

newsletter
on
intellectual
freedom



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million signatures sought

Groups representing booksellers, librarians and writers launched a nationwide effort February 17 to obtain one million signatures in support of legislation to amend Section 215 of the USA PATRIOT Act. The groups hope to persuade Congress to restore safeguards for the privacy of bookstore and library records that were eliminated by the Act.

The Campaign for Reader Privacy—sponsored by the American Booksellers Association, the American Library Association and PEN American Center—will gather signatures in bookstores, libraries and on a new Web site, www.readerprivacy.org. Over the last year, Republicans, Democrats and Independents have joined to sponsor a number of bills to amend Section 215 of the PATRIOT Act, including the Freedom to Read Protection Act (H.R. 1157) and the Security and Freedom Ensured (SAFE) Act, S. 1709.

“Booksellers are deeply concerned about the chilling effect of Section 215 and President Bush’s stated intent to seek blanket reauthorization of the PATRIOT Act,” said ABA Chief Operating Officer Oren Teicher.

Section 215 of the PATRIOT Act amended the Foreign Intelligence Surveillance Act (FISA) to give the FBI vastly expanded authority to search business records, including the records of bookstores and libraries: the FBI may request the records secretly; it is not required to prove that there is “probable cause” to believe the person whose records are being sought has committed a crime; and the bookseller or librarian who receives an order is prohibited from revealing it to anyone except those whose help is needed to produce the records.

“This isn’t about stripping law enforcement of the power to investigate terrorism. It’s about restoring confidence that our reading choices aren’t being monitored by the government,” said Larry Siems, director of PEN’s Freedom to Write Program.

The Bush administration opposes changes in Section 215. Attorney General John Ashcroft has characterized concern over the privacy of bookstore and library records as “hysteria.” In his State of the Union message on January 20, President George Bush called on Congress to reauthorize the provisions of the PATRIOT Act that are due to expire at the end of next year, including Section 215. More than 253 anti-PATRIOT Act resolutions have been passed nationwide in states, counties, cities and small towns—

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*Published by the ALA Intellectual Freedom Committee,
Nancy C. Kranich, Chair*

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Alice series most challenged of 2003

Phyllis Reynolds Naylor's Alice series tops the list of most challenged books of 2003, ending the four-year reign of J. K. Rowling's Harry Potter series, according to the American Library Association's (ALA) Office for Intellectual Freedom. The Alice series drew complaints from parents and others concerned about the books' sexual content.

The ALA Office for Intellectual Freedom received reports of a total of 458 challenges last year. A challenge is defined as a formal, written complaint, filed with a library or school requesting that materials be removed because of content or appropriateness. The majority of challenges are reported by public libraries, schools and school libraries. According to Judith F. Krug, director of the Office for Intellectual Freedom, the number of challenges reflects only incidents reported, and for each reported, four or five likely remain unreported.

The "Ten Most Challenged Books of 2003" reflect a wide variety of themes. The books, in order of most frequently challenged are:

- Alice series, for sexual content, using offensive language, and being unsuited to age group.
- Harry Potter series, for its focus on wizardry and magic.
- *Of Mice and Men*, by John Steinbeck, for using offensive language.
- *Arming America: The Origins of a National Gun Culture*, by Michael A. Bellesiles, for inaccuracy.
- *Fallen Angels*, by Walter Dean Myers, for racism, sexual content, offensive language, drugs and violence.
- *Go Ask Alice*, by Anonymous, for drugs.
- *It's Perfectly Normal*, by Robie Harris, for homosexuality, nudity, sexual content and sex education.
- *We All Fall Down*, by Robert Cormier, for offensive language and sexual content.
- *King and King*, by Linda de Haan, for homosexuality.
- *Bridge to Terabithia*, by Katherine Paterson, for offensive language and occult/satanism.

Off the list this year, but on the list for several years past, are *I Know Why the Caged Bird Sings*, by Maya Angelou, for sexual content, racism, offensive language, violence and being unsuited to age group; *Captain Underpants*, by Dav Pilkey, for insensitivity and being unsuited to age group; and *The Adventures of Huckleberry Finn*, by Mark Twain, for racism, insensitivity and offensive language. □

RFID raises questions in SF, other libraries

The San Francisco Public Library is ready to spend \$1 million on technology that would make it easier to check

out and track its collection and reduce costly workplace-related injuries. But critics fear it could plunge the library's customers into Orwellian quicksand, allowing everybody from government investigators to computer hackers to peek into the sacrosanct privacy of the book bag.

The tracking devices are called radio-frequency identification computer chips, RFID for short. They've been embraced by everyone from the Food and Drug Administration, which uses them to trace prescription drugs, to Wal-Mart to track its inventory. The San Francisco Public Library sees them as a better way of keeping track of its books than tagging volumes with a bar code, which must be read by laser scanner.

The chips emit a radio signal that can be picked up from a remote site. Most current chip readers can pick up a signal from just three feet away, but that range is expected to expand as the technology improves. That's when privacy advocates fear that anyone with a handheld wand will be able to scope out that copy of *The Anarchist Cookbook* in your book bag. Perhaps it will be an airport screener, who may then ask you to step out of line.

"Because RFID tags are insecure, the tags can potentially be read by other readers at places other than the library," said Lee Tien, an attorney with the Electronic Frontier Foundation, a San Francisco digital rights advocacy group. "What happens is that RFID can become an all-purpose tracking system."

Supporters describe the chips as the next generation of the bar code and point to more than 250 libraries nationwide that have adopted systems, including Santa Clara and Berkeley.

"We are not on the leading edge here," said Susan Hildreth, the San Francisco city librarian. "We would not do something that would compromise our users' privacy."

Critics, however, fear that the technology is permeating the culture before some difficult questions are answered. Their concern: What information will be placed on the chips and who will have access? Can a nosy hacker or federal investigator link a book on say, Islamic architecture, back to a user and start asking questions?

"Libraries are the North Star when it comes to protecting free expression and privacy," said Karen Schneider, who chairs the Intellectual Freedom Committee of the California Library Association and is among those trying to draw up national guidelines on using the chips.

California state Sen. Debra Bowen, (D-Redondo Beach) introduced what's believed to be the nation's first legislation covering the technology. But it addresses mostly consumer privacy concerns, such as requiring that businesses ask people's permission before revealing personal information gathered from the chips.

Bowen's bill outlines three requirements for any business using an RFID system that can track products and people. The business must tell customers it's using an RFID system and get express consent before tracking and

collecting any information. The bill also says companies must detach or destroy any RFID tags that are attached to a product offered for sale before the customer leaves a store.

“San Francisco has a chance to be influential on how RFID is implemented,” Schneider said. “I think there’s been a rush to implement this.”

But with the city renovating or expanding 24 branch libraries, now is the time to install the technology, Hildreth said. Start-up costs over the next two years would be a little more than \$1 million, she said. After that, the expense would be roughly the same as installing bar codes and security strips.

The real value, she said, lies in how the technology would improve life for patrons and library staff. The system would speed checkout by as much as 50 percent, Hildreth said. It would free the staff to help patrons, she added, and cut down on the library’s chief workplace hazard: repetitive stress injuries caused by sweeping bar-coded books across a scanner. Such injuries cost the library \$265,000 in workers’ compensation claims in the last three years, Hildreth said. The Berkeley Public Library spent \$1 million over five years before deciding to switch to RFID, said library director Jackie Griffin.

Hildreth anticipates using a system similar to one being installed in San Mateo, where three public libraries will be part of a pilot program. There the tags will only show a bar code number, not the customer’s personal information, said Gail McPartland, assistant director of the Peninsula Library System.

“We feel pretty confident with the system,” McPartland said.

Plus, said several librarians, state law prohibits identifying customers by linking them to the materials they check out.

“I don’t believe there are library people rubbing their hands waiting to use this technology to spy on patrons,” said Katherine Albrecht, director of a consumer privacy group called CASPIAN. “But if they create the RFID infrastructure in these books, I think someone else will come along and co-opt that information.”

Albrecht wonders whether the technology could somehow be turned against, say, a 12-year-old girl who checks out a medical book about her changing body, or the still-married adult perusing a book about divorce.

“What seems remote today won’t tomorrow,” said Ann Brick, an attorney with the Northern California chapter of the American Civil Liberties Union, which is worried about privacy concerns the chips present. “Once that RFID chip is in there, and readers become more prevalent and proficient, there won’t be any turning back.”

The issue has also drawn the attention of national lawmakers. Sen. Patrick Leahy (D-VT) is calling on Congress to begin studying RFID technology. Addressing attendees

at a conference on video surveillance and other technologies at Georgetown University’s law school in Washington in late March, Leahy said Congress may need to hold hearings on RFID technology. He said that the time is now to begin a national dialogue on RFID before a “potentially good approach is hampered because of lack of communication with Congress, the public, and lack of adequate consideration for privacy and civil liberties.”

“We need clear communication about the goals, plans, and uses of the technology, so that we can think in advance about the best ways to encourage innovation, while conserving the public’s right to privacy,” he told the conference. Reported in: *San Francisco Chronicle*, March 4; *Information Week*, March 25. □

scientists say administration distorts facts

More than sixty influential scientists, including twenty Nobel laureates, issued a statement February 18 asserting that the Bush administration had systematically distorted scientific fact in the service of policy goals on the environment, health, biomedical research, and nuclear weaponry at home and abroad.

The sweeping accusations were later discussed in a conference call organized by the Union of Concerned Scientists, an independent organization that focuses on technical issues and has often taken stands at odds with administration policy. The organization also issued a 38-page report detailing its accusations.

The two documents accuse the administration of repeatedly censoring and suppressing reports by its own scientists, stacking advisory committees with unqualified political appointees, disbanding government panels that provide unwanted advice and refusing to seek any independent scientific expertise in some cases.

“Other administrations have, on occasion, engaged in such practices, but not so systemically nor on so wide a front,” the statement from the scientists said, adding that they believed the administration had “misrepresented scientific knowledge and misled the public about the implications of its policies.”

Dr. Kurt Gottfried, an emeritus professor of physics at Cornell University who signed the statement and spoke during the conference call, said the administration had “engaged in practices that are in conflict with spirit of science and the scientific method.” Dr. Gottfried, who is also chairman of the board of directors at the Union of Concerned Scientists, said the administration had a “cavalier attitude towards science” that could place at risk the basis for the nation’s long-term prosperity, health and military prowess.

Charles Levendosky

A gathering to share memories of the life of Charles L. Levendosky, a nationally recognized and much beloved advocate on behalf of free expression, was held at the Nicolaysen Art Museum in Casper, Wyoming, March 21. Levendosky died March 14, 2004, in the loving arms of his wife at his home from colon cancer. He was 67.

Charles Levendosky was born July 4, 1936, in the Bronx, New York, to Charles L. and Laura (Gregorio) Levendosky. Because his father was a professional military man, his schooling was diverse from Oklahoma to Germany. As an adult, he also lived in the Virgin Islands and Japan.

He was a poet and a journalist.

He received an undergraduate degree in both physics and mathematics and a Master's in Education from New York University. He shared his passion for learning in classrooms in New York, Georgia, New Jersey, and Wyoming, and did poetry readings in places as varied as Harvard University to auditoriums filled with coal miners in Gillette. He left New York City in 1972 to move to Wyoming and fell in love with the state.

In 1961, he married Charlotte Jaeger in New York. They were divorced in 1997. In 1999, he married Dale Eva Eckhardt in Casper.

Levendosky wrote twelve books and chapbooks in addition to a remarkable career in journalism. He was awarded a National Endowment for the Arts Fellowship in 1974. In 1988, Gov. Mike Sullivan selected him as Wyoming's Poet Laureate and he served in that capacity until the end of Sullivan's term in office.

He was perhaps best known to advocates of free expression as the editorial page editor and a columnist for the *Casper Star-Tribune* since 1982. His weekly column was distributed by the New York Times wire service and appeared in more than 225 newspapers around the country. He was equipped with a home office in 1999 when illness prevented him from working in the *Star-Tribune* building and he continued to write editorials and his weekly column despite having metastatic cancer.

His columns earned him a reputation as an expert on First Amendment issues. He was honored with the following awards: Hugh M. Hefner First Amendment Award for Print Journalism, American Bar Association's Silver Gavel Award, the *Baltimore Sun's* H.L. Mencken Award and the Society of Professional Journalist's First Amendment Award. He was the recipient of a number of

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Dr. John H. Marburger, III, science adviser to President Bush and director of the Office of Science and Technology Policy at the White House, said it was important to listen to "the distinguished scientific leadership in this country." But he said the report consisted of a largely disconnected list of events that did not make the case for a suppression of good scientific advice by the administration.

"I think there are incidents where people have got their feathers ruffled," Dr. Marburger said. "But I don't think they add up to a big pattern of disrespect."

"In most cases," he added, "these are not profound actions that were taken as the result of a policy. They are individual actions that are part of the normal processes within the agencies."

The scientists denied they had political motives in releasing the documents as the 2004 presidential race began to take clear shape. The report, Dr. Gottfried said, had taken a year to prepare, much longer than originally planned, and was released as soon as it was ready.

"I don't see it as a partisan issue at all," said Russell Train, who spoke during the call and served as administrator of the Environmental Protection Agency under Presidents Richard M. Nixon and Gerald R. Ford. "If it becomes that way I think it's because the White House chooses to make it a partisan issue."

The letter was signed by luminaries from an array of disciplines. Among the Nobel winners were David

Baltimore and Harold Varmus, both biomedical researchers, and Leon M. Lederman, Norman F. Ramsey and Steven Weinberg, who are physicists. The full list of signatories and the union's report can be found at www.ucsusa.org.

According to the report, the Bush administration has misrepresented scientific consensus on global warming, censored at least one report on climate change, manipulated scientific findings on the emissions of mercury from power plants and suppressed information on condom use.

The report asserts that the administration also allowed industries with conflicts of interest to influence technical advisory committees, disbanded for political reasons one panel on arms control and subjected other prospective members of scientific panels to political litmus tests.

Dr. Sidney Drell, an emeritus professor of physics at Stanford and a senior fellow at the Hoover Institution who was not a signatory to the statement, said the overall findings rang true to him. "I am concerned that the scientific advice coming into this administration seems to me very narrow," said Dr. Drell, who has advised the government on issues of national security for some 40 years and has served in Democratic and Republican administrations, including those of Presidents Nixon and Lyndon B. Johnson. "The input from individuals whose views are not in the main line of their policy don't seem to be sought or welcomed," he said. Reported in: *New York Times*, February 19. □

James Madison Award announced

The American Library Association (ALA) is honored to present the 2004 James Madison Award to David Sobel, the General Counsel for the Electronic Privacy Information Center (EPIC). The Madison Award, named for President James Madison, was established in 1986 and is presented annually on the anniversary of his birth. The award honors those who have championed, protected, and promoted public access to government information and the public's right to know.

By exhibiting persistent and creative leadership in litigating cases, David Sobel has increased the pressure on the courts to keep government agencies open and accountable to the public. As the General Counsel for EPIC, he is a key litigator on the Freedom of Information Act (FOIA). His work in *EPIC v. DOD* has strengthened public access to government information, by helping to reaffirm the viability of 'representative of the media' status for non-profit educational organizations that disseminate information to the public. He has also led the effort to obtain documents about the misuse of JetBlue and Northwest air passenger data, which has underscored the importance of open government not only in the United States, but also in Europe, where such disclosures will contribute to greater government oversight.

"David Sobel is a tireless and courageous advocate for openness and public disclosure of government information, and in his work has continuously defended what James Madison would often refer to as the 'liberty of learning,' said ALA President Dr. Carla Hayden. "Because libraries can only prosper in an environment of openness and free access to information, those who work so hard to protect and defend such rights, like David Sobel, live up to the true spirit of liberty that the Madison Award was established to honor," she concluded.

Information found on EPIC's Web site, "Former Secrets—Documents Released Under the FOIA," validates the importance of FOIA and of its use by dedicated advocates of openness. The site includes documents that the government would prefer to remain veiled in secrecy, including one on how the FBI's 'Carnivore' Internet Surveillance System interfered with an anti-terrorism investigation involving Osama Bin Laden. □

Oboler Memorial Award winner announced

Wendell Berry and David James Duncan, coauthors of *Citizens Dissent: Security, Morality and Leadership in an Age of Terror* (Orion Society, 2003), are the 2004 recipients of the Eli M. Oboler Memorial Award. The award is presented for the best published work in the area of intellectual freedom and consists of a citation and \$500.

"The committee is very pleased to present Wendell Berry and David James Duncan with this award for *Citizens Dissent*," said Oboler Award Committee chair Martin Garner. "These essays on the larger issues of civil liberties and political dissent in a post 9/11 world are powerful reminders of the underlying principles of intellectual freedom."

Presented by the American Library Association (ALA) Intellectual Freedom Round Table (IFRT), the award honors Eli M. Oboler, an extensively published Idaho State University librarian who, as an intellectual freedom champion, demanded the dismantling of all barriers to freedom of expression.

"Members of the committee were impressed with the authors' quality of writing, eloquence of arguments, and dedication to beliefs," said Garner. "Berry's rigorous and intellectual refutation of the National Security Strategy nicely balances Duncan's emotional, almost grief-stricken lament of the country's current policy towards Iraq. These profound topics provide a context for the daily challenges to intellectual freedom in both our libraries and our larger society."

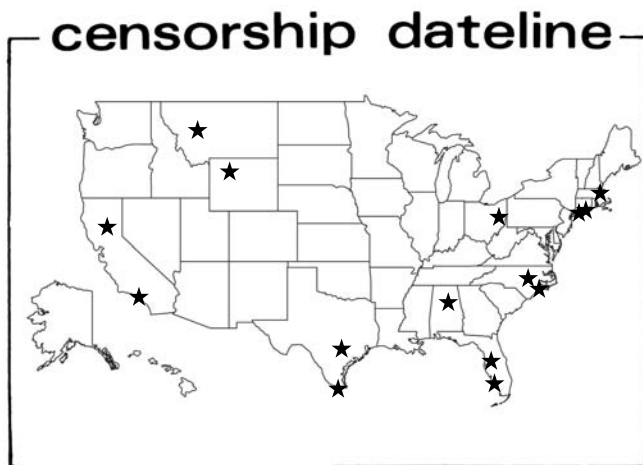
Berry, farmer, essayist, poet and novelist, is the author of more than thirty books, including *In the Presence of Fear: Three Essays for a Changed World*, and is a regular contributor to *Orion* magazine. When he learned of the award, he said, "The little book *Citizens Dissent* puts its authors well out on a limb. That is where intellectual freedom is apt to put its practitioners from time to time, if it is in fact a working freedom. Even so, writers who go out on a limb should not expect to be honored. I am telling the truth, then, when I say I am surprised by the Eli M. Oboler Award. But I am also relieved and encouraged. Thank you."

Duncan, author of the novels *The River Why* and *The Brothers K* whose recent book, *My Story As Told by Water*, won the Western States Book Award and was nominated for the 2001 National Book Award, said, "I am more grateful than I can say that the American Library Association, in a dark time, stands by those of us who love the richness of human and literary experience and call the psychic assault weapons into question."

The Eli M. Oboler Award will be presented on Saturday, June 26, at 1:30 P.M., during the IFRT program at the ALA Annual Conference in Orlando, Florida.

For more information regarding the Eli M. Oboler Memorial Award and past recipients please visit www.ala.org/ala/ifrt/ifrtinaction/ifrtawards/oboler/oboler.htm.

Citizens Dissent: Security, Morality, and Leadership in an Age of Terror, ISBN 0-913098-62-0, Paperback, 60 pages, \$8.00 US, is available through www.oriononline.org and at independent booksellers nationwide. □



libraries

Milford, Connecticut

The leader of a large city-based Christian church asked the Board of Education to audit all library books in local schools for sexual and occult content, a review the district's top official said isn't needed and won't be done. Bishop Jay Ramirez of Kingdom Life Christian Church said his request for the audit was based on previous and recent incidents in which questionable reading material turned up in middle schools.

"I definitely think the books need to be reviewed by people at the school," Ramirez said. "Audit is a better term."

Superintendent of Schools Gregory Firm, however, said that while he understands Ramirez's concerns, the school system will not perform an audit. He said if anyone has an objection to a particular library book or textbook they can inform the school principal and the matter will be reviewed. "That's why we have a process in place," Firm said.

State Department of Education spokesman Thomas Murphy said while objections to material in textbooks have arisen in Connecticut, he can not recall any case in which a prominent clergyman raised objections to library books. "This is not something I've heard of in the last 20 years," said Murphy.

Teresa Younger, executive director of the Connecticut Civil Liberties Union, said while she respects Ramirez's

right to his opinion, she applauds Firm's decision not to conduct an audit. "No one person should dictate what students have access to in school libraries, if the librarian, school board and superintendent feel these books are suitable," Younger said. "It is always unacceptable to take reading material out because it may reference a particular issue... literature adds to the lives of our children."

Younger said the only recent criticism of children's literature she recalls in the state was of books in the Harry Potter series, which involve young witches and wizards. None of those complaints resulted in removal of the books from schools, she said.

But Ramirez said he has had concerns about the content of some books in city schools since three years ago when his wife was volunteering at West Shore Middle School's library and came across several books the couple believe had graphically sexual themes. Administrators removed the books, the names of which Ramirez was not able to recall.

More recently, Ramirez said, his brother, Dr. Randy Ramirez, a Stratford physician, found books with questionable themes at Milford's John F. Kennedy School. Randy Ramirez said his wife, Colleen, attended a one-day book swap at Kennedy and raised concerns about six or seven books she believed contained references to violence and the occult. He said his wife handed the questionable books to Kennedy Principal John Barile to review.

Four of the books questioned were *The Empty Grave*, by Ida Chittum; *The Berenstain Bears and the Ghost of the Forest*, by Stan and Jan Berenstain; the Hardy Boys *The Witch Master's Key* and *Beware This House Is Haunted*, by Henry Dreher, Barile said. He said the book-swap was a one-day event to promote literacy. He reviewed books the Ramirezes targeted and conceded a couple, which he did not name, might be "questionable." Barile, however, also said an audit is unnecessary.

Ramirez's nearly 2,000-member congregation made headlines last summer when it purchased an adults-only video/book store for \$250,000 in an as yet unsuccessful attempt to drive it out of the city. He said that when he brought questionable books to the attention of West Shore Principal Macaire Stein about three years ago, she removed them. Ramirez said he examined some of the books and was dumbfounded by blatant promotion of sex and violence. One passage he highlighted was a description of two teens going into the forest to perform oral sex, he said.

"Do we really want books talking about oral sex in our schools?" Ramirez asked. Reported in: *New Haven Register*, March 25.

Hernando County, Florida

Deenie, a coming-of-age novel by Judy Blume challenged last fall by the parent of a 7th-grader who borrowed the book from the Spring Hill Elementary School media center, will remain in the K-8 collections of the Hernando

County Schools, the school board ruled February 17. Board members stipulated, however, that only students with written parental permission will be given access to the title—an action that had been suggested by Spring Hill Principal John DiRienzo.

The decision to retain the novel overruled the recommendation, made by a district-level materials-review committee and the superintendent of schools, to remove it from elementary schools. “I can’t see denying its availability if some parents decide it’s okay for their child to read,” school board vice-chair Jim Malcolm said. “Some people are offended by the content. Others aren’t. I will defer to individual parental choice for their child.”

Deenie, which chronicles the life of a 7th-grade girl dealing with curvature of the spine, includes two passages depicting the title character masturbating, to which Jerri Trammell objected. “What she read isn’t bad,” Trammell said of her daughter’s exposure to the book, adding, “I just don’t want her to learn about it from Judy Blume.”

The challenge process was further complicated by the *St. Petersburg Times* filing suit to make the review-committee deliberations public. Florida Circuit Judge Jack Springstead ruled in favor of the newspaper, and the committee held its deliberations publicly January 28. The school board is expected to review the district’s guidelines for handling material reconsiderations to avoid future litigation. Reported in: *St. Petersburg Times*, February 19.

Medford, Massachusetts

Advertising by student groups at Tufts University embroiled the university library in the issue of what constitutes obscenity on a college campus. The issue focused on chalkings for “The Vagina Monologues” which appeared across campus grounds. Prior to the play’s debut, there were large, chalked advertisements in front of Tisch Library. Included in the chalking was the word “c**t.”

Although one of the aims of the play is to make such words commonplace, one student was offended enough by the chalking to complain. On February 11, “a student entered the library and complained about the language the ‘Vagina Monologues’ advertisement used,” Tisch Library Director Jo-Ann Michalak said. “We forwarded that complaint to Facilities, which arrived and removed the chalking.”

The group of students performing “Monologues” was upset to see their ad removed. “I felt as though I was being supported within the theater, but when [our cause] got outside, it got shut down,” said Assistant Stage Manager and Producer junior Louise Weed.

According to the student handbook, chalking on campus can include “no profanity or explicit sexual material.” However, there is no clarification of what constitutes profanity or how “explicit” is to be defined.

“Part of the answer lies in the context of the advertisement,” Dean of Students Bruce Reitman said. “Leeway is

given to certain words if it is used in an appropriate way.” Reitman said that University policy does not permit advertisement or stand-alone graphics to remain if its objective is merely to shock the viewer.

In 1988, the University implemented free speech zones in response to complaints about a student who was selling T-shirts with the slogan “15 Reasons Why Beer is Better than Women at Tufts.” Academic buildings were designated “limited tolerance” for obscenity and dorms were designated “no tolerance.” In response to campus and national outcry, the University eventually eliminated the free speech zones, though several large state universities still maintain the distinctions.

Last school year, Reitman explained his opposition to free speech zones. “People have to be able to express how we differ in background, race, and religion, to name a few,” he said. “We at this University wish to promote and naturally cherish the tenets of freedom of expression.”

The controversy surrounding the “Vagina Monologues” came at a time when similar boundaries are being tested at other colleges nationwide. At Harvard University, a new student publication called *H-Bomb* has recently gained administrative approval. It will focus on “issues of sex and sexuality” and the students involved have already been warned by the administration to stay clear of any format resembling “porn.” The Harvard administration did not elaborate on what would actually constitute pornographic material.

On a similarly risqué note, Yale University provides alternative education during Sex Week, where students learn about various sexual issues in fraternity houses with the Porn and Chicken Society, which has brought porn stars to campus as speakers. Items discussed this year ranged from the logistics of a threesome to what is the best condom.

Freshman Caitlin Johnson said she was not offended by the chalkings on campus, and that she supports the play’s goals. “By celebrating my sexuality, I am not being obscene,” she said. “I will not deny one aspect of myself for the sake of puritanical mores.”

Freshman Liz Hammond agreed that the advertisements were appropriate and successful. “Advertising is supposed to attract attention, and this was just good advertising. They just happened to be selling vaginas,” she said.

But University Chaplain Rev. David O’Leary said that “people have the freedom to go and pay to see the ‘Vagina Monologues’”. But people do not have that choice when drawings or wordings are written on the plaza.” O’Leary said that forcing issues on people in public spaces—especially younger children—was not a positive thing. “Some folks do not want to have to explain to a little child what function body parts have, and I do know the library is used by more than college-aged students,” he said.

Women’s Center Director Peggy Barrett said that since Tufts is a fairly liberal campus, students and the adminis-

tration must make allowances for many different ideas. “[The students advertising for the “Vagina Monologues”] feel that the value of women being able to talk about their bodies themselves outweighs the discomfort of others,” she said. “The real question here is: do we want to place limits on what people can say?” Reported in: *Tufts Daily*, February 25.

Helena, Montana

A concerned parent has called into question a library book about horses and wants it removed from an elementary school library. Roxanne Cleasby, a parent of an 8-year-old student attending Smith Elementary School, filed a Request for Reconsideration of Educational Materials, urging the school district to remove a book from the Smith School library that she believes promotes evolution.

Horse, by Juliet Clutton-Brock, is part of the Eyewitness Books series and explains the origin of horses using the theory of evolution without suggesting the possibility of a creator. Cleasby’s complaint calls for either the removal of the entire book from the school’s library or the removal of two pages—eight and nine—in the book that describe the evolutionary process. One sentence on those pages reads: “It took about 55 million years for the present family of horses, asses, and zebras to evolve from their earliest horse-like ancestor.”

Cleasby said she understands that evolution is widely taught in public schools, and said she was not opposed to her daughter being exposed to evolution, but wanted other theories explored as well. “It’s a hypothesis—a theory—and it needs to be presented that way,” she said.

Board policy mandates appointment of a five-member review committee by the superintendent. The committee is made up of parents, librarians and an administrator. The group reviewed the parent’s request and the book she questioned in an initial public meeting February 27.

Although John Fenlason of the Hannaford Street Bible Church agreed that “evolution is just as much a theory and a religious view as creationism is,” he was the only person offering testimony to support Cleasby. “For the success of future generations, it is critical that we allow access to books that contain the prevailing views of science,” Grant Hokit, biology professor of Carroll College, said, adding that science neither proves nor disproves the existence of a creator.

“I’ve had the opportunity, first hand, to see what extremists can do,” testified Afghani-American Zia Kazimi, who likened Cleasby’s complaint to Taliban philosophy. Kazimi went on to say, “It’s not our public schools who teach our faith. This is done at home and in our churches. Let the schools do what they do best.”

Helena School District Library Coordinator Suzi Watne, who is a member of the committee, told the crowd of more than 100 that district policy forbids pulling a book because

of the author’s background or views. The review committee will prepare a written report to District Superintendent Bruce Messinger, who will take into consideration the recommendations of the committee in an ultimate recommendation to the board of trustees. The board members will be charged with the final decision.

If Cleasby disagrees with the committee’s recommendations, the superintendent’s recommendation to the board or the board’s final decision, she will have the opportunity to file a written appeal. If that happens, the board of trustees will review the complaint and the appeal and reconsider the original decision.

The request for the removal of *Horse* from Smith School was only the second challenge the Helena School District has seen regarding library books or instructional materials in the past decade. Cleasby said she brought the challenge to shed light on the debate surrounding the theories of evolution and creation.

“I’m sure the school’s curriculum is full of it through and through,” she said. “And I’m sure that I can’t challenge all of it, but I think there needs to be more public awareness on the creation side. There’s been lots of great scientific research done on creation that needs to be considered.” Reported in: *Helena Independent-Record*, February 25, 29.

Wilmington, North Carolina

A children’s book about a prince whose true love turns out to be another prince will be available only to adults in a school’s library, a school committee has decided. *King & King* will be locked up at Freeman Elementary School in response to complaints by parents. The parents who complained after their 1st-grader brought the book home, said the decision satisfied them. Michael and Tonya Hartsell said they never wanted the book banned.

“It might be appropriate in certain situations,” Michael Hartsell said.

“But a child of this age shouldn’t have a choice.”

In the book, Prince Bertie dismisses a line of eligible princesses before falling for Prince Lee. Reported in: *Chicago Tribune*, March 28.

Brownwood, Texas

Objections made by some Brownwood residents to the inclusion of figurines of Little Black Sambo, pickaninnies, and Aunt Jemima in the city library’s Black History Month display have prompted library officials to modify the exhibit by placing the items in historical context. “The display is not at all what I expected,” Brownwood Public Library Director Mat McConnell said of the private collection on loan from area resident Sharon Watson. “This was not done to offend anyone in any way, and this display will not be going up next year.”

Watson, who is white, had asked volunteer Carol Spratt, who for years has offered to create the library’s Black

History Month display, to allow her to showcase her collection. Spratt said that she agreed without seeing Watson's memorabilia, adding, "I can understand her collecting these items. But this does not portray black heritage." However, Brownwood Black History Committee member Reggie Perry remarked that while "there are some inflammatory pieces in the collection," the items on display are "a testament to how far this country has come."

Spinning the controversy into an educational opportunity, McConnell said that library workers would "add some balance to the exhibit by putting up some items showing leaders from the black community. We also want to explain the origin of some of these items and show that what was acceptable 50 to 100 years ago is not acceptable now." Reported in: *Abilene Reporter-News*, February 12.

Teton County, Wyoming

A Teton County, Wyoming, resident has questioned why the library keeps a copy of Ed Rosenthal's *Marijuana Grower's Guide* in its collection. In an e-mail to Library Director Betsy Bernfeld, Robert Gathercole asked if the library would also carry books on assassination and bomb-making. "I do not understand why, when so much of our county resources are devoted to dealing with the problem of substance abuse, you have chosen to spend tax dollars to purchase a how-to crime manual," he wrote.

"We take challenges very seriously," responded Bernfeld, explaining that she would put the book on hold when the current borrower returns it, then would follow established procedures for handling complaints. "We talk to the person about it to see if we can get to the bottom of the concern, and if they still aren't satisfied we take it to the library board," she said. Reported in: *American Libraries Online*, February 27.

schools

Sacramento, California

The Galt Joint Union Elementary School District board decided December 8 to ban a young adult novel from classrooms but keep it in middle school libraries. The district looked at the issue of whether to remove *Don't You Dare Read This, Mrs. Dunphrey*, a novel that chronicles the problems of a troubled teenager, as supplemental classroom reading after a parent complained. The book had been assigned in a seventh-grade English class.

Trustees voted 4-1 to stop the novel from being used for instructional purposes but will allow it to remain in libraries as long as students get parental permission to check it out. Trustee Susan Richardson cast the dissenting vote.

Superintendent Jeffrey Jennings said he did not feel the book was appropriate for seventh-graders. "We should be

able to have some discretion as to what our kids have to read," he said.

The decision came after trustees voted 3-2 to reject the recommendations of a district committee that found the book appropriate for middle school students. Trustees Ervin Hatzenbuehler, Donna Fluty and Tina Skinner voted against the committee's recommendations, while Richardson and trustee Donald Nottoli voted in favor.

Don't You Dare Read This, an ALA Best Book for Young Adults, is about a fictional character named Tish Bonner, whose English teacher requires students to keep a journal. The teacher promises not to read entries that are labeled confidential, and Tish uses the journal to relate parental neglect, sexual harassment at an after-school job and other stresses she deals with. She eventually opens up to her teacher and gets help for herself and her younger brother. The novel was a supplemental book that middle school teachers had assigned on and off for the past seven years without any parental complaints, Jennings said.

Parent Mark Madison objected to the language and content, including some sexual language. "This isn't a book that should be force-fed to young children," he said.

But parent Barbara Vanderveen said she was disappointed because she believes it will lead to other books being challenged and removed from classrooms. "I'm afraid about where it'll stop," she said. Reported in: *Sacramento Bee*, December 9.

Durham, North Carolina

The family of an eighth-grader at Stanford Middle School have protested the classroom use of Harper Lee's *To Kill A Mockingbird*. Students in the class took turns reading passages from the classic novel aloud—an action that Garvey Jackson says forced him to hear a word possibly more offensive to him than any other word. Throughout the novel, which won the Pulitzer Prize in 1961, characters use the word "nigger."

With the help of his family, Garvey, who is black, ultimately ended up protesting the use of the book in class. Although the class is still using the widely read novel, the Jackson family said it plans to continue educating the community about what they feel is an offensive book, and eventually formally challenge the use of the book.

"We just don't want it in the school system," said Andrew Jackson, Garvey's father. "We do want to kill a mockingbird if it takes to the end of the school year." Thirteen-year-old Garvey said he won't be satisfied until the book "is out of the school system."

"Just to put it simple, I felt uncomfortable," he said. "Definitely within the first week [of reading it]."

But it wasn't until February—Black History Month—that Garvey decided to do something. He watched a television documentary about lunch counter sit-ins in Greensboro—part of the civil rights movement—and was

inspired. Garvey told his dad about reading the book. Jackson was appalled. He brought it up at a family meeting—a frequent occurrence in the Jackson home.

Rita Gonzalez-Jackson, Garvey's mother, was also stunned that *To Kill a Mockingbird* was being used in the classroom. She acknowledged she hadn't read the entire book, but strongly felt if it had the word "nigger" in it, it shouldn't be used in schools.

"I was like, this is 2004, and this is still being read in schools?" she said. "[Garvey] started pointing out the words in the book. It's inappropriate."

So Garvey, with the help of his mom, dad, sister and brother, devised a plan. He wore a shirt, created by his sister, to class. The white shirt was covered in phrases from the book, including "nigger rape," "nigger lover" and "nigger snowman." Garvey knew he might get suspended, and so did his parents. No one worried about that.

"He was doing the right thing," his mom said. "I agree with him. I support him." Garvey covered the shirt until he got to his English class. Then he uncovered it, and walked to the front of the class, where his teacher, Thomas Watson, noticed it.

"Basically he said, I should cover that up," Garvey said. "I said I wouldn't do that. If it's good enough for the book, it's good enough for the shirt." Garvey said Watson sent him to the principal's office, where a woman he didn't recognize told him the shirt was inappropriate. He took the shirt off—minutes before his parents, wondering what had happened in the class, arrived at school—because "I guess I was just tired of hearing all this," Garvey said. "Maybe it was fear of being suspended." Principal Dave Ebert and Associate Principal Connie Brimmer explained the district's process for challenging books to the Jacksons. They explained why wearing the shirt was against school rules.

"The dress code is specifically stated," Ebert said. "We try to follow that. We ask students to take [the offensive clothing] off, if they have something else to wear, or we call the parents and ask them to bring something else."

Although Ebert said he couldn't comment on the specific case, he did say that most students read *To Kill a Mockingbird* at some point in their education. Ebert said Watson explained to the students that if they were uncomfortable saying "nigger" aloud, they didn't have to say it.

"I think we've handled this as well as we could have," Ebert said. "Any time a student has a real concern about a book or a classroom material, we treat that with respect. It is dealt with in a way that we feel is respectful to the opinions of the students and the parents."

Garvey, meanwhile, wasn't finished with his protest after he took off the shirt. The next week he handed out a letter to his classmates—the same letter he gave to his teacher the week before—explaining that the book offends him, and why it shouldn't be used. That day, Garvey said, Watson and the class had a discussion about the book, and

the word "nigger." Two days later, the day the class was slated to watch the movie version of *To Kill a Mockingbird*, Garvey attempted to pass out armbands to his classmates, to protest.

"They didn't want to wear them," Garvey said. "They said they made them look ugly." Garvey wore his anyway. The family plans to hold a mock funeral for the book, inviting the community and burying it in a cemetery. "Just another form of protest—nonviolent protest," Andrew Jackson said. "It's not when the book is over, the problem is over." Reported in: *Durham Herald-Sun*, February 15.

Belpre, Ohio

A sixth-grader served a three-day suspension because he refused a lesser punishment for bringing the *Sports Illustrated* swimsuit issue to school, the schools superintendent said. Justin Reyes had the magazine in the gymnasium at Belpre Middle School before classes February 18, and Principal Kathy Garrison cited him for violating school's policy on nonverbal harassment and possession of lewd or suggestive material, Superintendent Tim Swarr said.

Garrison ordered the 12-year-old boy to spend two days at an alternative school where students from several area districts are sent when they get into trouble. But Swarr said Justin and his mother, Nicole Reyes, refused to accept the alternative school punishment, so the penalty was increased to three days of out-of-school suspension.

"Last time I checked, we were in charge of running the schools," Swarr said.

Nicole Reyes said the alternative school was too harsh a punishment. "It's not like it was *Hustler*, *Playboy* or *Penthouse*," she said. "The punishment doesn't fit the crime."

Swarr said he had never seen the swimsuit edition before. "I was shocked," he said. "It doesn't belong in public schools."

Belpre Middle School, about 90 miles southeast of Columbus, serves some 550 students in grades four through eight. Reported in: *Salon.com*, February 24.

student press

Naples, Florida

When a journalism teacher at Lely High School pulled her student editor's column from the campus newspaper and wrote "censored" at the top of the space, it lit a fuse that sparked concern among some journalists that First Amendment rights to freedom of speech—and the press—were being violated.

Jackie Hagerman, who teaches journalism and is the newspaper and yearbook adviser at Lely High, said March 26 that censoring the student editor's column about bad

teachers was not what she intended. “I didn’t use the word ‘censored’ in the same way journalists do,” Hagerman said. “I took the column out because we didn’t have time to rewrite it, to get the harshness out.”

Hagerman, who has a degree in English, said she isn’t a journalist and isn’t trained in journalism. She said she doesn’t understand what all the flak is about. But national and state press organizations were stunned when they heard Hagerman pulled the column and printed “censored” at the top of the empty space, which was two columns wide and 14 inches deep.

“It’s pretty clear that the law does not allow censorship simply because (teachers and administrators) differ in viewpoint,” said Mark Goodman, executive director of the Student Press Law Center in Arlington, Virginia. “That’s what it sounds like in this case. In effect, they robbed the student of his voice.”

The censoring drew attention in Florida, too. “We are certainly concerned—and I am personally concerned—that the practice of high school journalism has been threatened,” said Dean Ridings, executive director of the Florida Press Association and secretary-treasurer of the First Amendment Foundation Board of Trustees in Tallahassee.

“It’s very unfortunate when a teacher goes against the journalistic principles that are so well-protected in our country and our newspapers,” Ridings said. *Naples Daily News* Editor Phil Lewis also wrote about the incident in two of his columns.

But Hagerman said she and the student, Renato Talhadas, editor in chief of *The Trojan Epic*, have learned some valuable lessons from the incident. And they also taught some lessons, Talhadas said: The teachers he wrote about have mended their ways.

“It made me realize our power,” Hagerman said. “It made me aware of the power we have, and I think we gained more respect for it. We learned from it, too.”

Talhadas, 18, a senior who wants to become a journalist someday, said it doesn’t bother him that Hagerman wanted him to tone his column down. “It was my voice. She just wanted to get some of the harshness out,” Talhadas said. “I write from the heart, sometimes with a lot of emotion.”

Talhadas wrote a column for the March 3 edition of the *Epic* with the headline “When teachers go bad.” In it, he said Lely High was blessed with qualified and competent teachers, and named some of his favorites. Then he said there were “quite a few” teachers who made him think otherwise. Talhadas didn’t name any of them, but he said some sat at their computers checking e-mail and trading on Ebay all day.

“That’s true. They do,” Hagerman said, defending Talhadas.

The column was still in the *Epic* when a courtesy proof was sent to the office of Principal Jerry Primus for review before it went to press. Primus was out of the office at the

time. The *Epic* was reviewed by Karen LaPorte, assistant principal for curriculum and instruction, and Mary Ellen Cash, a teacher of English for Speakers of Other Languages, or ESOL, whom Primus designated.

LaPorte and especially Cash were the ones who raised the concern over the column Talhadas wrote, Hagerman said. “They didn’t tell me to remove the column,” she said. “I wanted Renato to rewrite it, but he didn’t have time. There was too much going on, so I took the column out. I was just trying to make everybody happy. If I had known it would cause all this, I would have left it in there.”

When Primus got back and read the column, he became involved. “It wasn’t the column I was concerned about—my sensitivity was with the timing,” he said. “I had a newsletter praising teachers going out at the same time as the newspaper.” The newsletter highlighted six teachers Primus chose because of their “extraordinary dedication and service” to Lely High.

Primus said he recognizes and respects the *Epic*’s First Amendment right to free speech and freedom of the press. But Primus said there are other reasons why he likes to review the paper before it goes to press. “I have been very open. The first thing they’ll admit is that I’m very objective,” Primus said. “It’s a great paper, and that’s why I support them. But I have caught hell this year, and somebody has to come in and say, ‘Thou shalt not do this.’”

Primus referred to printing words such as “crap,” “hell” and other four-letter words that send up a red flag. “Along with freedom comes responsibility,” he said. “What the *Epic* prints reflects taste. It reflects the image of this school.”

Goodman, of the Student Press Law Center, said Talhadas could appeal the censorship and take the issue to the Collier County School Board. But Talhadas said he doesn’t want to push it any further. “The teachers that were trading on Ebay don’t do it anymore,” he said. “Now they get up in front of the class and teach like they’re supposed to. So we taught some lessons out of this.” Reported in: *Naples Daily News*, March 31.

Brooklyn, New York

Long Island University at Brooklyn removed the faculty adviser of its weekly student newspaper, *Seawanhaka*, after the paper published the grades of a former student leader. University officials also temporarily removed the newspaper’s student editor and changed the locks on the *Seawanhaka* office.

The university contends the newspaper violated the student’s privacy in publishing personal information, although journalism experts are defending the legality of the disclosure.

The shake-up involved a January 21 article about the resignation of the student-government president, Abdel Alileala. In the article, Alileala cited “personal problems”

as reasons for stepping down. “There has been speculation,” the article continued, “that Alileala’s academic struggles last year are the reason for his decision to resign.” Alileala’s grades in six classes, which included two failing marks, followed. The article did not contain a comment from Alileala about the grades. Obtaining a response to accusations or unfavorable comments is a standard practice in journalism.

Justin Grant, the author of the article and the newspaper’s editor, said he had obtained information about Alileala’s grades from another reporter hours before his deadline. Grant, a junior, said that the reporter had confirmed the information with several student sources and that the newspaper had not obtained Alileala’s official academic transcript.

“I stand by my work,” Grant said. “The only thing I probably would have done differently would have been to let [Alileala] know we had the information after we got it.”

Both Grant and G. Michael Bush, the ousted adviser of the newspaper, said students had a right to know about the grades because Alileala was an elected official and a public figure, to whom laws do not accord the same degree of privacy as they do to ordinary citizens. “It would have been wrong,” Grant said, “if it had been John Q. Public student.” The decision was journalisticly sound because the grades “were obtained legally and published accurately,” said Bush, who remains a professor of journalism at the university.

Some administrators, however, disagreed. In a February 3 letter to Bush, David Cohen, a dean at the university, suggested that the adviser had violated “federal regulations” by directing students to publish the grades.

But Mark Goodman, executive director of the Student Press Law Center, a nonprofit group, said that the Family Educational Rights and Privacy Act, which protects most student records, “is a limitation solely on the university.” The U.S. Department of Education has previously stated that the law, commonly known as FERPA, was not intended to apply to campus newspapers.

Goodman also cited *Bilney v. Evening Star*, a 1979 case in which a Maryland court held that it was not an invasion of privacy for a college newspaper to publish the grades of members of a university’s basketball team because the athletes were public figures.

Bernadette Walker, the university’s dean of students, did not return a telephone call to her office. A statement released by the university said that the administration was investigating the incident and reviewing editorial procedures, “to ensure that they safeguard our students’ confidential information.”

Peg Byron, a spokeswoman for the university, said the *Seawanhaka*, which did not come out for a week, would resume publishing under a new supervisor. Grant, who receives a tuition discount as editor of the newspaper, said his suspension was effective until the end of February.

In an opinion column that appeared in the January 28 issue of the *Seawanhaka*, Grant apologized for the “hurt and embarrassment” the article may have caused Alileala and his family. “In spite of the gathering storm clouds though, this year’s *Seawanhaka* staff has set out to take this newspaper to the next level,” Grant wrote. “We are not just a student club, we are a newspaper.” Reported in: *Chronicle of Higher Education*, February 13.

periodicals

Cullman, Alabama

United States District Attorney Mary Beth Buchanan apparently wasn’t kidding when she said in a national television appearance that it might be possible that even *Playboy*, a tame magazine by today’s standards, could still be deemed obscene in the United States. A bookstore in Alabama is currently being accused of selling obscene materials—*Playboy* and *Playgirl*.

The Books-A-Million bookstore in the Cullman Shopping Center has removed all adult magazines following a police investigation that obscene materials were on display and being sold at the location. Cullman County District Attorney Len Brooks told the local newspaper that *Playboy* and *Playgirl* were the “obscene materials” that led to the complaints.

“I have received a letter today from the president of Books-A-Million indicating that the placement of the magazines in the local store was a mistake and that the magazines have been removed,” Brooks said. “I’m glad to know that Books-A-Million has voluntarily chosen not to sell these magazines. We must continue to work to insure the community standard and values of morals and decency that have been established here are not compromised.”

Brooks indicated that he would continue to press businesses not to carry such magazines.

If *Playboy* were not to meet the “community standards” test for proving that an item is “obscene,” it would happen in a community like Cullman—the town has a population of less than 14,000 and is best known as the home of the only Benedictine Abbey in the state of Alabama, which hosts the Ave Maria Grotto—miniature reproductions of over 125 famous churches, shrines, and buildings.

Cullman is also the home of University of Alabama offensive lineman Wesley Britt—who declined an offer to be a member of *Playboy*’s preseason All-America team last year—because the magazine didn’t conform to his Christian faith.

Buchanan had made her now prophetic remarks during a debate about the Extreme obscenity case on ABC’s *Good Morning America* in August of last year. *Good Morning America* host Charles Gibson asked Buchanan to

give her interpretation of what is illegal, specifically questioning how far the “community standards” concept could go. “Some would argue that applies to *Playboy*. By community standards *Playboy* might be offensive,” Gibson, said.

Buchanan admitted, “That might be possible.”

Apparently it definitely is possible, although the bookstore decided to pull the magazines voluntarily rather than let a jury decide whether or not the magazine actually was obscene. Reported in: *Cullman Times*, January 17.

broadcasting

San Antonio, Texas

Clear Channel Communications, the biggest radio broadcaster in the nation, suspended the Howard Stern show from its stations February 25 after announcing a policy to prevent the broadcasting of indecent content. The moves by Clear Channel came after it fired a talk-show host who broadcast sexually explicit material.

“Clear Channel drew a line in the sand today with regard to protecting our listeners from indecent content, and Howard Stern’s show blew right through it,” Clear Channel Radio’s president, John Hogan, said in a statement. The statement did not specifically describe the content but said it “was vulgar, offensive and insulting, not just to women and African Americans but to anyone with a sense of common decency.”

Clear Channel did not disclose how many of its stations carry the show, which is produced and distributed by the Infinity radio unit of Viacom. The company said it would not reinstate Stern “until we are assured that his show will conform to acceptable standards of responsible broadcasting.”

Clear Channel said earlier that it fired Todd Clem, the host of a show broadcast from Florida who called himself Bubba the Love Sponge. His show drew the threat of a fine from the Federal Communications Commission for broadcasting graphic and sexually explicit material.

The actions by Clear Channel came as Congress sought to toughen penalties for indecency. The company’s new policy includes making disc jockeys’ pay part of any federal fines imposed for using profanity.

The Clear Channel decision prompted speculation that the move had more to do with Stern’s politics than his raunchy shock-jock shtick. Stern’s loyal listeners, Clear Channel foes and many Bush administration critics immediately reached the same conclusion: The notorious jock was yanked off the air because he had recently begun trashing Bush, and Bush-friendly Clear Channel used the guise of “indecency” to shut him up. That the content of Stern’s crude show hadn’t suddenly changed, but his stance on Bush had, gave the theory more heft. That, plus his being

pulled off the air in key electoral swing states such as Florida and Pennsylvania.

Stern himself went on the warpath, weaving in among his familiar monologues about breasts and porn actresses accusations that Texas-based Clear Channel—whose Republican CEO, Lowry Mays, is extremely close to both George W. Bush and Bush’s father—canned him because he deviated from the company’s pro-Bush line. “I gotta tell you something,” Stern told his listeners. “There’s a lot of people saying that the second that I started saying, ‘I think we gotta get Bush out of the presidency,’ that’s when Clear Channel banged my ass outta here. Then I find out that Clear Channel is such a big contributor to President Bush, and in bed with the whole Bush administration, I’m going, ‘Maybe that’s why I was thrown off: because I don’t like the way the country is leaning too much to the religious right.’ And then, bam! Let’s get rid of Stern. I used to think, ‘Oh, I can’t believe that.’ But that’s it! That’s what’s going on here! I know it! I know it!”

Stern’s was relentless in detailing the close ties between Clear Channel executives and the Bush administration, and insisting that political speech, not indecency, got him in trouble with the San Antonio broadcasting giant. If he hadn’t turned against Bush, Stern told his listeners, he’d still be heard on Clear Channel stations. In a statement released to Salon, the media company insisted that “Clear Channel Radio is not operated according to any political agenda or ideology.”

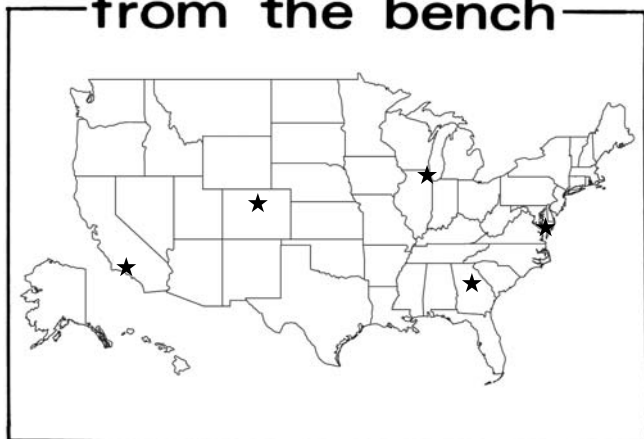
Although by far the most powerful, Stern was not the first radio jock to charge Clear Channel with retaliation for anti-Bush comments. “I’m glad he’s pissed off and I hope he raises hell every single day,” said Roxanne Walker, who claims Clear Channel fired her last year because of her anti-war views. “I think any time a broader section of the population hears about the Bush administration and the Clear Channel connection, it’s a good thing.”

Walker, South Carolina Broadcasters Association’s 2002 radio personality of the year, is suing Clear Channel for violating a state law that forbids employers from punishing employees who express politically unpopular beliefs in the workplace. “On our show, we talked about politics and current events,” she said. “There were two conservative partners and me, the liberal, and that was fine. But as it became clear we were going to war, and I kept charging the war was not justified, I was reprimanded by Clear Channel management that I needed to tone that down. Basically, I was told to shut up.” She says she was fired on April 7, 2003.

Phoenix talk show host Charles Goyette said he was kicked off his afternoon drive-time program at Clear Channel’s KFYY because of his sharp criticism of the war on Iraq. A self-described Goldwater Republican who was

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from the bench



U.S. Supreme Court

The U.S. Supreme Court ruled February 25 that states can refuse to provide financial aid to students who major in theology. In a 7-to-2 ruling in a case involving a scholarship program in Washington State, the justices rejected arguments that banning student aid to theology majors violated the First Amendment's religious-freedom provision and the Fourteenth Amendment's equal-protection guarantees.

"Training someone to lead a congregation is an essentially religious endeavor," Chief Justice William H. Rehnquist wrote for the court's majority. "Indeed, majoring in devotional theology is akin to a religious calling as well as an academic pursuit."

While the ruling dealt a blow to the Bush administration's efforts to give federal funds to faith-based charities, the decision is likely to have little practical effect on colleges. Only fourteen states besides Washington ban the use of state dollars for theology training, and many more states prohibit public spending on religious education.

But even in those states without an explicit prohibition, less than two percent of all college students, by some estimates, receive public funds for studying theology.

"This case presented a unique set of circumstances that are unlikely to be replicated elsewhere," said Sheldon E. Steinbach, vice president and general counsel at the American Council on Education.

Before the ruling, some leaders at religious colleges feared that a decision in favor of Washington State could jeopardize state-based financial aid for their students. But Robert C. Andringa, president of the Council for Christian Colleges and Universities, said that, based on his initial reading of the decision, it is unlikely to be broadly interpreted by the states.

"States will take a closer look at what students major in, especially those majoring in vocational ministry," Andringa said. "But students attending religious colleges or majoring in religion anywhere else shouldn't be worried."

The Supreme Court's decision overturned a 2002 ruling by the U.S. Court of Appeals for the Ninth Circuit. That court had struck down a Washington law prohibiting the award of financial aid to students pursuing degrees in theology. Joshua Davey sued the state when it rescinded his scholarship in 1999, after he decided to major in both business administration and theology at Northwest College, an institution in Kirkland, Washington, that is affiliated with the Assemblies of God Church. Davey argued that he had met all the criteria to receive a Promise scholarship, Washington's merit-based award, which was worth \$1,125 at the time. A federal district court ruled in favor of the state in 2000, but in overturning that decision, the appeals court said the scholarship's theology prohibition was discriminatory. Davey is now a student at Harvard Law School.

In their dissenting opinion, Justices Antonin Scalia and Clarence Thomas agreed with the appeals-court decision. "Let there be no doubt: This case is about discrimination against a religious minority," Justice Scalia wrote. "In an era when the court is so quick to come to the aid of other disfavored groups, its indifference in this case, which involves a form of discrimination to which the Constitution actually speaks, is exceptional."

Jay Sekulow, the lawyer for Davey, said that the ruling "clearly sanctions religious discrimination." The court, he said, had "missed an important opportunity to protect the constitutional rights of all students."

The attorney general of Washington State, Christine Gregoire, said in a written statement that she was pleased by the decision. "The framers of Washington's Constitution believed that religious freedom was best protected by ensuring that public money would not be used to support religious activity with which others may disagree." Reported in: *Chronicle of Higher Education*, February 26.

The Supreme Court heard oral arguments March 2 about Internet pornography, one of the most vexing issues at the intersection of technology and First Amendment rights. Neither side got a free ride from the justices in the discussion of the Child Online Protection Act, a 1998 law that makes it illegal for commercial Web sites to make available to children 16 and under material that is not necessarily obscene but could be considered "harmful to minors" under a complex, three-part formula in the law.

Just minutes into his argument, Solicitor General Theodore B. Olson was interrupted by Justice Sandra Day O'Connor, who asked why the government was fighting for new laws when it was not enforcing the old ones. "There are very few prosecutions, and there's all kinds of stuff out there," Justice O'Connor said.

Olson said the Bush administration was stepping up its prosecution of pornography cases in the online and offline world and had issued 21 indictments in the last two years. Regulation of Internet pornography is urgently needed, Olson said, because "it's causing irreparable injury to our most important resource—our children." The materials are "as available to children as a television remote," he said, and turn up when youngsters make the most innocuous searches.

He argued that the world of online pornography was exploding, and said that typing the words "free porn" on a search engine produced 6,230,000 sites. "I did this this weekend," he said. When asked whether all of the sites could be considered obscene, he said, "I didn't have enough time to go through all of those sites," drawing laughs from justices and spectators.

At another point, Justice Stephen G. Breyer asked for specific examples of Web sites that were not pornographic but could run afoul of the law's prohibitions. Justice Breyer said that he looked at examples provided by the American Civil Liberties Union in its legal brief and could not find one that fell that into that middle ground. Ann Beeson, a lawyer for the civil liberties union, cited examples that included "lesbian and gay pleasure" and "the pleasure of sex outdoors," and the works of a sex columnist, Susie Bright.

Congress passed the Child Online Protection Act in 1998 after the court struck down its first major effort to restrict pornography in cyberspace, the Communications Decency Act, which Congress passed in 1996. That law, which would have made it a crime to provide "indecent" material to minors online, was declared unconstitutional by the Supreme Court in 1997.

In passing the Child Online Protection Act, Congress was trying to produce a law narrower in scope than its first try, Olson said. The new law prohibits commercial Web sites from publishing material "harmful to minors" unless the site can show that it has made good faith efforts—requiring a credit card, for example—to keep out all Web surfers younger than 17. Violators could be fined as much as \$50,000 and spend six months in jail, with higher penalties for repeat offenders.

The ACLU challenged the law in federal court and was joined by a broad coalition of Web sites, booksellers and civil liberties organizations, as well as online stores like Condomania and online publications like Salon, which discuss sex frankly. The oral arguments were the second time the justices have taken up this law. In a ruling last term,

they reversed a decision by the United States Court of Appeals for the Third Circuit, which had declared the law unconstitutional. The appeals court said that the law's reliance on "community standards" would mean, in practice, that the most tolerant communities would still be held to "the decency standards of the most puritanical communities." The Supreme Court said that the lower court should not have declared the law unconstitutional based on a finding of only that single major flaw. The Third Circuit reviewed the case again and, last March, found multiple grounds for declaring the act unconstitutional.

In the arguments, Justice Ruth Bader Ginsburg asked whether people who were entitled to view the Web sites would be reluctant to do so because of the government's requirement that the sites verify age by getting credit cards or other identification. "The whole world can know about it if I put in my credit card number," Justice Ginsburg said.

Olson replied that the law included provisions that make abuse of the data illegal. Beeson argued that there were less restrictive alternatives to the pornography law: parents could now take matters into their own hands by using Internet filtering software and configuring it to reflect their own values. Congress already requires that schools and libraries use filters if they wish to receive federal funds.

Chief Justice William H. Rehnquist and Justice Antonin Scalia seemed skeptical of that argument, however, and both noted that the civil liberties union had opposed the library filtering bill. Olson also noted that a number of Web sites gave step-by-step instructions on defeating the technology.

Still, Beeson said in closing, Congress has gone too far in restricting online speech. "The government can't burn down the house to roast the pig," she said. Reported in: *New York Times*, March 3.

The U.S. Supreme Court heard oral arguments March 24 in a case challenging public school sponsorship of the Pledge of Allegiance. In *Elk Grove Unified School District v. Newdow*, the justices will decide whether state-mandated classroom recitation of the Pledge, with its "one nation under God" phrase, violates the church-state separation provision of the U.S. Constitution. Michael Newdow, a California parent, says school promotion of a religious concept transgresses the First Amendment.

"I think the justices clearly understand the importance of this case," said the Rev. Barry W. Lynn, executive director of American(s) United for Separation of Church and State. "Tough questions were asked of both sides.

"This case is a test of America's commitment to true religious freedom," continued Lynn, who attended the argument. "When Congress added 'under God' to the Pledge, a patriotic ritual was turned into a religious oath that many children cannot in good conscience recite. The government should never try to impose religion on school children," Lynn added. "Parents should decide what religious training—if any—their children receive."

excerpts from arguments on “under God” in Pledge of Allegiance

Following are excerpts from arguments before the Supreme Court concerning the inclusion of “under God” in the Pledge of Allegiance. Solicitor General Theodore B. Olson and Terence J. Cassidy, the lawyer for a California school district, defended the current pledge, and Dr. Michael A. Newdow argued against it.

JUSTICE JOHN PAUL STEVENS: Do you think that the pledge has the same meaning today as when it was enacted—when the words, under God, were inserted into the prayer, into the pledge?

OLSON: It’s an important question because the reference to under God in the pledge, as numerous decisions of this court have indicated in dicta . . . is an acknowledgment of the religious basis of the framers of the Constitution, who believed not only that the right to revolt, but that the right to vest power in the people to create a government came as a result of religious principles. In that sense, the Pledge of Allegiance today . . . has that same significance to this country as it did in 1954 when it was amended.

But as this court has also said . . . the ceremonial rendition of the Pledge of Allegiance in context repeatedly over the years . . . would cause a reasonable observer to understand that . . . this is not a religious invocation. It is not like

a prayer, it is not a supplication, it’s not an invocation. It is—

JUSTICE RUTH BADER GINSBURG: Your argument is that there’s a stronger case now than there would have been 50 years ago?

OLSON: Yes, Justice Ginsburg, and that is for many reasons, for . . . the reason that I just made, but also because the Congress revisited this issue in 2002 after the decision below in this case. There are findings in the record . . . with respect to . . . what the pledge means, the context of the pledge in its historical context, in the connection with its civic invocation, its ability to invoke certain principles that are indisputably true, which gave rise to the institutions which have given us freedom over all this period of time.

It is significant that the Court, the Congress, in making those findings, specifically referred to the decisions that I was referring to before, which have been characterized as dicta, but very important dicta, because they explain how the Court came to its conclusions. . .

. . . And to go back to what this Court has taught us with respect to the Establishment Clause and the endorsement prong of the Establishment Clause, it’s the entire context. It’s the nation’s history, it’s a Pledge of Allegiance to the flag and to the nation for which it stands, and then a

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Before the justices can decide whether the words “under God” render the pledge unconstitutional, they have to answer a factual question that is inextricably entwined with the legal one: what exactly does it mean to pledge allegiance to “one nation under God”?

According to Newdow, to recite the pledge with “under God” is to take “one side in the quintessential religious question ‘Does God exist?’ “ a statement of “sectarian religious dogma” that the government should not sponsor in a public school setting.

According to the Bush administration, which is defending the pledge, its recitation is no more a religious act than pocketing a coin imprinted with “In God We Trust.” The administration’s brief says both are simply patriotic acknowledgments of “the nation’s religious history” and of the “undeniable historical fact that the nation was founded by individuals who believed in God,” an empirical statement that poses no threat to the separation of church and state.

According to the Christian Legal Society, a group of lawyers, judges and professors, the pledge has a distinctly religious cast, and properly so. The group’s brief says that the words “under God” support the concept of limited govern-

ment, serving as a reminder that “government is not the highest authority in human affairs” because “inalienable rights come from God.”

According to another group of religious individuals, 32 Christian and Jewish clergy members who take the opposite side in the case, reciting the pledge with “under God” invites a troubling kind of civic blasphemy. If children are supposed to utter the phrase without meaning it as an affirmation of personal faith, the group’s brief asserts, “then every day, government asks millions of schoolchildren to take the name of the Lord in vain.”

According to a form letter signed by President Bush and sent to those who wrote to the White House about the federal appeals court decision in June 2002 that declared the pledge unconstitutional, reciting the pledge is a way of proclaiming “our reliance on God” and of “humbly seeking the wisdom and blessing of divine providence.”

This letter, clearly in some conflict with the current official view, concluded by expressing the wish that “the almighty continue to watch over the United States of America.” Americans United for Separation of Church and State and other organizations that oppose the administration’s position included the letter in an appendix to their joint brief.

The striking range of views on just what “under God” signifies represents only the beginning, not the end, of the justices’ task as they take up the case. For example, if reciting the pledge is a religious act, is it a voluntary or coerced one, and is that distinction even relevant? In 1992, the court prohibited prayer led by the clergy at public high school commencement ceremonies on the ground that the graduating students were effectively coerced into participating. But a landmark Supreme Court decision from 1943 held that schoolchildren could not be required to recite the pledge. One of Dr. Newdow’s points is that even if the pledge is nominally voluntary, daily classroom recitation inevitably labels as outsiders children who do not take part.

If reciting the pledge is seen as a patriotic statement of homage to the founding fathers, does that make it less problematic or more? Prof. Douglas Laycock of the University of Texas law school, said that seen in that light, the message of the pledge is that “if you’re doubtful about the existence of God, you are of doubtful loyalty to the nation.” Professor Laycock represents the 32 clergy members who oppose the pledge.

If “under God” is unconstitutional, what is the fate of numerous other examples of religious references scattered throughout civic life and long accepted as a benign form of “ceremonial deism”?

Jay A. Sekulow, speaking at the same forum, said that even the Supreme Court marshal’s intonation of “God save the United States and this honorable court” would be suspect. Sekulow, chief counsel of the American Center for Law and Justice, a legal organization affiliated with the Rev. Pat Robertson, filed a brief on behalf of several dozen members of Congress who back the pledge as it is written, as well as 250,000 people who signed a supporting petition.

Justice Antonin Scalia has recused himself, raising the prospect of a 4-to-4 tie. His recusal, announced in October when the court accepted the case, stemmed from a speech he gave last year that pointedly criticized the lower court’s reasoning.

The attorneys general of all states have signed a brief supporting the pledge, as have the National School Boards Association and the National Education Association, the teachers’ union.

Dr. Newdow argued his case before the justices. He was opposed by Solicitor General Theodore B. Olson and Terence J. Cassidy, counsel for the Elk Grove district, near Sacramento, where Dr. Newdow’s daughter attends school.

A preliminary question was whether Dr. Newdow, who was never married to the girl’s mother and is not the custodial parent, has standing to pursue the case. The mother, Sandra L. Banning, has filed a brief supporting the pledge and her daughter’s recitation of it. A decision that Dr. Newdow lacks standing would wipe out the lower court’s ruling, but not the emotion the case has generated or the potential that a different plaintiff might renew the debate in

the next case. Reported in: *New York Times*, March 24.

The Supreme Court has ruled in a 6–3 decision that an individual must prove he has suffered actual harm before he can receive a \$1,000 minimum award guaranteed by law when the government wrongfully discloses personal information.

The case, *Doe v. Chao*, arose from the Department of Labor’s use of miners’ Social Security numbers to identify their black lung claims on official agency documents, some of which were made public. Several miners sued the agency, arguing they were entitled to \$1,000 minimum damages from the government provided under the Privacy Act.

The United States District Court for the Western District of Virginia found that only one miner, Buck Doe, was entitled to damages because he had shown that he suffered sufficient emotional distress as a result of the disclosure of his Social Security Number to be awarded damages. The United States Court of Appeals for the Fourth Circuit disagreed, concluding that Doe was not entitled to damages under the Privacy Act because he failed to show that any tangible harm resulted from the disclosure of his Social Security Number.

The Electronic Privacy Information Center (EPIC) collaborated with numerous consumer and privacy organizations, legal scholars and technical experts to submit a “friend of the court” brief to the Supreme Court on Doe’s behalf, arguing that the Privacy Act provides damages for those who suffer “adverse effects,” which does not require actual harm. The brief pointed to the dangers of Social Security Number disclosure, the tradition of providing similar awards under other privacy laws, and the history of the Privacy Act to show that actual harm is not necessary to recover the \$1,000 award under the Privacy Act.

The Supreme Court concluded, however, that an individual must prove actual damages to receive the \$1,000 award from the government. Justice Souter (joined by the Chief Justice and Justices O’Connor, Scalia, Thomas, and Kennedy) found that the most straightforward reading of the Privacy Act supported the conclusion that an individual must prove actual harm to collect minimum damages under the Privacy Act, noting that it is unusual for a law not to require proof of harm suffered before an individual is awarded damages.

In a dissenting opinion, Justice Ginsburg (joined by Justices Stevens and Breyer) argued that the majority’s interpretation of the law failed to take into account each word of the section of the Privacy Act that provides for damages. Justice Ginsburg pointed out that the majority’s decision is at odds with the Office of Management and Budget’s guidelines for interpreting the Privacy Act, which were issued just six months after the law was passed. She asserted that the majority’s holding encourages individuals to “arrange or manufacture” actual damages, such as paying

a fee to run a credit report, in order to be allowed to recover the minimum \$1,000. She also noted that the Privacy Act's language is similar to that of other federal laws that do not require proof of actual harm for an individual to collect the minimum award provided under the law.

In a separate dissent, Justice Breyer found "no support in any of the statute's basic purposes for the majority's restrictive reading of the damages provision." Reported in: *EPIC Alert*, February 25.

privacy

Chicago, Illinois

A federal appeals court on March 26 rejected the Justice Department's demand for abortion records from Northwestern Memorial Hospital in Chicago, saying the disclosure of the records would compromise the privacy of women who had abortions there. The decision, by the United States Court of Appeals for the Seventh Circuit, in Chicago, was the first time an appeals court has weighed in on the politically charged question of whether the federal government has a right to demand abortion records in its defense of the Partial-Birth Abortion Ban Act. The ruling followed conflicting opinions from several trial courts around the country.

The Justice Department, responding to the decision, said in a statement that it "has made every attempt to ensure that sensitive patient information remains private" and that it planned to continue aggressively defending the ban passed by Congress last year.

But abortion rights advocates applauded the decision as an affirmation of the privacy rights of women.

"This is a victory for medical privacy," said Representative Rahm Emanuel (D-IL). "It's not for the Justice Department to intimidate people and tread on their medical privacy."

Federal courts in Manhattan, San Francisco, and Lincoln, Nebraska, were set to begin trials in separate lawsuits seeking to block the enactment of the abortion restrictions on the grounds that they would prevent medically needed procedures. In defending the ban, the Justice Department subpoenaed more than a dozen hospitals and clinics around the country to get access to potentially thousands of medical records of women who had abortions.

The Justice Department said it needed the records—but not identifying information on the women—to test the claims of those doctors who maintain the ban would prevent them from performing medically necessary procedures.

The case was heard by Judges Richard A. Posner, Daniel A. Manion, and Ann Claire Williams. Judge Manion concurred in part of the legal reasoning behind the decision but

dissented on the central issue, saying he thought the subpoena should be enforced.

Earlier, the Justice Department dropped its demand that six Planned Parenthood clinics around the country produce medical records on abortions. The decision, applauded by privacy advocates and supporters of abortion rights, came in response to a decision March 5 by a federal judge in San Francisco, who found that the government's demand for the records was an undue intrusion on patients' rights.

In her decision, Judge Phyllis J. Hamilton of United States District Court threw out the government's demand for the Planned Parenthood records of some 2,700 patients. Judge Hamilton also said she "strongly encouraged the government" to withdraw the subpoenas it had issued to Planned Parenthood for related medical records.

In letters dated March 8, the Justice Department did just that and notified Planned Parenthood affiliates in New York, Pittsburgh, Washington, Los Angeles, San Diego and Kansas City, that "we will not move at this time" to pursue the subpoenaed records. But the department said it might still "renew our requests if necessary."

The Justice Department sought the records as part of its defense of the new law that bans a procedure it calls partial-birth abortion. The law, enacted last year, makes it a crime to perform an abortion using a method known as intact dilation and extraction, but the law's opponents say the law's language is broad enough to ban other abortion procedures as well. Some doctors and health care providers who are suing to block the law have maintained that it would prevent them from conducting medically necessary procedures. Government lawyers say they need access to records—without identifying information on the patients—in order to test the validity of that claim.

The Justice Department was still demanding abortion records from at least a half-dozen hospitals in New York and Philadelphia, among other places. The subpoenas came in a separate lawsuit brought in New York over the abortion restrictions. Two federal judges in that case have issued divergent opinions, with a judge in Chicago throwing out the subpoenas and a judge in New York saying that the government was entitled to see the records.

In the San Francisco case, the Justice Department continues to believe that the subpoenaed records "are central to Planned Parenthood's claim that partial-birth abortion is medically necessary," but it decided to drop the subpoenas for now in light of the judge's order, the department said.

"I am glad the department has decided to back off its subpoena for now," said Representative Louise M. Slaughter (D-NY) and co-chairwoman of the Congressional Pro-Choice Caucus. "But it should never have attempted such a violation of women's medical records in the first place."

Eve Gartner, senior staff lawyer for the Planned Parenthood Federation, said that the group was discouraged

to see that the Justice Department had left open the possibility of renewing its demands.

“These affiliates remain on notice that at any moment they could get a letter from the Justice Department demanding these records,” Gartner said. “It’s not a good feeling to have this cloud hanging over them.”

Planned Parenthood agreed in February to turn over to the government its redacted records on 17 cases from 2002 involving second-trimester abortions that resulted in a complication in the procedure. But the group maintains that the other records sought by the Justice Department are more extensive and irrelevant to the lawsuit.

Reported in: *New York Times*, March 10, 27.

university

Macon, Georgia

In a departure from legal precedent, a Georgia judge has ruled that Mercer University, a private institution, must make its campus crime records public to comply with the state’s open-records laws. The decision was the result of a complaint filed last November by Amanda A. Farahany, an Atlanta lawyer representing a former Mercer student who says she was raped on the campus in 2000.

Farahany had sought university police records pertaining to sexual assaults on the campus going back to the early 1990s. Mercer had refused the request, contending that its police force is not a public agency and that as a private institution it was exempt from open-records laws.

Yet in his ruling, Superior Court Judge L.A. McConnell, Jr. wrote “the public’s interest in safety and in the transparency of public affairs outweighs Mercer’s interest in protecting the privacy of the university and its students.”

The ruling, filed February 11 in the Superior Court of Bibb County, also rejected Mercer’s argument that its police force does not perform public functions. Mercer’s police officers are certified by the state and have the power to make arrests.

S. Daniel Carter, vice president of Security on Campus, a nonprofit watchdog group that monitors crime on campuses, hailed the decision as a victory for students. Private colleges, Carter said, should not have “incentive to operate their police departments as a black hole, where crime can be dealt with privately, without the public being able to be aware of extent of crime on the campus.”

At least two other colleges are involved in disputes over campus-police records. Last summer, the student newspaper at Harvard University, the *Harvard Crimson*, filed a lawsuit seeking to force the institution to release its campus police records. The *Ithaca Journal*, a newspaper in New York, is seeking access to campus police reports at Cornell University. Reported in: *Chronicle of Higher Education*, February 13.

Internet

Garden Grove, California

A California state appeal court ruled February 1 that cities aren’t violating the First Amendment by forcing Internet cafe owners to implement extreme security measures, such as security guards and video surveillance cameras. But the decision, upholding an ordinance ostensibly aimed at curbing gang-related violence, drew an unusually sharp dissent from one justice, who accused the majority of blessing Orwellian “Big Brother” governmental oversight.

“The majority opinion represents a sad day in the history of civil liberties,” Fourth District Court of Appeal Justice David Sills wrote. “They see no infringement on privacy when a video camera is, literally, looking over your shoulder while you are surfing the Internet. “This is the way constitutional rights are lost,” he continued. “Not in the thunder of a tyrant’s edict, but in the soft judicial whispers of deference.” Sills called the majority ruling an “emasculatation” of the state right to privacy and an “infringement” of speech and press rights.

Faced with rising gang activity at Internet cafes—the number of which had grown from three to 22 in two years—the Orange County city of Garden Grove in 2002 placed a moratorium on more cafes. It also prohibited minors from visiting the cafes during school hours, required uniformed security guards on Friday and Saturday nights, and demanded the installation of video surveillance systems.

Cafe owners filed suit, claiming violations of their free speech and privacy rights. Orange County Superior Court Judge Dennis Choate agreed, saying the ordinance was overly burdensome and not narrowly tailored to avoid First Amendment problems.

But the Santa Ana-based Fourth District disagreed on both grounds, saying that the city’s “time, place and manner restrictions” on First Amendment activities were narrow and were adopted for legitimate governmental reasons.

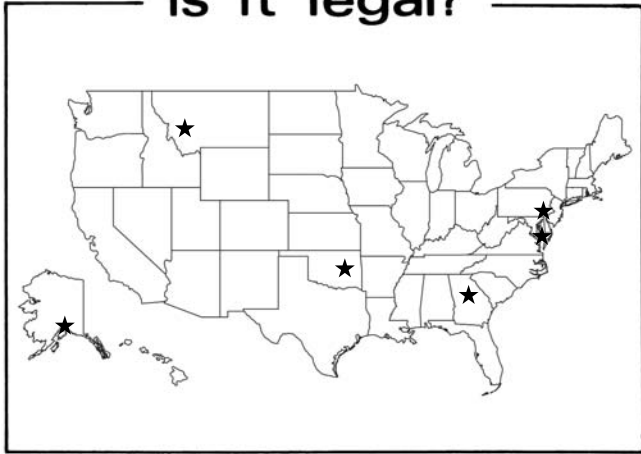
“Given the well-demonstrated criminal activity observed at cybercafes, and their tendency to attract gang members,” Justice Raymond Ikola wrote, “the court should not have second-guessed the city council’s judgment and discretion.” Justice William Bedsworth concurred.

In his dissent, Justice Sills argued that the city’s ordinance isn’t warranted because violence had been reported at only five Internet cafes. “That leaves 17 cybercafes which have experienced no serious problems, a fact which should be enough to require this court to affirm the trial court’s injunction, not overturn it,” he wrote.

Sills also accused Garden Grove of “picking on” Internet cafes, and said the court’s majority had chosen to “fob off” onto private citizens the government duty of providing police protection. “No city council would dare require private security guards for private residences or

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is it legal?



libraries

Anchorage, Alaska

A bill before the Alaska State Senate would require public libraries to give parents access to their children's records upon request. Sen. Lyda Green (R-Wasilla) said she introduced the legislation after a constituent told her about receiving a call from the library to say a book her 8-year-old son had put on hold was available, but that privacy laws prevented them from saying which title it was.

The newspaper noted that the legislation, Senate Bill 269, is on the fast track, having cleared two committees since its introduction January 16; one of those bodies, the Senate Health, Education, and Social Services Committee, advanced it February 23 after a 15-minute hearing with no debate.

Lynn Shepherd, chair of the Alaska Library Association's Government Relations Committee, said the group would like to see amendments to the measure that would allow library records to be released to parents if a child's books are overdue but require children's written permission for parents to see other records or pick up books for them. "We recognize there needs to be a balance of parents' rights, children's rights, library staff rights, and the protection of public property," Shepherd said. Reported in: *Anchorage Daily News*, February 24.

schools

Atlanta, Georgia

A proposed set of guidelines for middle and high school science classes in Georgia has caused a furor after state education officials removed the word "evolution" and scaled back ideas about the age of Earth and the natural selection of species. Educators across the state said the document was a veiled effort to bolster creationism and that it would leave the state's public school graduates at a disadvantage.

"They've taken away a major component of biology and acted as if it doesn't exist," said David Bechler, who heads the biology department at Valdosta State University. "By doing this, we're leaving the public shortchanged of the knowledge they should have."

Although education officials said the final version would not be binding on teachers, its contents will ultimately help shape achievement exams. And in a state where religion-based concepts of creation are widely held, many teachers said a curriculum without mentioning "evolution" would make it harder to broach the subject in the classroom.

A handful of states already omit the word "evolution" from their teaching guidelines, and Georgia's schools superintendent, Kathy Cox, called it "a buzz word that causes a lot of negative reaction." She added that people often associate it with "that monkeys-to-man sort of thing."

Still, Cox, who was elected to the post in 2002, said the concept would be taught, as well as "emerging models of change" that challenge Darwin's theories. "Galileo was not considered reputable when he came out with his theory," she said.

Much of the state's 800-page curriculum was adopted verbatim from the "Standards for Excellence in Education," an academic framework produced by the Council for Basic Education, a nonprofit group. But when it came to science, the Georgia Education Department omitted large chunks of material, including references to Earth's age and the concept that all organisms on Earth are related through common ancestry. "Evolution" was replaced with "changes over time," and in another phrase that referred to the "long history of the Earth," the authors removed the word "long." Many proponents of creationism say Earth is at most several thousand years old, based on a literal reading of the Bible.

Sarah L. Pallas, an associate professor of biology at Georgia State University, said, "The point of these benchmarks is to prepare the American work force to be scientifically competitive." She said, "By removing the benchmarks that deal with evolutionary life, we don't have a chance of catching up to the rest of the world."

The guidelines, which were adopted by a panel of 25 educators, will be officially adopted after 90 days, and Cox

said the public could still influence the final document. “If the teachers and parents across the state say this isn’t what we want,” she said, “then we’ll change it.”

In the past, Cox has not masked her feelings on the matter of creationism versus evolution. During her run for office, she congratulated parents who wanted Christian notions of Earth and human creation to be taught in schools. “I’d leave the state out of it and would make sure teachers were well prepared to deal with competing theories,” she said at a public debate.

Educators say the current curriculum is weak in biology, leading to a high failure rate in the sciences among high school students across the state. Even those who do well in high school science are not necessarily proficient in the fundamentals of biology, astronomy and geology, say some educators.

David Jackson, an associate professor at the University of Georgia who trains middle school science teachers, said about half the students entering his class each year had little knowledge of evolutionary theory. “In many cases, they’ve never been exposed to the basic facts about fossils and the universe,” he said. “I think there’s already formal and informal discouragements to teaching evolution in public school.”

The statewide dispute follows a similar battle two years ago in Cobb County, a fast-growing suburb north of Atlanta. In that case, the Cobb County school board approved a policy to allow schools to teach “disputed views” on the origins of man, referring to creationism, although the decision was later softened by the schools superintendent, who instructed teachers to follow the state curriculum.

Eric Meikle of the National Center for Science Education said several other states currently omit the word “evolution” from their science standards. In Alabama, the state board of education voted in 2001 to place disclaimers on biology textbooks to describe evolution as a controversial theory. “This kind of thing is happening all the time, in all parts of the country,” Meikle said.

Dr. Francisco J. Ayala, the author of a 1999 report by the National Academy of Sciences titled “Science and Creationism,” vehemently opposes including the discussion of alternative ideas of species evolution.

“Creation is not science, so it should not be taught in science class,” said Ayala, a professor of genetics at the University of California at Irvine. “We don’t teach astrology instead of astronomy or witchcraft practices instead of medicine.”

But Keith Delaplane, a professor of entomology at the University of Georgia, said the wholesale rejection of alternative theories of evolution is unscientific. “My opinion is that the very nature of science is openness to alternative explanations, even if those explanations go against the current majority,” said Professor Delaplane, a proponent of

intelligent-design theory, which questions the primacy of evolution’s role in natural selection. “They deserve at least a fair hearing in the classroom, and right now they’re being laughed out of the arena.” Reported in: *New York Times*, January 30.

Darby, Montana

Against the advice of the principals and teachers it employs and the attorney who represents it, the Darby school board voted 3–2 February 2 to approve an “objective origins” policy that will change the way science is taught. The policy, proposed by a Darby minister whose children do not yet attend the schools, “encourages” Darby science teachers to teach criticisms of prevailing scientific theory, but the only theory identified by the policy is evolutionary theory.

Voting for the policy were board members Doug Banks, Elisabeth Bender and board chair Gina Schallenberger. Voting against were Mary Lovejoy and Bob Wetzsteon.

Banks said “objective origins” is just a way to teach both sides of the evolution “debate,” but the board has no plan in place for such instruction, nor does it have plans for teacher training. Banks said the fact that the district has no curriculum in place is unimportant. Policy leads, he said, and curriculum will follow.

Elizabeth Kaleva, the board’s attorney through her position as the attorney for the Montana School Boards Association, had previously urged the board to come up with a proposed curriculum for “objective origins” and submit it to the state for approval. Kaleva had also warned the board that it would likely be sued over such a policy by groups or individuals who believe that “objective origins” is a catch phrase for putting religion into science class.

Banks, Bender and Schallenberger all stressed that “objective origins” has no religious purpose in school, and that intent will be a key feature should the board be sued. Federal courts have repeatedly struck down religious-based efforts to bring Christian “creation science” into the mainstream of American science instruction.

Wetzsteon said the board was making a mistake by moving ahead with a vague policy that gives no guidance for what and how teachers will teach. Where will the school find a textbook to match its policy? he asked. And, he said, how would it be paid for? “Right now there’s nothing in place,” Wetzsteon said.

The debate over “objective origins” has sharply divided the town, and that division was once again evident as the board took additional testimony about the policy proposal. The policy has already been the topic of at least four meetings, and nearly 100 people offered their thoughts in meetings.

And despite what the board said about the policy having no religious purpose, it was clear that many in Darby wish that it did. A handful of speakers talked about how they’d had prayer in schools growing up, and several more talked about Jesus. They also decried Darwinism as a secular religion.

Once again, the religious proponents were countered by the advocates of current science instruction, which included a boisterous group of Darby High students. Zach Honey, a student, had done an unscientific poll of his fellow students, and he told the board the “vast majority” doesn’t want the new policy.

“We are choosing,” Honey said. “And we don’t want it.”

They got it anyway, over additional objections from principals Loyd Rennaker and Doug Mann. Rennaker is principal of the junior and senior high schools, and he urged the board to work with the state to develop a curriculum that will fit state standards for public instruction. Critics have said the school may be jeopardizing its funding by enacting the new science proposal.

“Why Darby? Why Darby?” Rennaker asked. “Let the state decide this.”

Mann, principal of the elementary school and curriculum coordinator for the district, said the board would be putting the “cart before the horse” by approving the policy with no plans for implementing it. Mann had a series of questions for the board, none of which was answered. What teaching materials would be used and are they credible? What are the costs, in both time and money? What “origins” will be acceptable?

The majority appeared far from having those answers but Schallenberger, Bender and Banks said the process was just beginning. “There’s work to be done,” Schallenberger said.

And it appeared that the board would receive some outside assistance in some of that “work.” In late February, it was announced that the school board will get legal help from a group that says it functions to “keep the door open for the spread of the Gospel.”

On February 25, the board voted to retain Lincoln attorney Bridgitt Erickson, whose fees will be paid by the Allied Defense Fund, an organization that traces its founding in part to the groups Focus on the Family and Campus Crusade for Christ.

Attorney Elizabeth Kaleva of the Montana School Boards Association told the board that if the district is sued and loses, it likely will be responsible for the plaintiff’s legal fees and costs, expenses that could total \$300,000.

On February 23, some Darby High School students left classes early and protested the curriculum decision. Some fifty students, about one-third of the high school enrollment, walked in front of the school, carried protest signs and shouted “save our school.” A few teachers and some parents stood with them. Reported in: *Missoulian*, February 3; *Billings Gazette*, February 26.

colleges and universities

Norman, Oklahoma

Two students in charge of a Christian newspaper at the University of Oklahoma at Norman have filed a religious-

discrimination lawsuit after a committee of the university’s Student Congress denied their publication almost all of the student-fee appropriation they had requested. The two students—Ricky E. Thomas and James Hagan Wickett, both seniors—filed the suit against the university’s president, David L. Boren, and its Board of Regents. The suit seeks unspecified damages.

The suit says the Student Congress’s Ways and Means committee granted the newspaper, the *Beacon OU*, only \$150 of the \$2,300 that Thomas and Wickett had sought for publication and distribution. According to the lawsuit, Timothy Jay Roberts, a junior who is chair of the committee, told *Beacon OU* staff members that they were granted only a limited sum of money because of a university policy prohibiting financing for “religious services of any nature.”

The purpose of the *Beacon OU* is to “share the genuine love of God to the campus while providing news from or with a Christian perspective,” according to the lawsuit. The publication also organizes campus seminars on creationism and evolution.

Jordan Lorence, a lawyer from the nonprofit Alliance Defense Fund, which is representing the students, said the committee’s decision to deny the paper financing was unconstitutional. He cited the U. S. Supreme Court’s 1995 ruling in *Rosenberger v. Rector and Visitors of University of Virginia*, in which the court held that the University of Virginia had violated the First Amendment by denying financial support to a religiously oriented student publication.

“This case is an example of the recurring error that many university officials make in thinking that they have to treat religious groups worse than everyone else to show that they’re neutral towards religion,” said Lorence. “It’s clear and common sense that a university does not endorse a religious group just by treating it the same as other student groups on campus.”

One of the two students, Wickett, requested an investigation into the committee’s decision in November, and the president’s office concluded two weeks later that there was no evidence of discrimination in the decision. After the *Beacon OU* appealed the president’s ruling, an ad hoc committee set up by the president granted the publication an additional \$500, although it is not clear if the money came from the student-activity account. Reported in: *Chronicle of Higher Education*, February 25.

Shippensburg, Pennsylvania

In a legal settlement with a national free-speech advocacy group, Shippensburg University of Pennsylvania has agreed to alter its campus code of conduct. The Foundation for Individual Rights in Education had challenged the code in a lawsuit that ignited debate over whether policies designed to protect students from harassment violated the First Amendment. The preamble to Shippensburg’s student code of conduct, for instance, stated that the university would protect speech that was

not “inflammatory, demeaning, or harmful toward others.” In the settlement, Shippensburg agreed to reword portions of the code and to replace its “Racism and Cultural Diversity Policy” with a statement affirming the university’s commitment to “educational diversity.”

University officials decided to make the changes after Judge John E. Jones of the U.S. District Court in Williamsport, enjoined the university in September from enforcing portions of its conduct code, as well as parts of its cultural-diversity policy. In his order, Judge Jones wrote that, although well-meaning, portions of Shippensburg’s policies were “likely unconstitutional.”

Anthony F. Ceddia, Shippensburg’s president, said in a statement that, although the university’s policies had changed, its “expectations for student behavior” had not. “These changes do not affect what we hope are the aspirational aspects of what we’re trying to do—and that is to provide our students and others with the opportunity to learn and practice the institution’s core values of community, civility, citizenship, and character,” Ceddia said.

Alan Charles Kors, FIRE’s chairman, hailed the settlement as the second legal victory in the organization’s national campaign against campus speech restrictions. In June, Citrus College, in California, repealed its speech code after the foundation filed a lawsuit that challenged the institution’s policy limiting political demonstrations to designated areas on the campus.

“Shippensburg’s example will not be lost on the hundreds of American public colleges and universities that continue to maintain unconstitutional speech codes,” Kors said.

Peter M. Gigliotti, a spokesman for Shippensburg, said the university had received no complaints from students about its code before FIRE’s lawsuit. “We feel the changes we made were appropriate, based on the judge’s ruling,” Gigliotti said. “We have always been supportive of free speech, and this doesn’t change that.” Reported in: *Chronicle of Higher Education*, February 25.

access to information

Washington, D.C.

The Transportation Security Administration has asked the news media to delete from their archives two pages of unclassified congressional testimony from a public hearing in November on airport security. The Federal Document Clearing House (FDCH), which provides transcripts of hearings to news organizations and others, agreed to delete the testimony, in which a government contractor described security problems at the Rochester, N.Y., airport, according to an article posted on the *Congressional Quarterly* Web site.

The FDCH passed the agency’s request on to its subscribers, including *Congressional Quarterly*, which

declined to remove the contractor’s remarks, the CQ article said. A CQ official said something that had been on the Web site that long would have been downloaded many times, “so what we do with it is actually of little consequence.”

A TSA lawyer said the testimony, about how small handguns were easily smuggled past airport screeners, included “sensitive security information.” Reported in: *Washington Post*, February 6.

publishing

Washington, D.C.

Writers often grumble about the criminal things editors do to their prose. The federal government has recently weighed in on the same issue—literally. It has warned publishers they may face grave legal consequences for editing manuscripts from Iran and other disfavored nations, on the ground that such tinkering amounts to trading with the enemy.

Anyone who publishes material from a country under a trade embargo is forbidden to reorder paragraphs or sentences, correct syntax or grammar, or replace “inappropriate words,” according to several advisory letters from the Treasury Department in recent months. Adding illustrations is prohibited, too. To the baffled dismay of publishers, editors and translators who have been briefed about the policy, only publication of “camera-ready copies of manuscripts” is allowed.

The Treasury letters concerned Iran. But the logic, experts said, would seem to extend to Cuba, Libya, North Korea and other nations with which most trade is banned without a government license. Laws and regulations prohibiting trade with various nations have been enforced for decades, generally applied to items like oil, wheat, nuclear reactors and, sometimes, tourism. Applying them to grammar, spelling and punctuation is an infuriating interpretation, several people in the publishing industry said.

“It is against the principles of scholarship and freedom of expression, as well as the interests of science, to require publishers to get U.S. government permission to publish the works of scholars and researchers who happen to live in countries with oppressive regimes,” said Eric A. Swanson, a senior vice president at John Wiley & Sons, which publishes scientific, technical and medical books and journals.

Nahid Mozaffari, a scholar and editor specializing in literature from Iran, called the implications staggering. “A story, a poem, an article on history, archaeology, linguistics, engineering, physics, mathematics, or any other area of knowledge cannot be translated, and even if submitted in English, cannot be edited in the U.S.,” she said. “This means that the publication of the PEN Anthology of Contemporary Persian Literature that I have been editing

for the last three years, would constitute aiding and abetting the enemy.”

Allan Adler, a lawyer with the Association of American Publishers, said the trade group was unaware of any prosecutions for criminal editing. But he said the mere fact of the rules had scared some publishers into rejecting works from Iran.

Lee Tien, a lawyer with the Electronic Frontier Foundation, a civil liberties group, questioned the logic of making editors a target of broad regulations that require a government license. “There is no obvious reason why a license is required to edit where no license is required to publish,” he said. “They can print anything as is. But they can’t correct typos?”

In theory—almost certainly only in theory—correcting typographical errors and performing other routine editing could subject publishers to fines of \$500,000 and 10 years in jail. “Such activity,” according to a September letter from the department’s Office of Foreign Assets Control (OFAC) to the Institute of Electrical and Electronics Engineers, “would constitute the provision of prohibited services to Iran.”

Tara Bradshaw, a Treasury Department spokeswoman, confirmed the restrictions on manuscripts from Iran in a statement. Banned activities include, she wrote, “collaboration on and editing of the manuscripts, the selection of reviewers, and facilitation of a review resulting in substantive enhancements or alterations to the manuscripts.”

Congress has tried to exempt “information or informational materials” from the nation’s trade embargoes. Since 1988, it has prohibited the executive branch from interfering “directly or indirectly” with such trade. That exception is known as the Berman Amendment, after its sponsor, Representative Howard L. Berman, a California Democrat.

Critics said the Treasury Department had long interpreted the amendment narrowly and grudgingly. Even so, Berman said, the recent letters were “a very bizarre interpretation.”

“It is directly contrary to the amendment and to the intent of the amendment,” he said. “I also don’t understand why it’s not in our interest to get information into Iran.”

Kenneth R. Foster, a professor of bioengineering at the University of Pennsylvania, said the government had grown insistent on the editing ban. “Since 9/11 and since the Bush administration took office,” he said, “the Treasury Department has been ramping up enforcement.”

Publishers may still seek licenses from the government that would allow editing, but many First Amendment specialists said that was an unacceptable alternative. “That’s censorship,” said Leon Friedman, a Hofstra law professor who sometimes represents PEN. “That’s a prior restraint.”

Esther Allen, chair of the PEN American Center’s translation committee, said the rules would also appear to ban translations. “During the cold war, the idea was to let voices

from behind the Iron Curtain be heard,” she said. “Now that’s called trading with the enemy?”

In an internal legal analysis, the publishers’ association found that the regulations “constitute a serious threat to the U.S. publishing community in general and to scholarly and scientific publishers in particular.” Adler, the association’s lawyer, said it was trying to persuade officials to alter the regulations and might file a legal challenge. Reported in: *New York Times*, February 28.

broadcasting

Washington, D.C.

A Senate panel paved the way March 9 for a broad crackdown on radio and television programming deemed offensive, including stiff fines for entertainers who break indecency rules and limiting violence that can be seen by children. Congress moved swiftly in the wake of public outcry over a Super Bowl halftime show in which performer Janet Jackson’s breast was bared by singer Justin Timberlake. President Bush indicated he supports the House legislation, which would allow fines of up to \$500,000 per incident that could be levied by the Federal Communications Commission against violators of its indecency rules.

But the Senate Commerce Committee sharply raised the stakes for the entertainment industry, which has pledged to police itself and has been careful not to openly oppose tougher FCC regulation. The Senate bill would temporarily roll back controversial rules passed by Congress late last year that allow some media organizations to get larger. By a 13–10 vote, the panel passed an amendment sponsored by Sens. Byron L. Dorgan (D-N.D.), Trent Lott (R-MS) and Olympia J. Snowe (R-ME) that would put the rules on hold for a year until the General Accounting Office can study the relationship between indecent programming and media consolidation.

“These issues are inevitably related,” said Dorgan, who last year led an effort in the Senate to roll back the new media ownership rules. But Sen. Sam Brownback (R-KA), who sponsored the overall bill, said the amendment would be “a deal killer” that threatens passage of any indecency legislation.

If the provision survives a full Senate vote and then negotiations with the House, it would pose a challenge for FCC Chairman Michael K. Powell, who supported even greater easing of media concentration rules, while also beating the drum for tougher indecency enforcement.

Jonathan Cody, a legal adviser to Powell, responded that the FCC has seen no evidence that the issues are linked. In fact, Cody said, the presence of intense media competition in the Internet age has driven programmers to use more and

more sexually driven programming, because it attracts viewers and listeners and sells advertising.

The Senate panel also passed an amendment by Ernest F. Hollings (D-SC) that directs the FCC to investigate whether technologies designed to block violent content, such as the V-chip, are working. If they are found to be deficient, the amendment empowers the FCC to curb violent programming during hours when children are likely to be watching. It also would prohibit violent programs from being broadcast if they are not properly coded so they can be electronically blocked by parents.

A spokesman for Rep. Fred Upton (R-MI), lead sponsor of the House bill, said the congressman hopes that unrelated provisions, concerning media ownership and violence, for example, will not be attached to a final bill that would be sent to President Bush.

Like the House Energy and Commerce Committee, the Senate panel approved increasing fines for indecency, from the current \$27,500 per incident to a maximum of \$500,000 after a third violation. The House version allows for a \$500,000 fine after a first offense, and requires the FCC to consider revoking a broadcaster's license after three violations. The Senate bill would require license revocation be considered with any fines, and allows the FCC to double fines for indecent, obscene or profane language or images when the offending programming was scripted or planned in advance, or if the audience was unusually large—such as for a national or international sporting or awards event.

That would encompass entertainment awards shows, during which artists have uttered expletives. The bill approved by both the House and Senate committees would give the FCC the ability to impose the same fines on artists as on broadcasters, if the on-air talent willfully used indecent or profane language or images when they knew it would be broadcast.

That provoked sharp reaction from the union representing disc jockeys and other radio and television personalities, which fears Congress and the White House are hurtling toward censorship in an election-year frenzy to curry favor with certain voting blocs.

"If you're penalizing the person who is performing, because the words come out of their mouths . . . that has definite First Amendment implications," said Thomas Carpenter, national director of news and broadcasting for the American Federation of Television and Radio Artists.

Jack Myers, who publishes an independent newsletter about the media industry, saw the recent moves in even darker terms. "The danger we face is when we are overly sensitive to the protective right guard," Myers said. "We've elevated Janet Jackson to a position of glorification, and we're on the verge of making Howard Stern a martyr. We're edging toward a McCarthyism that strikes fear in the hearts of communications companies."

Since the Jackson incident, Stern's syndicated show has been booted from six stations owned by radio giant Clear Channel Communications, Inc (see page 102). He remains on the air on about three dozen other stations. Florida radio personality Todd Clem, known as Bubba the Love Sponge, who worked for Clear Channel, was fired for indecent conduct on the air.

By a 12–11 vote, the Senate committee defeated a provision that would have extended the FCC oversight provisions of indecency and violence to cable and satellite programming, except for pay-per-view channels such as HBO. Courts have generally held that any programming for which users must pay, including basic cable and satellite service, cannot be regulated in the same way as shows beamed over public airwaves. Reported in: *Washington Post*, March 10.

privacy

Washington, D.C.

Two cutting-edge computer projects designed to preserve the privacy of Americans were quietly killed while Congress was restricting Pentagon data-gathering research in a widely publicized effort to protect innocent citizens from futuristic anti-terrorism tools. As a result, the government is quietly pressing ahead with research into high-powered computer data-mining technology without the two most advanced privacy protections developed to police those terror-fighting tools.

"It's very inconsistent what they've done," said Teresa Lunt of the Palo Alto Research Center, head of one of the two government-funded privacy projects eliminated last fall.

Even members of Congress like Sen. Ron Wyden (D-OR), who led the fight to restrict the Pentagon terrorism research, remain uncertain about the nature of the research or the safeguards. He won a temporary ban on using the tools against Americans on U.S. soil but wants to require the administration to give Congress a full description of all its data-mining research.

"We feel Congress is not getting enough information about who is undertaking this research and where it's headed and how they intend to protect the civil liberties of Americans," said Chris Fitzgerald, Wyden's spokesman.

The privacy projects were small parts of the Pentagon's Terrorism Information Awareness research. The project was the brainchild of retired Adm. John Poindexter, who was driven from the Reagan administration in 1986 over the Iran-Contra scandal. Some 15 years later, he was summoned back by the Bush administration to develop data-mining tools for the fight against terrorism.

(continued on page 129)

success stories



libraries

Littleton, Connecticut

Staff members of the Reuben Hoar Library do not think it is their job to decide what Littleton families can access at the library. The Merrimack Valley Library Consortium (MVLC) agrees. Reuben Hoar, along with 34 other public libraries that comprise MVLC, therefore have approved a policy whereby the consortium will not filter Internet-enabled computers at the central server, thereby declining to comply with the federal Children's Internet Protection Act (CIPA), upheld by the U.S. Supreme Court in June 2003.

As a result, MVLC will forego reimbursement of the Universal Services Discount, which amounts to about \$9,000 a year, a few hundred dollars per library, said Larry Rungren, director of MVLC.

MVLC provides Internet connections and automated checkout to member libraries. It also provides access to the online catalog to library card holders.

"On a practical basis, filtering doesn't make much sense for regional consortia. Too much material is protected by the First Amendment," Rungren said. "Our policy doesn't preclude any individual library from filtering. If a certain critical mass of members were filtering, we would apply for partial reimbursement." The loss of the reimbursement money would probably not raise member dues, Rungren added.

CIPA requires libraries that receive certain federal funding to certify they are using filtering technology on

Internet-enabled computers. Staff computers in administrative areas not accessible to the public must also comply. The filters are meant to protect minors from visual depictions considered harmful. CIPA mandates that library officials disable filters for adult patrons for lawful purposes, but disabling is not permitted for minors.

Reuben Hoar Library Director Marnie Oakes suggested that the government's confidence in filters is misplaced. Filters either over-block or under-block, she said. Makers of software filters consider the embedded list of blocked sites proprietary, so the library doesn't know what is blocked. Plus, new Web sites are created faster than the software makers can block them.

Further, Oakes said, librarians felt that if MVLC made the decisions for all the libraries, it would be untenable in Littleton. But given the state of the town's finances, the cost of filtering at the workstation level—about \$500 for all the library computers—is untenable, too.

"Filtering is an unfunded mandate," Oakes said. "I, personally, and the trustees think it's best to teach kids and parents how to responsibly use the Internet." Oakes used the analogy that fences and locked gates can't keep kids from drowning in a backyard pool. But teaching them to swim can. "That's the way we want to go," she said. Reported in: *Littleton Independent*, February 18.

Ocala, Florida

Eat Me, the first book banned from the Marion County library system because of its content, is going back on the shelves. Library Director Julie Sieg issued a three-page report February 24 announcing that she was reversing her earlier decision to remove the controversial, sex-splashed Australian novel from the adult fiction section, and was reinstating it to the collection.

In a startling revelation, Sieg wrote that her original determination was not "infallible" and was based primarily on her own personal loathing of the book.

Eat Me, an Australian bestseller published in the United States in 1997, is a graphic, lewd romp along the lines of "Sex and the City." It purports to explore feminism and gender politics through the sexual encounters of four 30-something professional women. Many scenes depict characters relating body parts to food, or performing sex acts that involve food such as cucumbers, figs, strawberries, grapes and sushi.

The controversy erupted when Loretta Harrison, an 83-year-old grandmother from Ocala, stumbled across the book in July, and upon reading a portion of it filed a complaint. She maintained that the novel was too obscene for general readers and requested that it be relocated.

Sieg, who read the book as part of an internal review of Harrison's request, pulled *Eat Me* several weeks later. In doing so, she overruled a staff committee's 2-1 recommendation to retain it.

Sieg said that several factors influenced her to change her mind. She drew some inspiration from McIntosh resident Mary Lutes, who formally protested Sieg's decision to ban the book. Lutes, a former member of the county Library Advisory Board, argued her case at the panel's December 2 meeting. She did little more than remind the board of the library's own policies governing the building of its collection.

Sieg had found that *Eat Me* could be discarded because it met only three of the 17-point selection criteria. Yet, in her report, she said Lutes convinced her otherwise with a "more thorough, objective" analysis of that policy than Sieg herself had applied.

"Mrs. Lutes objectively made a case for a majority of the 17 selection criteria. . . . Unfortunately, at the time, I allowed my personal dislike for *Eat Me* to overshadow my objectivity and adherence to the policy," Sieg wrote.

When strung together by Lutes, the key points in the county's own acquisition policy forced Sieg to recall that the guideline "defines this library's philosophy for selection and is the heart of any public library. This philosophy is not just specific to the Marion County Public Library but echoes what public libraries represent in Anytown, Anywhere, USA."

Sieg emphasized that: library patrons are free to choose or reject materials as they see fit; parents are responsible for the material chosen by their children; the library exists to provide the "widest possible" diversity of views, including those considered "strange, unorthodox or unpopular;" frankness of expression is not sufficient cause to ban a book; the library system doesn't endorse ideas found in a book just by adding it to its collection.

Sieg acknowledged that those views might trouble some people in the community. But, she added, they are rooted in law and court rulings, not in personal opinion.

Lutes applauded the outcome. "I'm glad to see the process worked and we finally have closure on this book challenge," she wrote in an e-mail. "Protecting the integrity of the library collection takes constant vigilance and I'm sure that will continue."

Sieg also cited two other factors. One was the library board's opinion, as expressed by that December vote. Sieg interpreted the "overwhelming" 7-3 recommendation to put *Eat Me* back in the library as a condemnation of censorship. She recalled the collection policy's provision that "while individuals may reject materials for themselves, they cannot exercise censorship or restrict access to materials for others."

As additional input to her finding, Sieg highlighted a quote from a letter to her from *Eat Me* author Linda Jaivin, a Connecticut native now living in Australia. "I don't think *Eat Me* is for everyone—but what book is?" Jaivin wrote. "The point is, people who want to read *Eat Me* ought to be

able to access it through the library system; those who don't want to read it can simply read other books."

Sieg ended the report by recalling public sentiment expressed to her through phone calls and other correspondence since the controversy flared last summer. She called the comments "evenly distributed" between keeping it out and restoring it to the shelves.

"The diversity of opinion expressed emphasizes that there are differing views, interests, backgrounds and motives within Marion County," she said. But, she concluded, "(T)he public library is about variety, diversity and inclusion rather than exclusion and doctrinal thinking." Reported in: *Ocala Star-Banner*, February 25.

Choteau, Montana

The Joint City-County Library Board in Choteau has decided it will not mandate filters to protect people from accessing objectionable or illegal Web sites on the public computers in the county's three libraries. Instead, the board, meeting on January 15, said the librarians and the local advisory library boards are free to decide on the filters issue.

The Choteau, Fairfield and Dutton librarians said they would forgo the federal funding that subsidizes the cost of the libraries' Internet telecommunication lines rather than purchase expensive filtering software required under CIPA that does not work well, that "over-blocks" Web sites, and that is a form of censorship.

Fairfield librarian Marian Leifer said the library receives about \$40 a month in E-Rate subsidies and 50 percent of that is for Internet-dedicated lines. The filters would cost more than \$783 a year for the first three years, she said.

"I can see why filtering is important and why parents want it, but we had no indication that anybody cares," she said. "Filters don't work. They are based on words. We are trying to do what we can do considering our budget. We must be able to afford it," she said.

Lillian Alfson, the Fairfield representative on the Joint City-County Library Board, said the library would do a patron survey so that people can voice their opinions on filters.

All three libraries have an Internet policy and patrons must sign a "user agreement" form and an "Authorization by Parent or Guardian for Internet Access" form. The Internet policies prohibit users from using library computers to view, create, transmit, print or otherwise distribute threatening, racist, sexist, pornographic, obscene, or sexually-explicit material, among other provisions.

Choteau Librarian Marsha Hinch said she has never had a problem with patrons accessing illegal material and if they do, the Internet policy states that the patron may lose computer privileges at the library.

Children under 14 have access to a computer in the children's area that has restricted Internet access. Minors who

are at least 14 must have written permission from the parent or guardian to have Internet access. Children are not allowed to use the other public-access computers without an adult present.

Jim Heckel, director of the Great Falls Library, said the library does not have filters. The library has had public access to the Internet since 1994, one of the longest associations with Internet access in the state, he said.

“The real issue for our board was whether the installation of filters on public-access computers prevented people from getting to Web sites that are constitutionally-protected speech,” he said.

“Our board wrestled with filters; however, there is no requirement to put in filters and only E-Rate funding is affected,” he said, and added that the funding is small compared to the library’s total budget.

People who want a filter can use one by checking the preferences on the search engines they use, Heckel said, adding that 200,000 people a year use the computers and he can recall only two complaints about objectionable material.

“The Internet is largely uncontrolled and unregulated. It grew quickly and anybody can use it. It scares people and there are offensive sites, but a blunt instrument will not control access,” Heckel said. “CIPA operates on these fears. It was an attempt at a quick fix, it doesn’t do what it is supposed to do,” the director added. Reported in: *Choteau Acantha*, February 4.

Marple, Pennsylvania

The board of the Marple Public Library voted unanimously January 29 to retain seven books on sexuality whose presence in the collection had aroused the ire of an area patron and the local chapter of a national family-values group. “We feel the books met the criteria we have set for book selection,” board President Marcy Abrams said, adding, “they are back where they belong in the Dewey system.”

In December, Glenn Mills resident Jack Whoriskey was upset at finding several books on sexuality in the new book section while searching for material about the Atkins diet. He checked out the titles and showed them to elected officials, as well as Kathy Coll of the Delaware County Pro-Life Coalition, declining to complete a request-for-reconsideration form.

Abrams explained at the meeting that because trustees “never received a complaint,” board members “were not required to look at the books.” She went on to say that as officials of a community library, MPL staffers “want to provide what the community wants and needs.” The contested books, which included Violet Blue’s *Ultimate Guide to Fellatio* and *Sex Toys 101: A Playfully Uninhibited Guide*, were purchased within the past 18 months at the completion of a weeding project and assessment of collection strengths and weaknesses.

The board’s vote came two weeks after Coll led an anti-pornography meeting in support of Whoriskey. She said that removal of the titles “was never our expectation or our focus.” Rather, Coll said, her newly formed group, Citizens for the Protection of Children at Libraries, is focusing instead on “the system that let this [acquisition] happen.” Reported in: *Delaware County Daily Times*, February 2.

Washington Township, Pennsylvania

Wanda Mella says she and her husband are not zealots, just concerned parents who want to know what their children have access to read in their school library and download from school computers. They asked Washington Township school officials for a list of books in the school library, and sought to have two books they believe to be occult-related removed from the Chestnut Ridge Middle School. They felt the books contributed to a sudden change in behavior in their 14-year-old son, David O’Quinn, including acts of self-mutilation.

But the district in February denied the request, saying that a school committee determined the books were both “age appropriate” and “acceptable.” The news left Mella disappointed but not deterred.

“We are not trying to be religious freaks,” Mella said. “This is about the difference between right and wrong.” Mella, a “stay-at-home mom,” said she and her husband Tahir, a Philadelphia lawyer and author of a children’s book, were not accepting the committee’s report as the final word. “We will appeal,” she said. “I am not sure how we go about it at this time, but we will follow the proper channels. We will do what we have to do.”

School Superintendent Thomas Flemming notified the Mellas of the decision in a letter and said he was willing to meet with them about this issue and other concerns they may have. “I respect your opinion and your right to bring your concerns forward,” Flemming told the family.

The committee that reviewed the books consisted of the principal, librarian, a teacher and two community members. The two books—*The Devil’s Storybook* by Natalie Babbit, and *The Devil: Opposing Viewpoints* by Thomas Schouweiler—have received positive critical and reader reaction.

The Mellas’ worries about their eighth-grade son began last fall when their daughter Mallorie, 12, told her parents that “David has been acting weird and has been into stuff you won’t like,” Wanda Mella said. “My son in September was student of the month,” she said. “In October, he went from good kid to starting to self-mutilate, and with tattoos on the back of his neck.”

Through conversations with her son, Mella said she learned he had recently read the two books in question. She said her son also had printed copies of articles on mutilating animals and self-mutilation from the Internet

on a school computer and that he had purchased a copy of the Satanic Bible, by Anton LaVey, from a local bookstore.

“I prepared myself to talk to my children about sex, drugs and smoking,” she said, “but I was never prepared to talk about this. I hope no mother has to do this. It was so scary.”

Flemming said that all school computers have filtering software to prevent accessing inappropriate Web sites. “It is fairly effective, but it doesn’t mean it is 100 percent effective,” he said. “To circumvent that situation, all computers are in clear view of the library staff.”

In an effort to garner support for her cause, the Mellas in January formed an organization called the National Concerned Citizens for Youth, with about 20 members. In February, about 100 people attended a candlelight vigil at a local park in support of the group.

Wanda Mella said the group was concerned that children have access to materials inappropriate for their age, whether in schools or in bookstores. The group wants the school district to seek parental approval before elementary and middle school students can check out books related to the occult.

Asked whether she would oppose a course in her children’s school that dealt with the occult, Mella said she did not think she would, as long as the approach was fair. “The course would need to bring in other viewpoints, from the Bible, the Koran and the Torah,” she said. Reported in: *Philadelphia Inquirer*, February 19.

West Salem, Wisconsin

A West Salem School District reconsideration committee has decided to retain *Walter the Farting Dog* on the library shelves of the West Salem Elementary School, despite a challenge filed by Richard Carlson, the son of a former school board member. “The vote was unanimous to take no action, so the book will remain in the library,” said committee member Tony Gunderson.

The controversy began in January, when Carlson’s father Maynard read the book with his grandson and took offense at the story’s use of the words “fart” and “farting” 24 times. “The graphics in this thing kind of make you sick, too,” he said at the board’s January 13 meeting, at which he asked that it be removed but declined to file a reconsideration request.

Richard Carlson has the option of appealing to the school board, where he may gain a more sympathetic ear: Board President Greg Bergh went on record in January in support of Maynard Carlson bypassing the district’s reconsideration policy since, Bergh observed, selection criteria “did not work properly when the book was made a part of the elementary library.” Reported in: *La Crosse Tribune*, February 27.

schools

Bakersfield, California

The Kern High School District will not bar *The Bluest Eye* from the classroom despite the organized protest of hundreds of parents. At least not now. On February 2, one Kern High trustee, Shafter farmer Larry Starrh, moved to suspend the district’s review process, a precursor to banning Nobel Prize winner Toni Morrison’s novel. But no other trustees agreed with Starrh and his motion died for lack of a second, to the jubilation of some and disgust of others.

The four remaining trustees spoke in support of district Superintendent Bill Hatcher. “We are not educators. The educators are the ones we put confidence in,” said trustee Sam Thomas.

That means junior and senior honors and Advanced Placement English teachers may continue to assign the novel, though parents may still choose to have their children read an alternative book. The board thus rejected the first outright ban of a book in recent Kern High School District history.

“I think education won tonight,” said Hatcher. “I think the open discussion of opinions and ideas won tonight.”

But East Bakersfield High parent Sue Porter has sworn she will continue to fight against the book and all other “pornographic” material. “Our only protection was the elected school board and they failed us tonight,” Porter said. “I could cry I am so disturbed. I think they have no integrity. They state that this book was no good for their homes but that my child would have to opt out.” Porter said she may even run for the board herself: “I’m definitely giving that a lot of consideration.”

Morrison’s *The Bluest Eye* is about a young black girl, Pecola Breedlove, her abusive family and the 1940s America around her. Pecola desperately wishes for blue eyes so she can be beautiful. In a drunken fit of desperation, her father rapes and impregnates Pecola. After she miscarries, the 11-year-old slowly spins into insanity.

The controversy started almost three months earlier, when East High teacher Jean Nilssen assigned the novel to her 11th grade honors English class. Porter’s daughter, Sarah, brought the book home to her mother and said it made her uncomfortable.

The Bluest Eye describes a woman’s orgasm, Pecola’s rape by her father and a husband making unpleasurable love to his listless wife. It wasn’t the events themselves that irritated Porter, she said, it was the graphic details Morrison included.

“Knowing about incest and pedophilia is not the same thing as knowing what happens to a man’s anatomy when he’s raping his daughter,” she said. Porter claimed the book is obscene. Whether “great literature” or not, it’s inappropriate for children, she said. Besides, she added, teachers

are not counselors—they're not qualified to guide students through a discussion of rape, sex and incest.

Porter was offered an alternate assignment, as is policy, administrators said. But she wasn't satisfied. She didn't want any students reading the book in class. She filed a formal complaint with the district, forcing Hatcher to create a committee to review the novel. She also wrote a letter to the district accusing Nilssen of sexual harassment by assigning the novel.

In December, Hatcher's committee decided to restrict the book to advanced juniors and seniors. Though teachers and community members lauded the decision as wise and politically savvy, Porter continued to drum up support against the novel, creating a Web site—www.goodschool-books.com—and stumping for more than 750 signatures on a petition against the book.

Then, at a January 12 meeting, she asked the board to take a roll-call vote on the use of the novel in class. Starrh said he agreed with Porter and asked district staff to place the item on the agenda of its February 2 meeting.

That day, the boardroom at the Kern High School District's main office was packed by midafternoon. Teachers like Ray Ayala came right after school. Ayala, an East High English teacher, said he got to the boardroom around 3:30 p.m. to show support for Hatcher and the district's process. "The process is valid," he said. "It was a representative process. The committee came to consensus." The teachers union brought a truck-bed full of pizza for those willing to sit out the afternoon wait.

But just across the hall, another room was filling, this one with supporters of Porter and the movement to ban *The Bluest Eye*. They would watch the same meeting through a televised feed.

Then the meeting started, and lines of supporters and detractors ran to the back of the room. Each was ready to speak to the board. Speech was passionate against the use of the book:

"The teacher is not the sovereign over the students," said Pastor Chad Vegas. "The parents are."

And for it: "My daughter's experience (reading *The Bluest Eye*) was one of the most profound literary experiences of her lifetime," said mother Kathy Yniguez.

Social studies teacher Ryan Coleman supported the superintendent. He said he was afraid that keeping books out of the classroom could compromise his daughter's chance to gain the world-class education that he got in the district. Reported in: *Bakersfield Californian*, February 3.

Renton, Washington

Renton teachers are again allowed to use Mark Twain's *The Adventures of Huckleberry Finn* in their classrooms. The controversial book was pulled from reading lists at the three Renton high schools after an African-American student said the book degraded her and her culture. The book,

which is not required reading in Renton schools but is on a supplemental list of approved books, has more than 200 references to a racial slur. The use of that word made class discussion and reading the book uncomfortable for junior Calista Phair, when her literature class was assigned to read the book.

After Phair complained to the Renton School District, administrators assembled a team of teachers and department leaders to find a way to give teachers more training in dealing what they termed "sensitive materials" and to ensure that Huck Finn would be used in a culturally sensitive way. So far, Huck Finn is the only book labeled as "sensitive."

Phair's grandmother, Beatrice Clark of Renton, said that she would have preferred to see the district remove the book from the district's reading list. "It is not acceptable literature for African-American or any students. It negatively impacts our kids," she said.

The Renton School District team, however, developed a guide for teachers who want to teach the book. The guide includes suggested reading for teachers and offers several topics of class discussion, including the use of satire, as well as the history and use of the "n-word."

Use of the guide is not required for those who want to teach Huck Finn, but high school language arts teachers will be required to attend a training about using sensitive materials in class.

"We've trusted our teachers to teach this novel in a sensitive manner, and they have for many years," said district curriculum director Ed Sheppard. But the new guidelines may increase sensitivity and provide insight for teachers, he said.

Huck Finn becomes a vehicle to have a mature conversation about race issues in the community and in school, said Renton teacher Hilari Anderson. "It forces us to talk about what our own worries are, what our own fears are," she said.

Anderson said she's pleased teachers can use Huck Finn again in the classroom, and she's planning to work it into her schedule again next year. She said she expects that most teachers already follow the new guidelines and that it's unlikely anyone is teaching the book in an irresponsible manner.

"I think we try to make it as painless as possible. And it can be a painful book . . . I don't want my students to feel pain. However, we can grow from it," Anderson said. "I think it is unwise to suggest that we can create a system of education that is never uncomfortable. I think we learn from our discomfort."

It remains a Renton policy to allow students to work on an alternate assignment if they express concern about a book, Sheppard said.

"Some people are not going to be happy with the choices of some novels being used," Sheppard said. "I think our policy that allows parents to have their children opt out

is beneficial in that particular setting. There are a variety of materials teachers can use to meet the same ends.” Reported in: *King County Journal*, March 16.

university

Des Moines, Iowa

Facing growing public pressure from civil liberties advocates, federal prosecutors on February 10 dropped subpoenas that they issued the previous week ordering antiwar protesters to appear before a grand jury and ordering a university to turn over information about the protesters. The protesters, who had said they feared that the unusual federal inquiry was intended to silence and scare people who disagreed with government positions, declared victory.

“We made them want to stop,” Brian Terrell, executive director of the Catholic Peace Ministry and one of four protesters who received subpoenas, told a crowd at the federal courthouse. “We’re here to make them want to never let it happen again.”

Representatives of the United States attorney for the Southern District of Iowa, Stephen Patrick O’Meara, declined to comment on what prompted the reversal.

The day before, prosecutors had defended their inquiry, saying it was limited to the narrow issue of whether a protester trespassed on Iowa National Guard property on November 16. A subpoena compelling Drake University to provide information about an antiwar forum on its campus on November 15 was also withdrawn, as was an earlier court order that barred Drake officials from speaking publicly about the case.

David E. Maxwell, president of the private university of 5,100 students, said he was deeply relieved. “It has been a remarkable several days,” Maxwell said. “I’m still processing this.”

The school had received a subpoena demanding a broad range of information about the sponsor of the forum on November 15, the Drake chapter of the National Lawyers Guild. The subpoena included its leadership lists, annual reports and location. That subpoena was later narrowed somewhat, university officials said, to include the names of people at the forum and records from campus security that might describe “the content of what was discussed at the meeting.”

Dr. Maxwell said the subpoenas concerned him because they threatened essential values of the university like the right to free assembly and the sense of the university as a “safe haven” for ideas, even unpopular ones.

“Whatever one’s views of the political positions articulated at that meeting, the university cherishes and protects the right to express those views without fear of reprisal or recrimination,” Maxwell said in a written statement. “The university in America is, by definition, a ‘free speech’ zone

in which dissent, disagreement and multiplicity of views are not only tolerated, but encouraged.”

In the end, the president said, events played out as they should. “From that perspective,” Maxwell said, “this has shown that the system works. We felt something inappropriate was being asked of us, and in the end it was resolved the way we wanted.”

But some civil liberties advocates were not so readily mollified. “Despite any retreat by the Iowa U.S. Attorney,” said Ben Stone of the Iowa Civil Liberties Union, “there remain serious questions about the scope of this particular investigation. If it was just a trespassing investigation, why seek the membership records of the National Lawyers Guild? If this was an attempt to chill protests through the aggressive policing of a run-of-the-mill crime, we’ve got a serious problem in America.”

The Federal Educational Rights and Privacy Act restricts a university’s ability to release student information to third parties unless individuals are informed that their records have been requested. One exception is a grand-jury subpoena. Because of the gag orders, university officials and lawyers were initially unable to express their concerns about the subpoenas, so members of the National Lawyers Guild and the American Civil Liberties Union did it for them.

“The government has no business investigating legal conferences held in academic institutions,” said Michael Avery, president of the National Lawyers Guild and an associate professor of constitutional law at Suffolk University Law School, in Boston. He called the subpoenas and the gag orders “outrageous.”

The case garnered interest from legal scholars and activists around the country and coverage from local, regional, and national news media. Members of the Iowa Congressional delegation, including Sen. Tom Harkin, a Democrat, questioned the government’s tactics.

Some legal experts said they had not heard of such a case involving a university in recent years, and said it took them back to FBI surveillance of protests during the Vietnam War.

Attorneys for the university had informed the U.S. attorney’s office in Des Moines that they intended to ask the judge to quash the subpoena today. But the prosecutor responded that he was asking the judge to withdraw it. However, since the deliberations of a grand jury are secret, the investigation of the meeting may not yet be over. Reported in: *New York Times*, February 11; *Chronicle of Higher Education*, February 11.

student press

Boston, Massachusetts

Editors for Boston College’s student newspaper and members of the college’s administration have resolved their

differences over editorial control of the publication after three months of sometimes-tense negotiations. Officials of the Jesuit institution had initially requested that the paper, *The Heights*, change its policies on advertising content and editorial practices as a condition of the lease renewal for the publication's campus office. The newspaper's editors had refused.

Under a compromise announced in February, *The Heights* will pay more rent and its editors will monitor advertising content more closely, but their decisions will not be subject to review by a faculty advisory board.

"We're not raising their rent because we want the money," a college official said. "The gist of this is that they agreed with us that they couldn't be an independent newspaper if their rent was subsidized" by the college.

In return for paying the higher rent, the newspaper avoided making concessions that the college had requested, including banning all alcohol and tobacco advertising and appointing a faculty advisory board that would oversee editorial content.

"It would be nice to pay \$50 or nothing," said Ryan Heffernan, the newspaper's editor in chief, "but this speaks to how we value our independent status and want to continue that." He said the higher rent would not adversely affect the newspaper's operations, as strong advertising revenue would make up the difference.

According to both sides, a sexually explicit advertisement for a Boston nightclub that depicted a woman in skimpy clothes had prompted the college's initial demand for a ban on alcohol and tobacco advertisements. College officials said they had received complaints from students and alumni about the ad.

In a compromise, the newspaper will "use more judgment" in selecting advertisements, according to Heffernan. The college spokesman said he had complete confidence in the newspaper's ability to monitor its advertising content.

The editors also pledged that they would not accept advertisements from family-planning organizations, like Planned Parenthood. That policy is an extension of a rule, dating to 1978, that prohibits the newspaper from publishing advertisements advocating abortion.

Instead of the faculty advisory board proposed by the college, the newspaper agreed to hold an open meeting once a semester to solicit feedback from students, faculty members, and administrators.

Heffernan, a sophomore, became editor-in-chief at the beginning of the semester, in late January. The dispute with the college began under his predecessor, Nancy E. Reardon.

While Heffernan conceded that the arrival of a new editor might have helped ease the negotiations, he said the college had been fairly reasonable once both sides discussed their concerns at an hourlong meeting in late January.

"*The Heights* is lucky, in the sense that our newspaper is an independent one," said Heffernan. "A lot of our col-

leagues," at other Jesuit colleges, "have faculty advisers, but at our paper, it's up to the staff to decide what readers get to see." Reported in: *Chronicle of Higher Education*, February 11. □

(*censorship dateline . . . from page 102*)

selected "man of the year" by the Republican Party in his local county in 1988, Goyette—more recently named best talk show host of 2003 by the Phoenix *New Times*—said his years with Clear Channel had been among his best in broadcasting.

"The trouble started during the long march to war," he said. While the rest of the station's talk lineup was in a pro-war "frenzy," Goyette was inviting administration critics like former weapons inspector Scott Ritter on his show, and discussing complaints from the intelligence community that the analysis on Iraq was being cooked to support the White House's pro-war agenda. This didn't go over well with his bosses, Goyette said: "I was the Baby Ruth bar in the punch bowl."

Soon, according to Goyette, he was having "toe-to-toe confrontations" with his local Clear Channel managers off the air about his opposition to the war. "One of my bosses said in a tone of exasperation, 'I feel like I'm managing the Dixie Chicks,'" Goyette recalls. "I didn't fit in with the Clear Channel corporate culture."

Writing in the February issue of *American Conservative* magazine, Goyette put it this way: "Why only a couple of months after my company picked up the option on my contract for another year in the fifth-largest city in the United States, did it suddenly decide to relegate me to radio Outer Darkness? The answer lies hidden in the oil-and-water incompatibility of these two seemingly disconnected phrases: 'Criticizing Bush' and 'Clear Channel.'"

Goyette, who was relegated to the dead 7–10 p.m. slot, wrote, "I was replaced on my primetime talk show by the Frick and Frack of Bushophiles, two giggling guys who think everything our tongue-tied president does is 'Most excellent, dude!'"

Whether Stern was suspended because of his Bush-bashing—or only because of his Bush-bashing—is open to question. The media behemoth had another powerful reason to clean up its image: In the wake of Janet Jackson's nipplegate, broadcasters faced hostile congressional hearings about indecency on the airwaves and a new bill that would drastically increase the penalties for it.

If Clear Channel did fire Stern at least partly to prop up Bush, the move may backfire—especially if Stern's rage against Clear Channel feeds his newfound distaste for the president. Stern's audience contains many independents and potential swing voters.

At least one radio pro suggests Stern's sudden turn against Bush could prove costly to the administration during this election year. "Absolutely it should be of concern for the White House," says Michael Harrison, the publisher of *Talkers* magazine, a nonpartisan trade magazine serving talk radio. "Howard Stern will be an influential force for the public and for other talk show hosts during the election. Despite the shock jock thing, Stern has credibility. He's looked upon as an honest person.

"Clear Channel is a good target and Stern may be honestly upset with them. But over time he'll realize Bush makes a better target, and Stern could be the leader of a new anti-Bush movement. Bush is very vulnerable at talk radio and Stern could reinvent himself as a new, improved Stern and take on more serious issues."

Stern's political conversion came on Monday, February 23, when he returned to the show after a week's vacation and announced he'd read Al Franken's anti-Bush book, *Lies and the Lying Liars Who Tell Them: A Fair and Balanced Look at the Right*. That morning Stern, who had strongly backed Bush during the war on Iraq, told listeners, "If you read this book, you will never vote for George W. Bush. I think this guy is a religious fanatic and a Jesus freak, and he is just hell-bent on getting some sort of bizzaro agenda through—like a country-club agenda—so that his father will finally be proud of him . . . I don't know much about Kerry, but I think I'm one of those 'Anybody but Bush' guys now. I don't think G.W. is going to win. What do you think about that?"

Three days later, on the morning of February 26, Stern was suspended from all six Clear Channel stations that aired his wake-up program. Company executives pointed to the Tuesday show as the reason for the suspension.

During that program Stern interviewed Rick Solomon, who had starred in a sex tape with Paris Hilton. The conversation was graphic (Stern: "I can't believe you banged her. Did you get anal?"), and one caller used a racial slur that was broadcast. But Stern's shows are filled with such language and have been for years.

On Monday, March 2, Stern was telling his vast audience he took a hit because of his stance on Bush.

For her part, former Clear Channel jock Walker doubts that politics was behind Clear Channel's move against Stern. "Much as I'd love this to be about Bush and politics, it's more about sex and indecency," she said. But she stresses the important thing for people to understand is the relationships among Clear Channel CEO Mays, vice chairman Tom Hicks and George W. Bush. Says Walker, "These are not casual acquaintances."

Mays is a staunch Republican, a good friend of the elder George Bush, and close to the current president. "I see him all the time," Mays told a reporter during the 2000 presidential campaign. "His father's a friend of mine." Mays and the company have showered the party with con-

tributions, while essentially stiffing Democrats. Mays served as one of Texas A&M's nine regents when the school landed the elder Bush's presidential library. Mays subsequently became a major donor to the library. Also, former President Bush and Mays shared a podium when they were inducted into the Texas Business Hall of Fame on the same evening in 1999.

FCC chair Michael Powell, appointed by the current president, has been pushing a strong pro-big-business, deregulation agenda, which makes Mays happy. But Texas investment banker Hicks may have an even closer relationship to Bush. Hicks, a major Bush donor, sits on the Clear Channel board. The two men helped make each other very wealthy during the 1990s. When Bush was governor of Texas, he privatized the financial assets of the University of Texas, all \$13 billion worth, rolled them into a single entity, and placed it under the control of Hicks, who, behind closed doors, doled out investment deals to longtime Bush family political contributors. In 1998, Hicks turned around and bought the Texas Rangers from a group of investors that included Bush; Bush pocketed \$15 million off his initial investment of \$605,000, most of which was borrowed.

During the 2000 campaign, Hicks announced on a conference call among Clear Channel's senior radio executives that the company was supporting Bush's presidential run, that everyone was encouraged to make donations, and that the legal department would be in contact with donors in order to maintain a proper roster. "Some people took out their checkbooks, but lots of people felt it was staged like a shakedown," said one knowledgeable source. "To be fair, Hicks told everyone they were free to vote for whoever they wanted. But some senior people felt there was an implied pressure there, especially with the mention of the law department maintaining a roster of donors," the source said.

Clear Channel is also the corporate home of rabid Bush booster Rush Limbaugh, who spoke to company managers during a Clear Channel conference on the eve of the 2000 presidential election. According to one person who attended, Mays also addressed assembled executives, telling them a Bush administration would be good for the radio industry and good for America.

Just before the war, Clear Channel made news when its syndicated talk show host Glenn Beck began promoting "Rallies for America." Clear Channel insisted the events were put together at the local level and not sponsored by San Antonio headquarters. Yet at a time when antiwar rallies were dominating the news, Clear Channel played a key role in giving war supporters a voice by providing a turnkey service: staging the events, acquiring any necessary permits, taking care of security, assembling speakers, and of course relentlessly publicizing the events on Clear Channel radio stations. Reported in: *New York Times*, February 26; Salon.com, March 4.

cable TV

Los Angeles, California

In the aftermath of Janet Jackson's controversial Super Bowl breast exposure, MTV has decided that pop singer Britney Spears may be a bit too "Toxic" for daytime tastes. The music channel, which produced Jackson's notorious halftime duet with Justin Timberlake, said February 9 that it had moved six of its racier videos, including Spears' video for her new single, "Toxic," from daytime to late-night rotation.

Record labels for Spears and other artists whose videos were consigned to overnight programming—from 10 p.m. until 6 a.m.—were informed of the move, a spokeswoman for the network said. She denied that MTV was engaging in self-censorship or responding to pressure from its corporate parent, Viacom, Inc.

"We always take into account what the cultural environment is on an ongoing basis," the spokeswoman said. "Given the particular sensitivity in the culture right now, we're erring on the side of caution for the immediate future."

A Viacom spokesman likewise insisted the decision to remove some particularly edgy videos from daytime rotation originated from within MTV. "All play lists are decided by the individual channels and we have nothing whatsoever to do with it," Viacom spokesman Carl Folta said.

MTV's decision also applied to offerings from alternative rock bands Blink 182 and Maroon 5 and the rap-rock outfit Incubus, whose video for the song "Megalomaniac" depicts an Adolf Hitler character with angel's wings flying over a crowd.

In a statement issued by the band's publicist, Incubus guitarist Mike Einziger mocked MTV's play-list alteration, saying, "It's ironic that this MTV scrutiny comes from an incident where someone bared their chest in public, while for the first time, our singer has his shirt on for an entire video."

It was not the first time MTV has altered its play lists in the face of controversy. The network previously declined to premiere an R. Kelly video on its popular "Total Request Live" show in the aftermath of the R&B singer's indictment on child pornography charges.

MTV's quiet shuffling of its video rotation marked the latest instance of fallout from Jackson's bosom-baring performance at the Super Bowl, which sparked a public uproar and the promise of an inquiry by federal regulators. MTV, which produced the halftime extravaganza, apologized for the Jackson episode and insisted the stunt was not part of the planned show. MTV's sister broadcast network CBS, which aired the February 1 Super Bowl telecast, reacted by implementing a five-minute delay for its broadcast a week later of the Grammy Awards.

CBS also demanded that Jackson and Timberlake, who ripped open Jackson's Super Bowl costume to briefly reveal her right breast, apologize on air as a condition for appear-

ing on the Grammy telecast as planned. Timberlake obliged, but Jackson opted out of the event altogether.

NBC, a unit of General Electric Co., then edited out a brief glimpse of an elderly woman's breast in an emergency room scene on the hit hospital drama "ER." Reported in: Reuters, February 9.

Internet

Washington, D.C.

A newly arrived Republican appointee pulled references to sexual orientation discrimination off an agency Internet site where government employees can learn about their rights in the workplace. The Web pages at the Office of Special Counsel, an independent agency whose mission is to protect whistleblowers and other federal employees from retribution, no longer includes references to sexual orientation on a discrimination complaint form, training slides, a brochure titled "Your Rights as a Federal Employee" and other documents.

Scott J. Bloch, the agency head, said he ordered the material removed because of uncertainty over whether a provision of civil service law applies to federal workers who claim unfair treatment because they are gay, bisexual or heterosexual.

"It is wrong to discriminate against any federal employee, or any employee, based on discrimination," Bloch said. But, he added, "it is wrong for me, as a federal government official, to extend my jurisdiction beyond what Congress gives me in the actual interpretation of the statutes."

At issue is the meaning of a few lines of a civil service law that bans discrimination against employees and job applicants "on the basis of conduct which does not adversely affect the performance of the employee or applicant."

Bloch said he took the references to sexual orientation bias off the agency Web site because he was not clear about the office's policy and legal interpretation of the provision. He said he did not think it appropriate to leave the references on the site—"to have my stamp of approval"—while he reviewed the matter.

The provision usually has been interpreted to mean that a worker's off-duty behavior cannot be used as a justification for dismissal, demotion or discipline unless it hampers job performance or interferes with the work of others. That has been the stance at the Office of Personnel Management, which oversees the government's workplace policies, for at least two decades. The OPM Web site continues to advise employees that bias based on sexual orientation is unlawful and informs them that complaints may be filed at the Office of Special Counsel.

Bloch, who assumed office in January following Senate confirmation, had served as deputy director and counsel to

the Task Force for Faith-Based and Community Initiatives at the Justice Department. He was a partner in a law firm, specializing in civil rights and employment law, and has served as an adjunct professor at the University of Kansas School of Law.

Bloch said he did not clear his decision to alter the agency's Web site with the White House, which is caught up in a political debate on same-sex marriage.

The Human Rights Campaign, which lobbies Congress on gay rights, and Federal GLOBE, an umbrella organization for gay and bisexual employee support groups in agencies, faulted Bloch's decision to remove material from the Web site.

Colleen M. Kelley, president of the National Treasury Employees Union, said she was especially concerned because Bloch removed an agency news release posted last year describing an investigation at the Internal Revenue Service that found an IRS supervisor denied a job to an applicant because he was gay.

"Removal of this press release, in particular, seems to signal a deliberate decision to obscure the history of OSC's enforcement actions," Kelley said. Her union represents about 98,000 IRS workers.

As a general rule, most federal employees take complaints of sexual discrimination or harassment to the Equal Employment Opportunity Commission. During the Clinton administration, the Office of Special Counsel added sexual orientation discrimination to its list of prohibited personnel practices.

Elaine Kaplan, who served as the Clinton administration's special counsel, said references were added to complaint forms and training materials as part of an overhaul of the agency's information and outreach efforts.

"It seemed to us that this was well-established law," she said. "Part of the job of the agency is to educate employees about their rights." Kaplan said the old Civil Service Commission issued a bulletin to agencies in 1973 stating that agencies could not declare a person unsuitable for employment merely because the person was gay or engaged in homosexual acts. Ten years later, she said, the assistant attorney general for the office of legal counsel at the Justice Department concluded federal employees, even those in law enforcement, could not be fired solely for being gay.

In 1998, President Bill Clinton issued an executive order, which President Bush has not rescinded, saying it is unlawful to discriminate against employees based on their sexual orientation, Kaplan said. The order focused attention on the need to provide greater education to employees, she said.

"It is a matter of great concern that—as its first step—the new leadership of OSC is sanitizing all of the agency's public statements, including the complaint form and its educational materials for the purpose of removing references to sexual orientation discrimination," Kaplan said. Reported in: *Washington Post*, February 18.

foreign

London, England

An ad for supermodel Elle Macpherson's lingerie line was banned after regulators received a complaint from the public that the model in the ad appeared to be masturbating. The Advertising Standards Authority said March 3 it had ruled that the ad by Bendon UK Ltd. for its range of Elle Macpherson Intimates was offensive and couldn't be repeated.

The complaint was about an ad in *Vogue* magazine that showed a model wearing a bra and panties, and her thumbs were hooked inside the panties. The image was framed as if shot through a keyhole, and the model's head was not visible.

Bendon UK said the ad was inspired by Alfred Hitchcock's film "Rear Window," showing a moment that was "feminine, luxurious and stylized." *Vogue* argued that the image was "beautiful with no disturbing undertones." The Advertising Standards Authority ordered Bendon UK to consult with the agency before doing any more advertising. Reported in: Associated Press, March 3. □

(excerpts from arguments on "under God" . . . from 105)

descriptive phrase, under God, indivisible, with liberty and justice for all. So—

JUSTICE GINSBURG: Well, why not have it like oath or affirmation? That is, give people a choice, don't say it's got to be all one way or all the other, but say children who want to say under God can say it and children who don't, don't have to say it.

OLSON: Well, they don't. They don't have to say it. . . . In summary, . . . the Pledge of Allegiance is not what this Court has said the Establishment Clause protects against, that is to say, state-sponsored prayers, religious rituals or ceremonies, or the imposition or the requirement of teaching or not teaching a religious doctrine.

The Establishment Clause does not prohibit civic and ceremonial acknowledgments of the indisputable historical fact of the religious heritage that caused the framers of our Constitution and the signers of the Declaration of Independence to say that they had the right to revolt and start a new country, because although the king was infallible, they believe that God gave them the right to declare their independence when the king has not been living up to the unalienable principles given to them by God.

NEWDOW: Mr. Chief Justice, and may it please the Court:

Every school morning in the Elk Grove Unified School District's public schools, government agents, teachers, funded with tax dollars, have their students stand up, including my daughter, face the flag of the United States of America, place their hands over their hearts, and affirm that

ours is a nation under some particular religious entity, the appreciation of which is not accepted by numerous people, such as myself. We cannot in good conscience accept the idea that there exists a deity.

I am an atheist. I don't believe in God. And every school morning my child is asked to stand up, face that flag, put her hand over her heart, and say that her father is wrong.

NEWDOW: I am saying I, as her father, have a right to know that when she goes into the public schools she's not going to be told every morning to stand up, put her hand over her heart, and say your father is wrong, which is what she's told every morning. That is an actual, concrete, discrete, particularized, individualized harm to me, which gives me standing, and not only gives me standing, demonstrates to this Court how the—

JUSTICE SANDRA DAY O'CONNOR: Well, she does have a right not to participate.

NEWDOW: She has a—yes, except under *Lee v. Weisman* she's clearly coerced to participate. If there was coercion in *Lee v. Weisman*—

JUSTICE O'CONNOR: That was a prayer.

NEWDOW: Well, I'm not sure this isn't a prayer, and I am sure that the Establishment Clause does not require prayer. President Bush, and this is in the Americans United brief, stated himself that when we ask our citizens to pledge allegiance to one nation under God, they are asked to participate in an important American tradition of humbly seeking the wisdom and blessing—

JUSTICE O'CONNOR: Yeah, but I suppose reasonable people could look at the pledge as not constituting a prayer.

NEWDOW: Well, President Bush said it does constitute a prayer.

CHIEF JUSTICE WILLIAM H. REHNQUIST: Well, but he—we certainly don't take him as the final authority on this. (Laughter.)

CHIEF JUSTICE REHNQUIST: What you say is, I pledge allegiance to the flag of the United States of America and to the republic for which it stands. So that certainly doesn't sound like anything like a prayer.

NEWDOW: Not at all.

CHIEF JUSTICE REHNQUIST: Then why isn't General Olson's categorization of the remainder as descriptive, one nation under God, with liberty and justice for all? You can disagree it's under God, you can disagree that it's—has a liberty and justice for all, but that doesn't make it a prayer.

NEWDOW: First of all, I don't think . . . that the purpose of the Pledge of Allegiance is to disagree that it's liberty and justice for all. I think the whole purpose of the pledge is to say that, and this Court has stated it's an affirmation of belief, an attitude of mind when we pledge, and I think you have to take all the words. It says under God. That's as purely religious as you can get and I think it would be an amazing child to suddenly come up with this knowledge of the history of our society and—and what our nation was founded on.

CHIEF JUSTICE REHNQUIST: What if, instead of the Pledge of Allegiance, the school required the children to begin their—their session by singing God Bless America? Would that make your case weaker or stronger? . . .

NEWDOW: I think that if they stood up the child and they said, stand up, face the flag, put your hand on your heart and you say God bless America, I think that would clearly violate the line as well, just as in God we trust.

CHIEF JUSTICE REHNQUIST: Well, my hypothesis is that they ask the children to stand and to sing the patriotic song, God Bless America.

NEWDOW: I think the Court would have to go through its—its normal procedures and say, was this done for religious purpose? Does it have religious effects? Is it attempting to endorse religion? We would look at the text—

JUSTICE GINSBURG: Sounds pretty much, much more like a prayer than under God, God bless America.

NEWDOW: I don't think so. I mean, we're saying that this nation is under God. I mean, Congress told us itself when it passed the law.

JUSTICE GINSBURG: And if children who say God bless Mommy and God bless Daddy, they think they're saying a prayer.

NEWDOW: They think they're saying God bless, yes, and when they say, if Daddy and Mommy were under God, they'd be also assuming that there was a God there if they said that, and especially if they're stood up in the public schools. If they did that—

JUSTICE GINSBURG: It's two words sandwiched in the middle of something and the child doesn't have to say those words.

NEWDOW: But the Government is not allowed to take a position on that. Government is saying there's a God. Certainly the child doesn't have to affirm that belief if there weren't the coercion that we see in—

JUSTICE GINSBURG: The child doesn't have to if it doesn't want to. That's not an issue in this case.

NEWDOW: The issue is whether or not government can put that idea in her mind and interfere with my right. I have an absolute right to raise my child as whatever I see. Government is weighing in on this issue.

GINSBURG: No, you don't, you don't. . . . there is another custodian of this child who makes the final decision who doesn't agree with you.

JUSTICE O'CONNOR: We have so many references to God in our daily lives in this country. We opened this session of the Court today—

NEWDOW: Correct, and there are—

JUSTICE O'CONNOR:—with a reference, and I suppose you would find that invalid as well.

NEWDOW: This Court has to distinguish in this case When this Court opens, God save this honorable Court, nobody's asked to stand up, place their hand on their heart and affirm this belief. This Court stated in *West*

Virginia v. Barnette that this is an affirmation, a personal affirmation.

JUSTICE O'CONNOR: And you have no problem with, in God we trust, on the coins and that sort of thing?

NEWDOW: If my child was asked to stand up and say, in God we trust, every morning in the public schools led by her teachers

JUSTICE O'CONNOR: It's all right for her to have the coins and use them and read them, but it's the problem of being asked to say the pledge?

NEWDOW: I'm saying in this—

JUSTICE O'CONNOR: Which she doesn't have to say.

NEWDOW: Well, first of all, under *Lee v. Weisman*, she is coerced in—

JUSTICE O'CONNOR: Now, wait a minute. We have other authorities saying that no child is required to say the pledge.

NEWDOW: And no child was required to be at the graduation at *Lee v. Weisman*, but we said this is a coercive effect on—

JUSTICE O'CONNOR: That was a prayer.

NEWDOW: And—then we're back to the idea of why did Congress—Congress told us why they stuck this into the pledge.

JUSTICE KENNEDY: Well, we have to be careful about the facts here. Your daughter is not required, and of course, I have a serious problem about your daughter's standing, but your daughter is not required to put her hand over her heart and face the flag. That's a misstatement. She is not required to do that.

NEWDOW: She's not required but she is coerced. She is standing there. She's a 6-, 7-year-old kid at the time, and she—

JUSTICE KENNEDY: Justice O'Connor points out that's the difference in *Lee v. Weisman* and *West Virginia Board of Education v. Barnette*. One is a prayer, the other isn't.

NEWDOW: Well, it's—again, the Establishment Clause does not require a prayer. To put the Ten Commandments on the wall was not a prayer, yet this Court said that violated the Establishment Clause. To teach evolution or not teach evolution doesn't involve prayer, but that can violate the Establishment Clause. The issue is is it religious, and to say this is not religious seems to me to be somewhat bizarre.

And as a matter of fact, we can look at the standing argument and we can look at Elk Grove Unified School District's brief, in which eight times they mention that this is the mother involved with religious upbringing, they keep talking about religious upbringing, 18 times they spoke about religious education, religious training, religious interest. All of this has to do with religion, and to suggest that this is merely historical or patriotic seems to me to be somewhat disingenuous.

JUSTICE STEPHEN G. BREYER: I mean, it's a pretty

broad use of religion sometimes. . . Does it make you feel any better, and I think the answer's going to be no, but there is a case called *Seeger*, which referred to the Constitution—to the statute that used the word, supreme being, and it said that those words, supreme being, included a set of beliefs, sincere beliefs, which in any ordinary person's life fills the same place as a belief in God fills in the life of an orthodox religionist. So it's reaching out to be inclusive, maybe to include you, I mean,—because many people who are not religious nonetheless have a set of beliefs which occupy the same place that religious beliefs occupy in the mind . . . of religious men and women.

So do you think God is so generic in this context that it could be that inclusive?

JUSTICE BREYER: And if it is, then does your objection disappear?

NEWDOW: I don't think so, because if I'm not mistaken with regard to *Seeger*, *Seeger*—the Government was saying what *Seeger* thought about religion and what's occupied in *Seeger*'s mind. Here it is the Government and there's a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect. And in that case we're talking about protecting that individual's right for him to say in his view that this occupies the same thing as God.

Here we're talking about government, everybody on the way here is government. It's Congress that stuck the two words, under God, into the pledge, clearly for a religious purpose. It's the State of California that says, go ahead, use the Pledge of Allegiance, which is now religious. It is the city of Elk Grove that says, now we're going to demand—

JUSTICE BREYER: But what I'm thinking there is that perhaps when you get that broad in your idea of what is religious, so it can encompass a set of religious-type beliefs in the minds of people who are not traditionally religious, when you are that broad and in a civic context, it really doesn't violate the Establishment Clause because it's meant to include virtually everybody, and the few whom it doesn't include don't have to take the pledge.

NEWDOW: You're referring to the two words, under God?

JUSTICE BREYER: Yeah, under God is this kind of very comprehensive supreme being, *Seeger*-type thing.

NEWDOW: I don't think that I can include under God to mean no God, which is exactly what I think. I deny the existence of God, and for someone to tell me that under God should mean some broad thing that even encompasses my religious beliefs sounds a little, you know, it seems like the Government is imposing what it wants me to think of in terms of religion, which it may not do. Government needs to stay out of this business altogether. And this Court has always referred to— . . .

JUSTICE GINSBURG: There's an option here too. The child does not have to say it at all, can say it except for the

words, under God, or can say the whole thing.

NEWDOW: I think that's a huge imposition to put on a small child. Imagine you're the one atheist with 30 Christians there and you say to this child, let's all stand up, face the flag, say we are one nation under God and we're going to impose on a small child the—this immense amount of power, prestige, and financial support—

JUSTICE KENNEDY: Now, I just—I just want to point out that once again you're arguing based on the child, and I—I think there's a serious standing problem.

NEWDOW: I think the argument I'm trying to make, and I may not be making it well, is that government is doing this to my child. They are telling her, they're putting her in a milieu where she says, hey, the Government is saying that there is a God and my dad says no, and that's an injury to me that it is . . .

JUSTICE SOUTER: What do you make of this argument? I will assume that if you read the pledge carefully, the reference to under God means something more than a mere description of how somebody else once thought. We're pledging allegiance to the flag and to the republic. The republic is then described as being under God, and I think a fair reading of that would—would be I think that's the way the republic ought to be conceived, as under God. So I think—I think there's some affirmation there. I will grant you that.

What do you make of the argument that, in actual practice, the affirmation in the midst of this civic exercise as a religious affirmation is so tepid, so diluted then so far, let's say, from a compulsory prayer that in fact it should be, in effect, beneath the constitutional radar. It's sometimes, you know the phrase, the Rostow phrase, the ceremonial deism.

What do you make of that argument, even assuming that, as I do, there is some affirmation involved when the child says this as a technical matter?

NEWDOW: I think that whole concept goes completely against the ideals underlying the Establishment Clause. We saw in *Minersville v. Gobitis* and *West Virginia v. Barnette* something that most people don't consider to be religious at all to be of essential religious value to those Jehovah's Witnesses who objected. And for the Government to come in and say, we've decided for you this is inconsequential or unimportant is an arrogant pretension, said James Madison. He said in his memorial—

JUSTICE SOUTER: Well, I think the argument is not that the Government is saying, we are defining this as inconsequential for you. I think the argument is that simply the way we live and think and work in schools and in civic society in which the pledge is made . . . that whatever is distinctively religious as an affirmation is simply lost. It's not that the Government is saying, you've got to pretend that it's lost. The argument is that it is lost, that the religious, as distinct from a civic content, is close to disappearing here.

NEWDOW: And again, I—I don't mean to go back, but it seems to me that is a view that you may choose to take

and the majority of Americans may choose to take, but . . . it's not the view I take, and when I see the flag and I think of pledging allegiance, it's like I'm getting slapped in the face every time, bam, you know, this is a nation under God, your religious belief system is wrong.

And here, I want to be able to tell my child that I have a very valid religious belief system. Go to church with your mother, go see Buddhists, do anything you want, I love that—the idea that she's being exposed to other things, but I want my religious belief system to be given the same weight as everybody else's. And the Government comes in here and says, no, Newdow, your religious belief system is wrong and the mother's is right and anyone else who believes in God is right, and this Court—

JUSTICE GINSBURG: If you had her here in this courtroom and she stood up when the Justices entered and she heard the words, God save the United States and this honorable Court, wouldn't the injury that you're complaining about be exactly the same, so you would have equal standing on your account of things to challenge that as you do to challenge what the school district does here?

NEWDOW: I don't think the injury would be even close to the same. She's not being asked to stand up, place her hand on her heart, and say, I affirm this belief, and I think that can easily distinguish this case from all those other situations. Here she is being asked to stand and say that there exists a God. Government can't ever impose that

JUSTICE GINSBURG: If she's asked to repeat or to sing, as the Chief Justice suggested, God Bless America, then she is speaking those words.

NEWDOW: Again, if it were a situation where we said, let's only do nothing else in this classroom, all right, we'll say God bless America and let's just say those words or something, I think that would violate the Constitution as well. If it's just, let's sing one song a day and once a month we get God Bless America, no, that would be certainly fine. We don't want to be hostile to religion.

But here we're not—it's not a question of being hostile to religion. It's indoctrinating children and Congress said that was the purpose. . . .

JUSTICE BREYER: So it's not perfect, it's not perfect, but it serves a purpose of unification at the price of offending a small number of people like you. So tell me from ground one whywhy the country cannot do that?

NEWDOW: Well, first of all, for 62 years this pledge did serve the purpose of unification and it did do it perfectly. It didn't include some religious dogma that separated out some. . . .

. . . Again, the Pledge of Allegiance did absolutely fine and got us through two world wars, got us through the Depression, got us through everything without God, and Congress stuck God in there for that particular reason, and the idea that it's not divisive I think is somewhat, you know, shown to be questionable at least by what happened

in the result of the Ninth Circuit's opinion. The country went berserk because people were so upset that God was going to be taken out of the Pledge of Allegiance.

CHIEF JUSTICE REHNQUIST: Do we know—do we know what the vote was in Congress apropos of divisiveness to adopt the under God phrase?

NEWDOW: In 1954?

CHIEF JUSTICE REHNQUIST: Yes.

NEWDOW: It was apparently unanimous. There was no objection. There's no count of the vote.

CHIEF JUSTICE REHNQUIST: Well, that doesn't sound divisive. (Laughter.)

NEWDOW: That's only because no atheist can get elected to public office. (Applause.)

CHIEF JUSTICE REHNQUIST: The courtroom will be cleared if there's any more clapping. Proceed, Mr. Newdow. . . .

JUSTICE KENNEDY: You say this is the same as the prayer in *Lee v. Weisman*?

NEWDOW: No, not at all. I'm saying it's a religious exercise, and clearly the whole idea, the intent of Congress was—

JUSTICE KENNEDY: You're saying both are religious exercises?

NEWDOW: Well, I think religious exercise is a larger set, prayer is a subset. I would say again the President of the United States considers the pledge in that subset. Whether or not you do or I do is—somewhat, I think, irrelevant, because the question

JUSTICE KENNEDY: Well, now, let's suppose, I thought the case turned on whether this was a religious exercise.

NEWDOW: I think it definitely is, and it is because the two words are, under God, and I can't see of anything that's not religious, under God . . .

. . . It fails the endorsement test, it fails the outsider test. Imagine you're this one child with a class full of theists and you have this idea that you want to perhaps at least consider and you have everyone imposing their view on you, it fails every test this Court has ever come up with, and there's a principle here and I'm hoping the Court will uphold this principle so that we can finally go back and have every American want to stand up, face the flag, place their hand over their heart and pledge to one nation, indivisible, not divided by religion, with liberty and justice for all.

TERENCE J. CASSIDY, LAWYER FOR THE SCHOOL DISTRICT: The Pledge of Allegiance in grammar schools, in public schools, is part of a teaching program, and that's what we're here about, to talk about the educational upbringing of a child, and it has to do with national unity and citizenship of our young students.

JUSTICE STEVENS: May I ask you just one question? . . . One of the *amicus* briefs filed in this case has this sentence in it. I'd like you to comment on. If the religious por-

tion of the pledge is not intended as a serious affirmation of faith, then every day government asks millions of school children to take the name of the Lord in vain. Would you comment on that argument?

CASSIDY: I would disagree, because we feel that the use of the term, one nation under God, reflects a political philosophy, and the political philosophy of our country, as set forth in the Declaration of Independence, is that ours is one of a limited government, and that is the philosophy that's now more enhanced, more reflected in the 1954 act. □

(from the bench . . . from page 108)

restaurants," he wrote, "even though, I repeat, there is just as much reason to impose such requirements if one sticks to the rationale of the majority opinion."

The justices' sniping in the ruling was extraordinarily tart, with the majority using footnotes to counter various of Sills' allegations, which included that they countenanced a Big Brother atmosphere and encouraged laws more restrictive than those of many communist countries.

In his most pointed jab, Sills cited a failed effort by Malaysia to register the names and identity card numbers of all Internet cafe customers. "Apparently," he wrote, "my colleagues are willing to countenance infringements on the rights of cybercafe users which even the government of Malaysia is too ashamed to enforce!"

"Wow!" the majority responded in a footnote. "We will not respond in kind. We prefer to debate the issues on the merits." Reported in: *The Recorder*, February 2.

Greeley, Colorado

In what the American Civil Liberties Union called a victory for freedom of the press, "Howling Pig," a satirical online newsletter was back in business after a federal judge ordered police to return the editor's computer. "I'm planning on updating it this weekend," editor Thomas Mink said on January 10. The Howling Pig's Web site now features a page devoted to its self-described "trouble with the law."

Chief U.S. District Judge Lewis Babcock effectively gave Mink's editing a D for vulgarity and crassness, but said his literary shots at a finance professor still passed the Freedom of Speech test. "We have used the F-word," said Mink, saying crass and vulgar works with the MTV crowd.

On January 9, Babcock granted a restraining order requested by the American Civil Liberties Union requiring Greeley police to return the computer to the University of Northern Colorado student. He also barred prosecution of Mink for criminal libel. Babcock did not rule immediately on an ACLU request to strike down Colorado's criminal libel law but wasted little time on the restraining order.

The judge said he had read the newsletter, and compared its satire to that used by Dutch humanist Erasmus in his 16th-century pamphlet "Praise of Folly," critical of church dignitaries. "Even our colonialists of America engaged in this type of speech, with great lust and robustness. So I'm going to sign the temporary restraining order," Babcock said.

Weld County officials had said they were still investigating the case, which was launched at the request of professor Junius Peake, and had already planned to return the computer. Peake, an outspoken campus conservative, said he had not requested that charges be filed or that the computer be seized. He said he merely asked that the authors of the online newsletter, whose names are not listed on it, be identified.

"I believe in freedom of speech but this is not a spoof. This is a vicious attack on the university and its staff. And it is baseless," he said.

The newsletter, created in October, carried a photograph of Peake, altered to look like KISS guitarist Gene Simmons, along with a caption describing "Mr. Junius Puke" as a former KISS roadie who made a fortune by riding "the tech bubble of the nineties like a \$20 whore." Reported in: Associated Press, January 12. □

(is it legal? . . . from page 114)

Poindexter's new software tools, far more powerful than existing commercial products, would have allowed government agents to quickly scan the private commercial transactions and personal health records of millions of Americans and foreigners for telltale signs of terrorist activity.

Partly to appease critics, Poindexter also was developing two privacy tools that would have concealed names on records during the scans. Only if agents discovered concrete evidence of terrorist activities would they have been permitted to learn the identities of the people whose records aroused suspicion.

One privacy project worked with Poindexter's Genisys program, which scanned government and commercial records for terrorist planning. The other was part of his Bio-ALIRT program, which scanned private health records for evidence of biological attacks. Late last year, Congress closed Poindexter's office in the Defense Advanced Research Projects Agency, or DARPA, in response to the uproar over its impact on privacy.

But Congress allowed some Poindexter projects, including some data-mining research, to be transferred to intelligence agencies. Congress also left intact similar data-mining research begun in the fall of 2002 by the Advanced Research and Development Activity, or ARDA, a little-known office that works on behalf of U.S. intelligence.

The research sponsored by ARDA, called Novel Intelligence from Massive Data, is so similar to some work done for Poindexter that Lunt offered to adapt her privacy protection software. ARDA and other agencies weren't interested because Congress had killed the original projects.

"When I went to talk to them, ARDA made clear they don't want to get into any area Congress doesn't want to fund,"

Lunt said. It's not clear what, if any, privacy research is being done by ARDA or by the surviving remnants of Poindexter's program. Last fall's Intelligence Authorization Act approved continued research on the type of powerful data-mining Poindexter envisioned but said "the policies and procedures necessary to safeguard individual liberties and privacy should occur concurrently with the development of these analytic tools, not as an afterthought."

ARDA said it obeys all privacy laws and hasn't given its researchers any government or private data, but it declined to say whether it is sponsoring any research on privacy protection.

Lunt, a former DARPA program manager, was developing privacy protection software for Poindexter's Genisys program. Her software shielded identities in the records the government reviewed, restricted each intelligence analyst to only the data he or she was authorized to see and created a permanent record to track cheaters.

Professor LaTanya Sweeney of Carnegie Mellon University was the principal researcher developing privacy protections for the Bio-ALIRT project. An early version of Bio-ALIRT was used to help protect President Bush's 2001 inauguration and the 2002 Olympics before Sweeney developed her privacy software. She also presented her work last fall to officials of various agencies and said she was told they "might want to continue the work. But they came through with zero dollars."

The bio-surveillance system monitors symptoms of patients at emergency rooms and doctors' offices and such less-obvious sources as increases in grocery store orange juice sales and in school absenteeism in hopes of detecting a biological attack. Names are concealed until evidence suggests victims need to be treated.

Sweeney said DARPA paid to develop the privacy software but didn't pay for a public field test. "The tool just sits there unused," she said. "People think they have to sacrifice privacy to get safety. And it doesn't have to be that way." Reported in: *New York Times*, March 15. □

**READ
BANNED
BOOKS**

(million signatures sought . . . from page 89)

including New York City, Kansas City, Missouri, and Valencia County, New Mexico.

“Our concerns about privacy are far from hysterical. The federal government has attempted to monitor library records before and it seems inevitable that they will use Section 215 to try again,” said Judith F. Krug, director of the ALA’s Office for Intellectual Freedom.

To demonstrate the unity of the book and library community, the groups also released a statement of support for proposed legislation that amends Section 215. The statement (see below) is signed by 40 organizations representing virtually every bookstore, library and writer in the country as well as 81 individual companies, including Barnes & Noble Booksellers, Borders Group, Inc., Ingram Book Group, Random House, Simon & Schuster and Holtzbrinck Publishers. □

Book and Library Community Statement Supporting the Freedom to Read Protection Act (H.R. 1157), the Library and Bookseller Protection Act (S. 1158), and the Library, Bookseller and Personal Data Privacy Act (S. 1507)

Our society places the highest value on the ability to speak freely on any subject. But freedom of speech depends on the freedom to explore ideas privately. Bookstore customers and library patrons must feel free to seek out books on health, religion, politics, the law, or any subject they choose, without fear that the government is looking over their shoulder. Without the assurance that their reading choices will remain private, they will be reluctant to fully exercise their right to read freely.

Section 215 of the USA PATRIOT Act threatens bookstore and library privacy. FBI agents do not need to prove they have “probable cause” before searching bookstore or library records: they can obtain the records of anyone whom they believe to have information that may be relevant to a terrorism investigation, including people who are not suspected of committing a crime or of having any knowledge of a crime. The request for an order authorizing the search is heard by a secret court in a closed proceeding, making it impossible for a bookseller or librarian to object on First Amendment grounds prior to the execution of the order. Because the order contains a gag provision forbidding a bookseller or librarian from alerting anyone to the fact that a search has occurred, it would be difficult to protest the search even after the fact.

The organizations listed below strongly support federal legislation that addresses this problem: the Freedom to Read Protection Act (H.R. 1157), the Library and Bookseller Protection Act (S. 1158) and the Library, Bookseller and Personal Data Privacy Act (S. 1507). These bills strengthen protections for the privacy of bookstore and library records without preventing the FBI from obtaining crucial information. Under H.R. 1157 and S. 1158, the

courts would exercise their normal scrutiny in reviewing requests for bookstore and library records. S. 1507 allows the FBI to follow the procedures authorized by Section 215 but limits searches to the records of “foreign agents” engaged in acts of terrorism or espionage.

We applaud the authors of these bills, U.S. Representative Bernie Sanders (H.R. 1157), Senator Barbara Boxer (S. 1158) and Senator Russell D. Feingold (S. 1507) as well as the Democratic and Republican sponsors and co-sponsors of this legislation. They have shown great courage by defending civil liberties during a time of crisis.

The statement is endorsed by the following associations: American Association of Law Libraries, American Booksellers Association, American Booksellers Foundation for Free Expression, American Library Association, American Society of Journalists and Authors, Association of American Publishers, Association of American University Presses, Association of Booksellers for Children, Authors Guild, California Library Association, Children’s Book Council, Comic Book Legal Defense Fund, Florida Publishers Association, Freedom to Read Foundation, Great Lakes Booksellers Association, Illinois Library Association, Medical Library Association, Mid-South Independent Booksellers Association, Minnesota Library Association, Montana Library Association, Mountains and Plains Booksellers Association, National Association of Independent Publishers Representatives, New Atlantic Independent Booksellers Association, New England Booksellers Association, New York Library Association, Northern California Independent Booksellers Association, Pacific Northwest Independent Booksellers Association, PEN American Center, PEN New England, PEN USA West, Publishers Association of the West, Publishers Marketing Association, Science Fiction and Fantasy Writers of America, Small Press Center, Society of Children’s Book Writers and Illustrators, Southeast Booksellers Association, Southern California Booksellers Association, Special Libraries Association, Upper Midwest Booksellers Association, Virginia Library Association.

The statement is also endorsed by the following companies: 96 Inc., Abebooks, Academy Chicago Publishers, Akashic Books, Aliform Publishing, A. Pankovich Publishers, Arte Público Press, Avalon Publishing Group, Avocet Press, Inc., Baker & Taylor, Barnes & Noble Booksellers, Beacon Press, Borders Group, Inc., Capital Books, Cat’s-paw Press, Center for Thanatology Research & Education, Inc., Chicory Blue Press, Cold Spring Harbor Laboratory Press, Cornell Maritime Press & Tidewater Publishers, Darwin Press, Devenish Press, Duke University Press, The Feminist Press at the City University of New York, First Books & Inkwater Press, FoulkeTale Publishing, Four Walls Eight Windows, Fugue State Press, Fulcrum Publishing, Gival Press, LLC, Green Map System, Grove/Atlantic, Inc., Holtzbrinck Publishers, Houghton Mifflin, Humanics Publishing Group, International

Publishers Co., Inc., Independent Booksellers Consortium, Inc., Ingram Book Group, Inkwell Books, Island Press, John Wiley & Sons, Inc., Lee Stookey Books, Lynne Rienner Publishers, Mountain Empire Publications, Mountaintop Books, New York University Press, North Country Books, Patria Press, Inc., Pelican Island Publishing, Penington Press, Pocahontas Press, Plum Branch Press, Princeton University Press, PublishingGame.com/Peanut Butter and Jelly Press, Rainbow Books, Inc., Random House, Inc., Red Dust, Inc., Red Rock Press, Rexdale Publishing Company, Sem Fronteiras Press, Seven Stories Press, Shambling Gate Press, Simon & Schuster, Snake Nation Press, Southern Illinois University Press, Square One Publishers, Star Bright Books, Stein Software Corporation, Surrey Books, Turtle Books, Trafalgar Square, University Press of Colorado, VaiVecchio Press, Viveca Smith Publishing, Walker & Company, Wesleyan University Press, Wild Horizons Publishing, Inc., Wildcat Press, Winged Willow Press, The Winstead Press, Ltd., Workman Publishing, Yale University Press. □

CAL IFC receives 2004 SIRS-ProQuest State and Regional Achievement Award

The Colorado Association of Libraries Intellectual Freedom Committee (CAL IFC) is the 2004 recipient of the SIRS-ProQuest State and Regional Achievement Award presented by the American Library Association (ALA) Intellectual Freedom Round Table (IFRT).

The award, funded by SIRS-ProQuest, consists of a citation and \$1,000, and recognizes successful and effective intellectual freedom committees or coalitions that have made a contribution to the freedom to read in libraries, or to the intellectual freedom environment in which libraries function.

CAL IFC is honored for its development and implementation of a statewide initiative to educate the public about the USA PATRIOT Act.

Its work included informational presentations to 25 diverse groups throughout the state of Colorado, and the development of informational Web pages that are available to the general public as well as to librarians. Its informational resources are crafted for diverse audience use and are easily accessible. CAL IFC also offers customizable brochures to library or citizen's groups throughout the country who may need informational materials for their communities.

"We are all thrilled with this recognition," said Nicolle Steffen, current chair, CAL IFC. "This is a very dedicated committee that has worked hard through the years. Last year was especially challenging as we responded to the needs of library staff and citizens for answers to questions

about how the USA PATRIOT Act affects them professionally and personally."

Martin Garnar, immediate past chair, pointed out that the project is not over. He added, "The CAL IFC will use the monetary award given by SIRS-ProQuest to supplement our program budget so that we can keep resources current."

The award will be presented to CAL IFC on Saturday, June 26, at 1:30 p.m., during the IFRT program at the American Library Association Annual Conference in Orlando, Florida.

For more information on the award, see www.ala.org/ifrt/sirsproquest; for information on the Colorado Association of Libraries Intellectual Freedom Committee, see www.calwebs.org/if.html.

IFRT provides a forum for the discussion of activities, programs and problems in intellectual freedom. The roundtable serves as a channel of communications on intellectual freedom matters, and also promotes a greater opportunity for involvement among the members of the ALA in defense of intellectual freedom. □

(Charles Levendosky . . . from page 93)

First Amendment awards given by the American Library Association and the Freedom to Read Foundation.

Levendosky received a literary fellowship from the Wyoming Arts Council in 2001 and a major poetry award from the literary magazine, *Prairie Schooner*. He skillfully combined his intuitive love of poetry with a passion for journalistic truth and the right of everyone to speak out.

In 2001, he was the recipient of the Wyoming Wildlife Federation's Conservation Communicator of the Year Award for his columns and editorials. Survivors include his wife, Dale Eckhardt, of Casper; his mother, Laura Levendosky, of San Diego, CA; two daughters: Alytia Levendosky and her husband of Ann Arbor, Michigan, and Ixchel Whitcher and her husband of Fort Collins, Colorado; a stepdaughter, Daria O'Neill and her husband of Portland, Oregon; a stepson, Damien Eckhardt Jacobi of Brooklyn, New York; a brother, Richard Levendosky and his wife, of Sebastopol, California; a sister, Laurie Hamilton, of San Diego, California; three grandsons; two nephews; one niece; and two great nieces.

The family requests that donations in his memory go to the Freedom to Read Foundation, 50 East Huron Street, Chicago, IL, 60611; Wyoming Outdoor Council, 262 Lincoln St., Lander, WY, 82520; the American Civil Liberties Union Foundation, 125 Broad St., 18th Floor, N.Y., N.Y., 10004; Native American Rights Fund, 1506 Broadway, Boulder, CO, 80302; Central Wyoming Hospice Program, 319 S. Wilson, Casper, WY, 82601; or any organization that believes in preserving the beauty of our land and the right of freedom for all beings. □

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