparents have no idea what may be in these books," said Carl Hendrickson, chairman of Citizens Against Pornography.

Looking For Alaska sounds like a travelogue, maybe something to do with geography. *Escape From Egypt* sounds harmless enough."

Others books singled out by Citizens Against Pornography for containing explicit sexual material include *Alice On Her Way*, by Phyllis Naylor; *Growing Up Gay In America*, by Jason R. Rich; *The Little Black Book For Girlz: A Book on Healthy Sexuality*, by Youth For Youth; *Rainbow Boys*, by Alex Sanchez; and *Making Sexual Decisions: The Ultimate Teenage Guide*, by Kris Gowen.

Hendrickson said his group is not interested in removing books from library shelves. Instead, he and others would like to see books either carry warning labels or be moved to a library's adult section.

"Labeling is done with movies and TV programs, but with books the parents simply don't know what their children are reading. St. Louis County Library does have a teen advisory committee, but we think adults should have some input—a group of parents reviewing these books," Hendrickson said.

Jean Weinstock, president of the five-member St. Louis County Library Board, said members would take the group's request seriously. She said a workshop on the matter would be scheduled for late September or early October. She said the St. Louis County Library system does provide complaint forms to allow for adult input. Those complaints are reviewed by the library's administration team. She said the library is in the process of setting up a materials review committee.

Hendrickson said the complaint process is reactive rather than proactive. "We would like an adult advisory committee to help the library board by going through the books and deciding whether there is adult material," Hendrickson said.

Hendrickson said his group was approached by concerned parents who objected to the content of certain books found in the teen section of the Daniel Boone Branch Library in Ellisville. An online check showed that many of those same books are available throughout the St. Louis County library system.

"Our goal is not to censor. We are against censorship. We realize that we have books that we may disagree with, while another group may want something taken out of the libraries that we find wholesome," Hendrickson said.

Library officials said they were getting plenty of support from parents and patrons. "The feedback we've received has been overwhelmingly positive," said Jennifer McBride, communications manager for the St. Louis County Library. "Most people seem to endorse the idea of parents monitoring what their children are reading, and not the library or another group."

McBride said the feedback—the majority favoring existing library policies—has come in the form of e-mails to the library and comments posted on Web sites of news media outlets that have covered the book controversy.

McBride noted that in 2007, the county library was awarded a Teen Services Grant from the state of Missouri to establish a series of "teen spaces." The areas contain books, music, video games and decor to appeal to teens.

McBride said advisory groups were used to help design and choose content for the spaces. She said "teen spaces" are now at five branches: Cliff Cave, Daniel Boone, Indian Trails, Natural Bridge and Tesson Ferry.

Wicky Sleight, director of the Kirkwood Library, said the shelves at the library in Kirkwood contain some of the books that Citizens Against Pornography find objectionable. "The book on gay living is in our adult section, it is not in the children's library," said Sleight. "We take seriously our responsibility, but we would never label books. We have adopted the American Library Association's policies on intellectual freedom, access to materials and opposition to censorship."

Sleight said Kirkwood Library has a "Request for Reconsideration of Library Materials" form that can be filed in the case of books that some readers might find objectionable. She said a "very serious" discussion of the objections would follow among library officials.

"However, we are here to serve Kirkwood," said Sleight. "We probably would not be considering objections raised by an outside group or someone coming from Creve Coeur. We have a limited budget. We buy books that we think will be of interest to our readers in Kirkwood."

Reported in: *St. Louis Post-Dispatch*, September 2; *South County Times*, August 22; *Webster-Kirkwood Times*, September 12.

Helena, Montana

Helena resident Paul Cohen is asking the library to remove a book from its circulation. A formal public hearing was scheduled before the Lewis and Clark Library Board of Trustees, at which time public comment was accepted on the matter.

Cohen likes to visit the local library a few times a month, always browsing through the "new books" section. "It was routine for me to do that," he said. In February, however, Cohen's visit became anything but routine when he found *The Joy of Gay Sex* on the bookshelf. Offended by the content, Cohen immediately filled out a request for reconsideration of library material form.

Describing the drawings in the book as "pornographic," he wrote that the library is negligent of providing a "safe place" for children and adolescents when they have access to the material.

Per protocol, the book was reviewed by the library's collection review committee. Library Director Judy Hart accepted their recommendation to keep the book in the collection. "It is the library's mission and policy to provide access to a marketplace of ideas, accounts and approaches that are varied, divergent, and inclusive, including that

which may be controversial or a minority point of view," Hart wrote in a letter to Cohen in July. "It is, however, our obligation to provide information to all segments of society."

Dissatisfied with the decision, Cohen appealed to trustees in August where about half of the twenty people present testified in support of removing the book.

"We welcome this process," Hart said of Cohen's request of a formal hearing. "Every person needs an opportunity to express their feelings about particular items and it's our and the board's obligation to provide a venue for that." Hart said her earlier decision was based on policies, needs of the community and obligation to serve the entire community.

"In some cases not everyone is going to like some choices as well as others," she said.

The book has been in the library's circulation since 1993, replacing it several times as new editions came out. Most recently, the library purchased the third edition in November 2007, and it was checked out three times before it was pulled for review in February.

Cohen operates a Christian-based ministry with no denominational affiliation and has lived primarily in Helena since 1987. "There are a lot of things in the library that are garbage," he said. "Lots of people would find things objectionable. This was a no-brainer objection." Cohen said the book shouldn't have been purchased with public dollars and should be disposed of.

"I'm not trying to censor the book," he said, adding that if people want to read it they can buy it at a bookstore. Reported in: *Helena Independent-Record*, September 14.

Marietta, Oklahoma

Parents are usually proud when their youngsters take the initiative to read a book, but when Kathy Davis' daughter brought home a novel she checked out from her middle school library, both mother and daughter, were shocked by what was inside. "She just told me, 'Mom, it's gross,'" Kathy Davis told us.

Graphic descriptions of oral sex are detailed in passages discussing recreational drug use. What was even more shocking—a question in class about how many calories a tablespoon of a certain bodily fluid contains, all in the pages of a book, aimed at young adults.

"It's, it's awful . . . It's . . . I can't believe . . . I don't talk about that in front of my child—and I don't expect it to be in a book that she can get from the library. I mean it's just . . . I'm speechless."

Kathy Davis was shocked when she saw what her 13-year-old daughter was reading. Innocent looking enough from the outside, the neon green cover is eye-catching, but the words on the pages inside reveal some very adult discussions. "It's nasty—it's soft porn. As far as I have read—if it was a movie, she couldn't go see it."

The book—*TTFN*—came from the Marietta Middle School library, and was on an advanced reading list worth eight points to any student who checked it out and read it. The book was recommended for older students, grades ten through twelve, and is written in "instant message" style, depicting online conversations between three fictional eleventh grade girls.

"She read page 32 to me and that was the end of the book. I took it away from my daughter and I can't believe they have these things, this type of reading in a middle school," Kathy Davis said.

That book, which does contain crude references to fellatio and other sexually explicit innuendo, has been pulled from the shelves at Marietta Middle School. Reported in: kxii.com, September 2.

Portland, Oregon

A Portland man said August 19 that his 12-year-old son brought home adult-themed Japanese books from a Multnomah County Library. The Manga series of books are kept in the adult section of some Multnomah County libraries. The books include animated pictures of young women and girls in bondage, being raped and abused.

Rozz Rezabek found the books in his son's room. He said his son checked out the books without anyone questioning him. Rezabek said he went to the library in search of answers, but he said the employees defended the material.

"If you have an adult section, you should enforce it," Rezabek said. "He's 12 years old. They say right on the cover of all these books: 'mature, ages 18 plus.'"

A library representative said the Manga collection is available to everyone. She said it's up to parents to monitor the books their children are reading.

The Multnomah County Library allows patrons to file a statement of concern with the library. Rezabek said he may talk to an attorney about the matter. Reported in: kptv.com, August 19.

Round Rock, Texas

A group of Round Rock parents are outraged that middle school students have access to a book in a school library that discusses sex, porn, booze and an inappropriate teacher–student relationship. Parents of one sixth-grade student started a petition to move the book, *TTYL*, to a space where more sensitive material would be placed.

So far, 150 parents have signed a petition to try to get the book and others like it in a separate section of school libraries. "A lot of parents assume a middle school library is a safe place for your child to pick up any book they want and read," said parent Wes Jennings. "That is obviously not the case."

TTYL, by Lauren Myracle, is a bestseller, but some parents consider the content to be too graphic for preteen children who are looking for reading material. "The girls

are advising each other to wear crotchless panties for their boyfriends," said Jennings.

"A few pages into it and it was clear, [it's] off the charts vulgar," said Jennings.

"The book has been in our library for at least three years, in quite a few of our secondary schools," said JoyLynn Occhiuzzi with the Round Rock Independent School District. "This is the first complaint we've received about this particular book."

For Jennings, the issue is not about pulling *TTYL*. "This is not just one book and one library," said Jennings.

Occhiuzzi said the school district has several other books with the same kind of language or subject matter. Occhiuzzi added, the process to protest the book is just in the first of three stages.

"As a public school system, there are many laws and policies in place that state you can't just pull books off the shelf," said Occhiuzzi. "There is truly a process you must go through."

Parents also have the ability to tell the school they do not want their children to check out any particular book at the library. Reported in: kxan.com, September 25.

schools

Perry Township, Indiana

A high school teacher who was suspended after she defied a school board order to pull a controversial book from her students said in August that she doesn't regret the decision months after her suspension.

Perry Meridian High School teacher Connie Heermann spoke out during an event at the Indianapolis Museum of Art at which a movie based on the book *The Freedom Writer's Diary* was screened. Heermann said she believed the book, about a teacher who gave her students what she believed they needed—a voice—would inspire at-risk students.

The book was given to students with parents' permission, but without district approval. Heermann was told to collect the books, but took a stand instead because she thought her students were engaged and engrossed in the book. The school board said the book's racially and politically provocative words were too much for students to handle.

Heermann was suspended without pay earlier this year. Addressing a small crowd at the film screening, she railed against what she called censorship in the classroom. "There are very few high school teachers that are allowed to just teach," Heermann said. "In the class of 21 students, 19 refused to give me their book back."

In the months since Heermann's suspension, she has garnered national attention because of her defiance of the order. "Persevering for what you believe in your heart is right, I think, will ultimately end in success," Heermann said. Reported in: theindychannel.com, August 22.

student press

Redding, California

A high school newspaper in California was disbanded after it published a front-page photo of a student burning an American flag, triggering criticism that the administration was stifling free expression.

Shasta High School Principal Milan Woollard said the school year's final issue of the student-run Shasta High *Volcano* was embarrassing. "The paper's done," Woollard told the *Record Searchlight* newspaper of Redding. "There is not going to be a school newspaper next year."

The school newspaper also ran in its June 3 edition an editorial written by editor-in-chief Connor Kennedy that defended flag burning as speech protected by the First Amendment. Kennedy graduated in June from the high school in Redding, about 160 miles north of the state capital. He said he chose the topic because he had just studied flag burning in a class on government.

"I'm deeply saddened, and I find it terribly ironic a high school newspaper would be shut down for exercising free speech—particularly when the curriculum being taught was that this was free speech," Kennedy said.

A press-freedom advocate said the student journalists were within their legal rights to publish the photo and editorial. "I don't think any newspaper should ever be discontinued as punishment for things students have written, especially when what they've written about is the defense of free speech and what they have said is absolutely correct," said Terry Francke, general counsel of the nonprofit Californians Aware, which advocates for First Amendment issues.

Nevertheless, state law does not require schools to spend money on student newspapers or elective journalism classes, Francke said.

The school principal said eliminating the paper had been an option before it published the flag photo because the school expects to get less state funding next year and needs to save money. The students' decision to showcase flag burning "cements the decision" to pull funding from the newspaper, he said.

The newspaper's cover was a collage of photographs, some of which showed students in what appeared to be prom attire. Prominently displayed at the top of the collage was a photograph of a student holding a flag pole, with the American flag burning at its edge.

The Redding controversy is the latest example in recent years of high school and college administrators in California attempting to censure student-run newspapers or punish those who oversee them.

In Los Angeles, a high school newspaper adviser was removed after he refused to withdraw a November 2006 student editorial criticizing random searches on campus. In 2003, Novato journalism teacher Ronnie Campagna was similarly replaced when the student paper published stories

critical of San Marin High School. Reported in: Associated Press, June 11.

Clovis, New Mexico

The Clovis board of education will have final say on content in student publications under a new policy adopted about four months after the high school yearbook published pictures of lesbian couples.

The board voted 3–2 to pass the new publications code September 23. The code also gives school principals authority to review students' work before publication.

Clovis Municipal School District Superintendent Rhonda Seidenwurm said the school district's previous publications code did not allow principals to review student publications. She said the need for such a review surfaced after community groups criticized last year's edition of the high school yearbook, the *Plainsman*, for photographs of lesbian couples in a segment about relationships.

Under the code, students can appeal a decision regarding content. The board of education will have the final say in the appeals process.

Board member Lora Harlan voted against the measure because she said she wanted to be sure the code did not conflict with state statutes.

Photos of two lesbian couples, along with narratives describing their relationships, were included in a features section titled "Do you want to go out?" Also pictured on the two-page spread were nine heterosexual couples. Reported in: Associated Press, September 25.

publishing

New York, New York

Publisher Random House has pulled a novel about the Prophet Mohammed's child bride, fearing it could "incite acts of violence."

The Jewel of Medina, a debut novel by journalist Sherry Jones, was due to be published on August 12 by Random House, a unit of Bertelsmann AG, and an eight-city publicity tour had been scheduled, Jones said.

The novel traces the life of A'isha from her engagement to Mohammed, when she was six, until the prophet's death. Jones said that she was shocked to learn in May that publication would be postponed indefinitely.

"I have deliberately and consciously written respectfully about Islam and Mohammed . . . I envisioned that my book would be a bridge-builder," said Jones.

Random House deputy publisher Thomas Perry said in a statement the company received "cautionary advice not only that the publication of this book might be offensive to some in the Muslim community, but also that it could incite acts of violence by a small, radical segment."

"In this instance we decided, after much deliberation, to postpone publication for the safety of the author, employees of Random House, booksellers and anyone else who would be involved in distribution and sale of the novel," Perry said.

Jones, who has just completed a sequel to the novel examining her heroine's later life, is free to sell her book to other publishers, Perry said.

The decision sparked controversy on Internet blogs and in academic circles. Some compared the controversy to previous cases where portrayals of Islam were met with violence.

Protests and riots erupted in many Muslim countries in 2006 when cartoons, one showing the Prophet Mohammed wearing a turban resembling a bomb, appeared in a Danish newspaper. At least 50 people were killed and Danish embassies attacked.

British author Salman Rushdie's 1988 book *The Satanic Verses* was met with riots across the Muslim world. Rushdie was forced into hiding for several years after Iran's then supreme religious leader, Ayatollah Ruhollah Khomeini, proclaimed a death edict, or fatwa, against him.

Jones, who has never visited the Middle East, spent several years studying Arab history and said the novel was a synthesis of all she had learned. "They did have a great love story," Jones said of Mohammed and A'isha, who is often referred to as Mohammed's favorite wife. "He died with his head on her breast."

In a statement, Random House said: "We stand firmly by our responsibility to support our authors and the free discussion of ideas, even those that may be construed as offensive by some. However, a publisher must weigh that responsibility against others that it also bears, and in this instance we decided, after much deliberation, to postpone publication for the safety of the author, employees of Random House, Inc., booksellers and anyone else who would be involved in distribution and sale of the book." When Rushdie's book was published in 1988, attempts were made on the lives of his Norwegian and Italian publishers, and the Japanese translator of the novel was killed.

Jones said she did not believe there was any risk involved in publishing the book. "Frankly I'm more afraid of global warming than of terrorist attacks," she said. "I did expect my book would be controversial, just because I'm a pink woman writing about a culture that was not my own and a religion that is not my own. My aim was not to provoke, it was to portray the difficulty of being a woman in that era, and to portray this wonderful heroine who overcame obstacles to become a prominent figure in Islam."

Publisher Andrew Franklin, director of Profile Books, said that Random House should not have been deterred from publishing by imagined threats of Islamic extremism. "It's absolutely shocking. They are such cowards," he said. Franklin pointed to Penguin's publication of *The Satanic Verses* in 1988. "I think Penguin acted with great integrity," said Franklin, who was working for Penguin at the time.

"They behaved as any publisher in the west should do, and upheld freedom of publication and freedom of speech. They stuck by their guns at not inconsiderable risk to their senior executives. These are the principles we should live and die by."

The instigator of the trouble wasn't a radical Muslim cleric, but an American academic. In April, looking for endorsements, Random House sent galleys to writers and scholars, including Denise Spellberg, an associate professor of Islamic history at the University of Texas in Austin. Jones put her on the list because she read Spellberg's book, *Politics, Gender, and the Islamic Past: The Legacy of 'A'isha Bint Abi Bakr*.

But Spellberg wasn't a fan of Jones's book. On April 30, Shahed Amanullah, a guest lecturer in Spellberg's classes and the editor of a popular Muslim website, got a frantic call from her. "She was upset," Amanullah recalled. He said Spellberg told him the novel "made fun of Muslims and their history," and asked him to warn Muslims.

In an interview, Spellberg said the novel is a "very ugly, stupid piece of work." Added Spellberg: "I walked through a metal detector to see *Last Temptation of Christ*'" the controversial 1980s film adaptation of a novel that depicted a relationship between Jesus and Mary Magdalene. "I don't have a problem with historical fiction. I do have a problem with the deliberate misinterpretation of history. You can't play with a sacred history and turn it into soft core pornography."

After he got the call from Spellberg, Amanullah dashed off an e-mail to an electronic discussion list of Middle East and Islamic studies graduate students, acknowledging he didn't "know anything about it [the book]," but telling them, "Just got a frantic call from a professor who got an advance copy of the forthcoming novel, *Jewel of Medina*—she said she found it incredibly offensive." He added a write-up about the book from the *Publishers Marketplace*, an industry publication.

The next day, a blogger known as Shahid Pradhan posted Amanullah's e-mail on a website for Shiite Muslims—"Hussaini Youth"—under a headline, "upcoming book, *Jewel of Medina*: A new attempt to slander the Prophet of Islam." Two hours and 28 minutes after that, another person by the name of Ali Hemani proposed a seven-point strategy to ensure "the writer withdraws this book from the stores and apologise all the muslims across the world."

Meanwhile back in New York City, Jane Garrett, an editor at Random House's Knopf imprint, dispatched an e-mail on May 1 to Knopf executives, telling them she got a phone call the evening before from Spellberg (who happens to be under contract with Knopf to write *Thomas Jefferson's Qur'an*.) "She thinks there is a very real possibility of major danger for the building and staff and widespread violence," Garrett wrote. "Denise says it is 'a declaration of war . . . explosive stuff . . . a national security issue.' Thinks it will be far more controversial than the satanic verses and the Danish cartoons. Does not know if the author and Ballantine folks are clueless or calculating, but thinks the book should be withdrawn ASAP." (*The Jewel of Medina* was to be published by Random House's Ballantine Books.)

That day, the e-mail spread like wildfire through Random House, which also received a letter from Spellberg and her attorney, saying she would sue the publisher if her name was associated with the novel. On May 2, a Ballantine editor told Jones's agent the company decided to possibly postpone publication of the book.

Jones said Random House did not inform her that other scholars had raised the possibility that violence would erupt over the text. "One critic had warned of a heated response from Muslims," she said.

But Jones blames the Texas history professor for inciting more furor than the novel itself might have created. "I think that what she's done is reprehensible," said Jones. "She wasn't satisfied with calling me and discussing the book with me—she never did that. She called her editor and spouted hyperbole."

Spellberg sticks by her assertion that the main problem was with the book's lack of historical credibility: "My concern as a professional historian was that this did not meet the claims of being extensively researched." She added that she didn't really think the publisher would cancel the publication. Reported in: Reuters, August 7; *Wall Street Journal*, August 6; *Guardian*, August 12; *Chronicle of Higher Education* online, August 11.

film

Sacramento, California

A little too peppered with controversy, *Breakfast at Tiffany's* was taken off the menu and replaced by *Ratatouille* at Sacramento's free Screen on the Green movie series August 23.

The film series impresario, Sacramento Vice Mayor Steve Cohn, had planned to serve the 1961 classic starring Audrey Hepburn, but he was flayed by Asian American activists who called the film racist for Mickey Rooney's stereotypical depiction of the buffoonish Mr. Yunioshi.

Cohn first apologized and said he would bleep out Rooney's scenes and use the edited version as a teaching moment. But then Cohn announced he'd scrapped "Breakfast at Tiffany's" after the film distribution company agreed to ship overnight a copy of *Ratatouille*, a more wholesome, less heated entree.

"The bottom line is, we can't really edit out the offending scenes," Cohn said. "It turns out there are four or five of them, and to take them out would screw up the movie entirely."

Cohn said he and his movie selection committee never intended "to create controversy, to make political statements, or to be on the avant-garde of the movie world, let

alone to offend significant members of our community."

"There are plenty of other forums for people to get into political or artistic discussions," Cohn said. "But that's not what this is about—we're trying to find entertainment that reaches across all ages and backgrounds.

"Obviously, we missed the mark with our choice of *Breakfast at Tiffany's*."

While a number of activists praised Cohn's decision to toss *Breakfast*, Jerry Chong said he had mixed feelings. "We had an opportunity to educate an entire generation" by using the movie to illustrate hateful stereotypes, said Chong, legal counsel for CAPITAL (Council of Asian Pacific Islanders Together for Advocacy and Leadership).

Breakfast at Tiffany's starred Audrey Hepburn as Holly Golightly, a country girl turned call girl in New York.

Ratatouille, rated PG, is an animated film featuring rats in the kitchen of a French restaurant. Cohn didn't expect animal rights activists to protest, since "rats are pretty well-represented in the movie." But the film's depiction of "stuffy French people" might offend somebody. Reported in: *Sacramento Bee*, August 23.

foreign

London, England

A poem taught to thousands of schoolchildren every year has been dropped amid fears it could fuel knife crime.

Britain's biggest examination board removed the work from an English GCSE syllabus because of its violent content. The poem—"Education for Leisure" by Carol Ann Duffy—opens with the line: "Today, I am going to kill something. Anything." It goes on to say: "I have had enough of being ignored and today I am going to play God."

The poem has been included in an anthology—aimed at 15 and 16-year-olds—since 2004, despite protests from teachers.

Now the Assessment and Qualifications Alliance (AQA) has bowed to pressure and lifted it from the GCSE collection. It has written to schools advising them to destroy copies of the anthology containing the contentious verse—saying the board will replace them with an updated version.

Examiners insisted the poem had been a "popular choice" for pupils, who are given the opportunity to discuss the narrator's state of mind. In one test, teenagers were asked to discuss how the poem portrays anti-social behavior.

But a spokesman said AQA had received a fresh complaint and—fuelled by concerns over a rise in teenage knife crime—the board had now decided to drop it.

"People will have different views on this— but we have to make a decision in the light of what is currently happening," she said. The board had a duty to respond to current "social issues and public concern," she claimed.

Some schools already refuse to use the poem amid fears its content would provoke pupils. Sydney Smith School in Anlaby, near Hull, ripped the poem from books in 2004, with one teacher saying: "It really does worry me that we could be endorsing violent feelings. It is about an unemployed individual who seeks recognition by killing. It is a very powerful poem—but that is my point, we do not want blood on our hands."

The anthology includes other works by Carol Ann Duffy, the Glaswegian poet and playwright, as well as classics by Yeats, Wordsworth, Shakespeare, Tennyson and Blake.

Peter Strauss, the poet's literary agent, told the BBC that "Education for Leisure" did not promote violence. "This poem is pro-education and anti-violence. It is not glorifying violence in any way," he said. "Carol Ann Duffy is a vocational poet for the young. She gets children fired up about language and verse. She talks to more schoolchildren than I've ever met. She's encouraged more people to have a love of words and a love of education than anyone else I know." Reported in: *Daily Telegraph*, September 30.

London, England

Parents' complaints about inappropriate language in Jacqueline Wilson's latest novel, *My Sister Jodie*, have persuaded its publisher to replace the offending word.

Random House Children's Books received three complaints from parents about the use of the word "twat" in the book, which is aimed at children aged 10 years and over. Wilson, a former Children's Laureate, is an enormously popular author, and the book has already sold 150,000 copies in the United Kingdom since publication in March. But the complaints have meant that the publisher will replace the word with "twit" when it reprints the novel.

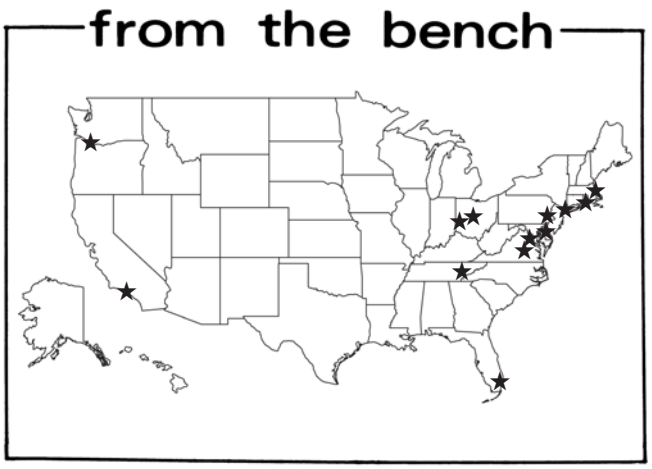
Supermarket chain Asda also received a complaint about the novel, which it passed on to Random House, and it is now in the process of withdrawing it from stores until the novel is reprinted. Asda said it had sold over 28,000 copies of *My Sister Jodie* since it was published, and that the complaint was "the first and only" one it had received.

The book is about Jodie, who is "bold and brash and bad," and her younger sister Pearl. During the course of the novel, when the two girls are sent to boarding school, Jodie becomes interested in a 19-year-old boy who uses the word "twat" in conversation with her.

"The word 'twat' was used in context. It was meant to be a nasty word on purpose, because this is a nasty character," said a spokesperson for Random House. "However, Jacqueline doesn't want to offend her readers or her readers' parents, so when the book comes to be reprinted the word will be replaced with twit."

In a statement, Random House apologised to anyone offended by the language in the novel, saying that although it felt the word was acceptable for children aged 10 and over to read, "especially as it is commonly used in a way that

(continued on page 258)



U.S. Supreme Court

A trio of former Federal Communications Commission chairmen, including the most iconic critic of TV content and a symbol of deregulation, have joined to ask the Supreme Court to strip the FCC of its power to regulate indecency entirely, saying that it is on a "Victorian crusade" that hurts broadcasters, viewers and the Constitution.

Former Democratic chairman Newton Minow may have famously dubbed TV a "vast wasteland" back in the 1960s, but he is ready to let TV programmers in this century have more say over content if the alternative is the current FCC.

Seconding that opinion was former Republican chairman Mark Fowler, who once likened TV to a toaster with pictures and became a symbol of the deregulatory 1980s.

Also weighing in on a brief to the court August 8 was James Quello, former acting chairman and longest-serving Democratic commissioner.

Citing the predictions of a political scientist back in the early 1980s, they called the Supreme Court's 1978 *Pacifica* decision that justified the FCC's indecency-enforcement powers a legal time bomb that had exploded into radical censorship. They argued that the commission "has radically expanded the definition of indecency beyond its original conception; magnified the penalties for even minor, ephemeral images or objectionable language; and targeted respected television programs, movies and even noncommercial documentaries."

"I think it is an incredible statement from FCC chairmen who have been some of the architects of the indecency policy and who are now saying that this is out of control," said First Amendment attorney John Crigler, a partner with Garvey Schubert Barer in Washington. "The enhanced indecency standard was created under Mark Fowler, and here he is saying 'boy, this train is way off the tracks.'"

The trio were joined by other former FCC commissioners and staffers including Henry Geller, former general counsel at the FCC; Glen O. Robinson, a former commissioner and said to be principal author of the brief; Kenneth G. Robinson, a former FCC legal adviser; and Jerald Fritz, senior VP and general counsel for Allbritton Communications. They filed an *amicus* brief in the FCC's challenge to a lower-court ruling that the commission's indecency finding against swearing on Fox awards shows was arbitrary and capricious and a violation of the Administrative Procedures Act. That act requires regulators to sufficiently justify their decisions and forewarn regulated industries.

The chairmen agreed that it violated the act but, like the broadcast networks in their brief to the court, said the Supremes needed to go farther. They said the court's work would be incomplete if it simply struck down the "fleeting expletives" policy, arguing that the FCC's indecency calls in cases of nudity and nonfleeting profanity were inconsistent and that the commission was using "context" as a "talisman to ward off serious questions about the extreme subjectivity of the agency's determinations."

Also mirroring the arguments of ABC, CBS, Fox and NBC, the chairmen argued that broadcasting is no longer uniquely pervasive or accessible to children given the Internet and multichannel video.

"It is time for the Court to bring its views of the electronic media into alignment with contemporary technological and social reality," they said. And that means getting the FCC entirely out of the business of regulating indecent content, they added.

"As former regulators, we appreciate that the FCC is in an uncomfortable position, buffeted by the turbulent passions of anxious parents and threats from excited congressmen," they added. "But that is precisely why the matter must be taken out of the agency's hands entirely."

Previously the networks, ABC, NBC, CBS, and in a separate brief Fox had made similar arguments.

Saying it now exists side-by-side with hundreds of cable channels not subject to FCC rules, Fox told the court broadcasting was no longer uniquely pervasive. That was one of the justifications the Supreme Court used for upholding the *Pacifica* decision finding George Carlin's "Filthy Words" monologue indecent. It also said that because kids can access indecent material through the Internet or via cable or satellite "just as easily" as they can get it via broadcasting, it is no longer uniquely accessible to children, which also would undercut *Pacifica*.

"The FCC has abrogated its cautious enforcement policy

and now willy-nilly punishes utterances that fall far short of the "verbal shock treatment" that for decades described what was necessary to satisfy the requirement that language be 'patently offensive,'" Fox argued.

The other broadcast networks also took dead aim at that policy and the underpinning of broader content regulation in their brief to the Supreme Court in support of Fox, calling the FCC's effort to avoid a challenge to the constitutionality of its indecency-enforcement regime the commission's "latest bait and switch."

In their filing, NBC, CBS and ABC called the FCC's indecency-enforcement regime unfathomable and indefensible. The networks were weighing in to support a lower-court decision that the FCC was wrong to find that swearing on a Fox awards show was indecent. The FCC appealed that decision and the Supreme Court agreed to take the case.

While the FCC wants the court to rule narrowly on this one instance of fleeting profanity, the networks in their filing said it is time for the court to rethink the indecency-enforcement regime altogether.

They argued that broadcasting is neither uniquely pervasive nor uniquely accessible to children—concepts they said have been "eviscerated" in the 30 years since the Supreme Court used them to uphold the FCC's indecency enforcement authority in the *Pacifica* decision.

The networks went even further, taking aim at the *Red Lion* decision, in which the High Court upheld content regulations—in this case the jettisoned "Fairness Doctrine"—using the spectrum-scarcity rationale.

"Whatever its validity when *Red Lion* affirmed it in 1969 or in 1987 when the commission rejected it without reservation, today the scarcity rationale is totally, surely and finally defunct," the networks said. "The antiquated notion of spectrum scarcity can no longer serve as a basis for according only 'relaxed scrutiny' to content restrictions in the broadcast media," they argued. "Nor can the outmoded premises of *Pacifica*—that over-the-air broadcasting is 'uniquely pervasive' or 'uniquely accessible to children.' As with any other content-based restriction of speech, the government should be made to demonstrate that the remand order serves a compelling state interest and is the least restrictive means available to achieve that interest. It cannot do either."

At issue in the case are profanities uttered by Nicole Richie and Cher in 2002 and 2003 during Fox broadcasts of the Billboard Music Awards. Kevin Martin was not FCC chairman at the time of the violations, but he has been vigorous in his support of the fleeting-profanity and nudity-enforcement policy.

The FCC found the utterances indecent as part of an omnibus March 2006 order that did not levy fines against some shows but indicated which shows the commission deemed indecent in an effort to provide guidelines for broadcasters. Martin said at the time that broadcasters asked for such guidance.

Fox took the FCC to court and won. The Second Circuit Court of Appeals found the FCC's decision arbitrary and capricious and remanded the decision back to the commission for better justification, while suggesting it would be hard-pressed to do so. The FCC instead sought Supreme Court review, which the court agreed to do in March.

In a separate filing with the Supreme Court in support of Fox last week, TV creators said they were literally at a loss for words to know when they might run afoul of FCC rules in the wake of the agency's profanity decision. But the Center for Creative Voices in Media—which includes the voices of Steven Bochco, Vin Di Bona, Tom Fontana and Warren Beatty—did not challenge the constitutionality of the FCC's underlying indecency-enforcement authority as did the networks.

The FCC's power to sanction fleeting profanities and nudity are both in regulatory limbo. The Third Circuit Court of Appeals followed the Second Circuit's lead in smacking down the Janet Jackson fine as arbitrary, capricious and insufficiently justified.

ABC is also challenging an indecency fine against NYPD Blue in the same court that struck down the profanity decision. Reported in: *Broadcasting & Cable*, August 1, 8.

library

Upper Arlington, Ohio

On August 14, the district court in the Southern District of Ohio issued an order permanently enjoining the Upper Arlington Public Library from "severing out and excluding activities from its meeting rooms that it concludes are 'inherent elements of a religious service' or elements that are 'quintessentially religious.'"

The lawsuit was filed by Citizens for Community Values (CCV), which describes itself as an organization promoting Judeo-Christian moral values for civil government. CCV sought to use the meeting room at the Upper Arlington Public Library for an event it called "Politics in the Pulpit." In its application for the room, CCV said its representatives would discuss Bible teachings and the law about Christians' political involvement, as well as allowing a time for prayer and praise concerning Christian involvement in politics.

On reviewing CCV's application, the library informed CCV that it viewed the time for prayer and praise as "inherent elements of a religious service" that conflicted with the library's meeting room policy, which forbids use of its meeting rooms for religious services. The library advised CCV that it could use its meeting rooms for the discussion of Bible teaching and the law concerning Christian involvement in politics but must refrain from the prayer and praise activities.

CCV did not use the meeting room. Instead, it filed suit

against the Upper Arlington Public Library, claiming that the library's decision to exclude religious meetings and religious services constituted unconstitutional viewpoint and content discrimination.

In reviewing facts presented by both parties, the court found that the library opened its meeting rooms to a wide range of groups for a wide range of expressive activities, including meetings, discussions, lectures, and other nonprofit activities that serve the community, creating a limited public forum. It further found that CCV's proposed presentation was compatible with the allowed uses of the meeting rooms.

The court then examined the library's policies and practices to determine if they were viewpoint-neutral and were reasonable in light of the purpose of the forum. Consistent with the Supreme Court's decision in *Good News Club et al.* v. *Milford Central School*, the court held that the library's policy of prohibiting prayer and singing from events that included other permissible discussion activities constituted unconstitutional viewpoint discrimination.

Notably, the court rejected the library's argument that its policies and practices were consistent with the Ninth Circuit's decision in *Faith Center Evangelistic Ministries* v. *Glover*, which upheld a public library's policy of excluding worship services from its meeting rooms. The court said the Ninth Circuit's holding relied on the church's own characterization of its event as pure religious worship, whereas CCV never described its event as a worship service. Instead, the Upper Arlington Public Library determined that the prayer and praise activities attached to CCV's event constituted "worship," thereby impermissibly entangling the public library with religion in a manner forbidden by the Constitution. The court noted the Ninth Circuit itself cautioned that distinguishing between what is worship and what are permissible forms of religious speech is "a distinction the government and the courts are not competent to make."

The court also rejected the library's claim that its actions concerning the CCV's event were justified by its compelling interest in not violating the Establishment Clause of the First Amendment. It found that the provision of meeting space to CCV did not have the primary effect of advancing religion, as the library did not endorse the event and there was no evidence that religious groups would dominate the use of the library's meeting room. The court cited the Supreme Court's decision in *Good News Club*: "When a limited public forum is available for use by groups presenting any viewpoint, however, we would not find an Establishment Clause violation simply because only groups presenting a religious viewpoint have opted to take advantage of the forum at a particular time."

The court's decision only addressed the library's policy and practice of identifying and severing out meeting elements the library believed are "quintessentially religious." The court refused to express an opinion on the constitutionality of the library's written policy excluding "religious services." Reported in: OIF Blog, August 27.

schools

Dayton, Ohio

A high school English teacher who claimed that her year-to-year contract was not renewed because her suggested list of supplementary readings for a classroom unit on censorship included controversial books such as Leslea Newman's *Heather Has Two Mommies* suffered a setback in her First Amendment lawsuit on July 30.

U.S. District Court Judge Walter Herbert Rice, in Dayton, found that the school board's prerogative in controlling the curriculum outweighed the teacher's academic freedom interest in selecting reading materials for her students.

In the fall of 2001, Shelley Evans-Marshall was in her second year of teaching at Tippecanoe High School when the controversy arose. She decided to supplement the district's ninth-grade English textbook with Hermann Hesse's classic novel *Siddhartha* whose themes include Buddhism, spirituality, family and romantic relationships, and personal growth. For a unit on censorship whose approved assignment was Ray Bradbury's *Fahrenheit 451*, she asked students to select a book from the American Library Association's list of the 100 "most challenged books in the United States." Several selected *Heather Has Two Mommies*, a children's novel about family diversity that includes families headed by same-sex couples along with single-parent and stepparent families.

Even though *Siddhartha* was on the school's approved reading list, and the district had purchased copies in the past, several parents raised objections at a school board meeting to their children being assigned that book. Later, the choice of several students to read *Heather* also became a flashpoint. As a result of these controversies and Evans-Marshall's outspoken independence on curricular matters, her relationship with the principal became tense, and eventually the school board accepted the principal's recommendation not to renew her contract. The stated reason was that she "refused to communicate with the administration and refused to be a team player."

Evans-Marshall believed her dismissal stemmed directly from her controversial supplemental reading choices, which she had not cleared in advance with the principal, and she contended in her lawsuit that the non-renewal for this reason violated her First Amendment rights to academic freedom in exercising her professional judgment. The school board strongly argued that the decision did not have to do with the specific reading assignments, but rather with the deterioration of her working relationship with the principal.

In considering the school district's motion to throw out the suit, Judge Rice confronted the fact that a 2006 Supreme Court decision, *Garcetti* v. *Ceballos*, had generated doubt

about whether the First Amendment even applies to a public school teacher's decisions about reading assignments, a point that had previously seemed well established. The 2006 case involved a deputy district attorney who complained he received a less desirable post after voicing concerns about the validity of a search warrant. The high court rejected his claim that he had First Amendment protection since his comment related to a matter of public interest, ruling that when a public employee speaks as part of his job, as opposed to in his capacity as a citizen, there is no such protection. The court found that government employers have the prerogative to control the job-related speech of those who work for them.

Justice David Souter dissented that this ruling could damage First Amendment protections in academic freedom cases brought by public university instructors, but the majority merely acknowledged that such a situation might deserve special consideration, without drawing a firm conclusion.

Subsequent to the 2006 ruling, the Chicago-based Seventh Circuit found that public school teachers had, as a result, lost their First Amendment academic freedom protection, while the Richmond-based Fourth Circuit came to the opposite conclusion when the teacher's speech involves issues of public concern. Dayton is in the Sixth Circuit, where the Court of Appeals has not yet addressed the question, so Rice had to pick between these competing views. He decided that the Fourth Circuit had the more persuasive view, and so applied First Amendment analysis to Evans-Marshall's claim.

That analysis, however, involves a test balancing the interest of the government employer in carrying out its functions with the employee's free speech interest in commenting on matters of public concern. Rice quickly determined that Evans-Marshall's actions involved First Amendment issues. Not only did she place *Heather Has Two Mommies* on a supplemental reading list; she also assigned two essays by former students—one graphically describing a rape, the other detailing the murder of a priest accompanied by desecration of sacred artifacts. The themes of all three raised "matters of public concern," Rice concluded.

However, Rice concluded that the balance of interests favored the prerogative of the school district in exercising control over the curriculum, rejecting Evans-Marshall's argument that under the First Amendment an individual high school teacher has total freedom in selecting what to assign. He pointed out that the elected school board is accountable to the public for such decisions, and empowered by the state to make them.

The judge also found convincing evidence that Evans-Marshall's relationship with the principal, rather than her specific reading assignments, were the cause for non-renewal of her contract, even if the disagreement about those assignments aggravated their relationship. Reported in: *Gay City News*, August 14.

Maryville, Tennessee

The U.S. Court of Appeals for the Sixth Circuit on August 20 affirmed a district court's grant of summary judgment to a Tennessee public high school in a lawsuit brought by three students who claimed the school's ban on wearing the Confederate flag violated their First Amendment, Equal Protection, and Due Process rights under the U.S. Constitution. The students had argued that they wanted to wear the flag on their clothing to express their pride in their southern heritage.

Students Derek Barr, Chris White, Roger Craig White and their parents said in a lawsuit their free speech rights were violated by the 2005 flag ban at William Blount High School in Maryville, about 15 miles south of Knoxville.

The Sixth Circuit carefully limited its holding in the case:

> We caution, however, that our decision today does not establish a precedent justifying a school's ban on student speech merely because other students find that speech offensive: we simply hold that the school's dress code as applied to ban the Confederate flag is constitutional because of the disruptive potential of the flag in a school where racial tension is high and serious racially motivated incidents, such as physical altercations or threats of violence, have occurred.

The court reasoned that there was no First Amendment violation because "the school reasonably forecast that images of the Confederate flag would substantially and materially disrupt the school environment," held that the Equal Protection guarantee was not infringed because "the dress code's ban on racially divisive symbols" satisfied intermediate scrutiny, and determined that the students had forfeited their Due Process claim by not sufficiently developing it.

In 2003, the Fourth Circuit upheld the dismissal of a suit filed by Matthew Dixon, a man who was fired for displaying Confederate flag stickers at work. South Carolina's Coburn Dairy, Inc., fired Dixon for continuing to display the stickers on his toolbox after a black co-worker complained. Dixon argued that the company violated his First Amendment rights and state employment laws, but the company maintained that Dixon was fired because he violated the company's harassment policy. Reported in: *Jurist*, August 21; Associated Press, August 21.

colleges and universities

Los Angeles, California

A federal judge has decided that the University of California can deny course credit to applicants from Christian high schools whose textbooks declare the Bible infallible and reject evolution. Rejecting claims of religious discrimination and stifling of free expression, U.S.

District Court Judge James Otero of Los Angeles said UC's review committees cited legitimate reasons for rejecting the texts—not because they contained religious viewpoints, but because they omitted important topics in science and history and failed to teach critical thinking.

Otero's August 8 ruling, which focused on specific courses and texts, followed his decision in March that found no anti-religious bias in the university's system of reviewing high school classes. Now that the lawsuit has been dismissed, a group of Christian schools has appealed Otero's rulings to the U.S. Court of Appeals for the Ninth Circuit in San Francisco.

"It appears the UC is attempting to secularize private religious schools," attorney Jennifer Monk of Advocates for Faith and Freedom said. Her clients include the Association of Christian Schools International, two Southern California high schools and several students.

Charles Robinson, the university's vice president for legal affairs, said the ruling "confirms that UC may apply the same admissions standards to all students and to all high schools without regard to their religious affiliations." What the plaintiffs seek, he said, is a "religious exemption from regular admissions standards."

The suit, filed in 2005, challenged UC's review of high school courses taken by would-be applicants to the 10-campus system and by applicants to the 23-campus California State University, which accepts the UC's review. Most students qualify by taking an approved set of college preparatory classes; students whose courses lack UC approval can remain eligible by scoring well in those subjects on the Scholastic Assessment Test.

Christian schools in the suit accused the university of rejecting courses that include any religious viewpoint, "any instance of God's guidance of history, or any alternative . . . to evolution."

But Otero said in March that the university has approved many courses containing religious material and viewpoints, including some that use such texts as *Chemistry for Christian Schools* and *Biology: God's Living Creation*, or that include scientific discussions of creationism as well as evolution.

UC denies credit to courses that rely largely or entirely on material stressing supernatural over historic or scientific explanations, though it has approved such texts as supplemental reading, the judge said.

For example, in the most recent ruling, the judge upheld the university's rejection of a history course called Christianity's Influence on America. According to a UC professor on the course review committee, the primary text, published by Bob Jones University, "instructs that the Bible is the unerring source for analysis of historical events" and evaluates historical figures based on their religious motivations.

Another rejected text, *Biology for Christian Schools*, declares on the first page that "if (scientific) conclusions contradict the Word of God, the conclusions are wrong," Otero said. He also said the Christian schools presented no evidence that the university's decisions were motivated by hostility to religion.

UC attorney Christopher Patti said that the judge assessed the review process accurately. "We evaluate the courses to see whether they prepare these kids to come to college at UC," he said. "There was no evidence that these students were in fact denied the ability to come to the university."

But Monk, the plaintiffs' lawyer, said Otero had used the wrong legal standard and had given the university too much deference. "Science courses from a religious perspective are not approved," she said. "If it comes from certain publishers or from a religious perspective, UC simply denies them." Reported in: *San Francisco Chronicle*, August 12.

Dover, Delaware

A federal judge has ruled that the University of Delaware violated a student's free-speech rights when it suspended him for content on his webpage. But the judge awarded only $10 to Maciej Murakowski, saying that his suspension, in April 2007, was justified because of his other actions, including ignoring an order not to return to his dormitory. At the time, Murakowski was already on disciplinary probation. He had originally sought damages and reinstatement at Delaware, but his suspension ended long ago, and he returned to the university earlier this year.

Delaware suspended Murakowski shortly after the Virginia Tech shootings for violating its policies on disruptive conduct and computer use. Among other things, his webpage contained a detailed description of how to skin a cat and jokes about rape, kidnapping, and torture. Reported in: *Chronicle of Higher Education* online, September 8.

Miami, Florida

A federal judge has struck down a Florida law that restricts students, faculty members, and researchers at the state's public colleges and universities from traveling to Cuba and four other countries that the U.S. government considers terrorist states.

The American Civil Liberties Union of Florida had challenged the law in court on behalf of the Faculty Senate at Florida International University, arguing that the statute violated faculty members' First Amendment rights and impinged on the federal government's ability to regulate foreign commerce.

The two-year-old law prevents students, professors, and researchers at public universities and community colleges in Florida from using state or federal funds, or private foundation grants administered by their institutions, to travel to Cuba, Iran, North Korea, Sudan, and Syria. Those at private colleges in Florida are forbidden to use

state funds for that purpose.

The decision, issued August 28 by the U.S. District Court in Miami, reversed an earlier ruling upholding the ban. In her order, Judge Patricia Seitz upheld one aspect of the law: State funds may not be used for travel to those countries. But nearly all such trips rely on private funds.

Judge Seitz agreed with the ACLU's argument that the state should not be allowed to regulate travel financed with private funds and that the Florida Legislature could not interfere with federal foreign-relations powers.

"It's a blow for academic freedom," Thomas Breslin, a professor of international relations and chairman of Florida International University's Faculty Senate, said of the decision.

The law was passed in 2006 after a Florida International professor and his wife, a university employee, were accused of spying for Cuba. Reported in: *Chronicle of Higher Education* online, August 29.

Philadelphia, Pennsylvania

A federal appeals court ruled August 4 that a sexual-harassment policy that Temple University abandoned early last year was unconstitutionally broad and violated students' freedom of expression.

The Philadelphia-based U.S. Court of Appeals for the Third Circuit—upholding a district court's March 2007 decision—said the university's policy could have stopped its students from making legally protected speech. The case was brought two and a half years ago by a former Temple graduate student, Christian M. DeJohn, who said his conservative views were unwelcome at the university.

The policy's definition of sexual harassment, the appeals court wrote, was "sufficiently broad and subjective" that it "could include 'core' political and religious speech, such as gender politics and sexual morality." The court said the policy had no test to differentiate between speech that was merely "offensive" or "hostile" and speech that actually resulted in a hostile work environment.

The decision has no immediate effect because Temple had revised its sexual-harassment policy shortly before the case went to trial. But the conservative legal-advocacy group that filed the suit on behalf of DeJohn, the Alliance Defense Fund, called the decision a victory against university-sponsored discrimination.

"Christian and conservative students shouldn't fear discrimination or censorship by university officials simply for expressing their beliefs," said Nate Kellum, a lawyer for the Alliance Defense Fund, in a written statement. "The university is a 'marketplace of ideas' where all viewpoints are welcomed, and this significant ruling makes that clear."

The ruling deals with only a small portion of DeJohn's original case. DeJohn, who had failed to receive a master's degree in military history at Temple, initially sued the university and two of his professors, asserting that they had prevented him from obtaining a degree in retaliation for his conservative political views. That part of the case was dismissed last year.

A Temple spokesman, Raymond Betzner, said in a statement that the university was "disappointed" with the ruling. But he said that the ruling leaves the university's current sexual harassment policy in effect and that DeJohn's original claims of political discrimination remain unfounded. Betzner said it was doubtful that the university would appeal the decision.

Temple had urged the appeals court to declare the case moot because the contested policy was no longer in place and DeJohn was no longer a student at the university. But the Third Circuit panel's three judges, noting that Temple abandoned its original policy only as the trial approached and "continues to defend" the constitutionality of and need for the original policy, said they had been "left with no assurance that Temple will not reimplement its pre–January 15 sexual harassment policy, absent an injunction, after this litigation is complete."

In dissecting the university's original policy, the appeals panel found it to be flawed in numerous ways. The court first zeroed in on the fact that Temple's policy prohibited "expressive, visual or physical conduct of a sexual or gender-motivated nature" that not only has the "effect" but the "purpose" of "unreasonably interfering with an individual's work, educational performance, or status" or "of creating an intimidating, hostile or offensive environment."

Under Supreme Court precedents, the Third Circuit panel argued, potentially harassing speech must be shown to "cause actual, material disruption" before it is prohibited. "Under the language of Temple's policy, a student who sets out to interfere with another student's work, educational performance, or status . . . would be subject to sanctions regardless of whether these motives and actions had their intended effect." The ruling added: "[T]he Policy punishes not only speech that actually causes disruption, but also speech that merely intends to do so: by its terms, it covers speech 'which has the purpose or effect of' interfering with educational performance or creating a hostile environment. This ignores [a previous decision's] requirement that a school must reasonably believe that speech will cause actual, material disruption before prohibiting it."

More fundamentally, the court found, the language in Temple's discarded policy bars an overly broad range of activities. "[T]he policy's use of 'hostile,' 'offensive,' and 'gender-motivated' is, on its face, sufficiently broad and subjective that they 'could conceivably be applied to cover any speech' of a 'gender-motivated' nature 'the content of which offends someone,'" the judges wrote, borrowing language from a 2001 decision involving a public school system.

"Absent any requirement akin to a showing of severity or pervasiveness—that is, a requirement that the conduct objectively and subjectively creates a hostile environment

or substantially interferes with an individual's work—the policy provides no shelter for core protected speech," such as that involving political or religious topics.

Robert M. O'Neil, executive director of the Thomas Jefferson Center for the Protection of Free Expression and an expert on higher education law, agreed that the Third Circuit's ruling would probably bring more scrutiny to colleges' policies. But while he described himself as an opponent of speech codes, O'Neil characterized the court's decision as "very ominous" because it so casually cast aside Temple's policy without hardly any consideration of whether DeJohn was hurt by it.

Not only did the court not show that the now-abandoned policy affected DeJohn, O'Neil said, but the panel's ruling did not even note that the Temple policy exposed violators to penalties. "There is no proof that this plaintiff was in any way put at risk or threatened or even reasonably felt threatened by the existence of the policy," O'Neil said, adding that a finding of such a threat is a "standard prerequisite in First Amendment litigation, including those cases that have invalidated genuinely coercive speech codes."

"I'm baffled that the court made no reference either to what consequences he might have faced or to any attempt to demonstrate that this particular plaintiff had said or was likely to say things that might bring the sexual harassment policy down on his head," O'Neil added.

He said he was concerned that the Third Circuit's casual dispatching of the Temple policy could "prevent public institutions from adopting and articulating standards and expectations of civility and collegiality if they contain any language that a court might construe to be restrictive with respect to expression." Reported in: *Chronicle of Higher Education* online, August 5; insidehighered.com, August 5.

political expression

Providence, Rhode Island

A federal judge has struck down a state law that allowed police chiefs to remove political campaign signs from the side of public roadways at their discretion.

U.S. District Court Judge William E. Smith ruled that the law unconstitutionally infringed on the freedom of speech by letting police chiefs decide who can post signs, but not listing criteria chiefs should use in making that decision.

Rodney D. Driver, whom Smith described as a perennial candidate for Congress, filed suit after Richmond Police Chief Raymond A. Driscoll removed campaign signs that Driver had placed on private property across the street from the entrance to the Washington County Fair in 2006.

"I thought it outrageous that a police chief could decide who may or may not post political signs, and then tear down those he disapproved of," Driver said yesterday in a statement issued by the Rhode Island Affiliate of the American Civil Liberties Union, which represented Driver in court.

Driver's suit targeted a section of state law that bans the placement of political signs—or other markings, including commercial signs and graffiti—in three locations: on traffic signs, on private property without the owner's consent and in or along public roads without the police chief's consent.

The state argued in court that the law is needed to prevent signs from encroaching on roadways and becoming a safety hazard.

The judge didn't see it that way.

"The state's reading of the statute is overly generous, to say the least," Smith wrote in a 25-page opinion dated July 31. "The statute makes no mention of traffic safety, or any other purpose justifying the restrictions, and sets forth no standards based on the characteristics of a proposed sign, i.e. color, size or shape. It vests chiefs of police with unfettered discretion, unconnected to any standards related to safety or any other legitimate consideration."

Smith cited a 1969 U.S. Supreme Court decision that held, "An ordinance which makes the peaceful enjoyment of freedoms which the constitution guarantees contingent upon the uncontrolled will of an official is an unconstitutional censorship."

"Ultimately, allowing the statute to stand would be an endorsement of a 'trust me because I am the Chief of Police' standard," Smith wrote. He noted that the Supreme Court rejected that thinking in a 1988 case.

But, Smith noted, restricting the placement of signs near roadways does not, by itself, violate the First Amendment's guarantee of free speech. Instead, the judge wrote, the law was faulty because it lacked objective criteria for chiefs to apply when deciding on the placement of signs. He observed that further legislation or regulations could bring the statute into compliance with the Constitution. Reported in: *Providence Journal*, August 6.

prior restraint

Cambridge, Massachusetts

On August 19, a federal judge lifted a gag order that had prevented three Massachusetts Institute of Technology (MIT) students from disclosing academic research regarding vulnerabilities in Boston's transit fare payment system. The court found that the Massachusetts Bay Transportation Agency (MBTA) had no likelihood of success on the merits of its claim under the federal computer intrusion law and denied the transit agency's request for a five-month injunction.

In papers filed the day before, the MBTA acknowledged for the first time that their Charlie Ticket system had vulnerabilities and estimated that it would take five months to fix.

The ruling lifted the restriction preventing the student researchers from talking about their findings regarding the security vulnerabilities of Boston's Charlie Card and Charlie Ticket—a project that earned them an "A" from renowned

computer scientist and MIT professor Dr. Ron Rivest. The Electronic Frontier Foundation (EFF) represented the students as part of its Coders' Rights Project.

"We're very pleased that the court recognized that the MBTA's legal arguments were meritless," said EFF Legal Director Cindy Cohn, who argued at the hearing. "The MBTA's attempts to silence these students were not only misguided, but blatantly unconstitutional."

The students had planned to present their findings at DEFCON, a security conference held in Las Vegas, while leaving out key details that would let others exploit the vulnerability. The students met with the MBTA about a week before the conference and voluntarily provided a confidential vulnerability report to the transit agency.

However, the MBTA subsequently sued the students and MIT in United States District Court in Massachusetts less than 48 hours before the scheduled presentation, without providing any advance notice to the students. The lawsuit claimed that the students' planned presentation would violate the Computer Fraud and Abuse Act (CFAA) by enabling others to defraud the MBTA of transit fares. A different federal judge, meeting in a special Saturday session, ordered the trio not to disclose for ten days any information that could be used by others to get free subway rides.

"The judge today correctly found that it was unlikely that the CFAA would apply to security researchers giving an academic talk," said EFF Staff Attorney Marcia Hofmann. "A presentation at a security conference is not some sort of computer intrusion. It's protected speech and vital to the free flow of information about computer security vulnerabilities. Silencing researchers does not improve security—the vulnerability was there before the students discovered it and would remain in place regardless of whether the students publicly discussed it or not."

Although the gag order was lifted, the MBTA's litigation against the students still continues. The students have already voluntarily provided a 30-page security analysis to the MBTA and have offered to meet with the MBTA and walk the transit agency through the security vulnerability and the students' suggestions for improvement.

"The only thing keeping the students and the MBTA from working together cooperatively to resolve the fare payment card security issues is the lawsuit itself," said EFF Senior Staff Attorney Kurt Opsahl. "The MBTA would be far better off focusing on improving the MBTA's fare payment security instead of pursuing needless litigation." Reported in: Electronic Frontier Foundation Media Release, August 19.

insults

Portland, Oregon

Yelling homophobic or racist names is free speech protected by the Oregon Constitution if the insults don't lead to violence.

In a unanimous ruling, the Oregon Supreme Court struck down a provision of the state harassment law that prohibited insulting a person publicly in a way likely to merely provoke violence. Oregon law does not make the threat of violence a legal issue when it comes to insulting speech or name calling, unless such violence is imminent, the court said.

The Oregon chapter of the American Civil Liberties Union said the lack of any requirement that violence be threatened was a fatal flaw in a law the ACLU warned legislators against adopting years ago.

"The law was written broadly enough that it swept in speech that was protected as well as speech that could be threatening," said Dave Fidanque, ACLU executive director in Oregon.

William Johnson had appealed his conviction for shouting names at two women—one black and one white—whom he presumed were lesbians. They moved in front of his pickup when a country road narrowed from two lanes to one in heavy traffic, and Johnson responded by calling them insulting names using amplified sound equipment.

As the rush-hour traffic slowed to stop-and-go, one woman got out of the car to confront Johnson, who used a string of homophobic and racist names to insult her. The woman testified she believed Johnson was trying to incite her to violence.

But she returned to her car when her companion intervened and told her a teenager in the bed of Johnson's pickup was swinging a skateboard in a menacing way.

In the opinion by Justice W. Michael Gillette, the court noted that, despite the epithets, Johnson "did not verbally threaten the woman with violence and no actual violence took place."

Gillette wrote that "harassment and annoyance are among common reactions to seeing or hearing gestures or words that one finds unpleasant." But he added, "Words or gestures that cause only that kind of reaction, however, cannot be prohibited in a free society, even if the words or gestures occur publicly and are insulting, abusive, or both." Reported in: *Seattle Times*, August 15.

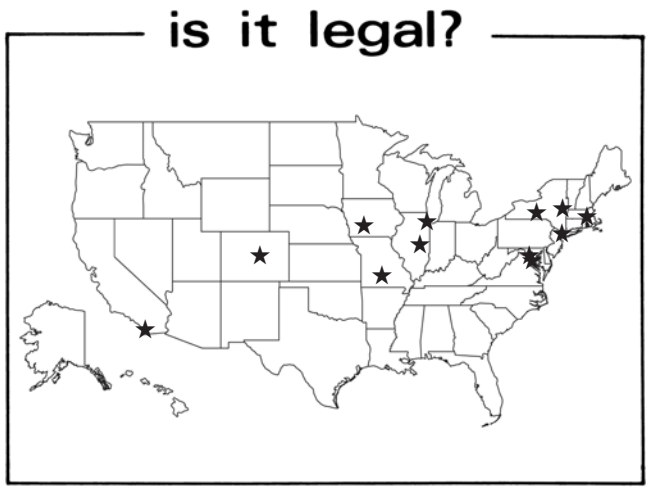
shield law

Billings, Montana

A District Court judge found September 3 that the state shield law that protects reporters from disclosing anonymous sources also protects the identity of anonymous commenters on a newspaper's website.

Judge G. Todd Baugh granted a motion filed by *The Billings Gazette* to quash a subpoena that sought information

(continued on page 259)



library

Frederick County, Maryland

A week after removing two public-access computers from the Frederick County Public Libraries' C. Burr Artz Library, the FBI obtained a court order to search the machines for clues to their July 24 use by Army scientist Bruce Ivins. A suspect in the 2001 anthrax letter attacks who killed himself July 29, Ivins was under surveillance by agents who observed him going to the library and accessing a website about the case, according to a search warrant request granted August 7 in the U.S. District Court for the District of Columbia.

The warrant specified that what is being sought was electronic evidence of "threats to witnesses related to the anthrax investigation, and obstruction of that investigation," allegedly by Ivins. The court document reveals that FBI agents observed Ivins visiting the Artz branch on the evening of July 24 and using library workstations 41 and 54; it went on to specify that "Special Agents of the FBI observed Dr. Ivins reviewing a website dedicated to the Anthrax Investigation and examining e-mail accounts."

The *New York Times* reported August 8 that the need for a court order to examine the library computers was the reason why investigators did not close the case after unsealing hundreds of documents two days earlier. The affidavit stated that the FBI was hoping to find electronic files or e-mails about plans to commit suicide and/or murder.

When the two FBI agents took the computers July 31, they did so without presenting a court order, although the library's normal procedure for such requests requires one. Director Darrell Batson said in the August 3 *Frederick News-Post* that he was persuaded to give the agents access after the case and situation was described to him. "They had an awful lot of information," he said, explaining that "It was a decision I made on my experience and the information given to me." Batson added that, while this was the third time the FBI has sought library records in his ten years with FCPL, it was the first time agents didn't bring a court order.

Ivins, a biodefense researcher at Fort Detrick, Maryland, killed himself July 29 as federal prosecutors planned to charge him with sending the anthrax-laden letters that killed five people and sickened 17 in the fall of 2001. Batson said the agents made no mention of Ivins, anthrax, or Fort Detrick. He went on to say, "Obviously it coincided with the events everyone is talking about," he said.

Although the library refused interview requests, FCPL officials issued a written statement about the FBI raid stressing that "no mention of any person or suspect was ever stated by either party, and FCPL continues to be unaware of the details of the FBI's investigation. Public-access computers are not connected to FCPL's library patron records. No library patron records were provided to the FBI. Library patrons' records are not made available to law enforcement authorities without a court order."

Articles in the *New York Times* and the *Washington Post* linked the removal of the library computers to the case against Ivins. ABC-TV affiliate WJLA reported August 4 that the FBI had been trailing Ivins and had seized his personal computers. Reported in: *American Libraries* online, August 8.

schools

Aurora, Colorado

The father of an Aurora fifth-grader said September 22 that he plans to sue after school officials suspended the youth when he wouldn't remove a home-made T-shirt reading "Obama a terrorist's best friend." "It's the public school system," Dann Dalton said, "let's be honest, it's full of liberal loons."

Eleven-year-old Daxx Dalton wore the crudely handwritten shirt the day Aurora Frontier K-8 students were urged to wear red, white, and blue to express their patriotism. School officials gave him a choice, he said, "switching the shirt, or wearing it inside out, or getting suspended."

"They're taking away my right of freedom of speech," Daxx said. "If I have the right to wear this shirt, I'm going to use it. And if the only way to use it is get suspended, then I'm going to get suspended."

The fifth-grader was "screaming and loudly arguing" with other students on the playground in a dispute over the T-shirt, which led to his suspension, according to a statement issued by the Aurora Public Schools district. The boy's sister wore a similar shirt at the school the same day and "did not disrupt learning," the statement said.

APS "[does] not suspend students for exercising their First Amendment rights," and in fact "students wear hundreds of shirt designs, including political shirts, without interruption to the school day," spokesperson Paula Hans said in the release. "Students at this school and throughout the district, have been wearing endorsement shirts for both presidential candidates. Because these shirts have not caused disruptions, students have not been asked to remove them."

Hans cited the APS dress code, which is reproduced in a student handbook for the district: "Any type of attire which attracts undue attention to the wearer, and thus causes a disturbance to the educational process is in bad taste and not acceptable. While preserving the individuality of our students is important, we also see the importance of preserving the educational process."

"School policy when clothing causes a disruption is to give students a choice to 'turn the shirt inside out or change into another shirt' before considering discipline," the statement added. "Because the shirt did cause a disruption, we offered the student these options." Hans declined comment to the Colorado Independent on any details of Daxx Dalton's suspension, citing student privacy laws and policies, but a letter from the school cited "willful disobedience" as a reason for the suspension.

It's not about politics, Dann Dalton said, but about his son's First Amendment rights. "The facts are, his rights were violated," he said. "Period."

It wasn't the first time Dalton, a self-described "proud conservative," has made news testing the limits of First Amendment expression. Dalton was among a group of anti-abortion protesters who marched through an Arapahoe County neighborhood to protest a Planned Parenthood doctor in July 2000. The protest came in response to a law passed that week by the Arapahoe County Commission that banned "targeted picketing" outside the physician's home. The picketers had been gathering at least once a month in the doctor's cul-de-sac.

Aurora schools are no strangers to free speech controversies sparked by conservative students, either. Two years ago in the neighboring Cherry Creek School District, a high school geography teacher made international headlines after a student recorded a lecture that included comparisons between the speaking styles of George Bush and Adolph Hitler.

The student, Sean Allen, passed the recording to a radio station and soon Fox News was airing it while blasting the Overland High School teacher for "indoctrinating" students. The recording included the teacher, Jay Bennish, asking, "Who is probably the single most violent nation on planet Earth?" He agreed when a student said, "We are."

A media circus descended upon Aurora and talk radio shows went wild over a number of Bennish's statements. When students walked out of class in support of their teacher, Fox commentator Alan Colmes claimed students had walked out to protest his views. Bennish flew to New York for an interview with the Today Show's Matt Lauer, where he said his comments were taken out of context and included contrary views expressed after the recording ended.

Civil rights lawyer David Lane represented Bennish, who contested a suspension from the classroom for failing to provide varying viewpoints for students. The school board reinstated Bennish, who agreed to change his teaching style.

Daxx Dalton said he's willing to leave his anti-Obama shirt at home for a while. "Except on Election Day," he said, "when I'm going to wear it again." Reported in: *Colorado Independent*, September 23.

Mountain Grove, Missouri

With the start of school comes reminders of the rules, like what students can wear and how they should act inside school walls. At Mountain Grove Middle School, those rules are the reason a student is back home when school has barely started.

Amelia Robbins, 12, is a star student who always does her homework, her chores and her hair. While the style changes at will, she takes the color seriously. "My father passed away when I was 6 years old, and I find the color pink is the cancer color and he died of cancer," she said.

When Amelia finished 6th grade with streaks in her hair, Mountain Grove Middle School administrators weren't fans. "He said, 'Okay, it's fine this time but don't do it again,'" said Amelia. Over the summer, with her mother's permission, Amelia dyed her whole 'do. The color controversy was not forgotten, however, and her school year stopped days after it started.

"He said, 'You're suspended until you can change your hair.' I don't feel like I should have to, because I'm expressing myself as an individual, because they constantly tell us, 'Be different, don't follow the crowd,'" said Amelia.

"If it's something that's getting in the way," said Principal J.T. Hale, "we try to address it and curtail it as soon as we can."

Administrators' authority over distractions is in the school handbook. Amelia says it lacks specifics, however. "Lay it plain and simple in the handbook: 'You're not allowed to have these shades of color—pink, green, whatever.' But pink could be a shade of red, so can redheads not go to school?" asked Amelia.

"We want it to be equal for everybody, nobody getting any more attention than anyone else, and we just go on with

the process of education," said Hale.

The biggest question now is Amelia's education. "I really want to get back to school so I don't have to make up too much work but I'm willing to not be in school to resolve this case," she said. And she thinks that's fine with her inspiration (her dad). "I think he's probably really proud, because I'm fighting for something," she said. Reported in: KY3 News, August 20.

colleges and universities

San Diego, California

The University of San Diego's turnabout on the appointment of a prominent feminist theologian to a visiting professorship in its religious-studies department has brought to a head again a long-simmering debate among Roman Catholic colleges over how to balance the interests of academic freedom and adherence to church teaching.

Officials of the 7,000-student institution said the theologian's appointment had never been approved by top administrators in the first place, blaming miscommunication between the department and the provost's office. But their decision in July to rescind the offer, like the initial announcement of the appointment itself, ignited passions on both sides of a debate that has persisted for decades.

The scholar at the center of the controversy, Rosemary Radford Ruether, is a leading Catholic feminist theologian and is on the board of an organization that advocates abortion rights. University officials cited that membership when they rejected calls by some faculty members to reinstate the appointment.

A department chair at the university had offered the appointment, a semester-long teaching position, to Ruether last spring. But the university rescinded that offer after a series of public and private complaints from conservative Catholic groups and others, saying Ruether's membership on the board of an organization that advocates abortion rights put her at odds with the teachings of the church.

Supporters of Ruether presented university officials with a petition with more than 2,000 signatures, including 54 faculty members, asking that the university restore its offer or allow her to give a lecture on academic freedom.

At the same time, many other Roman Catholics applauded the university for holding its ground as a Catholic institution.

The visiting professorship, an endowed position known as the Msgr. John R. Portman Chair in Roman Catholic Theology, would have involved teaching one course, giving a public lecture, and serving as a mentor to other faculty members during the Fall 2009 semester.

Pamela Gray Payton, a spokeswoman for the university, said a department chair had offered Ruether the position, and a dean of the College of Arts & Sciences had confirmed the appointment. Faculty members in the religious-studies department supported the decision, she said, but top university officials did not learn about the appointment until it was announced on the department's website. The dean neglected to receive final approval from the provost, which is the normal procedure, she said.

"This one got past us, quite frankly," Payton said. "Normally, it would never have come to this."

American Catholic universities have varying degrees of independence from the Catholic Church, which has said that the values of academic freedom must be founded on fidelity to the church's doctrine. Even elsewhere within the University of San Diego's theology department, several professors have published feminist views.

The endowed chair carries special requirements that are not imposed on all faculty positions, Payton said. The agreement that established the chair in 1999, she said, states that its holder must be somebody who "thinks with the Church in the fullest sense of the term." Ruether's membership on the board of an abortion-rights organization, Catholics for Choice, directly opposes this description, she said.

But not all Catholic educators endorse strict adherence to official policies of the church. The latest round in the debate stems from a 1990 document released by Pope John Paul II that defended academic freedom but also called on colleges to remain faithful to church teachings. He left it to local bishops to decide how institutions should live up to those instructions.

The current pope, Benedict XVI, also embraced "the great value of academic freedom" during his recent visit to the United States but made clear that he did not believe it could be used "to justify positions that contradict the faith and teaching of the church." Many Catholic educators were relieved that Pope Benedict did not take a hard line, even though his remarks left unresolved the debate over the mission of Catholic colleges and universities.

Lucia A. Gilbert, the provost at Santa Clara University, an 8,000-student Jesuit institution in California, said that fostering a dialogue on campuses was more important than making sure church teachings were strictly followed. "I can't imagine I'd be in a situation to say we don't want to hire this person because we have some alums who are not going to like their views. That's just not right," Gilbert said. "What you do as a provost and a president is, it's your responsibility to ensure the academic freedom of your campus."

But the University of San Diego's actions drew support from Roman Catholics who had said Ruether's appointment would have been inappropriate. Tom Mead, executive vice president of the Cardinal Newman Society, which regularly pressures Catholic colleges to adhere more closely to church doctrine, said that in changing its mind, the university was heeding Pope Benedict's call for Catholic universities to commit to "an academic freedom informed by truth."

"The bottom line is that this story is not about academic freedom, rather it is about dissenting Catholics wanting

USD to betray its Catholic identity," Mead said. Reported in: *Chronicle of Higher Education* online, August 22.

Chicago, Illinois

Following accusations by conservative political writer Stanley Kurtz that the University of Illinois at Chicago blocked his access to documents that might portray presumptive Democratic presidential nominee Barack Obama in an unpatriotic light, the university issued a statement August 22 that the material will be "available for public inspection" August 26.

Charging that UIC's Richard J. Daley Library prevented him from examining materials that might connect Obama's political agenda with those of radical activist William Ayers, Kurtz had demanded that UIC "take immediate public steps to insure the safety of the Chicago Annenberg Challenge records, to release the identity of the collection's donor, and above all to swiftly make the collection available to me, and to the public at large."

The UIC statement said that "authority to grant public access to the archives was recently called into question" but that "university officials promptly initiated a thorough inquiry into the legal circumstances of the gift and its custody of the documents. Pending resolution of this challenge, access to the archives in their secure location was temporarily suspended." It added that the university has "determined that the terms of the gift have been fulfilled and that it has the legal authority to allow public access to its archive of Chicago Annenberg Challenge documents in accordance with the customary procedures of the Special Collections Department of the UIC library."

Established largely through the efforts of Ayers, the Chicago Annenberg Challenge was a nonprofit public–private partnership founded in 1995 to improve school performance. Now a professor of education at UIC, Ayers is also an unapologetic former member of the Weather Underground, a leftist organization that organized a riot in Chicago in 1969 and bombed buildings in the 1970s. Obama served as the CAC board's first chair; he remained on the board until the project ended in 2001 but has denied any ties with Ayers's radical past.

Kurtz claimed in the August 18 *National Review Online* that he was "assured by a reference librarian that, although I have no UIC affiliation, I would be permitted to examine the records." But after making an appointment and arranging a trip to Chicago, he "received an e-mail from the special-collections librarian informing me that she had 'checked our collection file' and determined that 'access to the collection is closed.'" Once in Chicago, Kurtz said, he was greeted with a message from Ann C. Weller, professor and head of special collections, indicating that no one currently has access to the collection because "it has come to our attention that there is restricted material in the collection. Once the collection has been processed it will be open to any patron interested in viewing it."

The *Chicago Tribune* reported August 21 that Chicago Mayor Richard M. Daley was asked at an August 20 press conference if he supported access to the CAC collection in the library, which bears the name of his late father, mayor of Chicago from 1955 to 1976. Daley urged instead that people should stop trying to align Obama with radical activities that took place during "a terrible time [for] our country."

Although UIC is a publicly supported institution, the Daley Library is not a public library per se. UIC rules governing the use of special collection materials require "permission from the copyright owner before making any public disclosure of the contents." The acquisition of materials does not automatically give the library the legal right to open the materials to the public or to reveal the identify of the donor or other confidential information that might be embedded in the documents.

The campaign of Republican presidential candidate John McCain issued a statement urging Obama to call for the release of the documents. The Associated Press reported August 21 that the Obama campaign said the senator has no control over the UIC documents, but "we are pleased the university is pursuing an agreement that would make these records publicly available." Reported in: *American Libraries* Online, August 22.

Urbana-Champaign, Illinois

Sporting an Obama or McCain button? Driving a car with one of the campaigns' bumper stickers? You might need to be careful on University of Illinois campuses.

The university system's ethics office sent a notice to all employees, including faculty members, telling them that they could not wear political buttons on campus or feature bumper stickers on cars parked in campus lots unless the messages on those buttons and stickers were strictly nonpartisan. In addition, professors were told that they could not attend political rallies on campuses if those rallies express support for a candidate or political party.

Faculty leaders were stunned by the directives. Some wrote to the ethics office to ask if the message was intended to apply to professors; they were told that it was. At Illinois campuses, as elsewhere, many professors do demonstrate their political convictions on buttons, bumper stickers and the like.

Cary Nelson, a professor at the Urbana-Champaign campus and national president of the American Association of University Professors, said he believes he is now violating campus policy when he drives to work because he has a bumper sticker that proclaims: "MY SAMOYED IS A DEMOCRAT."

Mike Lillich, a spokesman for the university system, said President Joseph White was asked about the ethics memo this week and that he understands why faculty members are concerned. "The campus traditions of free speech

are very different from the DMV," said Lillich.

White told professors he thinks "this is resolvable," and they should use "common sense." But for now, Lillich said of the policy sent to all employees, "officially, it does apply."

Nelson and other professors were circulating a draft statement outlining their objections to the ethics rules. "Although these rules are not at present being enforced, the AAUP deplores their chilling effect on speech, their interference with the educational process, and their implicit castigation of normal practice during political campaigns," the draft says.

It adds: "The Ethics Office has failed to recognize and accurately define both the special context of a university and the role of its faculty members. Campus education requires that faculty and students have comparable freedom of expression on political subjects. This applies not only to obvious contexts like courses on politics and public policy in a variety of departments but also to the less formal settings in which faculty and students interact. . . . As the rules stand, students can exercise their constitutional rights and attend rallies and wear buttons advocating candidates, but faculty cannot. . . . [S]tudents might attend campus rallies and later analyze them in a classroom. Are faculty members to have no experience of the rallies themselves? Finally, it is inappropriate to suggest that faculty members function as employees whenever they are on campus. Faculty often move back and forth between employee responsibilities and personal acts within the same time frame."

Debate over the appropriate limits for political activity on campus is nothing new, of course. Most controversies involve actions that could be viewed as aligning an institution with a candidate. For instance, this week, the University of Massachusetts at Amherst called off a chaplain's efforts to recruit students to work for the Obama campaign and to get credit for the experience. But while such disputes come up every election year, they tend not to involve the bumper stickers on professors' cars or the buttons on their lapels.

The American Council on Education publishes guidance each election season on the latest legal standards about political activity and higher education. For instance, the council recommends that colleges not engage in activities such as endorsing candidates, placing signs on behalf of candidates on university property, or reimbursing university employees for contributions to specific candidates. Such actions could imply an endorsement by the institution, the guidance notes. With regard to activity by individual faculty members and administrators, the council said that it was important to avoid actions that "would be perceived as support or endorsement by the institution."

Ada Meloy, general counsel at the American Council on Education, said that the guidelines published by the ACE focus on Internal Revenue Service requirements for tax-exempt organizations. While she saw nothing there that would limit a professor's right to wear a button or attend a rally, she said that Illinois statutes may impose more limits.

The norm for regulation of faculty members is to bar the use of institutional or public funds or facilities on behalf of candidates, she said. One possibility, she said, may be that Illinois is especially sensitive to these issues because Obama is one of its senators.

Lillich, the system spokesman, said he knew of no controversies over inappropriate political activity that might have prompted the rules. Reported in: insidehighered.com, September 24.

Creston, Iowa

Steven Bitterman was on his way to teach a course in Western civilization at Southwestern Community College in Creston last fall when his car slipped off the road. By the time he got back on the road, Bitterman's clothes were muddy, so he returned home to clean up. That's where he got a telephone call from one of the college's vice presidents, saying he had been fired.

Three students, the vice president told Bitterman, were offended because he had told his class that people could more easily appreciate the biblical story of Adam and Eve if they considered it a myth. "She said the students and their parents had threatened to sue the school, and sue me, and she said: 'We don't want that to happen, do we?'" said Bitterman, who had been an adjunct professor at the Iowa college since 2001. "She told me I was supposed to teach history, not religion, and that my services would no longer be needed."

Several adjunct and full-time professors who work off the tenure track have been fired after saying something, as Bitterman did, that offended students or administrators. The instructors argue that their words would have been protected by academic freedom if they had had tenure. But because they don't, colleges can fire them on the spot or simply not renew their contracts—without even telling them why. In most cases, the instructors say they have no way to fight back short of engaging in an expensive legal battle.

But that may be changing. A handful of instructors are challenging colleges with help from unions and advocacy groups. The American Humanist Association, which supports nontheism, backed Bitterman in his charge that Southwestern had unfairly terminated him. In August, the association helped him secure a $20,000 settlement. (Patrick Smith, a lawyer for Southwestern, said the college settled merely to avoid litigation and "denies it did anything improper" in firing Bitterman.)

The American Association of University Professors is also paying more attention to the academic freedom of instructors who work off the tenure track. Such instructors now make up nearly 70 percent of the nation's professoriate.

The instructors who have been fired typically have been terminated after discussing hot-button issues: the

Israeli–Palestinian conflict, religion, and homosexuality, for example. Gary Rhoades, who will take over as general secretary of the AAUP in January, said it is dangerous not to extend academic freedom to instructors. "We're compromising the quality of a college education," he adds, "if we're saying to a large portion of the academic work force: Don't offend anyone."

The AAUP's 1940 Statement of Principles on Academic Freedom and Tenure says professors should be free to discuss pertinent subjects in the classroom and to comment critically on a university's operations without being punished. Academic freedom has always been closely tied to tenure, which until recently protected the overwhelming number of professors.

But as the number of full- and part-time instructors off the tenure track has grown, the AAUP has tried to steer universities into explicitly extending academic freedom to them as well.

In 2006, the association published a set of procedures it said universities should follow when terminating or simply not rehiring instructors. Universities, the procedures say, should tell instructors why they were not rehired and give them a formal opportunity to appeal the decision. At its meeting last June, the AAUP censured the University of New Haven for dismissing an adjunct professor who students said graded too harshly and was insensitive to their concerns. The university failed to investigate the students' complaints, said the AAUP, or to give the adjunct instructor access to its grievance procedures.

"We'll be pursuing more of these cases," said Cary Nelson, the association's president. "We need to ramp up our commitment."

Few institutions, however, appear to follow the AAUP's recommended procedures. University administrators say they do observe the principle of academic freedom for adjuncts, and that there frequently is more to the story of why particular instructors are shown the door. Some are unpopular with students and colleagues, while still others perform poorly in the classroom. Most work on short-term contracts, administrators point out, with no expectation of renewal.

Terri Ginsberg, however, said North Carolina State University led her to believe she would be considered for a tenure-track opening if she came to the campus last year for a full-time, nine-month position in its cinema-studies program. Not only did the university fail to consider her for the tenure-track job, she says, but it also did not reappoint her at all. Administrators and faculty members, she said, did not approve of her pro-Palestinian views—which she made clear when introducing the screening of a Palestinian-made film in a Middle Eastern film series she was hired to curate.

Ginsberg filed a formal grievance shortly before leaving the university, complaining that campus administrators had declined to rehire her because they disagreed with her views. But because she was no longer an employee by the time the university considered her complaint, the chancellor said she had no right to a hearing.

A group called the National Project to Defend Dissent and Critical Thinking in Academia—which also supported Norman G. Finkelstein, a DePaul University professor who was denied tenure in June 2007 after making controversial statements about the Holocaust—is circulating a petition that has gathered 700 signatures in support of Ginsberg. "We are hoping to get 1,000," says Steve Macek, an associate professor of speech communication at North Central College, who along with Ginsberg is a member of the Society for Cinema & Media Studies.

Larry A. Nielsen, North Carolina State's provost, said he could not comment on Ginsberg's allegations because they are part of "an active case." Ginsberg has asked the university's Board of Trustees to hear an appeal, and she is considering filing a lawsuit.

June Sheldon, an adjunct professor of biology, did file suit in July against the San Jose/Evergreen Community College District, claiming that San Jose City College violated her academic freedom. The college fired her last February following a student's complaint that in a class on heredity, Sheldon cited a German study that showed environmental factors might contribute to male homosexuality.

After the student complained, a dean at San Jose investigated the validity of Sheldon's statement by asking other biology professors at the college whether they agreed that environmental factors had anything to do with homosexual behavior. The lawsuit says the dean determined that Sheldon had taught "misinformation as science," and the college terminated her.

Both the Foundation for Individual Rights in Education and the Alliance Defense Fund—a conservative group that was founded by Christian leaders—have supported Sheldon. "The cornerstone of public higher education is the freedom of professors to discuss competing theories and ideas in the classroom," says the lawsuit the defense fund filed on Sheldon's behalf. "Unfortunately, at San Jose/Evergreen Community College District these freedoms do not exist."

While more adjunct instructors are challenging universities with the help of advocacy organizations, many others just try to move on with their lives after they are fired.

Teresa Knudsen taught English at Spokane Community College for 17 years, until she co-wrote an opinion article in a local newspaper in 2005 that said universities don't treat adjuncts well. Her department chairman, she said, called her in to his office and told her she had "offended" people at the college and said: "There are limits and consequences to freedom of speech." The following semester, Knudsen says, she simply was no longer on her department's teaching schedule.

Since then, she has worked at a day-care center and as an administrative assistant, and only recently paid a lawyer

to pursue a complaint against the community college, which she says violated her freedom of speech.

"When push comes to shove, we do not have academic freedom," Knudsen said. "We can be fired for what we say or what we teach." Reported in: *Chronicle of Higher Education* online, October 3.

Waltham, Massachusetts

At Brandeis University in Waltham, professor Donald Hindley—on the faculty for 48 years—teaches a course on Latin American politics. Last fall, he described how Mexican migrants to the United States used to be discriminatorily called "wetbacks." An anonymous student complained to the administration accusing Hindley of using prejudicial language—the first complaint against him in 48 years.

After an investigation, during which Hindley was not told the nature of the complaint, Brandeis Provost Marty Krauss informed Hindley that "The University will not tolerate inappropriate, racial and discriminatory conduct by members of its faculty." A corollary accusation was that students suffered "significant emotional trauma" when exposed to such a term.

An administration monitor was assigned to his class. Threatened with "termination," Hindley was ordered to take a sensitivity-training class. With no charges against him, no evidence of misconduct given him and no hearing, he refused—in the spirit of Supreme Court Justice Louis Brandeis, for whom this university is named.

A passionate protector of freedom of expression in a series of seminal Supreme Court opinions, Brandeis wrote in *Whitney* v. *California* (1972): "Those who won independence believed . . . that freedom to think as you will and to speak as you think are . . . indispensable to the discovery and spread of political truth."

The Brandeis Faculty Senate—joined by Brandeis's Committee on Faculty Rights and Responsibilities—objected to this assault on elementary fairness and academic freedom. So did the Massachusetts affiliate of the ACLU, and so did the university's student newspaper, *The Hoot,* declaring: "The administration's instant punitive response made Hindley's guilt a foregone conclusion. . . . With this kind of an approach, how will the University attract the high caliber professors who will be able to give the incoming classes of students the education they deserve? How will it draw students who want a free and open academic environment?"

Hindley said that despite the response of the faculty Senate and the committee on faculty rights, individual tenured members of his department, though outraged, would not stand up publicly on his behalf. One of them explained to him, "I'm about to retire." He and others fear retaliation.

In January, Krauss wrote Hindley—not with a pledge to give him a fair hearing, let alone an apology, but with this statement: "I trust (by now) you understand your responsibilities regarding the University's policies on nondiscrimination and harassment. The University now considers this matter closed." No, it isn't. Says Adam Kissel, director's of the Foundation for Individual Rights in Education (FIRE) Individual Rights Defense Program: "Brandeis has yet to explain how administrators could have so grossly misinterpreted normal classroom speech as 'harassment.' FIRE will pursue this matter until Brandeis finally applies basic standards of academic freedom and fair procedures to Donald Hindley's case." Reported in: *Sacramento Bee*, September 25.

Ithaca, New York

A sociology professor at Ithaca College who was denied tenure there twice says colleagues and administrators let their political views on the Israeli-Palestinian conflict get in the way of their judgments on her tenure bid.

The assistant professor, Margo Ramlal-Nankoe, has hired the same law firm that represented Norman G. Finkelstein, who was denied tenure at DePaul University last year after a highly public battle that focused on his critical writings about Israel. DePaul reached a settlement with Finkelstein last September.

Ramlal-Nankoe, who is from India and grew up in the Caribbean, teaches courses on women in the third world and on global race and ethnic relations, and has been a faculty adviser for a group called Students for a Just Peace, which opposes the Israeli occupation of the Palestinian territories. She does not consider herself either pro-Israel or pro-Palestine, her lawyer, Lynne Bernabei, said, "but many of the countries and societies she writes about are supportive of something other than Israeli policy, so she is tagged with that."

Bernabei's Washington, D.C., law firm, Bernabei and Wachtel, sent a letter in September to Ithaca's president and the chairman of its Board of Trustees, saying that both of Ramlal-Nankoe's tenure reviews were influenced by "blatant political lobbying against her based on her teachings on the Palestinian–Israeli conflict."

Specifically, the letter says that Ramlal-Nankoe was not deemed friendly to Israel by Howard Erlich, who retired in May after twenty years as dean of Ithaca's School of Humanities and Sciences. Erlich and Ramlal-Nankoe clashed, the letter says, because he considered the student group she advised and some speakers she invited to campus to be "anti-Israel."

The letter asked the college to grant Ramlal-Nankoe tenure or face a legal battle.

A spokesman for Ithaca College said he could not talk specifically about the professor's tenure case, citing the confidentiality of personnel matters. But he said tenure decisions were based solely on a professor's teaching, service, and scholarship.

The letter sent on behalf of Ramlal-Nankoe said it is clear the negative decisions on her tenure bid were politically motivated because the university flip-flopped on the formal reason it gave for why she didn't deserve tenure. After her first evaluation in 2006, the letter from Ramlal-Nankoe's lawyer said, the college said the professor had met the criteria for teaching but was deficient in her scholarship. After the assistant professor complained about "irregularities" in her tenure review—including what she called political influence by the then dean—the university agreed to evaluate her again in two years.

During that period, the letter says, Ramlal-Nankoe worked on her scholarship, completing two books (including one that was co-written with another scholar), and one peer-reviewed article. But when her tenure bid was reconsidered this year, a review panel in the sociology department said it had found "patterns of unevenness" in her teaching.

The letter says Ithaca's decision to deny her tenure violated Ramlal-Nankoe's academic freedom. "This is the kind of McCarthyism that is going around on campuses right now," said Bernabei. Reported in: *Chronicle of Higher Education* online, September 24.

Troy, New York

The e-mail messages wouldn't have won Donald Steiner any dinner invitations to the president's home.

In one e-mail to a faculty discussion group at Rensselaer Polytechnic Institute (RPI), Steiner—a research professor—responded to a recent message from President Shirley Jackson to the faculty by writing: "Sadly, I found more of the same subterfuge and insulting pabulum." And in an e-mail to Provost Robert Palazzo, copied to the faculty discussion group, Steiner wrote: "Should not a 'provost' be the advocate for the rights of all faculty? You have not done so. Therefore you are not a 'provost.' Should not a 'provost' uphold the Faculty Handbook procedures? You have not done so. Therefore, you are not a 'provost.' Should not a 'provost' be truthful in dealing with the faculty? You have not done so. Therefore you are not a 'provost.'"

For these e-mails, RPI took away Steiner's access to the institute's e-mail system.

In a letter sent to Steiner by Curtis N. Powell, vice president for human resources, citing only those e-mail messages, Powell said that the e-mails had violated two RPI rules. One states that "all members of the campus have the right not to be harassed by others." The other states that as a member of the campus community, responsibilities include "respect of the rights of privacy for all, respect for the diversity of the population and opinion in the community, ethical behavior, and compliance with all legal and institute restrictions regarding the use of information that belongs to others."

Faculty leaders say that Steiner's criticisms, while strongly worded, are tough dissent, not harassment. They note that in an era when some faculty critics attack presidents in anonymous blogs full of four-letter words, Steiner offered his critiques without hiding and without getting vile. Further, they note that in the context of intense debate over governance at RPI, kicking a critic off the RPI e-mail system reinforced the view that the administration won't tolerate dissent.

Over the last year, RPI's administration replaced the Faculty Senate when its members voted to give voting rights to those off the tenure track, and kicked off campus a controversial video art exhibit that upset College Republicans. Those decisions followed a debate over President Jackson that resulted in her narrowly avoiding a vote of no confidence.

Steiner—who has since become emeritus, a status that typically would qualify him for e-mail—said in an interview that he had been a strong supporter of the RPI administration, and noted that he had served at the university's request as chair of its last committee to prepare for an institutional accreditation review. But he said that when the university unilaterally eliminated faculty governance, "I felt compelled to express my concerns both as a faculty member and as the chair of the Middle States steering committee."

He added that he views the administration's action as "an act of retribution for my open criticism of their policies. I can also tell you that many senior faculty who disagree with the administration's actions fear retaliation and, therefore, will not express their concerns publicly."

William N. Walker, vice president for strategic communications and external relations at RPI, said in an e-mail that some of the e-mail messages in question "were offensive to other members of the university community," and noted that RPI's policies state that "all members of the campus have the right not to be harassed by others," or to be intimidated by others.

"As is written into our policies, Rensselaer supports free inquiry and expression by the users of its computer systems and networks. Rensselaer, however, reserves the right to take action against or deny access to its facilities to those whose use is not consonant with the purposes of the university or infringes on the rights of others," Walker added.

On the question of academic freedom, he said: "Academic freedom is among the most important values held by the Rensselaer community. Academic freedom goes beyond protecting the right of professors to speak freely in the university community. It also means that university administrators, students, and faculty are protected from harassment for expressing their own ideas."

Bruce Nauman, president of the Faculty Senate that the administration no longer recognizes, said that Steiner's criticisms were "quite lucid and not insulting or harassing." What the incident shows, Nauman said, is that "our administration is certainly not upholding the traditional standards

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libraries

San Juan Capistrano, California

A series of fantasy novels about a vampire and his teenage girlfriend were briefly banned September 26 from middle school libraries in the Capistrano Unified School District over concerns about age-appropriate content. However, the decision was reversed four days later without explanation, and the books remained on library shelves.

Stephenie Meyer's popular Twilight books, often compared to the Harry Potter series, were ordered removed from the district's 12 middle schools in an e-mail sent to library staff from Linda Myers, an instructional materials specialist for the district.

In the e-mail, she said Julia Gerfin, Capistrano Unified's coordinator of literacy programs, had recently reviewed the four-book Twilight series. "Julia has determined them to contain subject matter which is deemed too mature for our middle school-level students," the e-mail said.

Librarians were instructed to remove all books by Meyer from their collections and send them to the district office, where they were to be redistributed to the district's high school libraries.

But in a follow-up e-mail sent September 30, Gerfin instructed library staff to "disregard" the initial e-mail. She did not offer an explanation to library staff, but in a phone message left for a reporter, said, "We're not moving forward with moving the books to high school. I'm new at this job, and I already let the library techs know."

District spokeswoman Julie Hatchel said officials were looking into how the initial decision was made. "There's a process that we go through to determine the appropriateness of placement of library books, and we will go through that process to determine the best placement for these books," Hatchel said.

She added that the Twilight series had a reading level of eighth grade and up. Reported in: *Orange County Register*, September 30.

Windsor, Connecticut

A resident's requests to have a children's sex education book removed from the Main Library or relocated to a different section has been denied, an annual report from the Windsor Library Advisory Board to the Town Council revealed September 15.

According to library board chairman Michael Raphael, over the last year resident Timothy Bergsma made three separate requests to the board about the same book. Initially, Bergsma asked former library director Laura Kahkonen, who retired this summer, to remove the book. Citing library policy, she refused. Then Bergsma went to the library board that backed Kahkonen and voted unanimously to uphold the Library Development Collection Policy.

Adopted by the library board in 2007, the policy states: "while the library is aware that one or more persons may take issue with the selection of any items, the library does not have to remove from the shelves items purchased in accordance with the policy outlined here." The policy also states that the purpose of the materials collection at the Main Library is to "make available materials for educational, informational and recreational needs of the community."

In addition, it states that the library subscribes to the ALA *Library Bill of Rights*, which protects the intellectual freedom of minors. The ALA's Interpretation [Free Access to Libraries for Minors] states: "Library policies and procedures that effectively deny minors equal and equitable access to all library resources and services available to other users violate the *Library Bill of Rights*." Article V of the *Library Bill of Rights* reads: "A person's right to use a library should not be denied or abridged because of origin, age, background or views."

Raphael said the library board's response to the resident's requests was consistent with responses to similar complaints made in other towns. A letter of support was received by the board from Peter Chase of the Intellectual Freedom Committee, he noted. Subsequent to the original request, said Gaye Rizzo, the Main Library's new director, Bergsma filled out a reconsideration form and brought two more requests directly to the board, both of which were denied on the basis of present library policy. The second request was that the book be moved to the young adults section and the third request asked that the book be moved to the parents section.

According to Rizzo, the title of the book in question was

Sex, Puberty and All That Stuff.

In an interview, Bergsma said "I was browsing through the children's section. I wasn't looking for trouble." A Roman Catholic father of five children ranging in age from infant to 12, Bergsma said the family moved to Windsor in 2005. Two of his school-age children are home schooled while two others attend a parochial school. He said when he lived in Waterford he wrote a letter objecting to material at the Groton Public Library but did not pursue it because that was not his town library.

Bergsma said he wants other materials removed from the Main Library in Windsor but thus far has only made formal requests regarding the book. He contends the book goes beyond education and "advocates" behavior that he finds objectionable, as being acceptable or "normal," including masturbation, group masturbation, homosexual relationships, petting, oral sex, abortion and contraceptive use.

"These viewpoints are being advocated to our youngest patrons," he said. Bergsma said the book is located in an area called "Kidspace." He believes that presenting these behaviors to children as being widely accepted promotes a further "degeneration of our sexual mores."

Although the library board denied his requests, members did ask library staff to look for additional materials to add to the collection that would represent a variety of viewpoints and to ask Bergsma for suggestions. The staff has followed through and, according to Bergsma, was even able to find more materials than he could. Nonetheless, he said he is not satisfied with adding materials as a solution.

Bergsma said he has also asked the library board to allow an exchange between the public and the members at their meetings so his questions can be answered directly. Currently, library board agendas allow for public comment but if a matter is not on the agenda it is not discussed by the board.

Mayor Donald Trinks, a Democrat, and Republican Councilor Donald Jepsen each said this week they are not familiar with the book.

Based on the information he does have, Trinks said, constitutional rights may be involved and that thus far library staff and board members have made the "right choices" following the process that is in place.

"This was the first I had heard of it. It does bring up certain interest about constitutional rights, the town's obligation to disseminate all information and a parent's right not to have a child exposed to it," said the mayor.

Trinks added that parents have a responsibility to monitor what their children read at a public library just as they would monitor what their children watch on television.

Trinks and Jepsen agreed that passing judgement on the book is subjective. "One person's pornography is another person's art," said Trinks. Jepsen said he has confidence in the judgment of the library professionals. "Everyone's threshold for what they find acceptable is different. It's the old question—'what is pornography?' I don't know, but I'll know if I see it," said Jepsen.

As for a possible request to remove current library board members in regard to this situation, Jepsen said, "That is extreme. Reported in: *Windsor Journal*, September 18.

Nampa, Idaho

Two books with graphic sexual illustrations were restored to Nampa Public Library shelves September 8 in response to a threatened lawsuit from the American Civil Liberties Union. The Nampa Public Library board voted unanimously September 5 to return to open circulation *The Joy of Gay Sex* and *The New Joy of Sex* in the latest move in a two-year battle between area social conservatives and freedom-to-read advocates regarding the books' presence in the library collection.

The ACLU sent the Nampa Library Board a letter saying it would sue unless the board reversed its June decision to permanently banish *The Joy of Gay Sex* and *The New Joy of Sex* to the library director's office, where only those who specifically requested the books could see them. In response, the five-member library board held a special meeting and unanimously voted to put the books back on the shelves, library Community Relations Coordinator Dan Black said.

The trustees' decision to return the books to the stacks came two weeks after the ACLU of Idaho wrote Nampa Mayor Tom Dale that the organization would file suit if the titles were not moved back to the shelves from the library director's office within 14 days. The board approved the books' restriction in March, and reaffirmed the action in June, stipulating that it was complying with Idaho statute by shielding children from library holdings that could fall under the state's harmful-to-minors statute.

Declaring the sequestration policy in violation of the First Amendment, the August 25 letter from three pro-bono ACLU attorneys emphasized that free-speech "precepts apply with particular force to public libraries." Conceding that the books remained available by request, the correspondence went on to say that "even though a policy does not silence speech altogether, policies that suppress, disadvantage, or impose differential burdens upon speech are subject to exacting scrutiny."

Randy Jackson, who first objected to the titles in 2006, said in response that "Some things are worth fighting for despite the cost. When it comes to material that by law is deemed harmful to minors, you shouldn't let a law firm bully you into doing something that goes against your conscience." Bryan Fischer, executive director of the American Family Association's Idaho affiliate, backed Jackson in a September 8 Idaho Values Alliance press release that stated, "It's an abysmal state of affairs when a single letter from cultural thugs can undo two years of patient and pain-staking work on the part of Mr. Jackson, concerned citizens, and the library board."

It was a change in policy, if not a change of heart, for the board, which split 3–2 on the issue twice this year: first removing the books from the shelves pending further consideration, then a June 2 decision to make that move permanent.

The board agreed to reverse itself "as a matter of fiscal responsibility," board member Kim Keller said. The unanimous vote came after Nampa City Attorney Terry White told the board it could cost hundreds of thousands of dollars to fight a First Amendment lawsuit.

"The ACLU of Idaho commends the Nampa Public Library Board of Trustees for making information freely accessible and for respecting the First Amendment rights of its patrons, " staff attorney Lea Cooper said in a joint announcement of the library board's decision.

The decision also reversed the board's June vote, also 3–2, to amend library policy to restrict minors' access to any future library acquisitions that have graphic sexual illustrations that meet the definition of "harmful to minors" under state law, Black said.

Jackson began campaigning to remove the two books from Nampa's library after a friend's teenager saw *The Joy of Gay Sex* on a library table in late 2005. The board unanimously rejected his first attempt. But as board membership changed, the majority dwindled, and this spring Jackson's third try won narrow approval, with longtime members Rosie Delgadillo Reilly and Barry Myers dissenting.

"We felt it was a fair compromise, because it kept the books in the library but not where kids could reach them," Jackson said. Reported in: *American Libraries* online, September 19; *Idaho Statesman*, September 9.

Lewiston, Maine

A standoff of more than a year ended August 29 in Lewiston, when city officials decided not to pursue further action against JoAn Karkos, who has refused to return the Lewiston Public Library's copy of the youth sex-education book *It's Perfectly Normal* that she borrowed in the summer of 2007 to keep it out of circulation. Karkos had defied an August 27 district court order to return the book and pay a $100 fine and was threatened with jail time if she did not return the book by 4 p.m. August 29.

"We feel there's little to be gained," by seeking imprisonment, library Director Rick Speer said. "It would help her be a martyr and may bring public sentiment to her side." He noted, however, that because of the case, the community expressed its support for the library on the issues of theft and censorship.

Karkos's efforts also failed to make the title unavailable for borrowing in Lewiston. An August 29 city press release noted: "The library now has four copies of the same book, all donated by others, instead of the one that existed, [and Karkos's] right to use the public library has been suspended and will remain so until such time that she complies with the order." Reported in: *American Libraries* online, August 30.

Cambridge, Ontario

Calls for a crackdown on Internet pornography at Cambridge public library branches were answered with a staunch defence of the free flow of information on the part of library staff.

It's perfectly understandable why Rob Nichol was outraged when he saw a man downloading Internet pornogra-

phy at a public library in Cambridge in August. A retired Ontario Provincial Police officer, Nichol, who has two young daughters, felt it was inappropriate that his children could be exposed to such material. To make things worse, the man downloading the objectionable material had children with him.

In the wake of this incident, Nichol asked the library to take strong steps to protect children, steps that would include putting filters on the computers used by the public. The library declined, arguing that Internet filters are an imperfect solution. They aren't 100 percent effective and people find ways around them. In addition, the filters block out good material as well as the bad. Cambridge City Councilor Gary Price, who sits on the city's library board, pointed out that a filter could stop women from researching information on breast cancer. Limiting the public's ability to inform itself would create huge practical problems for a library and undermine its basic reason for existing.

It's not as if the Cambridge library is doing nothing about this issue, the library noted. Before using a computer, every patron must sign on with his or her library card and agree not to look at illegal content or expose others to disturbing content. And staff stop people from looking at inappropriate content. They did that 23 times in 2005 at the city's four library branches. However, the problem seems to be diminishing and staff intervened just 11 times in each of 2006 and 2007. Reported in: therecord.com, August 16.

schools

Marianna, Florida

After the novel's presence in the Jackson County School District was challenged by a student's parent, the Jackson County School Board voted August 19 to keep *The Kite Runner*. The board was provided with a recommendation by the District Instructional Material Committee to keep the book in the school system. After comments made by each board member, including Dr. Terry Nichols who offered the sole opposing vote, the board approved that recommendation.

The book, by Khaled Hosseini, is a story about a boy from Kabul. It is set during a number of dramatic events, from the fall of the monarchy in Afghanistan through the Soviet invasion, the exodus of refugees to Pakistan and the United States, and the rise of the Taliban regime. It was initially challenged last May by David McGowan, a parent of a Marianna High School student, who was disturbed to learn that the book was required reading in one of the MHS classes.

According to school board documents, McGowan first addressed staff and administration at MHS, which led to the book's removal from the required reading list. MHS Principal Randy Ward chose to keep the book available in the school library.

In July, McGowan sent a letter to Frank Waller, the district director of middle and secondary education, requesting that further action be taken and a committee be formed to consider the removal of the book from the school district.

"I do not wish to stand in the way of any educational advantage that literature provides. I am simply asking for your help in shielding my children from this particular book," read part of McGowan's letter.

In August, McGowan came before the district committee to speak against the presence of the book in the school district, reading aloud excerpts that contain profane language and sexual situations. The committee was composed of: Frank Waller; Deborah Barber, the middle and secondary education secretary and mother of two; Renea Hilton, programming manager and mother of one; Willer Moody, retired media specialist of Malone High School; Diane Oswald, retired English teacher at Marianna High and ESE director; Betty Joyce Hand, retired from a Jackson County hospital and president of a book club; and Alana Neel, a student at Chipola College.

The committee voted five to two in favor of leaving *The Kite Runner* in the system, with Hilton and Barber recommending the book's removal. At the meeting, before the board voted to keep *The Kite Runner*, the chairman of the board, Nichols, relinquished his chair to debate the recommendation.

Nichols said he had read the book in its entirety and was not in favor of keeping it in the district. "I think it's a good book. But in looking at this I think it's a book that's good for the adult population. . . . There are vivid scenes in the book that don't promote evil, but are a little bit too vivid for our younger students in high school," said Nichols.

Board member Chris Johnson said that, as a parent, he would not want his child reading the book, but felt that banning the book could lead to the issue of banning other books, such as *Huck Finn* and *Macbeth*.

Johnson said that he learned that the book is rated in such a way by the school system that it is available for any student in grade six or higher.

"When the librarian told me that was a sixth grade book I almost fainted," said Johnson. "But what I ban today might be something that hurts me tomorrow."

Board member Betty Duffee said that if the board bans books based on some passages, that some of the passages in *The Kite Runner* are not as bad as some in the Bible. "I don't think we'd want to ban the Bible," said Duffee. Board member Charlotte Gardner said that, when she heard the passages read out loud she was very offended; but when she read them in context, it was less offensive.

Those passages remained offensive to board member Kenneth Griffin, who said that having the book at a sixth grade level was absolutely wrong, and made a motion for the board to consider making the book available only to juniors and seniors. McGowan told the board that the limitiation was simply not enough. JSCB attorney Frank

Bondurant cited legal complications that might occur in trying to enforce such a rule. Griffin withdrew his motion and Duffee made a new motion to approve the recommendation made by the district committee. Reported in: *Jackson County Floridan*, August 19. □

(library censorship . . . from page 225)

Reporting October 28, 1996, the *Sitka Sentinel* said the newly elected mayor had "asked all of the city's top managers to resign in order to test their loyalty to her administration." Palin told the newspaper, "Wasilla is moving forward in a positive direction. This is the time for the department heads to let me know if they plan to move forward or if it's time for a change." Emmons, the *Sentinel* stated, "said she couldn't speak without the mayor's approval."

June Pinnell-Stephens, chair of the Intellectual Freedom Committee of the Alaska Library Association, was quoted in the September 4 *Daily News*, saying she had no record of any books being censored in the Wasilla library nor any conversations about the issue with Emmons, who was president of the association at the time. But she did recall that Palin "essentially forced Mary Ellen out. She all but fired her."

Other librarians began criticizing Palin on the Librarians Against Palin blog, which was formed after the 1996 story resurfaced. Discussion also erupted on the electronic discussion list of the American Library Association's (ALA) governing Council and quickly turned into the kind of political debate that ALA's 501(c)3 tax-exempt status prohibits. After the ALA executive office cried foul, the discussion was moved to the electronic list of the ALA-Allied Professional Association, whose 501(c)6 tax status permits arguing for or against a candidate for elective office.

In response to the controversy, on September 3, ALA issued the following public statement:

> The American Library Association (ALA) opposes book banning and censorship in any form, and supports librarians whenever they resist censorship in their libraries. Since our society is so diverse, libraries have a responsibility to provide materials that reflect the interests of all of their patrons.
>
> Each year, the ALA Office for Intellectual Freedom receives hundreds of reports on books and other materials that were 'challenged' (their removal from school or library shelves was requested). The ALA estimates the number reported represents only about a quarter of the actual challenges.
>
> In support of our efforts to fight censorship, the ALA annually celebrates Banned Books Week—a national celebration of the freedom to read. Observed during the last week of September each year, Banned Books Week reminds Americans not to take the precious democratic freedom to read for granted. This year, Banned Books Week will take place September 27–October 4, 2008.
>
> The American Library Association is a nonprofit, 501(c)3 educational association that supports quality library and information services and public access to information. As such, it is not allowed to take a position on political candidates and strives to be nonpartisan in its activities. To learn more about book challenges and Banned Books Week please visit http://www.ala.org/bbooks.

The *Mat-Su Valley Frontiersman* posted on the Internet its original December 18, 1996, coverage September 6 "to accommodate numerous requests for the story from media worldwide and curious individuals," with a caveat to readers: "Please note that not at any time were any books ever banned from the Wasilla city library." Bloggers then began asking for a list of books that Palin wanted banned. A bogus list soon surfaced on the internet but it included books not yet published in 1996, and has been discredited at snopes.com and elsewhere.

Written by Paul Stuart, a semi-retired *Frontiersman* reporter, the 1996 article suggests that at the very worst, Palin was sending up what Emmons (now Mary Ellen Baker and public services manager for the Noel Wien Library in Fairbanks) then called a "trial balloon," to which Emmons responded with "a step-by-step blueprint of procedures for anyone wanting to challenge the selection and availability of library material."

According to the 1996 article,

> Library Director Mary Ellen Emmons . . . said Palin broached the subject with her on two occasions in October—once Palin was elected mayor Oct. 1 but before she took office on Oct. 14, and again in more detail on Monday, Oct. 28. Besides heading the Wasilla City Library, Emmons is also president of the Alaska Library Association.
>
> "The issue became public . . . when Palin brought it up during an interview about the now-defunct Liquor Task Force. Palin used the library topic as an example of discussions with her department heads about understanding and following administration agendas. Palin said she asked Emmons how she would respond to censorship.
>
> Emmons drew a clear distinction . . . between the nature of Palin's inquiries and an established book-challenge policy in place in Wasilla, and in most public libraries.
>
> "I'm not trying to suppress anyone's views," Emmons said. "But I told her (Pa0lin) clearly, I will fight anyone who tries to dictate what books can go on

the library shelves.

Emmons recalled that in the Oct. 28 conversation she pulled no punches with her response to the mayor.

"She asked me if I would object to censorship, and I replied 'Yup'," Emmons recounted. "And I told her it would not be just me. This was a constitutional question, and the American Civil Liberties Union (ACLU) would get involved, too.

Emmons said Palin asked her on Oct. 28 if she would object to censorship, even if people were circling the library in protest about a book. "I told her it would definitely be a problem the ACLU would take on then," Emmons said.

ABC News, however, noted in the September 10 report that Stuart had said specific titles were at issue and recalled one of them as *Pastor, I Am Gay*, by Howard Bess, who was pastor of the Church of the Covenant in nearby Palmer, Alaska. Bess said Palin's church at the time, the Assembly of God, was pushing for the removal of the book from local bookstores, "and she was one of them. This whole thing of controlling information, censorship, that's part of the scene."

The December 1996 *Frontiersman* article quoted Palin as saying, "All questions posed to Wasilla's library director were asked in the context of professionalism regarding the library policy that is in place in our city. Obviously the issue of censorship is a library question . . . you ask a library director that type of question."

On September 14, the *New York Times* reported that in 1995, Palin, then a city councilwoman, told colleagues that she had noticed the book *Daddy's Roommate* on the library shelves and that it did not belong there. Palin's predecessor as mayor recalled that "People would bring books back censored. Pages would get marked up or torn out." Laura Chase, the campaign manager during Palin's first run for mayor in 1996, recalled that she had read the book, which helps children understand homosexuality, and said it was inoffensive and suggested that Palin should read it.

"Sarah said she didn't need to read that stuff," Chase said. "It was disturbing that someone would be willing to remove a book from the library and she didn't even read it."

Responding to the reports about Palin asking a librarian how she would feel about banning books, a San Francisco man donated two children's books dealing with homosexuality to the Wasilla Library.

Mike Petrelis, a 49-year-old who files Freedom of Information requests for a living, said he was aghast to read reports of Palin's 1996 inquiry about banning books at Wasilla's library. The news prompted Petrelis to send to Wasilla *Heather Has Two Mommies* and *Daddy's Roommate*, both children's books that explain gay lifestyle.

"I said, 'I'm going to send copies of both books just to make sure they're on the shelves,'" Petrelis said.

Taylor Griffin, a spokesman for the McCain campaign, said Palin asked Emmons on three occasions how she would react to attempts at banning books. He said the questions, in the fall of 1996, were hypothetical and entirely appropriate. He said a patron had asked the library to remove a title the year before and the mayor wanted to understand how such disputes were handled.

In a statement, the McCain campaign declared that "Governor Sarah Palin has never asked anyone to ban a book, period." Reported in: *American Libraries* online, September 8, 10; *Anchorage Daily News*, September 4; *Mat-Su Valley Frontiersman*, September 5, 22; Associated Press, September 12; *New York Times*, September 14. □

(censorship dateline . . . from page 236)

is removed from its original meaning," it would remove it from future printings.

Random House added: "Jacqueline Wilson aims to reflect the realities of modern life, including dialogue, in her books. Children do hear a wide variety of language in the playground and through this, learn what is and isn't acceptable, and also how language demonstrates mood and feelings. In the context of the character, we felt the word was used in a way that accurately portrayed how children like Jodie and her friends would speak to each other, and it also contributed to the reader's understanding of how Jodie felt in the situation."

Wilson is one of the 750 authors to have put her name to a petition against age guidance, a publisher initiative to include the ages at which a children's book is aimed on its back cover. Reported in: *Guardian*, August 21.

Bolzano, Italy

A modern art sculpture portraying a crucified green frog holding a beer mug and an egg that Pope Benedict has condemned as blasphemous may have its days numbered. The board of the Museion museum in Bolzano were meeting to choose whether to side with the pope and other opponents of the frog or with proponents who say it should be defended as a work of art.

The wooden sculpture by the late German artist Martin Kippenberger depicts a frog about four feet high nailed to a brown cross and holding a beer mug in one outstretched hand and an egg in another. Called "Zuerst die Fuesse," (Feet First), it wears a green loin cloth and is nailed through the hands and the feet in the manner of Jesus Christ. Its green tongue hangs out of its mouth.

Kippenberger's work has been shown at the Tate Modern and the Saatchi Gallery in London and at the Venice Biennale, and retrospectives are planned in Los

Angeles and New York.

Museum officials in the northern bilingual Alto Adige region near the Austrian border said the artist, who died in 1997, considered it a self-portrait illustrating human angst.

Pope Benedict, who is German himself and was recently on holiday not far from Bolzano, obviously did not agree. The Vatican wrote a letter of support in the pope's name to Franz Pahl, president of the regional government who opposed the sculpture.

"Surely this is not a work of art but a blasphemy and a disgusting piece of trash that upsets many people," Pahl told Reuters by telephone as the museum board was meeting.

The Vatican letter said the work "wounds the religious sentiments of so many people who see in the cross the symbol of God's love."

Pahl, whose province is heavily Catholic, was so outraged by the sculpture of the pop-eyed amphibian that he went on a hunger strike to demand its removal and had to be taken to a hospital during the summer. The museum then moved the statue out of its foyer and into a less trafficked area on the third floor.

But Pahl's opposition was unflagging and he has threatened to resign as regional president unless it is removed altogether.

Art experts defend the work. "Art must always be free and the artist should not have any restrictions on freedom of expression," Claudio Strinati, a superindendent for Rome's state museums, told an Italian newspaper. Reported in: ABC News, August 28.

Kuala Lumpur, Malaysia

The government of Malaysia has banned a collection of academic research papers written about the challenges facing Muslim women. According to a Web-based newspaper, Malaysia's Ministry of Home Affairs said August 14 that the volume, *Muslim Women and the Challenge of Islamic Extremism*, could cause confusion and undermine the religion.

The announcement baffled Sisters in Islam, an activist group that published the papers in 2005. A representative from the organization said the book, written by scholars, examined the impact of religious extremism on women living in Southeast Asia and the Middle East. Edited by Norani Othman, a professor of sociology at the National University of Malaysia, the book grew out of a 2003 academic conference on women and Islam.

The ban was condemned by groups trying to reform laws that give the Muslim-majority government the power to censor books and the media. The Writer's Alliance for Media Independence and the Centre for Independent Journalism called the ban "the height of cowardice for the intellectually inferior." They urged Malaysians to sign an online petition calling for an end to the government's power to determine what is published.

Malaysian censors routinely review books that may contain sensitive material regarding religion or sex. It was unclear which passages the ministry objected to. Those who produce or print prohibited material can face at least three years in prison. Reported in: *Chronicle of Higher Education* online, August 16.

Riyadh, Saudi Arabia

A senior cleric in Saudi Arabia has declared on state radio that it is acceptable to kill owners of satellite TV channels that air immoral programs. Sheikh Salih Ibn al-Luhaydan made the comment September 10 in response to a listener who asked his opinion about TV programs that feature scantily-clad women during the Muslim holy month of Ramadan, according to BBC News.

Salih al-Luhaydan is also chairman of the Saudi Supreme Judicial Council. He replied to the listener by saying that some of those "evil" entertainment shows promoted debauchery. "The owners of these channels are as guilty as those who watch them," said the sheikh. "It is legitimate to kill those who call for corruption if their evil can not be stopped by other penalties."

He said those programs caused the "deviance of thousands of people" because they feature "seduction, obscenity, and vulgarity." His comments have caused a big stir in the Middle East, as several Saudi princes own satellite networks. There has been no response so far from the Saudi royal family. Reported in: CBC News, September 13. □

(from the bench . . . from page 244)

that may lead to the identity of those who post comments on the newspaper's online edition.

Russ Doty, a 2004 candidate for the Public Service Commission, issued the subpoena as part of his civil lawsuit against Brad Molnar. The lawsuit accuses Molnar, who won the election against Doty, of libel and slander during the campaign.

At the end of a hearing into the *Gazette's* motion, Baugh said the state's Media Confidentiality Act protects the newspaper from being forced to provide the information sought by Doty. Baugh also noted that the information Doty was seeking from the *Gazette* was related to comments made long after the 2004 campaign. The judge asked Doty whether the anonymous comments, sometimes known as "blogs," have enough credibility to reach the legal requirements of libel and defamation.

"I can't imagine an anonymous comment has much credence whatsoever," Baugh said.

Doty said he sought the information from the newspaper

to bolster his claim that his reputation in the community had been harmed by the alleged libel he attributes to Molnar. Several newspaper commenters would be valuable witnesses in his case, Doty told the judge.

Doty also sought the identity of newspaper bloggers whom he suspected as being Molnar himself. The subpoena, served on the newspaper in July, sought "all electronic information . . . you have including but not limited to IP addresses, e-mail addresses, and other identity and contact information" for Molnar.

In a deposition taken previously in the case, Molnar denied that he used the monikers "CutiePie" and "Always, wondering" to post comments on the newspaper's website. Doty said knowing the identity or contact information of those two bloggers would help him prove his libel case against Molnar.

"I have a right to test whether or not Molnar is telling the truth when he says in his deposition that he is not either of these people," Doty said.

Gazette attorney Martha Sheehy argued that the information sought by Doty is privileged under the state's Media Confidentiality Act, commonly known as a shield law. The act protects from forced disclosure "any information obtained or prepared" by a news agency. Sheehy said the information sought by Doty in the subpoena clearly falls within the protection of the act. "Whether posted on a message board or printed in the newspaper makes no difference," Sheehy said.

In an affidavit, *Gazette* Editor Steve Prosinski said the newspaper does not require or know the real names of persons who post story comments. Commenters are required to register before posting comments, but they are only required to provide an e-mail address when they create a "nickname."

The blogger's IP address, which is an Internet tracking number, is also collected as part of the registration process, Prosinski said. But the newspaper does not control the IP address or have access to the name of the person associated with each number.

Prosinski said the online story comments are a "core service and integral part" of the newspaper's business, and allowing anonymous comments serves the public "by fostering democratic discourse through communities of users."

Doty argued such information is not protected because it was not gathered as "news."

"The scope of the statute is to shield the news media from disclosing 'news' sources or any information obtained or prepared when 'gathering, writing, editing or disseminating news,'" Doty wrote in a court brief. "Blogs and online comment simply are not 'news.' Therefore, the persons who comment are not protected by a statutory privilege."

Molnar did not attend the hearing, but his attorney, Jack Sands, told Baugh that the information sought by Doty was not relevant to the lawsuit. "All this discussion is really irrelevant to the case before the court," Sands said. Reported in: *Billings Gazette*, September 3.

copyright

New York, New York

A U.S. judge halted publication September 8 of an unofficial encyclopedic companion to the popular Harry Potter book series in a copyright case author J. K. Rowling argued would threaten other writers.

Judge Robert Patterson in U.S. District Court in Manhattan wrote in his opinion that an independent U.S. book publisher, RDR Books, "had failed to establish an affirmative defense of fair use" and that publication of *The Harry Potter Lexicon* should not proceed.

The ruling said Warner Brothers Entertainment, Inc., and Rowling had established copyright infringement of the Harry Potter series of seven novels and two companion books, *Fantastic Beasts and Where to Find Them*, and *Quidditch Through the Ages*.

The British author and Warner Bros, a subsidiary of Time Warner, Inc., sued RDR Books, which planned to publish the lexicon. The proposed book was a 400-page reference written by fan Steve Vander Ark on www.hp-lexicon.org.

The ruling said that if an injunction on the lexicon was not issued "defendant is likely to continue infringing plaintiffs' copyright in the future." It said the encyclopedia would not harm sales of the novels, but could impact the market for Rowling's companion books.

The judge also wrote that in general, reference guides and companion books were an aid to readers and should not be stifled, a point that RDR noted in its reaction.

"The opinion upholds the genre," said David Hammer, an attorney for RDR Books. "As for the lexicon, we are disappointed and RDR is considering all of its options, including an appeal."

Rowling said in a statement from her home in Edinburgh, Scotland, that she was "delighted" with the outcome. "The proposed book took an enormous amount of my work and added virtually no original commentary of its own. Many books have been published which offer original insights into the world of Harry Potter. The Lexicon just is not one of them," her statement said.

In court in April, Rowling, estimated by the *Sunday Times* to be worth about $1 billion, said she was outraged her work was considered to be fair game because it was so popular.

At the same hearing, Vander Ark, wearing eye glasses similar to those worn by Harry Potter, said his book was intended to help readers and celebrate Rowling's work.

But Patterson's ruling in favor of Rowling's position said that "because the Lexicon appropriates too much of Rowling's creative work for its purposes as a reference

guide, a permanent injunction must issue to prevent the possible proliferation of works that do the same and thus deplete the incentive for original authors to create new works."

The judge awarded Warner Brothers and Rowling the minimum damages of $750 for each of the seven novels about the boy wizard and $750 for each of the two companion books for a total of $6,750. Reported in: *New York Times*, September 8.

spam

Richmond, Virginia

The Virginia Supreme Court ruled September 12 that the state's anti-spam law, designed to prevent the sending of masses of unwanted e-mail, violates the First Amendment right to freedom of speech.

Virginia Attorney General Robert F. McDonnell promptly said he would appeal the case to the U.S. Supreme Court. The law was one of the first enacted in the United States to stem the overwhelming tide of unwanted e-mail. The 2004 trial in Loudoun County of mass e-mailer Jeremy Jaynes resulted in the first felony conviction in the country for spamming.

But the state Supreme Court said the law doesn't make any distinction between types of e-mail or types of speech, and so it was unconstitutional. The ruling came on an appeal of Jaynes's conviction. Jaynes had sent the mass e-mails anonymously by using false Internet addresses, and the court said that speech is also protected by the First Amendment.

Justice G. Steven Agee, who has since moved to the U.S. Court of Appeals for the Fourth Circuit, wrote the unanimous opinion for the court. "The right to engage in anonymous speech, particularly anonymous political or religious speech, is 'an aspect of the freedom of speech protected by the First Amendment,'" Agee wrote, citing a 1995 U.S. Supreme Court case.

"By prohibiting false routing information in the dissemination of e-mails," the court ruled, Virginia's anti-spam law "infringes on that protected right."

Agee noted that "were the 'Federalist Papers' just being published today via e-mail, that transmission by 'Publius' would violate the [Virginia] statute." Publius was the pen name for James Madison, Alexander Hamilton and John Jay.

The court determined that the law does not limit its restrictions on spam to commercial or fraudulent e-mail or to such unprotected speech as obscenity or defamation. Many other states and the federal government drafted anti-spam laws after Virginia, but often specifically restricted the regulations to commercial e-mails, the court found. The ruling affects only the Virginia statute.

McDonnell called the law an innovative act that broke new ground in protecting citizens, and he noted that Jaynes was rated one of the most prolific spammers in the world. Loudoun Circuit Court Judge Thomas D. Horne sentenced Jaynes, of Raleigh, N.C., to nine years in prison but allowed Jaynes to remain free while his appeals were heard.

"The Supreme Court of Virginia," McDonnell said in a statement, "has erroneously ruled that one has a right to deceptively enter somebody else's private property for purposes of distributing his unsolicited fraudulent e-mails. . . . We will take this issue directly to the Supreme Court of the United States. The right of citizens to be free from unwanted fraudulent e-mails is one that I believe must be made secure."

The court's ruling was remarkable for another reason: It reversed its own ruling of six months earlier, when the court upheld the anti-spam law by a 4 to 3 margin. But Jaynes's attorneys asked the court to reconsider, typically a long shot in appellate law, and the court not only reconsidered but changed its mind. Agee wrote both opinions.

"I think the decision is a sound one," said Rodney A. Smolla, dean of the Washington and Lee University Law School and a First Amendment scholar. "This is a case in which the spammer may have been doing things that a well-crafted law could make illegal. The problem with the Virginia law is it included e-mail communications that people have the right to make anonymously."

There was plenty of disagreement, particularly among those who provide Internet service or battle spam.

"Horrendous," said Jon Praed of the Internet Law Group, which has represented America Online, Verizon and other Internet providers. "The idea that someone can intrude on someone else's mail server, because they might be reciting the Gettysburg Address? I guess a burglar can break into your home as long as they are reciting the Gettysburg Address."

Praed noted that spam is not likely to increase in Virginia just because the law has been struck; federal law also prohibits spam, spam filters screen much of it and expert spammers often are out of the country. But spam does provide links to dangerous and illegal places on the Web, particularly for young users, as well as inject viruses and other bad software into computers, giving lawmakers a compelling reason to regulate it, Praed said.

The U.S. Internet Service Providers Association estimated that 90 percent of e-mail is spam. Internet service providers "should not be required to bear the cost of the abuse of their e-mail networks," said Kate Dean, executive director of the association, which filed briefs in support of the law.

Jaynes was convicted by a jury of sending tens of thousands of e-mails through America Online servers in Loudoun. Jaynes's e-mails were advertising products to help pick stocks, erase one's Internet search history and obtain refunds from FedEx and contained hyperlinks within the e-mail redirecting the recipient to those businesses. His

attorney, Thomas M. Wolf of Richmond, noted that there was nothing fraudulent about the e-mails; Jaynes was prosecuted simply for sending them en masse.

"Everybody hates spam," Wolf said. "The point is, you don't have to trample the Constitution to regulate spam."

Virginia's anti-spam law made it a misdemeanor to send unsolicited bulk e-mail by using false transmission information, such as a phony domain name or Internet Protocol address. The domain name is the name of the Internet host or account, such as "aol.com." The Internet Protocol is a series of numbers, separated by periods, assigned to specific computers. The crime becomes a felony if more than 10,000 recipients are mailed in a 24-hour period.

Chris Thompson, a spokesman for Spamhaus, an international nonprofit group that tracks and combats spammers, pointed out that unlicensed radio stations may not broadcast, only the Postal Service can place mail in mailboxes and loud sound trucks may not troll neighborhoods with impunity.

"None of those minor restrictions appear to infringe on a citizen's ability to express themselves freely," Thompson said. "Why the court would deny basic protections for ISP servers and bandwidth escapes us." Reported in: *Washington Post*, September 13. □

(is it legal? . . . from page 252)

of academic freedom where dissent is not only allowed, but expected." Reported in: insidehighered.com, August 11.

foreign scholars

Washington, D.C.

The State Department abruptly revoked the visas of three Palestinian Fulbright Scholarship recipients just two months after Secretary of State Condoleezza Rice intervened personally with Israeli officials to ensure that the three scholars, along with four other Fulbright awardees, would be able to study at American universities.

One of the three arrived in the United States after being assured that his visa was in order, only to be asked to leave the country on the next flight. The students, all residents of the Gaza Strip, were awarded the prestigious grants financed by the U.S. government but were then notified in May that the scholarships were being withdrawn because Israeli army policies restricting movement from Gaza meant that the money would go to waste.

Sari Bashi, director of an Israeli human-rights organization called Gisha, said that although the seven Fulbright recipients have received the most attention, hundreds of students have been prevented from leaving Gaza, and many have had to forfeit places in foreign universities. Gisha provides legal assistance to Palestinians whose movements are restricted.

When news of the cancellation of the seven Fulbright scholarships became public in May, Secretary Rice expressed her unhappiness with the situation, emphasizing the importance of the scholarships to American foreign policy. She and other world leaders pressed the Israeli government to change its stance.

Faced with international pressure, "Israel changed its policy somewhat and said that it would let a few dozen students with recognized scholarships to study in friendly Western countries leave," Bashi said. But she said that the shift, while welcome, was intended in part to "deflect attention" from the "hundreds of students who would remain trapped in Gaza."

Four of the seven Fulbright recipients were allowed by Israeli authorities to leave Gaza, but the remaining three were told that, because of security requirements, they would not be allowed to travel. The three all studied engineering at the Islamic University of Gaza.

During a trip to Israel in June, Secretary Rice pressed the Israeli government about the three students. She later said she expected their status to soon be resolved. The American government subsequently took the highly unusual step of sending consular officials and expensive and cumbersome visa-processing equipment to the border crossing in Gaza to meet with the three students. "This seemed to indicate a commitment to letting these students leave," Bashi said.

The three were then issued visas. The first of the students—Fidaa Abed, a 23-year-old computer-science master's student who plans to enroll at the University of California at San Diego—was granted a U.S. visa on July 28. Officials from the American consulate in Jerusalem even helped coordinate his travel plans, but when he arrived in the United States, he was told that his visa had been revoked, apparently while he was en route from Amman, Jordan, to Washington.

Abed said he had been met at the airport by a State Department official who could offer no specifics about what had prompted the reversal. "I asked him why, and he said he did not know," Abed said, adding that the official had told him that he had never heard of such a thing happening. Abed said he spent less than an hour in the United States and was put on the next flight back to Jordan, via Frankfurt.

Abed then received a letter from the State Department telling him that his visa had been revoked because information came to light indicating that he is an international security risk, but he said he has been given no details. "They claim there is a security risk," he said. "If they have new information, they should present it to me. I have a right to know."

The State Department provided no specifics about the visa reversals. Kurtis Cooper, a department spokesman, said

the visas had been revoked "prudentially" after new information was received. "In the case of prudential revocation, applicants remain eligible to reapply for a United States visa at a future date," he added.

Bashi said her organization would continue to press the cases of the three Fulbright students and other Palestinian students, and asserted that the students affected by the restrictions are the very people best placed to acquire the skills to help build a better future for Gaza. "There is an international consensus that preventing Gaza's best and brightest from leaving Gaza to access badly needed degrees and skills is detrimental to the future of region," she said. "This policy is not only unjust; it is unwise." Reported in: *Chronicle of Higher Education* online, August 6.

etc.

New York, New York

Leaders of the Association of Professional Flight Attendants, which represents some 19,000 workers including American Airlines flight attendants, asked American Airlines' management in September to consider adding filters to its in-flight Wi-Fi access to prevent passengers from viewing porn and other inappropriate Web sites while in-flight.

A union representative said attendants and passengers have raised "a lot of complaints" over the issue.

American Airlines is one of several airlines testing in-flight Internet access as a way to lure more passengers. American has been offering the service on a limited basis since August 20 on some flights between New York, Los Angeles, and San Francisco, and between New York and Miami. The cost of the service on cross-country flights is $12.95, and it's $9.95 on the New York to Miami route.

The current program is in a 3- to 6-month trial period, and the airline plans to review usage and feedback on the service at the end of that period, an American Airlines spokesman said.

The controversy has stirred up a debate about whether Internet access in public places should be restricted. Earlier this year, the Denver International Airport took flack for blocking access on its free Wi-Fi network to websites that officials deemed offensive.

The argument was made by Denver airport officials that users must abide by their rules because they are providing the service for free. But that case is harder to make for in-flight passengers, who are paying for Internet access.

Given that people are packed onto planes literally elbow to elbow, it's often hard not to at least glance at the laptop screen of the person sitting next to you. But airlines have not banned people from reading pornographic magazines or watching their own DVDs on flights. And it's just as easy for someone to view a DVD of an adult video on a laptop or flip through *Hustler* as it is to surf porn websites.

American Airlines spokesman Tim Smith said that the "vast majority" of customers already use good judgment in what's appropriate to look at while flying versus what's not." And he added, "Customers viewing inappropriate material on board a flight is not a new scenario for our crews, who have always managed this issue with great success." Reported in: Cnet News, September 12. □

intellectual freedom bibliography

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