

newsletter
on
intellectual
freedom



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The following is the text of the report of the ALA Intellectual Freedom Committee to the ALA Council, delivered January 16 at the ALA Midwinter Meeting in Philadelphia by IFC Chair pro tem Barbara Stripling.

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

Information

Resolution on the Use and Abuse of National Security Letters

At the 2007 ALA Annual Conference, Council unanimously passed a resolution condemning the use of National Security Letters to obtain library records and urged Congress to pursue immediate reforms of NSL procedures. In accordance with the resolution, ALA asked its members, state chapters, and all library advocates to ask Congress to restore civil liberties and correct the abuse and misuse of NSLs. As of January 8, 2008, 43 state library associations have endorsed the resolution, along with the California Academic and Research Libraries (CARL) and the New England Library Association. The IFC applauds those states and organizations that endorsed this resolution.

Censorship and Book Challenges

Alms for Jihad and “Libel Tourism”—*Alms for Jihad: Charity and Terrorism in the Islamic World*, an academic work about how terrorism can be funded by various charitable organizations, was the subject of a British libel lawsuit brought by Saudi banker Khalid bin Mahfouz, who has filed several similar lawsuits to contest claims that the Saudi government has used Islamic charities to fund terrorism. Cambridge University Press, the publisher of *Alms for Jihad*, chose to settle the suit rather than risk a large damage award at trial. Under the settlement, Cambridge University Press began to ask libraries to remove the book from their shelves and return the book to the publisher.

In response to several inquiries, OIF staff used the new OIF Blog to inform the library community that libraries were under no obligation to remove or destroy the book and

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Views of contributors to the Newsletter on Intellectual Freedom are not necessarily those of the editors, the Intellectual Freedom Committee, or the American Library Association.

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FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council, delivered January 15 at the ALA Midwinter Meeting in Philadelphia by FTRF President Judith Platt.

As President of the Freedom to Read Foundation, I am pleased to report on the Foundation's activities since the 2007 Annual Conference:

We were honored to be able to present "An Evening with Anthony Lewis" at this Midwinter Meeting, on Monday, January 14. The sold-out event, held at the National Constitution Center, featured a conversation in which the two-time Pulitzer Prize-winning author and journalist discussed his latest book, *Freedom for the Thought We Hate: A Biography of the First Amendment*, with FTRF trustee Chris Finan.

This is our third annual author event, a tradition begun in San Antonio with Sandra Cisneros and continued in Seattle with young adult author Chris Crutcher, who has become a stalwart friend and supporter of FTRF and ALA's efforts on behalf of intellectual freedom.

The Freedom to Read Foundation is deeply grateful to Anthony Lewis and Chris Finan for their participation, and to the National Constitution Center—a wonderful facility—for cosponsoring this event and helping to ensure its success.

Securing the Right to Privacy

FTRF remains steadfast in its opposition to provisions of the USA Patriot Act that undermine our civil liberties and threaten our right to privacy in what we read and view. As we reported a year ago, many of the lawsuits challenging those provisions, including the lawsuit filed by the four Connecticut librarians of the Library Connection, have accomplished their immediate aims without producing a definitive judgment on the underlying question of the USA Patriot Act's constitutionality.

For this reason, I am happy to report that one challenge has survived, despite this administration's best efforts to prevent these challenges from going forward. *John Doe* and *ACLU v. Mukasey*, et al. (formerly *John Doe* and *ACLU v. Gonzales*, et al.), first filed in 2004, challenges the use of National Security Letters (NSLs)—administrative subpoenas that FBI field agents can issue on their own authority without judicial review. NSLs compel the recipient to turn over records of electronic transactions, including Internet use records, and impose a comprehensive and permanent gag order on the recipient. From the time the litigation was initiated, FTRF has supported the "John Doe" plaintiff, an unnamed Internet Service Provider (ISP), filing several amicus curiae briefs that underscore the threat to First Amendment values inher-

ent in the NSL provision of the law.

As you may recall, "John Doe" won his first victory in September 2004, when Judge Victor Marrero of the U.S. District Court for the Southern District of New York held that NSLs were an unconstitutional violation of the Fourth Amendment's prohibition against unreasonable search and seizure. He also ruled that and the accompanying gag orders constituted a prior restraint of speech in violation of the First Amendment. The government appealed to the U.S. Court of Appeals for the Second Circuit; that appeal was pending when Congress passed the USA Patriot Act reauthorization in March 2006, which included some modifications of the NSL provisions. The appellate court sent the case back to Judge Marrero for reconsideration of the constitutional questions in light of the statutory changes.

"John Doe" and the ACLU filed an amended complaint in the summer of 2006, arguing that the changes wrought by Congress in the reauthorized Patriot Act failed to remedy the NSL statute's constitutional flaws. While the FBI withdrew its demand for records in November 2006, effectively ending the legal challenge to the NSL itself, it refused to lift the nondisclosure order preventing "John Doe" from revealing "his" identity. The ACLU and "John Doe" went forward with their constitutional challenge, asserting that the automatic gag order was unlawful, with FTRF again providing amicus support.

On September 6, 2007, Judge Marrero once again vindicated our arguments and struck a blow for civil liberties. He held the entire amended NSL statute to be unconstitutional, ruling that the gag order and the standard of judicial review mandated by the amended statute violate both the First Amendment and the constitutional separation of powers. He enjoined the FBI from issuing any NSLs, but stayed enforcement of his ruling pending the government's appeal, in deference to the government's national security claims. The government again filed an appeal with the Second Circuit, and briefing is underway. At its meeting on January 11, the FTRF Board gave unanimous approval, subject to review of the final brief, to FTRF participation in an amicus brief in support of "John Doe" and the ACLU.

FTRF's defense of reader privacy does not begin or end with our concern about the USA PATRIOT Act. The Foundation recently joined with the New Jersey Library Association, the ACLU of New Jersey, the Electronic Frontier Foundation, and the Privacy Rights Clearinghouse in filing an amicus curiae brief to the New Jersey Supreme Court in *New Jersey v. Reid*. The state is appealing a ruling by the New Jersey Court of Appeals requiring police officers to obtain a valid subpoena in order to get an ISP account holder's personally identifiable information. FTRF's brief asks the New Jersey Supreme Court to uphold the Court of Appeals' decision. The case was argued on October 12, 2007, and we are awaiting a decision.

Securing the Right to Read

In the past six months, FTRF won two important victories in our efforts to protect the freedom to read materials published on the Internet. The first came on September 24, 2007, when Judge Walter Rice issued a written opinion in *ABFFE v. Strickland* (formerly *Bookfriends, Inc. v. Taft* and *ABFFE v. Petro*), in which FTRF is a plaintiff. In his opinion, Judge Rice ruled the Ohio “harmful to minors” statute unconstitutional as applied to the Internet, and enjoined its enforcement. The decision has been appealed to the Sixth Circuit Court of Appeals, and briefs are due to be filed early this year.

FTRF also secured an interim victory in *The King’s English v. Shurtleff*, a lawsuit challenging the constitutionality of Utah’s expanded “harmful to minors” statute. The statute has an astounding reach; not only does it criminalize constitutionally protected Internet content, it gives the state’s attorney general authority to designate a website to be “harmful to minors” without judicial review. In the spring of 2007, the State of Utah filed a motion to dismiss the lawsuit asserting that FTRF and its co-plaintiffs lacked standing to challenge the law. On November 29, 2007, the court denied the state’s motion and permitted the lawsuit to proceed, ruling that FTRF could continue to represent the First Amendment interests of Internet users across the country.

As reported at the 2007 Annual Conference, Judge Lowell Reed issued his ruling in *Gonzales v. American Civil Liberties Union*, the longstanding challenge to the Children’s Online Protection Act (COPA), the 1997 federal law that regulates and criminalizes protected Internet speech. In March 2007, Judge Reed permanently enjoined enforcement of COPA, which he found unconstitutional on its face.

The government appealed to the Third Circuit and on October 29, 2007, FTRF joined with the Association of American Publishers (AAP), the Center for Democracy and Technology, the Comic Book Legal Defense Fund (CBLDF) and several other partners in filing an amicus curiae brief urging the appellate court to uphold Judge Reed’s ruling. We expect oral arguments to take place in the near future.

FTRF is also an amicus curiae in *U.S. v. Williams*, a lawsuit that challenges the federal government’s PROTECT Act, a law that criminalizes advertising, promoting, presenting, distributing, or soliciting material in a manner that “reflects the belief, or is intended to cause another to believe,” that the material is illegal child pornography. On August 14, 2007, FTRF joined with the American Booksellers Foundation for Free Expression (ABFFE), AAP, CBLDF, and PMA, the Independent Book Publishers Association, in filing an amicus curiae brief that addresses the constitutionality of laws criminalizing the marketing of First Amendment protected materials in general. The brief focuses on materials published or sold by members of the amici groups. The Eleventh Circuit Court of Appeals heard oral arguments on October 30, 2007.

Finally, FTRF continues to participate in several important lawsuits implicating fundamental First Amendment rights. *American Civil Liberties Union of Florida v. Miami-Dade School Board* is a lawsuit challenging the Miami-Dade School Board’s decision to remove from its classrooms and libraries all copies of the book *Vamos a Cuba* and its English-language counterpart, *A Visit to Cuba*. The lawsuit is still pending before the Eleventh Circuit Court of Appeals, which heard oral arguments on June 6, 2007. FTRF has filed an amicus curiae brief urging the appellate court to uphold a fine decision by the district court which, in a resounding defense of basic First Amendment principles, ordered the return of the books to school library shelves.

FTRF continues to monitor *Sarah Bradburn et al. v. North Central Regional Library District*, which challenges a library’s restrictive use of Internet filters and its policy of refusing to honor adults’ requests to disable temporarily the filter for research and reading. FTRF is not currently a participant in this lawsuit.

Securing the Right to Know

In 2001, President Bush signed Executive Order No. 13233, which subverts the Presidential Records Act of 1978 by imposing restrictions that threaten the timely release of presidential and vice-presidential records in accordance with the standards established by enactment of the Presidential Records Act. Professional historians, archivists, and public interest groups joined to file a lawsuit, *American Historical Association v. National Archives and Records Administration*, to challenge the legality of the executive order. FTRF has participated in the lawsuit as amicus curiae, supporting the public’s right to access important government records.

After many years of litigation, Judge Kollar-Kotelly of the federal district court in Washington, D.C., issued an opinion on October 1 that enjoins the U.S. Archivist from relying on the order to delay the release of presidential records. It is her finding that the U.S. Archivist’s reliance on the executive order to delay release of former presidents’ records violates the Administrative Procedures Act. However, she also held that some aspects of the challenge were not ripe for review, and she did not overturn Executive Order No. 13233. Neither side appealed the decision.

Looking Ahead

In the course of its deliberations, the Board identified several issues, including growing evidence of tacit or explicit censorship involving licensed databases, which, while still under the radar, might well develop into legal battles in the not-too-distant future. The Board approved creation of an ad

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administration censored media access to climate science

Charging that the Bush administration acted as if an American Petroleum Institute action plan to create doubt about global warming was its “mission statement,” a new report from the House Committee on Oversight and Government Reform said the administration censored climate scientists’ access to the media, while Republicans on the committee said the majority had distorted information to reach a foregone conclusion.

The report said the administration had tried to shape the message for scientists appearing on PBS’ NewsHour with Jim Lehrer, CNBC’s On the Money and NBC’s Today, or denying those appearances if a scientist was not available who could argue that intensified hurricanes were the result of natural causes.

“The White House exerted unusual control over the public statements of federal scientists on climate change issues,” the report concluded. “It was standard practice for media requests to speak with federal scientists on climate change matters to be sent to CEQ [the White House Council on Environmental Quality] for White House approval. By controlling which government scientists could respond to media inquiries, the White House suppressed dissemination of scientific views that could conflict with administration policies.”

Citing one e-mail in response to a request by Today for a scientist to discuss “if there is a link between hurricanes and global warming,” Katie Levinson, director of White House television operations, responded, according to the report: “Not sure this is a good idea. Gets into Al Gore statement/politics of global warming.”

The report was released even as news operations were airing former Vice President Gore’s acceptance speech for the Nobel Peace Prize for his global-warming warnings dating back decades.

The committee, headed by Henry Waxman (D-CA), has for months been investigating the allegations that the administration has “censored climate-change scientists, edited climate-change reports and misled policymakers and the public about the dangers of global warming.”

The Republican minority on the committee put out its own report on the report, saying that the report was a partisan attack. “An investigation that began as a bipartisan inquiry into the role of the Council on Environmental Quality in climate change policy has veered into a partisan diatribe against the Bush Administration,” said the minority report.

The Republicans said the report was “seriously flawed,” arguing that it had based its findings on “selective passages from two hearings, one deposition, and one transcribed interview to make grossly exaggerated claims of political interference with climate change science.”

“Democrats assert their report leads to one ‘inescapable

conclusion’ about alleged political interference with climate change science under the Bush Administration,” said Republican staff communications director Brian McNicoll. “We believe, and the attached views demonstrate, the only inescapable fact is that Democrats were interested only in presenting distorted information that supported their preconceived conclusions.” Reported in: *Broadcasting & Cable*, December 10. □

challenged materials in Colorado public libraries, 2006

According to a study released by the Library Research Service, a project of the Colorado State Library, the Colorado Department of Education, and the University of Denver, in 2006, out of the 115 public libraries in Colorado, 23 reported that they received a formal challenge during the year. There were a total of 89 individual challenges to books, materials, events, exhibits, and Internet-related services in the state’s public libraries. Challenges to Internet content or access policies are reported separately from materials and event challenges. There were 63 challenges to materials and events. This was the lowest number of challenges to materials and events since 2003.

The Library Research Service annually collects data on challenged materials as part of the Colorado Public Library Annual Report.

In 2006, six Colorado public libraries reported challenges to Internet content or access policies. A total of 26 individual challenges were reported. This is nearly four times the number of Internet-related challenges reported in 2005.

A follow-up survey was sent to all 23 libraries who reported a formal challenge. This survey requested the title, author, format, reason for the challenge, action taken by the library, and the date of the publication or incident regarding each challenge. Twenty of the twenty-three libraries responded to the follow-up survey, which received detailed information for 49 challenges to books, materials, events, and exhibits. Of these challenges 40 (82 percent) resulted in no change being made by the staff regarding the location, availability, description, or classification of the item. Seven items (14 percent) were moved to another part of the library or reclassified. The action was dropped by the individual who filed the challenge in one case (or 2 percent).

Of the 26 Internet-related challenges reported in the Public Library Annual Report, the follow-up survey received information for 13 challenges. Six cases resulted in no change, in three cases the action was dropped, and in two cases the Internet-related matter was restricted. For the remaining one case, the reporting library chose other for the action but did not provide more detailed information.

Following the trend of previous years, books were the most challenged format in 2006 according to the result of the

follow-up survey. Almost half (47 percent) of all challenges in Colorado public libraries involved books. Less than one-quarter (22 percent) involved Internet-related services (i.e. computer) and video materials accounted for less than one-fifth (17 percent) of the challenges. Challenges involving music CDs, periodicals, activities, and audio books together totaled over one-tenth (12 percent) of all challenges.

In 2004, the figures indicated a possible trend in which videos would begin to account for a greater proportion of challenged materials. However, a more recent examination of the types of materials challenged indicated that computer (i.e. Internet-related) services are increasingly being challenged. The percentage of Internet-related challenges rose dramatically from 3 percent in 2005 to 22 percent in 2006. In spite of these fluctuations, books continue to be the most challenged format.

More than half (51 percent) of all challenges for 2006 were considered challenges to adult materials. In 2006, there was only one more challenge to children's materials (20) than to young adult (19) materials. Although challenges to adult materials fell from 63 percent in 2005 to 51 percent in 2006, they continue to be challenged more frequently than materials in other age categories. Interestingly the percentage of challenges to children's or young adult materials fluctuates rather more from year to year. The proportion of challenges to young adult materials grew steadily from a low of 17 percent in 2003 to 30 percent in 2006. Whereas challenges to children's materials went from 36 percent in 2003 to a record low 15 percent in 2005, and then rose again in 2006 to 30 percent.

In 2006, the reasons most commonly cited for challenging materials were due to materials being sexually explicit or unsuited for the intended age group. The only title to be named multiple times in a formal challenge to non-Internet related materials in 2006 was Justin Richardson's *And Tango Makes Three*. This title was mentioned in two separate challenges. Richardson's book was also the most frequently challenged book nationally in 2006 according to the ALA. The remaining 61 challenges to books, materials, events, and exhibits were a variety of individual titles. □

world privacy rights "fragile" in 2007

Threats to personal privacy got more severe in 2007, a report has claimed.

Compiled by Privacy International and the Electronic Privacy Information Center, the report details global trends in privacy protection and surveillance. It found that in 2007 more nations than ever ranked as places where surveillance had become "endemic." The move toward greater surveillance had left the fundamental right to a private life "fragile and exposed," the report concluded.

The 1,000 page report from the two campaigning groups details what governments, companies and lobby groups have done in the past 12 months to defend or dismantle privacy online or offline. Overall, wrote the report's authors, privacy protection "worsened" during 2007.

As in previous years, the report found no nation which consistently tried to uphold privacy or gave substantial help, legislative or otherwise, to protect personal data. Greece topped the table of 47 countries ranked in the report and was the only one that was identified as having "adequate safeguards against abuse."

Most countries surveyed were classed as having "some safeguards but weakened protections" or a "systemic failure" to defend citizen's private lives. In 2007, the survey found surveillance "endemic" in nine countries—compared to five in 2006. The nine were England, Wales, Malaysia, China, Russia, Singapore, Taiwan, Thailand and the U.S.

The report said that greater scrutiny of citizens grew out of two trends—government efforts to beef up national security and a burgeoning industry built around surveillance or the data it collects. It noted that action by lobby groups or campaigners to protect privacy were "marginal" and added that any substantive effort to fight back could struggle against the complex and diverse threats ranged against privacy. Reported in: BBC News, December 31. □

Barbara Jones wins Downs Award

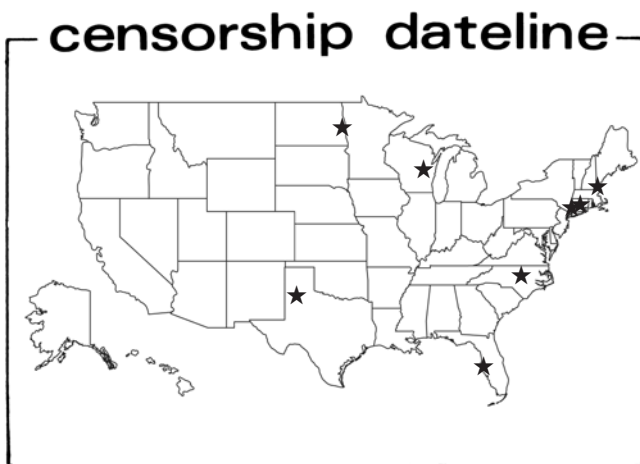
Barbara Jones has taken her commitment to intellectual freedom around the world and back again.

The Caleb T. Winchester University Librarian at Wesleyan University has done extensive work on behalf of intellectual freedom, both in the United States and abroad. For her efforts, she received the 2007 Robert B. Downs Intellectual Freedom Award, given by the faculty of the Graduate School of Library and Information Science (GSLIS) at the University of Illinois, Urbana-Champaign.

Jones's work on behalf of the Committee on Freedom of Access to Information and Freedom of Expression has taken her to Costa Rica, Dubai and Mexico to present a series of workshops on such topics as access to HIV/AIDS information, internet access, and libraries in the fight against government corruption. She just completed hosting a workshop at Wesleyan, attended by librarians from Africa, East Asia and Latin America. She has presented papers on intellectual freedom at conferences in Croatia, Japan, and Norway, and over the next few years, Jones will visit Ecuador, Nigeria, South Africa, Brazil and Sri Lanka.

In her position as Wesleyan's head librarian, Jones has coordinated faculty programs on scholarly communication and the Patriot Act and serves as co-chair of the Intellectual Property Committee, working with university legal counsel

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libraries

Brandon, Florida

Residents can judge for themselves whether a *New York Times* bestseller under challenge in the Hillsborough County school system is too intense for teens. After finding *Just Listen*, by Sarah Dessen, in her 15-year-old daughter's backpack, Armwood High School parent Milisa Burt asked the county school board at its meeting December 11 to review whether the book is appropriate for high school libraries.

The board agreed to have school libraries mark their copies of the book "for mature readers" while a committee of parents, teachers and students at Armwood review the book. The committee will present its assessment to the Hillsborough County School District, which may or may not accept the committee's recommendation. Burt told the school board the book's graphic description of an attempted rape disturbed her.

Dessen, 37, has written seven books directed toward teens and young adults, including two that were the basis for the 2003 movie "How to Deal" starring Mandy Moore. *Just Listen* was released in April 2006.

"This kind of issue is right up our alley," said Jo Averill-Snell, artistic director for the Alley Cat Players, a nonprofit professional acting troupe from Tampa, which gave dramatic readings from *Just Listen* at the Brandon Regional Library. "We do performance art and read from literary works and poetry, especially roles with strong women."

Averill-Snell pointed out that the few paragraphs challenged by Burt constitute a minor part of the book and should not be a reason for banning it from school libraries.

She said she was surprised by reaction after an article about Burt's request was posted on the Web and published in *The Tampa Tribune* December 13.

"When I read some of the comments parents made, I realized many hadn't even read the book. They just assumed it must be bad," she said. "We're trying to add to the community conversation about this book and encourage parents and other interested parties to actually read it. And we want to provide a forum for those who are already familiar with the book to express their thoughts."

In fact, Averill-Snell said, the main characters in the book go through experiences that lead them to put more trust in their families and make better choices when choosing friends. "The book models behaviors any of us would want for our own children," she said. "And, by telling teen girls that they shouldn't read about an attempted rape, you're sending them the message that they shouldn't talk about rape, that they should hide it. That's just the opposite of what we want them to do." Reported in: *Tampa Tribune*, December 29.

Johnston County, North Carolina

Some books are not appropriate for high school students, according to a Johnston County parent—and a district committee agreed. One book in particular was removed from school libraries this past fall and officials are searching for other offensive materials to be removed from libraries and classrooms.

How The Garcia Girls Lost Their Accents, by Julia Alvarez, was taken out of the school district after a West Johnston High School student's parents challenged its sexual content and profane language to the school board. The county schools staff then launched a district-wide book title review.

"We are just simply looking back through the titles to see if there are any red flags out there. It's not that we are looking for any particular title, it's just a broad review just to see if there is anything out there that jumps out at us," said Keith Beamon, associate superintendent for curriculum and instructional services.

The district is double-checking the titles for the first time ever because of the concerns raised by the Alvarez book that got by the book screening and purchasing process, Beamon said. The book was taught for the first time at West Johnston and in one other high school in the district this year, he said.

"If you've got a leak in one place in your house . . . we're just kind of checking everywhere else just to make sure there are no other leaks," Beamon said.

Georgia Roberts' daughter, a 15-year-old student at West Johnston High, came to her with a copy of *How The Garcia Girls Lost Their Accents* and told her mother she was having a hard time reading the book. Roberts encouraged her to give it a try and come back if she was still having problems

with it, she said. Her daughter got about halfway through the book and brought it back to her again.

“She just came to me and she was very upset and crying because the more you go into the book, the worse it got,” she said.

The Robertses were disgusted and called the school asking for an alternate assignment and a parent-teacher conference about the reading material. School officials assigned her daughter *All Quiet On The Western Front*, by Erich Maria Remarque, a book centered around World War I, in place of the Alvarez novel.

When Roberts arrived at her parent-teacher conference she was surprised to find the teacher, school principal and her daughter’s advisor all there, she said. They could not understand what she was so upset about, Roberts said.

The school’s reason for teaching the book was that each of its scenes is a lesson, she said. Roberts was told a pedophile scene in the book was meant to teach students about the language barrier for Latinos in America. That’s because after the main character, who cannot speak English well, is approached by a man flaunting himself sexually, the girl had to go to the police station to tell them what happened, Roberts said.

“I said (to the teacher), ‘Well ma’am, you can learn about language barriers at the DMV (Division of Motor Vehicles) . . . you can go anywhere in Johnston County and come up with a language barrier situation . . . It doesn’t have to be done with a man’s (private part) rising and him taking care of himself,’” Roberts said.

Roberts asked her daughter what the teacher did in class when she came across the foul language and sexual terms while reading the book aloud. The teacher read it, Roberts said her daughter told her, but substituting words such as “flippin’” for the profanity.

“(School staff) told us that it was supposed to be a cultural lesson . . . (about) the Dominican Republic girl coming to America, learning how to adjust to our culture, and in turn, in reading this book, we’re supposed to have been learning about their culture,” Roberts said. She said she is agreeable to learning about the Latin culture but not with the foul language and sexually explicit situations in the book.

“I read quite a bit until it nauseated me,” Roberts said of the book.

After she spoke with her daughter’s teacher, principal and advisor about the book, a West Johnston Media and Technology Advisory Committee meeting was held, Roberts said. That committee decided the book would remain on the library shelf and in the classroom curriculum. The Robertses were later informed by letter.

“Anthony (her husband) and I were not notified about this meeting,” she said. “We had no idea they met until we got this letter in the mail. Any type of meeting like that should be public knowledge.”

The district’s media and technology committee then

reviewed the book and voted to remove it from all county schools, overturning the school committee’s decision to keep the book.

Belva Lovitt, district media coordinator for Sampson County schools, said there is one copy of *How The Garcia Girls Lost Their Accents* in Sampson schools, in the Union High School library. There have been no complaints about the book, but administrators were planning to look at the novel as a group in light of the situation in Johnston County, she said.

“The novel is no slight ‘pornographic’ hack work that got into curriculum as a misguided selection by clueless teachers who are corrupting the minds of young people,” said author Julia Alvarez. “Perhaps the high school teachers who selected the novel for Johnston’s high school students knew (they) were in fact making an informed and intelligent choice.”

Schools such as Mount Holyoke College of South Hadley, Mass., Smith College of Northampton, Mass., and Miami University of Oxford, Ohio, chose the piece for first-year students, Alvarez said. In 2001–02, *Garcia Girls* was chosen as one of four texts for a national reading project, “A Latino National Conversation,” sponsored by The Great Books Foundation. NY (New York) Librarians chose it as one of 21 classics for the 21st century, which also included titles such as *The Diary of a Young Girl* by Anne Frank and *Invisible Man* by Ralph Ellison.

Alvarez said she is dismayed over the banning of her book in Johnston County schools. Literature is about story telling to human beings and story telling is rich because humans come from many different tribes, she said. Alvarez has taught in high schools and lower grade schools, and currently teaches at Middlebury College in Vermont.

Johnston County probably made its decision to ban the book based on selected passages, Alvarez said, and as a result, the school system may have deprived all students of a positive learning experience. “(Parents) have their concerns. I do think they are misguided. I think they are out of context,” Alvarez said.

The National Coalition Against Censorship sent a letter to the Johnston County Board of Education on December 21, expressing concern about the ban and that school administrators are now checking commonly challenged books.

“This isn’t just an issue of my particular novel’s merit, but a bigger one about the curtailment of civil liberties and an erosion of the best values and principles of this free country,” Alvarez said. Reported in: *Dunn Daily Record*, January 10.

Fargo, North Dakota

The Fargo Public Library may examine whether children should be allowed access to some materials after complaints from two patrons. A library Collection Development

Team recommended that both *Borat* and the magazine *Vibe* remain in the library's adult collections. It also recommended the Library Board revisit its access policy.

Roberta Anderson filled out a statement of concern with the library in October after watching the R-rated DVD *Borat: Cultural Learnings of America for Make Benefit Glorious Nation of Kazakhstan*. Anderson wrote that she was concerned about anti-Semitism and sexual content in the movie. "Don't let kids check this one out," she wrote.

Jacqueline Ulstad filled out a statement after she saw the December 2007 cover of *Vibe* magazine while touring the new Dr. James Carlson Library. The cover, on display in the periodical section near the teen library, featured a nude woman holding her breasts.

"It wasn't anything against that magazine, nothing against the library, but I did feel like it was inappropriate to have it there," Ulstad, who has a teenage son, said when reached after the Library Board meeting.

The library does not act in loco parentis, meaning parents and guardians are responsible for what children read, see and listen to. Currently, a child of 12 or 13 could check out an R-rated video, something board members Leo Wilking and Prakash Mathew said was concerning.

On the flip side, some parents could accuse the library of denying their children service if access to those materials were limited, said Tim Dirks, the library's new director. Ultimately it should be the parent who determines what the child sees, he said.

Board members took no formal action on the recommendations. Board President Helen Levitt asked Dirks to gather research on the best practices for library access rules. Reported in: *Fargo Forum*, January 16.

Oshkosh, Wisconsin

At least one Oshkosh area school temporarily pulled the novel *The Golden Compass* from its library shelves over concerns about what critics call its "anti-Christian message." The book is the first in the *His Dark Materials* trilogy by British author Philip Pullman.

The book and the film based on it, which was released in December, follow a headstrong girl named Lyra on a quest to help a world that is somewhat like the real world. The movie focuses on 12-year-old Lyra and her daemon (pronounced "demon"), which is a manifestation of her soul in the form of a talking animal. All humans in Lyra's world have a daemon.

Many religious groups, including the New York-based Catholic League, have protested the film and the books as denigrating Christianity and promoting a stealth atheistic campaign to unsuspecting children and their families.

Mary Miller, media specialist at St. John Neumann Middle School and Lourdes High School, said she temporarily removed the series from the shelf at the shared school library because she wants to have a chance to read them and

decide for herself if they are appropriate for students.

"I just heard all the news and I decided to pull them," Miller said. "After (I read them), I'm not sure what I'll do with them."

Mary Zunker, media specialist for the Oshkosh Area School District, said the series was available in media centers throughout the school system. She said educators reviewed the series and found they meet the district's book selection policy for adding materials to library collections. According to the school district policy, "The primary objective of the library media program is to implement, enrich and support the educational program."

Sandy Joseph, children's librarian at the Oshkosh Public Library, said she's hearing the same types of complaints she heard in the past about the "Harry Potter" series.

"Some element of the Christian right is saying that (the books) are not supportive of Christianity, that (the books) are anti-God," Joseph said.

To that, Joseph says, "The books are fantasy. Good and evil play out in almost every story or there is no plot."

Joseph said the library chooses what section books belong in based on the number of serious issues that arise in a book. If a book has more than one serious issue like death or divorce, it can stay in the children's section, which is generally geared toward children in eighth-grade or younger, but if there are multiple issues, it's designated to the young adult section.

The Oshkosh library carries the three-book series in each section of the library—children, young adult and adult, Joseph said.

Zunker said it's important for parents to keep an eye on what their children are reading. She said parents can create a dialogue with children if there are questionable themes or issues raised in books. "The reality is, parents and guardians have a responsibility. They just need to be responsible and familiar with the popular media their children are using," Zunker said. "To me, I'm always concerned about the parental and guardian direct supervision. I think it's important because parents need to know what their child is viewing or reading and if you're kind of reading it together, you can then raise the child with the values you want them to have." Reported in: *Appleton Post-Crescent*, December 7.

schools

Manchester, Connecticut

The Adventures of Huckleberry Finn, by Mark Twain, the subject of a parent's complaint, is on a Board of Education-approved list of books, Superintendent of Schools Kathleen M. Ouellette said. The approval was given about three or four years ago and does not expire, Ouellette said. However, the book is still not being taught at Manchester High School while administrators review it in response to the complaint.

In a written complaint filed December 6, the parent objected to the use of *The Adventures of Huckleberry Finn* in a Manchester High School English course “because the ‘N’ word is used in the book 212 times.”

The form asks nine questions, including whether the complainant read the book in its entirety, which is answered, “Yes, and I am very offended by the overuse of the ‘N’ word. In one four-page passage, the ‘N’ word appears 15 times.”

The complaint notes the book’s status as one of the most frequently banned and challenged books in America. It states that its theme is “racism and degradation of the black man.”

Explaining what the book’s effect would be on students, the complaint says: “The ‘N’ word has meaning to African Americans that no one else can really fathom. Its association with slavery, segregation, and lynchings are too real for black people.

“African Americans are already overwhelmed with racial slurs that erode their self-esteem and affect their performance in school. The liberal use of racial stereotypes and racial epithets make up a pervasive theme within this novel.

“Therefore, children of color do not need to be reminded about racism through the alleged teaching of this book, a book that takes lightly the use of a word that black people are trying so hard to bury.”

The Adventures of Huckleberry Finn is one of the most frequently taught books in American high schools. It is considered a classic of American literature, and is one of the first books written in the vernacular. The book is noted for its description of life along the Mississippi River and for its often-scathing look at attitudes of the time, particularly racism.

According to school board policy, complaints may be made regarding only material that is required of all students in a course. If a parent is unsatisfied with the response from the teacher or librarian and the school principal, the parent may go to the assistant superintendent, who has 30 days to complete an investigation.

A report summarizing the investigation’s findings and making recommendations goes to the superintendent, who makes the final decision. Reported in: *Journal-Enquirer.com*, December 7.

Lawrence, Massachusetts

When the janitors walked into the lobby of the principal’s office at Lawrence High School with buckets of white paint, 15-year-old Thuan Tran stood in front of his half-finished mural of Martin Luther King Jr. and Malcolm X, pleading with them not to erase it.

“I asked them, ‘Why do you got to do this?’” Tran said, pointing to the newly painted white wall.

They were under orders from the school’s superinten-

dent, Wilfredo T. Laboy, who said that the mural looked like “ghetto art.” Laboy said that he was trying to protect taxpayers’ investment in the \$110 million 4-month-old school and said the new principal of the school’s Humanities and Leadership Development Academy had made a mistake in granting Tran permission to paint the mural.

“There was a fundamental breakdown in communication,” he said. “The adults didn’t communicate.”

He added that he had a “fundamental problem” with the mural depicting Malcolm X, “because he promoted violence. If that went up there, what kind of uproar would there have been?” he said. “In my humble opinion, it looked like urban art, ghetto art . . . I did what I had to do.”

Lawrence’s mayor, Michael J. Sullivan, agreed with Laboy’s decision. “The fact that this school is brand-new is why I don’t think any part of the building should be touched, unless there’s a real, firm decision from the top,” Sullivan said. “Everyone should feel comfortable with this.”

Other school officials, teachers, and students criticized the superintendent, arguing that he acted heavy handedly, did not talk to Tran before ordering the mural painted over, and squelched free expression in a school where the vast majority of students are of color.

“He reacted harshly,” said James Vittorioso, one of seven School Committee members for Lawrence Public Schools. “His actions give Lawrence Public Schools another black eye. There’s supposed to be freedom of expression here. It’s not right.”

Eric Allshouse, Tran’s art teacher, called Laboy’s decision “an act of censorship. I think it’s just about control,” Allshouse said. “He wanted to oversee it.”

Tran’s friends said they couldn’t understand how the school would destroy a student’s work. They said it was unfair that the superintendent ordered his mural painted over but allowed a mural depicting global warming to remain.

“He worked so hard on it,” said Joanne Trinh, 15. “It’s so wrong.”

Freddy Garcia, 15, added, “They could have at least given him a chance to finish it.”

After local media reported on the situation, Laboy invited Tran to talk to one of his aides about submitting a new rendering of the mural, which the superintendent said he would consider with the school’s art teachers. “If I’m a tyrant, I’m certainly living in the wrong country,” Laboy said. “I embrace consensus, but I acted as I needed to act.”

Tran said he agreed to submit a new sketch of the mural that didn’t include Malcolm X or his quote about seizing justice. The revised mural would retain King and his quote: “Darkness cannot drive out darkness; only light can do that. Hate cannot drive out hate; only love can do that.”

Standing in front of the school, his hair spiked and his anger soothed, Tran said he didn’t want any more conflict. “I can compromise,” he said. Reported in: *Boston Globe*, December 12.

Westhampton Beach, New York

The Westhampton Beach school board voted to remove two books from its reading list for ninth-graders and to conduct a review of the remaining list. The two books, Jodi Picoult's *The Tenth Circle* and James Patterson's *Cradle and All*, attracted the ire of several parents for what they deemed inappropriate sexual content.

Several weeks earlier, the parents complained to the school board, which appointed a committee to review the books and make a recommendation. On December 3, four of the board's seven members voted to follow the recommendations of the committee and superintendent: The books must go.

"It didn't pass my own personal parent test," said Clint Greenbaum, a school board member who voted to remove the books from the list.

The district's ninth-graders weren't required to read the two books, one of which dealt with date rape, the other with virgin birth. Rather, the two titles were on a list of more than 300 books from which ninth-graders could choose to read for school credit.

Terry Lucas, a local bookstore owner who spearheaded the fight to keep the two books on the list, said the board's action was akin to censorship. "I just don't want fear," Lucas said. "I don't want teachers to be afraid of presenting challenging material."

The district is conducting a review of the entire list, headed by the high school's English faculty and the school librarian, Superintendent Lynn Schwartz said. He said the committee is charged with updating the list, which could mean removing other books.

"I have confidence and faith in our faculty here to do what's right and to vet the books appropriately," Schwartz said.

That process was scheduled to be complete by February 1, he said. The two books in question, while off the reading list, will remain in the school library.

Parent Theresa Caponi of Spenk said she was relieved by the board's decision. "The material was very sexually explicit," Caponi said. "My 13-year-old daughter would be in ninth grade next year, and I didn't want her to be exposed to that type of reading material." Reported in: *Newsday*, December 4.

Lubbock, Texas

A group of parents is angry that a third-grade teacher read a controversial book authored by a self-described atheist to students at Shallowater Intermediate School. The parents want *The Golden Compass* banned from the libraries at the intermediate school and Shallowater Middle School. They also do not want the book to be read in class again, said Carrie Williams, whose daughter is in the third-grade class.

The school has formed a committee to review the request, Principal Jack Noles said.

The complaint came as a national controversy swirled around the book, which has been made into a movie. Religious groups have complained the book contains anti-religious messages and that the movie will encourage young people to read it.

The author, Philip Pullman, has denied such claims.

Civil rights groups and library associations say they're opposed to banning books from public schools simply because a person disagrees with the content.

The Golden Compass features the world of 11-year-old Lyra Belacqua, an orphan who grows up in the precincts of Jordan College in Oxford, England. Her world is filled with people who have a personal animal called a daemon. Science, theology and magic blend in her world.

Under the Shallowater school district policy, instructional materials can be challenged, which the parent group recently took advantage of.

Williams said there are 30 to 40 parents who want the book banned. "We were very upset," she said, adding she has heard the negative publicity about the movie and has a problem with the author being an atheist. "Basically, we are very disappointed that the book was chosen to be read to our 8-year-old, and we didn't know about it until the book was almost done . . . We pulled her out the last day."

Noles and Warren said parents received written notification the book would be read in class. Parents have the right to take their children out of a lesson they don't want their children to participate in, Noles said, adding teachers have academic freedom when it comes to choosing such materials.

Williams, who said she has read the book, also says it is not age-appropriate. "It is very dark," she said. "There are lots of violent and bloody depictions in the book."

Noles said it is common practice for teachers to read higher-level reading materials, such as novels, to students to boost their vocabulary.

Kiera McCaffery, a spokeswoman for the Catholic League, which has been outspoken against the film and book, said parents should be concerned if their children are reading these books in class. "This is a candy-coated message of atheism," she said.

The American Civil Liberties Union of Texas Lubbock Chapter opposes banning books from public schools, said Harvey Madison, vice president of the group's board. "We encourage the school to make their judgments based on educational criteria rather than someone's complaint," he said. "We are certainly always interested in censorship matters." Reported in: Lubbock Online, December 7.

art

Stamford, Connecticut

The removal of a bear sculpture from the Government Center's lobby has riled the Cloonan Middle School art-

ists who built it. The sculpture stood just outside the town clerk's office for three days, until December 6. It depicts a snow-white bear, almost waist-high to an adult, standing over the prone form of a boy who has one arm raised.

To Cloonan art students and their teacher, it was the culmination of months of effort, an art project illustrating a story about redemption and forgiveness. In the tale, an angry, violent boy learns humility and goodness after a fight with a mysterious bear on an Alaskan island.

"The display was a celebration of student achievement and excellence," said David Sepulveda, a Cloonan art teacher who guided the project.

The sculpture is based on "Touching Spirit Bear," by Ben Mikaelson. Students read the book over the summer and met the author in an assembly in November. They spent three months working on the sculpture—part of a display containing text that explained the story. The sculpture shows a gentle moment of epiphany, when the boy reaches up to touch the bear as it stands over him, Sepulveda said.

He and his students expected the display to stay in the Government Center lobby for about two weeks, but it was removed after three days.

"The bear itself was absolutely gorgeous," but drew complaints from several people—including children and senior citizens—who found it disturbing or frightening, who thought it shows a bear attack, Mayor Dannel Malloy said. It sat outside the town clerk's office, where people hurrying past were unlikely to catch its meaning, he said.

"It's appropriate someplace. It's just not appropriate at the very front of the town clerk's office, where people don't have the time to understand what's being depicted," Malloy said.

Sepulveda said the bear looks pensive, rather than ferocious, and said its removal was censorship of the students' artistic expression. "If you look at the sculpture, it is a powerful visual image. It is not violent, it is not gory, and I think the mayor totally overreacted," Sepulveda said. "I don't think it was his place to make that judgment for the entire city of Stamford."

Malloy replied that "of course it's not censorship." The display just needs a more appropriate setting, he said.

Students were dismayed by the removal of the statute. "I was very disappointed, because a lot of effort was put into making this sculpture," said Joanna Koczuk, a Cloonan eighth-grader who worked on it.

Student Nikita Sturrock said, "I could see that it would be a little bit scary," but said it was supposed to be realistic. She and other students said it was removed abruptly and without explanation or announcement. The students were seeking another forum for the display, which is back at Cloonan. Reported in: *Stamford Advocate*, December 14.

Lubbock, Texas

A Lubbock city official has banned two drawings from an art show in a city-run facility. The predominantly pencil-

sketched images of a nearly fully clothed mother who is breast-feeding and a nude pregnant woman were banned from the Buddy Holly Center.

The artist, Lahib Jaddo, said she's surprised by the ban because she'd shown many nudes there in 2003. She said the move could discourage other West Texas artists.

City officials said the decision came just hours before the First Friday Art Trail opened in December and was made without a policy governing what's prohibited. Reported in: Associated Press, December 12.

foreign

Borneo, Malaysia

A Malaysian church has sued the government for banning the import of Christian books containing the word "Allah," alleging it was unconstitutional and against freedom of religion, a lawyer said December 27.

The Sabah Evangelical Church of Borneo also is challenging the government for declaring that the word "Allah"—which means God in the Malay language—can be used exclusively by Muslims, said the church's lawyer Lim Heng Seng.

"The decision to declare 'Allah' as only for Muslims, categorizing this as a security issue, and banning books with the word 'Allah' is unlawful," Lim told The Associated Press.

Religious issues are extremely sensitive in Malaysia, where about 60 percent of the 27 million people are Malay Muslims. Ethnic Chinese, who follow Christianity and Buddhism, account for 25 percent of the population, while mostly Hindu Indians are 10 percent. Minorities often complain they don't have full freedom of religion even though the constitution guarantees everybody the right to worship.

In an affidavit, pastor Jerry Dusing said customs officials in August confiscated three boxes of education material for children from a church member who was transiting at the Kuala Lumpur airport. He said he was informed later the publications were banned because they contained the word "Allah," which could raise confusion and controversy among Muslims. The Internal Security Ministry also told him the issue was sensitive and has been classified as a security issue, he said in the affidavit.

But Dusing said Christians in Sabah on Borneo island have used the word "Allah" for generations when they worship in the Malay language, and the word appears in their Malay Bible. "The Christian usage of Allah predates Islam. Allah is the name of God in the old Arabic Bible as well as in the modern Arabic Bible," he said, adding Allah was widely used by Christians in Egypt, Lebanon, Iraq, Indonesia and other parts of the world without problem.

Dusing also said the confiscated material was for use only within the church. The church is asking the court to declare their constitutional right to use the word "Allah"

and for the right to import publications with the word in it, he said in the affidavit.

Earlier a Catholic weekly newspaper was told to drop “Allah” in its Malay-language section if it wants to renew its publishing permit.

Allah refers only to the Muslim God and can be used only by Muslims, government officials have said. Reported in: Associated Press, December 27.

Warsaw, Poland

A history professor at Princeton University may face criminal charges in his native Poland over the publication there of his latest book, in which he details “how Poles victimized Jewish survivors of the Holocaust in the aftermath of World War II.”

The professor, Jan T. Gross, arrived in Poland in January for a publicity tour for the book, *Fear: Anti-Semitism in Poland After Auschwitz*, which was published last year to wide acclaim in the United States. He is also the author of *Neighbors* (2001), a book about a 1941 massacre of 1,600 Jews in Jedwabne, Poland, by the town’s non-Jewish residents.

Under a 2006 law, which Gross and other historians contend Poland enacted partly in response to the American publication of *Fear*, “asserting that ‘the Polish nation’ was complicit in crimes or atrocities committed by Nazis or communists” is a crime punishable by up to three years in prison.

The archbishop of Kraków has written to the book’s Polish publisher, which has close ties to the Roman Catholic Church, saying that reading *Fear* was painful for him and that it was not the publisher’s role to “awake anti-Polish and anti-Semitic demons,” the *Polskie Radio* reported.

Even historians critical of the authorities for considering legal action against Gross have assailed the Princeton professor, himself a Polish Jew who immigrated to the United States in the 1960s, accusing him of inflaming feelings about an era that remains emotionally fraught. In an interview, Gross said he was unmoved by the controversy and did not think he would face criminal charges. Reported in: *Chronicle of Higher Education* online, January 18.

Ankara, Turkey

A professor of politics and political theory at Gazi University, in Ankara, was convicted January 28 of insulting the memory of Mustafa Kemal Ataturk, the founder of the modern Turkish Republic, and was given a 15-month suspended prison sentence.

The professor, Atilla Yayla, had been charged by the public prosecutor in the coastal city of Izmir, Turkey, following comments he made during a public panel discussion there in November 2006.

Speaking by telephone from England, where he has been

spending a sabbatical year teaching at the University of Buckingham, Yayla said he planned to appeal the ruling.

While the sentence was suspended, Yayla could still face imprisonment if he makes any statements over the next two years that a court-appointed “expert” determines have violated the law, a lawyer who has represented the professor said.

The comments Yayla made that landed him in court included questions about how the widespread cult of Ataturk, which persists throughout Turkey even now, 70 years after the leader’s death, would be viewed by outsiders as the country seeks admission to the European Union. Part of the concern rests on whether Turkey’s laws meet European standards of freedom of expression.

“They will ask us why there are the statues of Ataturk everywhere,” Yayla said during his 2006 talk. “They will ask us why in every government office is the same man’s photographs.”

Yayla was swiftly suspended by his university, a state-run institution, while it looked into his comments, and the prosecutor in Izmir launched an investigation as well. Yayla’s university reinstated him after three months, but he was charged in March 2007 under a measure, Law 5816, that makes it a crime to publicly insult the memory of Ataturk. Other Turkish academics and writers have in recent years faced prosecution under another legal provision, Article 301, that criminalizes “denigrating Turkishness.”

Turkey’s governing party and a leading opposition party have in recent days announced plans to amend the Constitution to change Article 301, which has become an international symbol of the country’s curbs on full freedom of expression. Politicians indicated that those moves would be deferred while they focused instead on changing a law that bans the wearing of head scarves by observant Muslim women at universities.

After news of the verdict in his case, Yayla and others argued that the recent moves to amend Article 301 obscured the fact that other measures used against academics, writers, and intellectuals to curtail freedom of expression were not being considered, and that the political climate in Turkey remained repressive.

“There is blood over this article, and they have a moral obligation to get rid of this,” said Orhan Kemal Cengiz, the lawyer who has represented Yayla and is head of the Human Rights Agenda Association in Izmir. Several writers and academics, including the Nobel literature laureate Orhan Pamuk, have been charged under Article 301, and one of its most prominent targets, the journalist Hrant Dink, was murdered in January 2007, in what many believe to be a politically motivated killing.

“What the government is offering about 301 is just a deception,” said Cengiz. “They are playing games with words, saying we will change Turkishness to Turkish nation, for example. This will not solve the problem, it will just politicize it more.”

Yayla was more generous in his assessment of the recent moves to alter Article 301, saying he believed “in the good intentions of the government,” but he cautioned against optimism. “There is an outside focus on Article 301,” he said, “but there are other laws and articles in Turkey’s legal system than can still be used to suppress freedom of expression.”

Taner Akcam, a visiting associate professor at the University of Minnesota–Twin Cities’ Center for Holocaust and Genocide Studies, has also faced prosecution under Article 301 and last year mounted a challenge to the law with the European Court of Human Rights, based in Strasbourg, France.

“The actual problem in Turkey is not the law itself,” Akcam said. “The basic problem is the mentality of the justice system. If they change or amend 301 or rescind the law, the Turkish courts or judges will find another article from the penal code to go after the intellectuals.”

Rather than viewing freedom of speech as an essential component of a healthy democracy, he said, the judiciary “have ingrained in their minds that they have to protect the country against freedom of speech.”

Although Yayla’s prison sentence was suspended, Cengiz called the ruling “a paralyzing punishment for an intellectual,” and added that it would have a chilling effect on other Turkish writers and academics. “Of course it will silence them,” he said. “We have just a few people who dare to criticize Ataturk and the official ideology, and either they will be silenced or they will be in a constant paranoid situation.”

Yayla said that the sentence was not a surprise, but that the news that an expert would be appointed to monitor him

was. “This is something new in Turkey. It’s the first time I have heard of it in my life,” he said, adding that he had no idea what the specifics of this supervision would entail. “I am a mature man. I don’t need an expert. I am not a child. To be under the supervision of an expert can only mean that I will be watched.”

The developments in Yayla’s case came against the backdrop of news of arrests over the weekend of leading Turkish ultranationalists. Among those detained was a lawyer who has spearheaded many of the Article 301 prosecutions of intellectuals, including the case against Orhan Pamuk. Although details remain sketchy, reports in the news media have said that a former general who was among the 13 people arrested had been plotting to kill Pamuk.

“This might be the only real positive step for the last one or two years,” said Cengiz. “I hope it will go beyond this, but I’m not hopeful, actually, because we have such deep-seated issues.”

Akcam, who has faced harassment from Turkish ultranationalists even at speaking engagements at universities in the United States, agreed that the arrests were “very promising.” They were not enough, however, to convince him that it is now safe for him to travel to Turkey, which he used to visit two or three times a year and last traveled to for Hrant Dink’s funeral a year ago.

Yayla is scheduled to resume his teaching post at Gazi University when his sabbatical ends in June, although he may delay his departure from Britain until September. “I will definitely return,” he said. “This is a fight for academic freedom and freedom of expression. I will keep fighting.” Reported in: *Chronicle of Higher Education* online, January 29. □

**SUPPORT
THE FREEDOM
TO READ**

from the bench



U.S. Supreme Court

CBS and ABC joined Fox to ask the Supreme Court not to review a lower-court decision that essentially took the Federal Communications Commission to the woodshed for failing to justify its crackdown on fleeting profanity. While Fox and CBS have been together from the beginning of the challenge, ABC stepped away after the FCC rescinded its profanity finding against the network over *NYPD Blue*.

But in the wake of the FCC's \$1.4 million fine for non-fleeting nudity in that show two weeks ago, ABC added its name to the Supreme Court petition. NBC is filing its own brief. Although no NBC shows were involved, the network is said to believe the issue is important enough for it to weigh in separately. Both filings are responding to the FCC's request that the High Court review last year's decision by the U.S. Court of Appeals for the Second Circuit.

In the brief, filed with the court February 1, Fox and friends argued that the Second Circuit got it right when it concluded that the FCC had "failed to provide a reasoned basis for reversing its longstanding indecency-enforcement policy with respect to isolated and fleeting expletives."

At issue were profanities uttered by Nicole Richie and Cher in 2002 and 2003 during Fox broadcasts of the Billboard Music Awards, as well as those on CBS' *Early Show*. The FCC had 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. FCC chairman Kevin Martin said at the time that broadcasters had asked for such guidance.

The broadcasters told the Court that there was no conflict with another court of appeals on the issue, nor did it raise any "important question" about administrative law that conflicts with precedent.

The Second Circuit decision did not extend to the question of the FCC's broader indecency-enforcement powers. The decision instead turned on the court's finding that the commission had not offered a reasoned justification for its change in policy, which began when it reversed its own 2004 finding that fleeting profanity in an earlier awards show on another network (courtesy of U2's Bono on NBC's Golden Globes broadcast) was not indecent.

The FCC had argued in its filing that the Second Circuit decision meant that the commission could no longer take context into account when regulating indecency, which would put the decision in conflict with the court's decision in the *Pacifica* case (the so-called seven dirty words case).

Fox and company countered that that was a fundamental misreading of the case, and that the Second Circuit was simply asking the FCC to better justify its change in policy after 30 years of not cracking down on isolated or fleeting profanities. The broadcasters pointed out that the *Pacifica* decision was a narrow one, citing that court's own admonition in the decision that it "did not speak to cases involving the isolated use of a potentially offensive word."

Martin has pointed out that the court also signaled that it would be nearly impossible to provide such a rationale, which is one of the reasons why the FCC sought Supreme Court review.

Andrew J. Schwartzman, head of Media Access Project, said he was "happy" with the Fox-led filing and that MAP will lend its support rather than filing separately. MAP represents the Hollywood group the Center for Creative Voices in Media, with creative voices including *NYPD Blue* creator Steven Bochco, Tom Fontana (*Homicide*) and Vin Di Bona, whose America's Funniest Home Videos flirted with an indecency fine following a complaint about a pacifier wedged in a baby's behind.

If the court doesn't take the case, the FCC will either have to justify its enforcement to the Second Circuit or modify its profanity-enforcement policy. But if it does the latter, it could be even stricter. The FCC had defended its crackdown on "fleeting profanities," saying that it was defending kids against the "first blow" from those words. The Second Circuit pointed out that the commission did not find the words indecent in *Saving Private Ryan*, for example, and that it did not see why that was any less of a "first blow." Reported in: *Broadcasting and Cable*, February 1.

PATRIOT Act

New Haven, Connecticut

Prosecutors can claim during the trial of a former sailor that he made coded references to terrorism plots, a federal judge ruled January 31. Hassan Abu-Jihaad, 31, is accused of leaking a document describing the location and vulnerabilities of a Navy battle group to suspected terrorism supporters in London.

The ruling by U.S. District Judge Mark Kravitz boosted prosecutors, who have acknowledged that they don't have direct proof that Abu-Jihaad leaked details of ship movements. Instead, prosecutors hope what they say are Abu-Jihaad's coded references to terrorism plots, his communications with the group in London and his destruction of videos promoting holy war after news reports about the case will persuade a jury to convict him.

Attorneys for Abu-Jihaad say the government's case is weak. Abu-Jihaad, of Phoenix, has pleaded not guilty to charges of providing material support to terrorists with intent to kill U.S. citizens and disclosed classified information relating to the national defense. He has been held without bail since his arrest in March.

Authorities said Abu-Jihaad spoke of "hot meals" and "cold meals" in conversations with associates to refer to intelligence that would be useful to strike American military targets. "I ain't been working ah, in, in, in the field of making meals and or, you know, in a, in a long time," Abu-Jihaad said in one call last year that was cited by prosecutors. "I've been out of that for, ah, over ah, cuatro years, you know."

Authorities say that statement was an admission that he provided such intelligence four years earlier while he was still in the Navy. Abu-Jihaad's attorneys said the statements were irrelevant.

In 2004, when British computer specialist Babar Ahmad was arrested on terrorism charges, investigators discovered information from the battle group documents among his files. Abu-Jihaad had exchanged e-mails with Ahmad while on active duty on the USS Benfold, a guided-missile destroyer, in 2000 and 2001, according to an FBI affidavit. Reported in: Associated Press, January 31.

Internet

Phoenix, Arizona

An Arizona appellate court joined a growing judicial consensus recognizing the need to protect the anonymity of online speakers from overreaching discovery requests.

Mobilisa, a Washington-based communications company, went to court last year to seek the identity of an individual who had obtained an email initially sent by the company's CEO to his mistress. The individual had forwarded the e-mail to company employees. A lower court agreed to issue a subpoena requiring Doe's ISP to reveal

Doe's personal information. Doe and the ISP, represented by attorney Charles Lee Mudd, Jr., immediately appealed.

The Electronic Frontier Foundation and Public Citizen (with help from Arizona attorney John Flynn) filed an amicus brief in support of Doe, pointing out that strong protection for the right to engage in anonymous communication—to speak, read, listen, and associate without revealing your full identity—is fundamental to a free society.

Concerns about political or economic retribution, harassment, or even threats to their lives lead many people today to choose to speak anonymously. For these individuals and the organizations that support them, secure anonymity is critical, often to their very safety, and courts should not permit the use of trumped up legal claims as an excuse to silence people who need anonymity. At the same time, people who have legitimate grievances against anonymous speakers should be able to pursue them in court. Recognizing these competing concerns, courts around the country have set up a flexible test for those seeking to unmask anonymous speakers. The courts have required litigants who seek an anonymous speaker's identity to show that they have given notice of the attempt to the Doe (so she can protect herself), present evidence to show that their case is legitimate, and demonstrate that their need for the information outweighs Doe's right to anonymity. Reported in: EFF Press Release, December 6.

Paris, Texas

In a case that is setting a legal precedent in Texas, a state appeals court has ruled that an anonymous blogger can keep his identity secret for now.

The Sixth Court of Appeals in Texarkana ruled December 19 that the operator of The-Paris-Site blog www.the-paris-site.blogspot.com has a First Amendment right to anonymity in a defamation lawsuit unless the company that owns the Paris hospital can prove it has suffered actual financial losses due to his blog postings.

Essent Healthcare, owner of the Paris Regional Medical Center, sued the blogger and nine of his anonymous commentors as John Does. The company claimed the blog had defamed the hospital and caused business losses. Essent can take the case back to the district court to show actual damages or appeal the ruling to the Texas Supreme Court.

Company spokeswoman Kim Fox said Essent will "pursue all available legal options." She said the company understands the court wants to balance First Amendment rights on the Internet. "In the same way the court is being careful, we are being vigilant with our patients' private health information and are working hard to ensure that information is kept confidential," Fox said. "It is equally incomprehensible that this same individual can publish false and misleading information damaging to the reputation of the hospital while hiding under the cover of anonymity."

The anonymous blogger responded by e-mail, calling the ruling "appropriate" because it protected his First

Amendment rights while giving Essent an opportunity to prove its case. “Should they (Essent) continue, I feel that the lawsuit will prove without merit,” the blogger wrote.

Since March 2005, The-Paris-site blog has been relentlessly critical of the business management and health care provided by the hospital. The blogger identifies himself under pseudonyms of fac_p and Frank Pasquale. Most blog commenters—some of whom appear to be hospital employees—are anonymous.

Essent in June filed a defamation lawsuit in state district court against “John Does 1–10” for postings and comments made on the Paris blog, which the suit says has had 169,272 page views “from sites throughout the United States and the rest of the world” since it began. The lawsuit also claims patient privacy was violated under the federal Health Insurance Portability and Accountability Act.

Essent won a ruling from state District Judge Scott McDowell ordering Dallas Internet Service Provider Suddenlink Communications to release the blogger’s name. The blogger’s lawyer, James Rodgers of Paris, appealed the ruling to the Texarkana court, claiming the order violated the blogger’s First Amendment rights of free speech.

Writing for a three-judge panel, Justice Jack Carter agreed. “The protections of the First Amendment extend to the Internet,” Carter wrote. “Several courts have noted that Internet anonymity serves a particularly vital role in the exchange of ideas and robust debate on matters of public concern.”

But Carter noted that the First Amendment “is not intended to protect unconditionally all forms of expression.” Carter said there is no Texas case law on how to handle defamation lawsuits against an anonymous blogger, but he cited cases from other states. The appeals court vacated McDowell’s order and told him to proceed under stricter standards.

At present, the appeals court ruling only affects Northeast Texas, but it will serve as a precedent for other such lawsuits if they are brought elsewhere in Texas. Reported in: *Houston Chronicle*, December 20.

privacy

Burlington, Vermont

A federal judge in Vermont has ruled that prosecutors can’t force a criminal defendant accused of having illegal images on his hard drive to divulge his PGP (Pretty Good Privacy) passphrase.

U.S. Magistrate Judge Jerome Niedermeier ruled that a man charged with transporting child pornography on his laptop across the Canadian border has a Fifth Amendment right not to turn over the passphrase to prosecutors. The Fifth Amendment protects the right to avoid self-incrimination.

Niedermeier tossed out a grand jury’s subpoena that directed Sebastien Boucher to provide “any passwords”

used with his Alienware laptop. “Compelling Boucher to enter the password forces him to produce evidence that could be used to incriminate him,” the judge wrote in an order dated November 29. “Producing the password, as if it were a key to a locked container, forces Boucher to produce the contents of his laptop.”

Especially if this ruling is appealed, *U.S. v. Boucher* could become a landmark case. The question of whether a criminal defendant can be legally compelled to cough up his encryption passphrase remains an unsettled one, with law review articles for the last decade arguing the merits of either approach. (A U.S. Justice Department attorney wrote an article in 1996, for instance, titled “Compelled Production of Plaintext and Keys.”)

This debate has been one of analogy and metaphor. Prosecutors tend to view PGP passphrases as akin to someone possessing a key to a safe filled with incriminating documents. That person can, in general, be legally compelled to hand over the key. Other examples include the U.S. Supreme Court saying that defendants can be forced to provide fingerprints, blood samples, or voice recordings.

Orin Kerr, a former Justice Department prosecutor who’s now a law professor at George Washington University, shares this view. Kerr acknowledges that it’s a tough call, but says, “I tend to think Judge Niedermeier was wrong given the specific facts of this case.”

The alternate view elevates individual rights over prosecutorial convenience. It looks to other Supreme Court cases saying Americans can’t be forced to give “compelled testimonial communications” and argues the Fifth Amendment must apply to encryption passphrases as well. Courts already have ruled that that such protection extends to the contents of a defendant’s minds, so why shouldn’t a passphrase be shielded as well?

In this case, Judge Niedermeier took the second approach. He said that encryption keys can be “testimonial,” and even the prosecution’s alternative of asking the defendant to type in the passphrase when nobody was looking would be insufficient.

A second reason this case is unusual is that Boucher was initially arrested when customs agents stopped him and searched his laptop when he and his father crossed the border from Canada on December 17, 2006. An officer opened the laptop, accessed the files without a password or passphrase, and allegedly discovered “thousands of images of adult pornography and animation depicting adult and child pornography.”

Boucher was read his Miranda rights, waived them, and allegedly told the customs agents that he may have downloaded child pornography. But then—and this is key—the laptop was shut down after Boucher was arrested. It wasn’t until December 26 that a Vermont Department of Corrections officer tried to access the laptop—prosecutors obtained a subpoena on December 19—and found that the Z: drive was encrypted with PGP, or Pretty Good Privacy.

(PGP sells software, including whole disk encryption and drive-specific encryption. It's a little unclear what exactly happened, but one likely scenario is that Boucher configured PGP to forget his passphrase, effectively re-encrypting the Z: drive, after a few hours or days had elapsed.)

Secret Service Agent Matthew Fasvlo, who has experience and training in computer forensics, testified that it is nearly impossible to access these encrypted files without knowing the password. There are no "back doors" or secret entrances to access the files. The only way to get access without the password is to use an automated system which repeatedly guesses passwords. According to the government, the process to unlock drive Z could take years, based on efforts to unlock similarly encrypted files in another case. Despite its best efforts, to date the government has been unable to learn the password to access drive Z.

Boucher is a Canadian citizen who is a lawful permanent resident in the United States and lives with his father in Derry, New Hampshire.

It's possible that prosecutors will be able to establish that Boucher's laptop has child pornography on it without being able to access it: after all, there were at least two federal agents who looked at the laptop when the Z: drive was still unencrypted. But if this ruling in the case is eventually appealed, it could have a far-reaching impact in a pro-privacy or pro-law-enforcement direction. Reported in: news.com, December 14.

shopping malls

San Diego, California

The California Supreme Court has ruled that shopping malls can't stop protesters from urging the boycott of stores while on mall property.

In a 4-3 decision December 24, the justices ruled that the Fashion Valley mall in San Diego violated California's free speech laws when it kicked out demonstrators in 1998. Members of a workers' union at the *San Diego Union-Tribune* newspaper were forced out of the mall for distributing leaflets urging the boycott of the Robinsons-May store.

The union was involved in a dispute with company management and wanted to hurt Robinsons-May's business because it advertised in the newspaper. The high court ruled that California's free speech laws protect such demonstrations. Reported in: Associated Press, December 25. □

(Barbara Jones . . . from page 58)

on intellectual property and privacy presentations to faculty and students.

"Barbara is a respected authority on matters related to intellectual and academic freedom, and has been highly visible in her work. We are very fortunate to have the benefit of her expertise here at Wesleyan," said Joe Bruno, vice president for Academic Affairs and provost.

Jones has been an active member of the American Library Association (ALA) and spent two terms as chair of the Intellectual Freedom Round Table. She is currently a member of the faculty of Lawyers for Libraries, a project of the ALA Office for Intellectual Freedom "designed to build a nationwide network of attorneys committed to the defense of the First Amendment freedom to read and the application of constitutional law to library policies, principles, and problems." In 1999, the ALA honored Jones by naming her to the Freedom to Read Foundation Roll of Honor.

Jones is the author of *Libraries, Access, and Intellectual Freedom: Developing Policies for Public and Academic Libraries*. Her second book, *Intellectual Freedom: Academic Libraries and Intellectual Freedom*, will be published by the ALA in 2008.

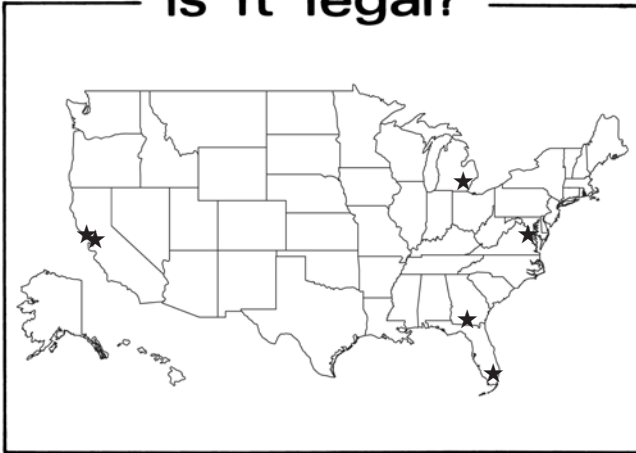
Jones' previous positions include coordinator of special collections and rare book and special collections librarian at the University of Illinois, Urbana-Champaign; head of reference at the Minnesota Historical Society; and head of cataloging at New York University's Bobst Library. She earned her master's degree in library science from Columbia University and her Ph.D. in U.S. History from the University of Minnesota.

A reception to honor Jones was held during the mid-winter meeting of the American Library Association in Philadelphia on January 12. The Greenwood Publishing Group provides the \$500 honorarium to the recipient of the Downs Intellectual Freedom Award and also co-sponsors the reception.

"The faculty members were impressed by Barbara's contributions to the literature, her development of lectures, workshops and training sessions and her activities in national and international profession associations that represent over the years a commitment to the principles that guard intellectual freedom in the profession of librarianship," said John Unsworth, professor and dean at the University of Illinois Graduate School of Library and Information Science.

The Robert B. Downs Intellectual Freedom Award is given annually to acknowledge individuals or groups who have furthered the cause of intellectual freedom, particularly as it affects libraries and information centers and the dissemination of ideas. Granted to those who have resisted censorship or efforts to abridge the freedom of individuals to read or view materials of their choice, the award may be in recognition of a particular action or long-term interest in, and dedication to, the cause of intellectual freedom. The award was established in 1969 by the GSLIS faculty to honor Robert Downs, a champion of intellectual freedom, on his 25th anniversary as director of the school. □

is it legal?



libraries

San Jose, California

San Jose City Councilman Pete Constant accused the city's head librarian January 23 of foot-dragging and shoddy research on his proposal to filter pornography out of library computers. Constant told Library Director Jane Light he was "disappointed" in her progress report to a council committee on his October proposal for the city to reconsider Internet filtering on library computers. A final report is due in March.

"I don't honestly feel we're going down a path to finding solutions," Constant said. "I feel we're going down a path to finding reasons not to do this."

Constant said Light had shown little or no progress on a half-dozen steps the council had asked for, including outreach to parent groups, the ability to have separate filtering policies at the branch and main libraries, and research on filtering technology. "All of those will be in the final report," Light responded.

Constant also said Light's statistics on the number of arrests for sex offenses or formal written complaints about pornography involving library computers downplayed the problem by ignoring calls to police that didn't lead to an arrest. And he disputed her assertion that there has never been a rape at the main library, citing a case number for a January 20, 2007, incident.

"I'm definitely concerned about what I think are not real statistics," Constant said.

Councilwoman Judy Chirco defended the librarian. "I think our staff is professional and diligent," Chirco said.

Mayor Chuck Reed, who chairs the council's Rules and Open Government Committee, asked for additional research into different filtering standards for students and for branch libraries for the final report due in March. Reported in: *San Jose Mercury-News*, January 24.

national security

Washington, D.C.

For three years, the Bush administration has drawn fire from civil liberties groups over its use of national security letters, a kind of administrative subpoena that compels private businesses such as telecommunications companies to turn over information to the government. After the 2001 USA Patriot Act loosened the guidelines, the FBI issued tens of thousands of such requests, something critics say amounts to warrantless spying on Americans who have not been charged with crimes.

Now, newly released documents shed light on the use of the letters by the CIA. The spy agency has employed them to obtain financial information about U.S. residents and does so under extraordinary secrecy, according to the American Civil Liberties Union, which obtained copies of CIA letters under the Freedom of Information Act.

The CIA's requests for financial records come with "gag orders" on the recipients, said ACLU lawyer Melissa Goodman. In many cases, she said, the recipient is not allowed to keep a copy of the letter or even take notes about the information turned over to the CIA.

The ACLU posted copies of some of the letters on its Web site. In most cases, nearly all the text had been redacted by CIA censors.

A CIA spokesman acknowledged the occasional use of the letters but dismissed the criticism that the practice was unusually secretive. The requests always have been voluntary and intended to "obtain data for such legitimate purposes as counterintelligence and counterterrorism," spokesman Paul Gimigliano said. Nondisclosure orders, counterterrorism officials have said, prevent leaks that might alert suspects to an investigation. Reported in: *Washington Post*, January 25.

Internet

Palo Alto, California

Under mounting pressure from law enforcement and parents, MySpace agreed January 13 to take steps to protect youngsters from online sexual predators and bullies, including searching for ways to better verify users' ages.

The hugely popular online hangout will create a task force of industry professionals to improve the safety of users, and other social-networking sites will be invited to participate. “We must keep telling children that they’re not just typing into a computer. They’re sharing themselves with the world,” said North Carolina Attorney General Roy Cooper.

The deal came as sites such as MySpace and Facebook have grown exponentially in recent years, with teenagers making up a large part of their membership. This has created a new potential venue for sexual predators who lie about their age to lure young victims and for cyber bullies who send threatening and anonymous messages.

The only state not joining the agreement was Texas, where the attorney general said he cannot support the effort unless MySpace takes action to verify users’ ages.

“We do not believe that MySpace.com—or any other social-networking site—can adequately protect minors” without an age-verification system, Texas Attorney General Greg Abbott said. “We are concerned that our signing the joint statement would be misperceived as an endorsement of the inadequate safety measures.”

The announcement was short on specifics about how improvements would be carried out. Skeptics doubt MySpace and similar sites can eliminate online predation because age-verification technology is difficult to implement and predators are good at circumventing restrictions.

Parry Aftab, executive director of WiredSafety.org, a children’s Internet safety group, said the agreement was a good first step but could have unforeseen consequences. “There’s no system that will work for age verification without putting kids at risk,” she said. “Age verification requires that you have a database of kids and if you do, that database is available to hackers and anyone who can get into it.”

Aftab estimated that 20 percent of teens have met someone online that they had never met in person, and there are numerous examples of sexual abuse arising from MySpace encounters.

On the same day the agreement was announced, prosecutors in Queens, New York, announced that two girls younger than 15 were lured via MySpace to the home of a couple who allegedly plied them with alcohol, engaged them in group sex and took them to a strip club where the girls danced on stage.

A 15-year-old girl from Texas was allegedly lured to a meeting, drugged and assaulted in 2006 by an adult MySpace user. And a 13-year-old girl in Missouri hanged herself in 2006 after receiving mean messages on MySpace she thought came from another teen that actually were sent as a hoax.

MySpace, which is owned by Rupert Murdoch’s News Corp., has more than 110 million active users worldwide, and Facebook claims more than 61 million active users. Investigators have grown increasingly interested in the sites in their search for sexual offenders. New York investiga-

tors said they set up Facebook profiles last year as 12- to 14-year olds and were quickly contacted by users looking for sex.

Over the last two years, MySpace said it has implemented over 100 safety and security innovations, including using new technology to identify and remove registered sex offenders from the site and pushing for tougher laws in this area. The company also said it hopes other sites follow its lead in pushing for tougher standards.

“We thank the attorneys general for a thoughtful and constructive conversation on Internet safety,” MySpace Chief Security Officer Hemanshu Nigam said in a statement. “This is an industrywide challenge, and we must all work together to create a safer Internet.”

In the past 30 days, Nigam said later in an interview, MySpace launched new technology detecting links to pornography sites. The technology redirects people who click on such links to MySpace’s home page. MySpace wants to share safety technology that emerges from the task force and other research, Nigam said. “We cannot ever compete on safety, when it comes to the safety of our teens,” Nigam said.

Facebook said it welcomed the increased vigilance. “We are happy to work further with the states to develop and deploy strategies to protect kids online,” the Palo Alto-based company said in a statement.

Under the agreement, profiles for users under age 16 will be set to private so no strangers can get information from their profile, users can block anyone over 18 from contacting them, and people over 18 cannot add anyone under 16 as a friend in their network unless they have their last name or their e-mail address.

Anthony Apreda, a 12-year-old from Teaneck, N.J., said he lied about his age to create a MySpace account two years ago. He said he was 18, and noted that other kids frequently do the same thing. “You just put an age and a date and you just put it on there,” the sixth-grader said.

MySpace said it is creating a database where parents can submit children’s e-mail addresses to prevent their children from setting up profiles. “The concept is this: We want to empower parents to be able to tell companies like ours that they don’t want their kids on our sites,” Nigam said.

The multistate investigation of the sites—announced last year—was aimed at putting together measures to protect minors and remove pornographic material, but lawsuits were still possible, officials said. Reported in: Associated Press, January 14.

Broward County, Florida

Do lawyers check their free speech rights at the courthouse steps?

That’s exactly what some are wondering after it was disclosed that a criminal defense attorney is facing Florida Bar ethics charges for critical comments he posted on a

Web log about a controversial Broward judge. A number of constitutional experts claim attorneys give up the full force of the First Amendment when they join the Bar, but other lawyers say they have every right to speak their mind.

The debate resurfaced after the Bar found probable cause against Fort Lauderdale criminal defense attorney Sean Conway for calling Broward Circuit Judge Cheryl Aleman an “evil, unfair witch” who is “seemingly mentally ill” on a blog about the courthouse. Formal charges against Conway are pending.

Bar rules ban attorneys from making statements that impugn the integrity of a judge or the judiciary. Attorneys who violate the rules of professional conduct could face discipline ranging from a reprimand to disbarment. Conway’s attorney, Fred Haddad, claims the First Amendment protects his client’s online comments posted on JAABlog in October 2006. The post criticized Aleman for allegedly forcing defendants in her courtroom to choose between the right to a speedy trial and the right to a well-prepared defense.

The controversial judge is facing her own disciplinary proceedings.

Haddad said Conway’s situation is “absolutely absurd.”

“You don’t give up any constitutional rights when you become a lawyer,” he said. “A lawyer has an obligation to educate the public. The choice of words is immaterial.”

Attorney Louis Jepeway Jr., who represents lawyers before the Bar, said Conway should not be facing any sanctions. “Lawyers aren’t second-class citizens,” he said. “It is unfortunate the judge is so sensitive, but it’s not a reason to violate [Conway’s] First Amendment rights.”

But several constitutional experts said an attorney’s ability to speak about a judge ends when the statements cross from criticism about a judge’s conduct or decisions to a personal attack. The intent is to ensure public confidence in the judiciary and the courts system, but it could undermine public trust in court operations.

Lida Rodriguez-Taseff, a Miami attorney and a former president Miami chapter of the American Civil Liberties Union, said the Bar can mandate ethical rules as a condition for admission, and the rules can limit First Amendment rights. “The practice of law is considered a privilege,” Rodriguez-Taseff said. “When lawyers choose to be admitted to the practice of law, they do so because they know they have to abide by rules of conduct of The Bar.”

Rodriguez-Taseff, who declined to comment specifically about Conway’s case, said the rules aren’t designed to muzzle attorneys. She said attorneys are still able to comment on the qualifications of judges and the merit of legal rulings. “The Bar can regulate the decorum in which you express opinions,” she said. “As lawyers, we have to be careful that in seeking to bring unfairness to the forefront that we do so in a manner that elevates the profession.”

Nova Southeastern University law professor Robert Jarvis, who teaches classes in constitutional and ethics issues, echoed Rodriguez-Taseff’s position that the Florida

Bar has a right to limit First Amendment rights as a condition of a law license. Jarvis said attorneys can talk about the qualifications of the judiciary but shouldn’t resort to name-calling.

Conway should have turned to the chief judge or Judicial Qualifications Commission if he believed Aleman’s actions were wrong, Jarvis said. Conway said he filed a JQC complaint against Aleman. “The purple prose is designed to inflame the passion of the public against this judge, which has the effect of inflaming the passion of the public against all judges,” Jarvis said.

Both Jarvis and Rodriguez-Taseff note the Bar has the power to limit lawyers’ commercial speech in advertising and client recruitment.

Florida has one of the nation’s most stringent rules regulating attorney advertising. Attorney Barry Richard, a partner at Greenberg Traurig in Tallahassee who has advised the Bar in disciplinary appeals, said the Bar rarely reviews claims of attorneys bad-mouthing judges in public. “Only since the advent of Internet and blogs did things get widely disseminated that at one time would be discussed at a cocktail party,” Richard said. “Most lawyers are usually pretty cautious to avoid that kind of public commentary out of respect for the system, even if they don’t respect the individual judge.”

Constitutional attorney Rick Ovelmen, a Miami partner with Jorden Burt, said Conway has some “strong First Amendment defenses” to the anticipated Bar charges. He said the rule barring false and reckless statements by attorneys against judges is based on the defamation rule for public officials and follows accepted constitutional law against libel of a public figure.

But Ovelmen said opinion is protected speech. He said Conway would have defamed Aleman by saying she was accepting bribes. However, Ovelmen thinks Conway has some good defenses on his “witch” remark.

In Conway’s case, he used his name on JAABlog when he complained about Aleman’s “new (illegal) ‘one week to prepare’ policy” setting felony trials one to two weeks after arraignment. Conway claimed the judge was forcing defendants to choose between a speedy trial and the right to a fully prepared defense.

JAABlog is a popular legal blog run by a small band of Broward criminal defense attorneys. The blog focuses on claims of judicial abuse and misconduct as well as courthouse happenings. In an October post, Conway wrote that Aleman had an “ugly, condescending attitude” during a proceeding he sat through. “But as anyone who has been in [Aleman’s courtroom] knows, she is clearly unfit for her position and knows not what it means to be a neutral arbiter,” Conway wrote. For the Web site, he replaced Aleman’s name with the words “evil, unfair witch” when transcribing one of his exchanges with the judge.

The Bar notified Conway in April that they opened an investigative file against him. The Bar’s 17th Judicial

Circuit Grievance Committee told Conway this month it found probable cause against him for violating five Bar rules. One requires that a lawyer not disparage the qualifications or integrity of a judge by saying something “the lawyer knows to be false or with reckless disregard as to its truth or falsity.” Another rule he is accused of violating states a lawyer cannot “engage in conduct in connection with the practice of law that is prejudicial to the administration of justice.” The other counts allege violations of a rule requiring attorneys to uphold standards of professional conduct.

The grievance committee found probable cause against Conway as the state Judicial Qualifications Commission wrapped up a three-day hearing against Aleman. She faced charges claiming she behaved in a vindictive manner, used fear to control her courtroom and exhibited a pattern of arrogant, impatient and discourteous conduct.

Lansing Scriven, a Tampa attorney prosecuting the JQC case, recommended a public reprimand for the judge, the lightest form of punishment for a judge. The commission’s six-member hearing panel has not ruled.

Conway stands by his actions. He said he was respectful and courteous before Aleman in court but felt the need to publicly expose her behavior. “Because our judges are elected, we should not have gag orders over the very people that work in front of those judges every day,” Conway said. “When something illegal is going on, we expect those people to tell the public.”

Conway said the Bar’s probable cause finding against him indicates people would be better off posting anonymously instead of signing their name to their comments. “But speaking from hiding is not free speech at all,” he said. “I don’t think the founders of our country intended us to use free speech from secret hiding spots.”

Haddad contends the Bar is overstepping its bounds. He pointed to Aleman’s hearing as evidence that his client’s statements weren’t unfounded. “Conway didn’t say anything that every other lawyer doesn’t say in the elevator every day,” Haddad said. Reported in: law.com, December 20.

colleges and universities

Valdosta, Georgia

T. Hayden Barnes opposed his university’s plan to build two large parking garages with \$30 million from students’ mandatory fees. So last spring, he did what any student activist would do: He posted fliers criticizing the plan, wrote mass e-mails to students, sent letters to administrators and wrote a letter to the editor of the campus newspaper. While that kind of campaign might be enough to annoy university officials, Barnes never thought it would get him expelled.

Rather than ignore him or set up a meeting with concerned students, Valdosta State University informed Barnes, then a sophomore, that he had been “administratively withdrawn” effective May 7, 2007. In a letter appar-

ently slipped under his dorm room door, Ronald Zaccari, the university’s president, wrote that he “present[ed] a clear and present danger to this campus” and referred to the “attached threatening document,” a printout of an image from an album on Barnes’s Facebook profile. The collage featured a picture of a parking garage, a photo of Zaccari, a bulldozer, the words “No Blood for Oil” and the title “S.A.V.E.—Zaccari Memorial Parking Garage,” a reference to a campus environmental group and Barnes’s contention that the president sought to make the structures part of his legacy at the university.

The letter also said that in order to return as a student, a non-university psychiatrist would have to certify that Barnes was not a threat to himself or anyone else, and that he would receive “on-going therapy.” After he appealed, with endorsements from a psychiatrist and a professor, the Georgia Board of Regents “didn’t do the right thing and reverse the expulsion,” said William Creeley, a senior program officer at the Foundation for Individual Rights in Education, a nonprofit organization that defends students’ free expression rights and helped Barnes secure legal counsel.

“Sometimes there will come along a set of facts where you read it and you think, they couldn’t possibly have done this,” said Robert Corn-Revere, Barnes’s attorney and an adjunct scholar at the libertarian Cato Institute. “Then you look at it [and realize that] yes, they did.”

Corn-Revere wrote to the University System of Georgia and was told only that the institution couldn’t discuss the case because of federal privacy law. (Creeley said public universities often “hide behind FERPA,” even though in this case Barnes had provided a waiver to his rights under the law, whose name stands for the Family Educational Rights and Privacy Act.) On January 9, he filed suit in federal court against the university, Zaccari and the Board of Regents under the First and Fourteenth Amendments.

In a reply to Barnes’s complaint to the university, the Board of Regents said Barnes had contacted system-wide administrators and board members, “telling them that he had met with President Zaccari on this issue, when he had not.” It also referenced the April 16 Virginia Tech massacre, which occurred around the time of the dispute between Barnes and the university.

As additional evidence of the threat posed by Barnes, the document referred to a link he posted to his Facebook profile whose accompanying graphic read: “Shoot it. Upload it. Get famous. Project Spotlight is searching for the next big thing. Are you it?” It doesn’t mention that Project Spotlight was an online digital video contest and that “shoot” in that context meant “record.” The appeal also mentions that Barnes’s profile stated, at one point, that he was “cleaning out and rearranging his room and thus, his mind, or so he hopes.” That was likely a status update, commonly used by Facebook members to update their friends on what they’re doing at a particular moment—whether literally or metaphorically.

After Zaccari saw a printout of Barnes's Facebook page, he was subsequently "accompanied to high-profile events by plain-clothed police officers, and uniformed police officers were placed on high alert," according to the document. The president has since announced his retirement, six months earlier than expected.

Creeley suggested that Zaccari is using Virginia Tech as a pretext for violating Barnes's rights as a student at a public university and said his behavior was either "dazzlingly paranoid" or "disingenuous."

"Knowing that Barnes had availed himself of counseling services made available to all students by VSU, Zaccari secretly and repeatedly met with Barnes's counselor seeking to justify his decision to expel him," the lawsuit states. "What he learned from both the campus counseling center and from Barnes's private psychiatrist who was consulted in the matter, however, was that Barnes had never exhibited any violent tendencies and that he did not represent any danger either to himself or to others. Quite to the contrary, despite a background in which he had been forced to cope with some difficult family issues from an early age, Barnes had developed into an engaged student, was a licensed and decorated emergency medical technician, and was politically aware and involved."

FIRE is simultaneously pressuring Valdosta State to reverse its "free speech area" policy, which is unusually rigid in restricting student expression to a single stage on the 168-acre campus, only between the hours of 12 and 1 p.m. and 5 and 6 p.m., with prior registration.

"Treating students as though they are caged animals is pretty reprehensible," Creeley said. Reported in: *inside-highered.com*, January 11.

Ponce, Puerto Rico

If a faculty member has his or her tenure rights violated, one recourse may be to file a suit—where an aggrieved professor could seek not only damages but reinstatement. While most professors might not want to go to court, the knowledge that they have that as an option gives them an important protection.

What if a state law said instead that tenure violations could be settled with a small sum of money and no reinstatement—and that such minimal compensation is all you could get? Obviously that would be much less protection, and that's why the American Association of University Professors is seeking to intervene in an unusual dispute involving a professor who was dismissed from a tenured job at the Inter-American University of Puerto Rico. A federal district court ruled that even if the professor could win on the merits of his suit, he would be entitled only to compensation under Puerto Rico's Law 80, which provides victimized employees with three months of salary, plus a week of salary for every year of service, for those who have worked 15 years or more. (The professor had worked 28

years, so he would end up with less than a year of pay, with no chance at getting his job back.)

The professor, Edwin Otero-Burgos, has numerous claims in his suit against the university, which deals in part with his argument that the university denied him the right to manage his course and assign grades. But the legal dispute—now before a federal appeals court, where decisions set precedents beyond the case at hand—is on whether Law 80 can effectively become the only protection in a tenure case. The AAUP is seeking the right to intervene in the case, arguing in a brief that the application of Law 80 undercuts tenure protections.

Beyond the Otero-Burgos case, the AAUP brief states that the broad legal question is whether "a particular statutory remedy—namely limited salary relief—may substitute for the protections of academic tenure." Upholding the lower court's ruling, the brief says, would "eviscerate the important guarantees that accompany, underpin and define tenure."

The AAUP makes several arguments against the lower court's ruling. One is that the law was written for "at will" employees, who may be dismissed at any time. While tenured faculty members may not work on hourly or yearly contracts, they are "by definition" not at-will employees, the AAUP says in its brief. It cites other decisions in Puerto Rico that have found tenure protections to be equivalent to contractual obligations.

While colleges and universities are not legally required to offer tenure, the AAUP brief notes that Inter-American does so, and specifically outlines tenure procedures in its faculty handbook. In this context, the AAUP says, applying Law 80 makes it possible for a university to get rid of a tenured professor—for no justifiable reason—as long as the university is willing to pay a modest sum (less than half a year's salary for someone who has taught for 15 years). If the lower court's decision is upheld, the court said, the protections of tenure would be largely eliminated.

"Such a holding, if not reversed, would subvert the time-honored consensus as to the nature of tenure, undoing a careful balance between the respective interests of professors and universities," the brief says. "It would effectively convert tenured professors into at-will employees, removing their incentives to develop special expertise and chilling their academic pursuits—to the detriment of society and, indeed, of institutions, of higher education." Reported in: *insidehighered.com*, January 29.

film

Ann Arbor, Michigan

The oldest film festival in North America showcasing independent and experimental films, The Ann Arbor Film Festival (AAFF) announced December 5 that it had settled a federal lawsuit, filed by the ACLU on its behalf, against

the State of Michigan. In exchange for the state legislature repealing unconstitutional restrictions on arts funding, the AAFF and ACLU agreed to voluntarily dismiss the lawsuit.

The lawsuit, filed in March 2007 in U.S. District Court in Detroit, claimed that the State of Michigan unconstitutionally punished the AAFF for screening films that the state deemed “objectionable” by withdrawing undistributed Michigan Council for Arts and Cultural Affairs (MCACA) program grants. The legislature had concluded that the AAFF had violated the MCACA speech restrictions and would not be eligible for funding.

These vague speech restrictions included a ban on funding art that contained “depictions of flag desecration” and “displays of sex acts.” Some legislators specifically accused the AAFF of showing films that contained “displays of sex acts” and labeled these films as “pornographic,” a charge vehemently denied by the AAFF.

The new guidelines for arts funding, resulting from the AAFF’s lawsuit, mirror the National Endowment for the Arts guidelines, which have been upheld by the U.S. Supreme Court. These flexible guidelines state that “Artistic excellence and artistic merit are the criteria by which applications will be judged, taking into consideration general standards of decency and respect for the diverse beliefs and values of the people of this state.”

“This decision isn’t only a victory for artistic freedom of expression, but a reminder to stand up and ensure that our government is held accountable for the power they wield,” said Christen McArdle, AAFF Executive Director. “We are pleased that arbitrary guidelines will no longer be used to deny artists their creative rights.”

After funding was restricted, the AAFF Board of Directors voted unanimously to forego state funding for as long as the restrictions were in place in order to safeguard the festival’s international reputation as an uncensored channel for artists and filmmakers showcasing independent and experimental films. Prior to the restrictions, the festival had received funding from the state for the past 10 years. Reported in: ACLU of Michigan, December 5. □

(FTRF report . . . from page 56)

hoc strategic policy group to begin the process of identifying potential landmines and developing positions and strategies to deal with them. Jim Neal agreed to serve as chair, and will report back to the Board at the 2008 Annual Conference.

Conable Scholarship

The FTRF Board at this meeting agreed to a tentative

plan to use the money collected following Gordon Conable’s untimely death to create a scholarship program. The Conable Scholarship will provide funds for a new librarian or library student who shows a particular interest in intellectual freedom to attend Annual Conference. Mentoring was an important value for Gordon, and the Board is pleased to be able to honor his memory in this way. If you would like to donate to the Conable Scholarship, please contact FTRF at ftrf@ala.org or (800) 545-2433 x4226.

FTRF’S 40th Anniversary

In 2009, the Freedom to Read Foundation will mark the 40th Anniversary of its founding, and one of the happiest tasks before the FTRF Board at this Midwinter Meeting was to begin the process of planning a celebration (or a series of celebrations) for the 2009 Annual Conference in Chicago. It was agreed that the event should serve both to mark how far we’ve come and what we’ve accomplished in the fight to defend basic First Amendment rights and to illuminate how far we still have to go in the ongoing struggle for intellectual freedom. I’m delighted to report that two of the most creative members of the FTRF Board—Burt Joseph and Bob Doyle—have agreed to co-chair an ad hoc committee to explore possibilities and develop a plan for the celebration.

Organizational Memberships

Last year in Seattle, FTRF’s then-president John W. Berry informed you of the Foundation’s new organizational membership system. I’m happy to report that, due in large measure to the efforts of FTRF Treasurer Jim Neal, the Foundation now has more than 100 organizational members, including 45 academic libraries that agreed to provide support at the \$500 and \$1,000 levels. A list of these members can be found in FTRF’s most recent newsletter.

The Board’s next focus will be major public libraries—encouraging them to join FTRF by showing the vital importance of the Freedom to Read Foundation in protecting public libraries’ interest in providing free access to information. We strongly encourage all ALA Councilors to promote FTRF organizational membership to their home institutions.

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

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

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

success stories



libraries

Tuscaloosa, Alabama

The Tuscaloosa County School Board grudgingly decided to keep *Sandpiper*, by Ellen Wittinger, on the shelves at the Brookwood High School library December 10. The book was challenged in September due to a complaint that it has sexual content and language.

“Let it be clear,” board President Brett Whitehead read from a prepared statement at the meeting, “this board does not approve of the graphic language used by the author in this book. We strongly feel the author could have chosen more appropriate language to establish the underlying theme of a book that seems obviously directed at young teenage schoolchildren.”

He went on to explain that the board decided to retain the book on the advice of legal counsel, who cited U.S. Supreme Court rulings that removing a book from a school library because of its content threatens students’ First Amendment rights. “It disappoints us that the decisions of the courts have taken away this local Board of Education’s ability to make decisions that protect these very same schoolchildren,” Whitehead added.

“We are proud that the board upheld the First Amendment,” Tuscaloosa County School System Library Media Specialist Jane Smith said. She noted that the library had received tremendous support for keeping the book, and that only two of the many letters to the editor published in the *Tuscaloosa News* were against retaining it.

However, the board does plan to review its selection policy, Whitehead’s statement ended by saying, to “determine how we as a school system can better screen and prevent those books and materials which contain vulgar, offensive, and inappropriate language and subject matter from reaching the shelves of our school libraries.” Reported in: *American Libraries Online*, December 14.

Calgary, Alberta

The Calgary Catholic School District has returned Philip Pullman’s *The Golden Compass* to its library shelves after ordering its removal two months earlier. Calgary was among several Catholic school systems that pulled the fantasy novel, which has been accused of antireligious content, for review following a complaint in the municipality of Halton in late November.

After reconsidering the book, Calgary school board officials decided its themes should be used as a teaching opportunity. “There is no doubt that the text is harsh in terms of its language about organized religion and that it presents a consistently negative view of church, clergy, and faith-based institutions,” the board stated. “However, there are glimpses of light with opportunities for positive reflection.”

The review recommendations urge teachers to use instructional guidebooks uncovered in its investigation that interpret the novels with a Catholic focus. They also suggest that teachers ensure “a carefully planned approach” when using the novel in the classroom, monitoring student responses to the books’ underlying themes of abuse, torture, and death.

“As with any sensitive titles, library personnel will continue to bring any concerns to the attention of the teacher, and teachers to the attention of parents when appropriate,” the review stated.

“We do want to take concerns seriously and recognize the validity of parent concerns,” said Superintendent of Structural Services Judy MacKay. “We have to remember we are in an instructional setting, which is different from just Saturday afternoon on the swing reading.”

The novel and its two companions in the *His Dark Materials* trilogy received heightened scrutiny for their alleged anti-Catholicism prior to the December 7 U.S. release of *The Golden Compass* movie, starring Nicole Kidman and Daniel Craig. Several Catholic schools in the United States were also caught up in the controversy. Reported in: *American Libraries Online*, January 28.

Alamosa, Colorado

The debate over *The Golden Compass*, both the Philip Pullman novel and the movie based on the novel, spilled over to the halls of an Alamosa middle school late last year. *Compass*, part of a trilogy written by the British author, was pulled from the library shelves at Ortega Middle School for

what critics regard as the book's anti-religious views. But the book was returned to circulation by district officials in mid-December.

Assistant Superintendent Jerri Stucky said school district officials and other district librarians did not find adequate reason based on school policy and recommendations from the American Library Association for the decision to pull the book.

Alamosa's Ortega Middle School librarian Mindy Wandling pulled the book over concerns about its age-appropriateness in November, after consulting with principal Neil Seneff. Alamosa High School librarian Mark Skinner soon found out about the removal and protested to district Superintendent Henry Herrera, who convened a meeting with school principals and librarians on December 3. Within two days, *The Golden Compass* was back in the Ortega collection.

"I have a hard time with anyone who wants to pull a book when they haven't read it," Skinner said at a December 10 Adams State College public forum prompted by the incident. Forum panelist Ed Wandling, husband of the Ortega school librarian, explained that Mindy became concerned after her research on Pullman turned up an interview in the *Sydney Morning Herald* December 13, 2003, in which Pullman—an avowed atheist—said, "My books are about killing God." Ed Wandling (who said he was representing his wife because she was recovering from the shock of two area shootings December 8 and 9 targeting the New Life Church where the Wandlings are staff members) added that he was not challenging the book's literary merit but its message because it conflicts with community standards. "The American Library Association thinks I, as a parent, am the only one who can restrict what my children read. I don't agree with that," he declared.

Of all the district personnel involved in the decision to remove and then reinstate the book, Skinner was the only one to have read it. "I have a hard time with anyone who wants to pull a book, who hasn't read it," he said.

Ed Wandling, who serves as pastor at a branch of the New Life Church in Alamosa, said his wife's decision reflected what she believed were the community's beliefs. Reported in: *The Pueblo Chieftain*, December 13; *American Libraries Online*, December 14.

Lewiston, Maine

A Maine library has been cleared of obscenity charges for having a controversial sex ed title on its shelves, and the patron who removed the book from the library will stand trial for theft. A police investigation found that the Lewiston Public Library did not violate the town ordinance against obscenity by stocking *It's Perfectly Normal*, a children's guide to sexual health that is one of the most challenged titles in libraries and schools nationwide.

Last summer, patron JoAn Karkos removed *It's Perfectly Normal* from library shelves and refused to return it, citing its "amoral abnormal contents." (Karkos also took the book from the public library in neighboring Auburn.) She sent a check to the library to cover the cost of the book, but the library returned it and had her charged with theft. Karkos responded by claiming the book failed Lewiston community standards, which prohibit obscene materials.

The police didn't agree. "According to the detective who investigated the complaint, one of the factors that led them to their decision was the fact that copies of the book have circulated thirty times since we added the title in 1995 and that hers has been the only complaint raised to date," library director Rick Speer said. Indeed, continuing coverage in the *Sun Journal*, a regional newspaper, drew hundreds of comments from readers, most of whom condemned Karkos for both theft from a taxpayer-supported institution and for attempting to impose her personal morality on others.

On December 19, Karkos faced an arraignment hearing in Maine's 8th District Court in Lewiston because she herself violated a city ordinance, one "that requires citizens to return borrowed materials after being given notice to do so," Speer said. "We expect her to plead 'not guilty.'" Because of the publicity spike, both the Lewiston and Auburn libraries have added additional copies of *It's Perfectly Normal* to their shelves. Reported in: *Library Journal*, December 7.

West Brookfield, Massachusetts

The father of a child who got an R-rated video from the Merriam-Gilbert Public Library said that he had contacted the state about the library's loan policy. Martin J. Nagle refused to identify the state agency or person contacted, but said he wanted to learn whether the library's policy is accurate. Beyond that, he said he does not know where he will take his concerns, following a recent decision by the library's board of directors not to amend the policy.

Nagle's daughter, at age 11, obtained a DVD of the 2006 movie *Underworld Evolution*, starring Kate Beckinsale and Scott Speedman. The girl since has turned 12. The fantasy-based film, which includes warring vampires and werewolves, is a sequel to the 2003 release *Underworld*. The sequel got a restricted rating "for pervasive strong violence and gore, some sexuality—nudity and language."

Lisa M. Careau, the library's director, said that the library's board sets policy and that it is guided by the Constitution and the American Library Association's Library Bill of Rights. "(The policy) is in direct relation to protecting First Amendment rights," she said.

She said that any library patron is allowed, with a library card, to take out whatever articles they wish, including from the library's collection of more than 1,400 movie titles. She said minors do not have to be accompanied by a parent or guardian to take out items, but must adhere to policy that governs who may visit the library unattended.

Children 8 years old or younger must be accompanied by someone 14 or older, she said. Children, who are 9 to 13, may visit unattended, but for a maximum of two hours, she said. Those 14 or older are unrestricted in their attendance, but like any visitor, may be asked to leave if they break library rules, she said.

Careau, who is a parent and has worked almost 12 years at the library, said people often are surprised about the open policy around obtaining items. She said they do not understand that public libraries function differently than private or school libraries. She said the board always is open to amending its rules, but does not intervene in relations between children and their parents or guardians. She said people need to exercise good judgment in letting their children visit public libraries.

"It is not our role to parent the child," she said. Reported in: *The Republican*, January 30.

Bangor, Pennsylvania

A reconsideration committee for Bangor Area Middle School unanimously voted to keep Todd Strasser's *Give a Boy a Gun* on library shelves over a student's aunt's concerns about the book's depiction of school violence. School board members agreed January 21, deciding against tweaking the materials selection policy.

"I'm not trying to censor the book," said Kathryn Ann Frangos, whose nephew is an 8th-grader at the school. "I just want parents to know this type of material is out there, and they should be aware of what their children are reading." She argued that school violence would be better addressed in a group than by having students coming across the topic in a school library book.

Published in the aftermath of the Columbine High School shootings, *Give a Boy a Gun* is a novel in which two students hold classmates and teachers hostage at a school dance. Each of the reconsideration committee's nine members was disturbed by parts of the book—described as "vivid, distressing, and all too real" on a review at the top of the book jacket—although none voted to remove it.

"The library cannot and should not censor a student's book selection," said Pam Nelson, who oversees the district's libraries. "If a teenager has a question he feels uncomfortable asking an adult, he has to be able to find the answers somewhere."

"My feeling is that any kid who's going to pick up a gun and shoot in schools is not going to pick up the idea in my book," Todd Strasser told a local newspaper. Reported in: *American Libraries Online*, January 28.

Lower Macungie, Pennsylvania

After several rounds of consideration, the board of Lower Macungie Library decided November 29 to keep *King and King* by Linda de Haan and Stern Nijland in the children's

section. Parents Eileen and Jeff Issa asked the library to remove the book from circulation due to its homosexual content, and collected about forty signatures from like-minded residents. "I just want kids to enjoy their innocence and their time of growing up," Jeff Issa said. "Let them be kids and not worry about homosexuality, race, [or] religion."

The library had previously considered and denied the Issas' request in September. The couple then appealed to the township supervisors, who considered the matter at their November 15 meeting, but upheld the library's decision by a 2–1 vote. Supervisor Chairman Kenneth DeAngelis, who is also president of the library board, said the supervisors did not want to micromanage the library.

Library Director Kathee Rhode said that the library provides material with a variety of views but leaves the responsibility for preventing a child from reading objectionable material to that child's parents. "We certainly want parents to make that decision for their children—not one parent making that decision for all children," she said.

Ironically, the controversy may result in making the book more available in the area. The Lower Macungie Library's decision inspired the Pennsylvania Diversity Network in Allentown to donate copies of *King and King* to the public libraries in Allentown, Easton, Bethlehem, and Reading, which don't currently carry it. The libraries have said they would wait until they receive and review the book to decide whether or not to shelve it. Reported in: *American Libraries Online*, December 14.

Campbell County, Wyoming

A reconsideration committee for the Campbell County School District voted 11–2 December 3 to keep C. S. Adler's *The Shell Lady's Daughter* in district libraries. Parent Sarah Foster challenged the book after her daughter read it in 2006 when she was a 4th-grader at Wagonwheel Elementary School, arguing that the book's discussion of sexual thoughts and actions, lying to parents, and suicide were inappropriate for elementary-school students. "Young women need to be cautious, but *The Shell Lady's Daughter* teaches girls to throw caution to the wind," she said.

The four people who spoke at the reconsideration committee meeting disagreed. "Young girls experience many of the challenges the protagonist faced, such as protecting themselves against unwanted physical contact, warning and wondering about their bodies, and dealing with depression," observed Mary Wegher, Wagonwheel library media specialist.

Wegher also shared an e-mail she received from the author in support of the book. "I personally can't see how [the book] would harm a child," Adler wrote. "When an author tries to deal with a serious subject, researches it, bases it on experience, and handles it to the best of his or her ability, it seems a shame that such a book should be banned."

Foster, who was lauded by committee members for

expressing her concerns, said she would not challenge the decision, but would explore alternate education options for her children. Reported in: *American Libraries Online*, December 14.

schools

Cherry Hill, New Jersey

The Cherry Hill Board of Education unanimously approved a resolution January 22 to keep *To Kill A Mockingbird*, by Harper Lee, in the high school English curriculum. The vote was 8–0. Board member Nancy O’Dowd was absent.

A resident had objected to the novel’s depiction of how blacks are treated by members of a racist white community in an Alabama town during the Depression. The resident feared the book would upset black children reading it.

A committee including board members Sharon Giaccio and Lisa Conn, a teacher, an assistant principal, Director of Curriculum Claudia Lyles, Assistant Superintendent Lawyer Chapman and Superintendent David Campbell determined the book should remain in the curriculum.

However, all high school English teachers will undergo in-service training focused on the book, emphasizing sensitivity when addressing racism of any kind and better awareness of student reactions to such material. Teachers will be directed not to read aloud or have students read aloud the offensive references to blacks, and will redesign the unit on the novel in ways similar to what was done with the unit on *The Adventures of Huckleberry Finn* in 1996, when blacks objected to its content and the way it was being taught in the high schools.

“In 1996, we dealt with the Huck Finn issue and thought it was over. It wasn’t. Students are still suffering,” said Danny Elmore of the Cherry Hill African American Civic Association. Reported in: *courierpostonline.com*, January 25.

Kanawha County, West Virginia

The second of two novels that caused controversy in a Nitro High School English class has been approved for return to the classroom, as long as students are offered alternative texts. Seven members of a ten-member committee voted that way when examining Pat Conroy’s novel *The Prince of Tides*, language arts specialist Judy Gillian told Kanawha County school board members January 7.

Two committee members said the Conroy book should be retained with no alternative for students. Committee member Leona Tyree, who first complained of graphic scenes in *The Prince of Tides* in the fall, favored retaining the book as a choice of titles from which students may select.

Another Conroy novel, *Beach Music*, was allowed back at Nitro in November after the same committee approved it for the classroom. Reported in: *Charleston Gazette*, January 8.

colleges and universities

Williamsburg, Virginia

President Gene R. Nichol was back in the hot seat after reluctantly agreeing to allow the Sex Workers’ Art Show to appear at the College of William and Mary in January. The show, which is billed as “an eye-popping evening of visual and performance art” by strippers, prostitutes, and other sex-industry workers, is scheduled to visit more than a dozen college campuses this winter. Nichol had asked the students who sponsored the event to find an off-campus venue for it, but he eventually agreed that the show must go on, citing the First Amendment and the spirit of academic freedom.

“My views and the views of others in the community about the worth or offensiveness of the program can provide no basis for censoring it,” Nichol said in a written statement. “Censorship has no place at a great university.”

Nichol ignited a controversy in 2006 when he ordered a brass cross removed from the college chapel in an effort to make students of other faiths feel more welcome there. The cross was subsequently returned to the chapel. Reported in: *Chronicle of Higher Education* online, January 29. □

(IFC report . . . from page 53)

that the settlement entered in the British courts was unenforceable in the United States. OIF recommended that U.S. libraries keep *Alms for Jihad* available for their users, given the controversy and readers’ interest in the work.

Alms for Jihad is only one example of what is called “libel tourism,” the practice of filing a libel lawsuit abroad under laws that favor the individual rather than the publisher or author, and then using the foreign court’s order to censor the book in the United States and other countries. We are fortunate that such tactics do not work here in the United States, where the law recognizes First Amendment freedoms and, therefore, requires plaintiffs to prove that the published statements about them are false. A libel lawsuit similar to the suit filed against the authors of *Alms for Jihad* was filed against Yale University Press regarding *Hamas: Politics, Charity, and Terrorism in the Service of Jihad*. The Yale University Press refused to settle, filing motions to dismiss the lawsuit and to obtain legal fees for a frivolous suit. The charitable organization who filed the lawsuit withdrew the suit after Yale filed the motions.

The Golden Compass—As you are likely aware, the Catholic League initiated a boycott of the film version of *The Golden Compass*, Philip Pullman’s award-winning fantasy for young adults. Subsequently, numerous media outlets reported challenges to the book, both here in the United States and in Canada. OIF received additional chal-

lenge reports concerning *The Golden Compass* as well.

ALA President Loriene Roy responded to these attempts to remove the book from libraries and schools by encouraging librarians, teachers, and parents to resist the call to censorship, thereby sending the message to young people that in this country they have the right to choose what they read, rather than allow others to do their thinking for them. We applaud President Roy for her strong and timely response.

Standardized Chapel Library Project

In September, in an article describing the Bureau of Prisons' Standardized Chapel Library Project (SCLP), the *New York Times* drew attention to what it called "a systematic purge of religious books and materials that were once available to prisoners in chapel libraries." According to the *Times*, the Bureau of Prisons (BOP) began the SCLP in response to concerns that prisons might become recruiting grounds for radical Islamic groups and other radical religious groups. The BOP hired a number of experts—whom the BOP refused to identify—to produce lists of up to 150 "approved" book titles and multimedia resources for each of 20 religions or religious categories. It then ordered prison chaplains to remove and dispose of any book in prison chapel libraries that did not appear on the lists.

As a result, hundreds of thousands of books that had been used for years without concern were removed from prison chapel libraries. Because no funds were allotted for new book purchases, many chapel libraries were emptied. According to inmates in an Otisville, NY, prison, only a Koran and two prayer books remained on the Islam shelf after the chapel library was emptied of books not on the "approved" lists.

After both librarians and members of various religious communities expressed outrage over the SCLP, including President Roy, the BOP decided to halt the project for the time being and return to chapel libraries all of the materials that were removed, with the exception of any publications that were deemed to be radicalizing or might incite violence. We continue to monitor the BOP's activities, as the BOP has not disclosed when books will be returned to the shelves, what books will be kept off the shelves, and what criteria will be used to make those decisions.

The Use of Obscenity Laws to Censor Literature

Censorship advocates are adopting a disturbing new tactic in their quest to remove books from schools and school libraries. Parents and censors alike are filing charges under existing criminal obscenity statutes, charging that the book is obscene under the law or that the teacher or librarian has violated the state's "harmful to minors" statute by providing a minor with allegedly "obscene materials" like Toni Morrison's *Beloved*. While the parent or censor may fail in the quest for a criminal conviction, the very act of bringing charges can intimidate and punish teachers for using or recommending books the parent or censor finds objectionable.

A would-be censor in Howell, Michigan, used these tactics to attempt to remove Toni Morrison's *Beloved* and *The Bluest Eye* from Howell High School's Advanced Placement curriculum. She filed criminal complaints with the local prosecutor, the Michigan attorney general, and the local U.S. attorney, claiming that Morrison's works were legally obscene. Fortunately, all three officials rejected her complaints, deciding that works of literature like *Beloved* were not obscene and did not merit prosecution under the law.

An English teacher in Tuscola, Texas, was placed on paid leave after a student's parents complained to police that the teacher, Kaleb Tierce, allowed their daughter to select Cormac McCarthy's novel *Child of God* from the school-approved ninth-grade reading list. According to the news reports, the parents went to the police after the school authorities sympathized with their concerns but backed their teacher. Tierce now faces criminal charges that he distributed harmful material to a minor, even though Texas law provides an exemption for teachers who provide approved materials to a student. It is uncertain when Tierce's situation will be resolved, or if he will ever be allowed to return to the classroom.

Connecticut teacher Nate Fisher faced similar charges when the parents of one of Fisher's students filed a criminal complaint after Fisher gave the student Daniel Clowes' *Eightball #22* as a quick and easy reading assignment when she failed to complete her required summer reading list. The girl's parents objected to the novel's discussion of rape and murder and its inclusion of some sexual images. While police quickly closed their investigation without filing charges, Fisher has lost his employment as a result of the controversy.

Festschrift to Honor Gordon M. Conable

At the 2005 Midwinter Meeting, the Intellectual Freedom Round Table (IFRT), the Freedom to Read Foundation (FTRF), and the IFC began work on a Festschrift to honor Gordon M. Conable. ALA Editions will publish it in 2008. All proceeds will be donated to the Gordon M. Conable Fund of the Freedom to Read Foundation.

Projects

New Projects

The Many Faces of Privacy: A Conversation

At the 2006 Annual Conference, Council adopted the "Resolution on National Discussion on Privacy," which urged the Intellectual Freedom Committee to collaborate with other ALA units toward a national conversation about privacy as an American value. To implement this resolution, ALA will sponsor a national conference on privacy, tentatively entitled "The Many Faces of Privacy: A Conversation."

Planning began at the IFC's 2007 spring meeting and another planning meeting took place on September 6–7,

2007, in Chicago with privacy experts as attendees. At the conclusion of this discussion, each participant endorsed the idea of organizing a national event to raise awareness about privacy and to kindle a multitude of local conversations addressing the value of privacy as the foundation for civil liberties and intellectual freedom.

It is anticipated that it will take a year or more to organize the conference, focus on the issues, raise funds, secure nationally recognized speakers, and so forth. The tentative date for the conference, which likely will be held in Chicago, is fall of 2009.

Because of its scope, the conference should draw a great deal of media coverage, thereby encouraging a renewed interest in privacy among the American public. To help bolster this interest, ALA will develop tools and other resources for libraries to promote grassroots efforts to support ongoing discussions and actions to protect our right to privacy, including tool kits that will be used to educate the public on privacy issues.

Preparing for the Eighth Edition of the Intellectual Freedom Manual

The first edition of the *Intellectual Freedom Manual* was published in 1973. It is—and continues to be—an attempt to bring together in one place all intellectual freedom-related policies and procedures. In the early editions of the *Manual*, there was not a great need to update constantly. Now, to keep up-to-date on such topics as media concentration, privacy, RFID, and online social networking, less time elapses between editions. Indeed, the fifth edition was published nine years ago, the sixth five-and-a-half years ago, and the seventh just eighteen months ago. It is anticipated the eighth edition will be available in 2009.

In the preparation of each edition of the *Manual*, the IFC reviews all the intellectual freedom policies, guidelines, and statements. The review began during the 2007 Annual Conference and will continue throughout 2008 during the IFC's Spring Meeting and Annual Conference sessions.

The Intellectual Freedom Committee will be seeking comment from Council and from divisions, units, and ALA members as it proceeds with its work. We invite you to send any comments or concerns to the committee's attention via the Office for Intellectual Freedom.

Development of Policy Statement Responding to U.S. Attorney Proposal to Retain Library Records for Law Enforcement Purposes

The IFC Privacy Subcommittee has developed a policy statement responding to U.S. Attorney Troy Eid's proposal to retain library records for law enforcement purposes. Eid had asked Colorado libraries to consider preserving hard-drive information for 90 days and electronically marking library computers so it's possible to track down

which terminal in a vast network was used to send child pornography.

Continuing Projects Banned Books Week

Banned Books Week 2007, held September 26 through October 6, was a major success. As part of our efforts to incorporate newer "Web 2.0" technologies, OIF created a MySpace page, a Facebook group with nearly 1,000 members, and a Flickr group in which people from around the nation posted over 200 photos of Banned Books Week activities. An interactive map was placed on the "I Love Libraries" Web site featuring Banned Books Week activities posted by dozens of libraries, colleges and bookstores. We posted videos on YouTube to promote Banned Books Week. The first set of videos featured authors Chris Crutcher, Carolyn Mackler, and Robie Harris promoting the Banned Books Week Read-Out! A fifth video, highlighting the top ten banned or challenged books for 2006, has been viewed over 5000 times and we were invited to cross-post it on TeacherTube, a video sharing resource for school teachers.

For the first time, OIF coordinated several activities in Second Life and Teen Second Life with the help of the Alliance Library System and others. These included an opening pirate party, two programs on book censorship and how to respond to censorship, two book discussions on frequently challenged books—*I Know Why the Caged Bird Sings* and *Of Mice and Men*—and even a couple of fireworks displays. Participation was healthy, and the Banned Books Week pirate ship display (with plenty of instructional posters, podcast listening stations, videos, free virtual t-shirts, and links to more resources) remained up well past Banned Books Week. There was even an article in Second Life News that can be read at <http://www.slnn.com/article/banned-books-week>.

The first annual Banned Books Week Read-Out!, held on Saturday, September 29, was co-sponsored by the ALA Office for Intellectual Freedom, the McCormick Tribune Freedom Museum and the Newberry Library. Hundreds of people joined ALA President Loriene Roy, ALA President-Elect Jim Rettig and local Chicago celebrities—Sara Paretsky, Dr. Haki Madhubuti, and Rick Kogan—who read passages from their favorite banned and challenged books. Also featured were several highly acclaimed authors of banned and challenged books—Chris Crutcher, Robie Harris, Carolyn Mackler, Peter Parnell, Marilyn Reynolds, Justin Richardson, and Sonya Sones—who discussed their experiences as targets of censors and also read from their books. In addition to the readings, we featured banned or censored music performed by musician Ben Porter of the Old Town School of Folk Music and dramatic readings of banned and challenged books by City Lit Theatre actors.

The event was a major success and we plan to host

another Read-Out! next year on Saturday, September 27, 2008. Save the date!

2008 Banned Books Week begins September 27 and continues through October 4, 2008; it marks BBW's 27th year. All BBW merchandise, including posters, bookmarks, t-shirts, and tote bags, will be sold and marketed through ALA Graphics (<http://tinyurl.com/qrb4>). More information on Banned Books Week can be found at <http://www.ala.org/bbooks>.

Contemporary Intellectual Freedom Series

The majority of printed works addressing intellectual freedom and privacy issues in the library tend to be academic or compilations of policies and articles like the Intellectual Freedom Manual. While these references make excellent resources for the academic, the professional librarian, or the student conducting in-depth research, few works provide practical, easy-to-access guidance on intellectual freedom and privacy issues to a broader audience that can include front-line librarians, library workers, LIS students, library volunteers, and members of the general public.

Three publications currently being written by Candace Morgan, Barbara Jones, and Pat Scales will comprise a series containing an introduction to intellectual freedom and more specific materials addressing the practical application of intellectual freedom principles in public, academic, and school libraries. Each publication will discuss intellectual freedom concepts via a series of case studies that will both illustrate and teach a particular intellectual freedom or privacy concept. The reader should be able to jump into the work at any point or find a case study to address a current problem or issue of concern.

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

ALA Editions anticipates publishing the series in late 2008.

Lawyers for Libraries

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

Twelve regional training institutes have been held since 2002, in Boston, Chicago, Dallas, San Francisco, Washington, D.C., Atlanta, Seattle, Columbus, Houston, Seattle, Philadelphia, and most recently in Denver, in conjunction with the Colorado Association of Libraries' 2007 Annual Conference. Previous to that, two grant-funded trainings were held in Chicago for representatives from each state chapter. To date, nearly 400 attorneys, trustees, and librarians have attended these trainings, and an e-list has been created to allow for ongoing communication on questions of policy and best practices. Those attending these trainings have proved invaluable to their institutions in terms of protecting them from liability and violations of intellectual freedom; they also have proved of great assistance to OIF when cases of local censorship or privacy violations have arisen.

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

For more information about Lawyers for Libraries, please contact Jonathan Kelley at jokelley@ala.org or 1-800-545-2433, ext. 4221.

LeRoy C. Merritt Humanitarian Fund

The LeRoy C. Merritt Humanitarian Fund is continuing to work to increase its awareness throughout the library world. Included in those efforts have been conversations at Midwinter cosponsored by IFRT; receptions at Annual Conference, hosted by ALA presidents; and outreach efforts via state chapters, various ALA publications and e-lists, and presentations at meetings. For more information on the LeRoy C. Merritt Humanitarian Fund, visit <http://www.merrittfund.org>.

Finally, the Intellectual Freedom Committee would like to congratulate Barbara Jones on receiving the Robert B. Downs Intellectual Freedom Award from the University of Illinois Graduate School of Library and Information Science. Her contributions to the cause of intellectual freedom both here in the United States and abroad are indeed worthy of celebration, and her award is richly deserved.

In closing, the Intellectual Freedom Committee thanks the division and chapter Intellectual Freedom Committees, the Intellectual Freedom Round Table, the unit liaisons, and the OIF staff for their commitment, assistance, and hard work for 40 years. □

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