



Bulletin

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Volume 11, Number 2

Winter 2006

Controversial Cartoons Lead to Worldwide Concern For Speech, Press Freedom, and Religious Values

In January 2006, a wave of protests spread through Muslim countries all over the world, some of them violent. As the *Bulletin* went to press, over a dozen people had been killed, and the nation of Denmark had lost hundreds of millions of dollars worth of revenue on exports due to a widespread boycott of its nation's products. Newspapers all over the world, including many in the United States and Europe, took care in what they printed for fear of violent outbursts or retribution. Editors lost their jobs or were placed on leave over what they did print, and some even faced jail time. The reason for all this uproar? Cartoons.

The Cartoons' Origins

The riots and the controversy are a reaction to a handful of political cartoons depicting the prophet Mohammed. Any depictions of Mohammed are prohibited by Muslim religious tradition. Originally published in September 2005 by the Danish newspaper *Jyllands-Posten*, the cartoons were commissioned by editor Flemming Rose, who invited 25 newspaper cartoonists to draw the prophet Mohammed as "they saw him," and then printed the submissions of the 12 cartoonists who responded in the Sept. 30, 2005 edition of the paper.

Rose commissioned the drawings after several incidents in 2005 led him to believe that there was a trend of self-censorship emerging in Europe specifically regarding material that might be offensive to Muslims. A Danish standup comedian, for example, said in an interview with the *Jyllands-Posten* that he felt free to urinate on a copy of the Bible in front of a camera, but would never dare do the same thing with the Koran. An avant-garde artist's exhibit at the Tate Gallery in London featuring the Koran, Bible and Talmud torn into pieces was withdrawn out of concern that it might "stir things up" in the wake of the London bombings. A museum in Göteborg, Sweden withdrew an exhibit earlier in the year that featured a sexual motif along with a quotation from the Koran, specifically because it might offend Muslims. Although all these events concerned Rose, these concerns were catalyzed after a discussion with Danish writer Kare Bluitgen, who was working on a children's book about religion and told Rose that he could not find anyone to illustrate the section on the prophet Mohammed. When Bluitgen finally did find someone, that person insisted on anonymity. At the end of September 2005, Danish Prime Minister Anders Fogh Rasmussen met with a group of imams, or Muslim clerical leaders. One of them reportedly called on Rasmussen to interfere with the press in Denmark in order to promote more positive coverage of Islam in the media. In an editorial written for *The Washington Post*, Rose wrote that these cases of "self-censorship" constituted a legitimate story: one in which freedom of speech in Europe was pitted against "the fear of confronting issues about Islam." To cover this story, Rose commissioned the cartoons.

The actual cartoons were varied. One poked fun at the *Jyllands-Posten*. Another satirized an anti-immigration Danish political figure. Still another made fun of Bluitgen, suggesting he had gone public with his difficulty in finding an illustrator solely to gain publicity for his book. The cartoons that were the most controversial included one that showed Mohammed turning away bombers from heaven, saying, "we've run out of virgins," and another that depicted Mohammed with a bomb in his turban, a reference to the story of Aladdin and how an orange falling into his turban led him to great fortune. The cartoons are widely available online, and can be found with a Google search or through Wikipedia. One complete archive of the cartoons is available online at http://www.zombietime.com/mohammed_image_archive/jyllands-posten_cartoons/.

The Controversy Festers

The cartoons sparked immediate controversy, but not immediate violence. Some Muslim readers of the *Jyllands-Posten* were upset, and the paper ran editorials on both sides of the debate in response. Ahmed Abu Laba, a prominent Danish cleric, was outraged from the start. Abu Laba enlisted the help of leaders from 11 Muslim groups, who eventually wrote letters to *Jyllands-Posten* and to the Danish culture minister, circulated a petition, and submitted 17,000 signatures to the Danish Prime Minister. The group met with ambassadors from 11 Muslim countries and asked Rasmussen for a meeting. Rasmussen declined.

In December, dissatisfied with the response the group was getting in Europe, Abu Laba and other Muslim leaders traveled to the Middle East. Ahmed Akkari, a Lebanese-born student of theology, accompanied them. He carried with him a 43-page dossier containing all 12 of the *Jyllands-Posten* cartoons, ten more illustrations from a November publication of the Danish *Weekend Avisen*, and some additional illustrations that depicted Mohammed

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Cartoons, continued from page 1
as a pig, and others that showed the prophet engaged in obscene acts.

According to *The Washington Post*, Akkari and Laban said that the cartoons depicting Mohammed as a pig and the obscene cartoons had been mailed anonymously to Muslim leaders in Denmark after they began their campaign in Denmark against the initial publication of the cartoons in the *Jyllands-Posten*. They claim that the obscene cartoons were not represented as being published in the *Jyllands-Posten* to those who viewed the dossier.

In the course of their December travels, the group of Danish Muslims visited Egypt and Lebanon, holding news conferences with Arabic language media regarding anger and prejudice against Muslims in Denmark. They met with top officials from the Arab League, the top muftis – Islamic scholars – of Egypt and Lebanon, and other prominent spiritual leaders. Their actions helped to spark a movement among the people of a variety of Middle Eastern countries, who were finally exposed to the cartoons and news about them through Muslim websites. By the beginning of 2006, protestors were burning Danish flags in Denmark. The re-publication of *Jyllands-Posten's* cartoons in the Norwegian paper *Magazinet* in January added further fuel to the fire. Protests and boycotts of Danish products spread across the world with the controversy.

On January 30, *Jyllands-Posten* finally gave in to pressure and issued an apology on its website, which read: “In our opinion, the 12 drawings were not intended to be offensive, nor were they at variance with Danish law, but they have indisputably offended many Muslims, for which we apologize.” According to the *Deutsche Presse-Agentur*, the statement was issued by *Jyllands-Posten* staffer Carsten Juste, and was also sent to the Jordanian news agency Petra. In addition to the statement, Juste wrote, “*Jyllands-Posten* is a strong proponent of democracy and freedom of religion, and respects the right of any human being to practice his or her religion.”

The same day, Rasmussen told Danish television “I personally have such a respect for people’s religious belief that I personally never would have depicted Muhammad, Jesus or any other religious character in a way that could offend other people.” However, this came only after his consistent defense of his country’s press and its freedom. Rose himself would not bow to pressure to apologize, though he did tell CNN and other news networks, “I cannot apologize for the publication itself. I apologize for the feelings it has caused.”

As the *Bulletin* went to press, protests and violent riots had begun to die down. However, ten people were killed in riots in Libya in February 2006, and attacks on foreign embassies in Tehran, Iran, and El Mahalla and El Kubra in Egypt were just a small part of the damage done by rioters in those cities. Large-scale protests, some resulting in significant property damage, took place in Saudi Arabia, Pakistan, Malaysia, Denmark, Germany, France, and the United States. Smaller protests have cropped up nearly everywhere Muslim populations are present.

To Print Or Not To Print – The Media Decide

The U.S. Press

The New York Times chose not to reprint the cartoons, describing them instead in their coverage of the controversy. Many other U.S. newspapers followed suit, saying they were motivated either by respect for or fear of those who might be offended. Many of the newspapers that chose not to reprint the cartoons ran explanations for their decisions, the majority citing the need to respectfully approach the controversy. Gene Policinski, executive director of the First Amendment Center, said, “A lot of editors are making the decision to say, ‘In this case I can fully inform my readers without having to show an image that I know will offend a number of others.’ And I think that the descriptions I’ve seen [of the cartoon] fully tell me what was in those images.”

Despite being known for its typically fearless approach to controversial issues, the *Boston Phoenix* cited fear as the motive for leaving the cartoon images off of its pages. Editors at the *Phoenix* wrote in an editorial, “Our primary reason is fear of retaliation from . . . bloodthirsty Islamists who seek to impose their will on those who do not believe as they do . . . Simply stated, we are being terrorized. . . As we feel forced, literally, to bend to maniacal pressure, this may be the darkest moment in our 40-year publishing history.”

The Philadelphia Inquirer, *Austin-American Statesman*, and *New York Sun* chose to publish some of the cartoons. Protests were held in response outside the offices of the papers. Regarding his paper’s decision, *American Statesman* editor Rich Oppel told *Editor & Publisher*, “It is one thing to respect other people’s faith and religion, but it goes beyond where I would go to accept their taboos in the context of our freedoms and our society.” In Wyoming, the Cheyenne *Eagle-Tribune* also chose to publish the cartoons, printing a staff editorial explaining that the newspaper staff felt the public should draw its own conclusions regarding the cartoons, and needed to see them in order to do so. Denver’s *Rocky Mountain News* also published the cartoons and printed an editorial explaining its decision. Both papers, which publish in communities with small Muslim components, received little negative feedback.

The Student Press

Acton Gorton, editor of the *Daily Illini*, the student newspaper at the University of Illinois at Urbana-Champaign, was fired for his decision to publish some of the original *Jyllands-Posten* cartoons. According to a news release from the paper’s publisher, Illini Media Co., Gorton “failed to adequately discuss the publication of the cartoons before they appeared in print Feb. 9.” According to the *Chicago Tribune*, the release also read: “The board is disappointed with this outcome and regrets that Gorton’s actions necessitated his termination less than three months into his one-year term.” Gorton told the *Chicago Tribune* that he plans to file a lawsuit to contest his termination. “I really thought I would be able to get my job back after I explained my point of view,” he told the *Tribune*.

Television News

Some national television networks in the United States, including Fox News and ABC News, broadcast the images in early February. According to Chris Wallace, "Fox News Sunday" anchor, the network aired the images because they were important to the story. Wallace told *USA TODAY*, "My feeling was, if you're going to tell the story about people rioting and burning down embassies, it's part of the story to know what it is that has caused such outrage." ABC News only ran the images on the first few broadcasts regarding the riots and protests. According to ABC News spokeswoman Cathy Levine, the network believed that after the first broadcasts, they were able to "report this story without continually needing to show the offending image." National networks in the United States that did not broadcast the images included NBC, CBS, and CNN.

The International Media

Journalists the world over have been subject to persecution and prosecution for their decisions regarding how to cover the cartoons. For example, Mohammed al-Asadi, the editor of the generally pro-government *Yemeni Observer*, is in jail for publishing the cartoons, even though his paper published the cartoons with a large "X" and with an article denouncing them. Al-Asadi was arrested by the Yemeni government on Feb. 11, 2006 and charged with insulting the Prophet. As the *Bulletin* went to press, al-Asadi's trial has been adjourned until April 19. Prosecutors in the trial are asking that he be banned from journalism, and religious leaders and even members of the Yemeni Parliament have called for his execution.

According to the *Yemeni Observer*, over a dozen other papers have been closed temporarily or permanently in Algeria, Morocco, Jordan, Yemen, Malaysia and Indonesia for reprinting the cartoons, regardless of whether they condemned them. According to a report by Michael Slackman and Hassan M. Fattah in *The New York Times*, 11 journalists in five Islamic countries face prosecution for printing some of the Danish cartoons, and six have been jailed. Some of those journalists face long prison sentences if convicted.

Governments Respond

Some governments have taken action to retaliate against the publication of the cartoons in their countries. For example, the Pakistani Supreme Court ordered that websites carrying the offensive cartoons be blocked. In France, a law has been proposed outlawing blasphemy, but was not near passage as the *Bulletin* went to press. In Great Britain, outrage over the cartoons bolstered support for laws against "religious hate speech."

The Experts Respond

Professor Jane Kirtley, Silha Professor of Media Ethics and Law at the University of Minnesota and Director of the Silha Center, told the Minneapolis *Star Tribune* that in the United States "it's up to the public to make a judgment on these cartoons, and the media should absolutely repudiate the suggestion that violence should lead to the suppression of free speech." Kirtley advised that, given the high news value of the cartoons, United States papers should

publish them, but not on their front pages or on the editorial pages, and not without including careful context, such as commentary from Muslim leaders. (For additional information about political cartoons as published in the *Silha Bulletin*, see "Developments in Media Ethics: Political Cartoons Criticized for Content" in the Summer 2003 *Silha Bulletin*; see also "Award-Winning Cartoonist Delivers 15th Annual Silha Lecture" in the Winter 2001 *Silha Bulletin*.)

In the Western world, political cartoons are perhaps the defining form of free and public expression. A staple in U.S. newspapers for more than 200 years, political cartoons rely on images to convey complex political messages in a simple form. In a recent editorial for the *Chicago Tribune*, political cartoonist Pat Oliphant quoted William H. "Boss" Tweed, regarding his lampooning by legendary satirical cartoonist Thomas Nast. Tweed reportedly said, "I don't care what the newspapers publish about me – most of my constituents can't read anyway. But them dam' pictures! Anybody can read 'em."

Cartoonist Chip Bok, who delivered the 2000 Silha Lecture, drew several cartoons editorializing on the controversy, and writes about them in his blog, *Bokbluster*, available online at http://blogs.ohio.com/chip_bok/2006/02/index.html. In an interview with the *Silha Bulletin* regarding the cartoon controversy, Bok said, "Cartoons are by their nature offensive – they are supposed to make a point, and when they make a strong point that is bound to be offensive. Every cartoon is bound to offend someone." Bok then added, "I don't buy the argument that the cartoons can simply be described – it disturbs me that other cartoonists believe that, because then all cartoons can just be described. To not publish the cartoons is to give in to intimidation."

Long-term Implications

Some characterize the riots as an indication of the conflicts that will inevitably arise when Middle Eastern populations immigrate to western nations, bringing cultural and religious beliefs and sensitivities with them. European countries, with well-established traditions and culturally ingrained ideas about free speech, can clash with cultures which regard the sanctity of a religious icon as the highest of all principles. The reactions of citizens in western democratic nations where satirical depictions of political and religious figures are taken for granted have been mixed.

Bob Steele, who teaches ethics at the Poynter Institute wrote in a Poynter Online editorial, "This is one of those cases where there can be multiple, justifiable ethical right answers. In the post-9/11 era, these matters take on a whole different level of urgency. The ethical decisions editors and broadcast executives face are tougher than ever." The ideals that drove the cartoons' publication and the ideals of the activists that helped to expose the Muslim world to them represent two sides of a deepening political and cultural divide.

— SARA CANNON
SILHA CENTER STAFF

Freedom of Speech

Church Group's Protests Spawn Legislation Limiting Demonstrations

"Placing restrictions of time, place or manner, but not on the content of speech, can serve a compelling public interest."

— Chuck Samuelson,
Executive Director,
ACLU Minnesota

On March 16, 2006, U.S. Senators Evan Bayh (D-Ind.) and Saxby Chambliss (R-Ga.), introduced S.2452 in the United States Congress, a bill that would restrict demonstrations at national cemeteries and military funerals. The bill, entitled the Dignity for Military Funerals Act of 2006, prohibits "protest activities" of any kind within 300 feet of a cemetery, mortuary, or church for one hour before, during, and one hour after the funeral of a member of the armed forces. According to the official websites of both Senators, violators of the Act would face felony charges and jail time of between one and five years. This national measure follows on the heels of efforts in more than half of the states in the Union to curb protests at funerals.

On March 13, 2006, Minnesota introduced its version of the bill, becoming one of over 30 states that had passed or were considering passing laws banning protests near funerals since late 2005.

The laws are being drafted in response to a recent rash of protests at military funerals by an anti-gay group consisting of members of the Westboro Baptist Church of Topeka, Kan.

Led by the Rev. Fred Phelps, the church, which is independent of any larger denomination, is composed almost solely of his own children, grandchildren and in-laws. Phelps contends that God is allowing U.S. soldiers to be killed in Iraq because U.S. policies tolerate homosexuality. Westboro church members protest at soldiers' funerals holding signs that bear anti-American and anti-gay slogans, as well as signs that thank God for the deaths of American soldiers, in hope of gaining publicity for their group and their message.

In the 1990s, the Westboro group protested at the funerals of AIDS victims, and became known for their signature slogan, "God Hates Fags." Although initial protests took place only in Kansas, the church gained national prominence when they protested the funeral of Matthew Shepard in Wyoming in 1998. Shepard was brutally beaten by two other young men because of his sexual orientation and left to die of exposure. His death gained media attention around the country and was the catalyst for the first hate-crime legislation passed in the United States, and his high-profile funeral drew the Westboro group.

The Westboro group's relatively new strategy of protesting at the funerals of soldiers killed in the war in Iraq, as well as other high-profile funerals, has sparked the recent wave of legislation. For example, the group protested at the memorial service conducted for the twelve miners killed in the Sago Mine explosion in West Virginia in the first days of January 2006. (See "Events at Sago Mine Lead to Confusion for Officials, Media," on page 21 of this issue of the *Silha Bulletin*.) According to the Associated Press, a small group of the protesters gathered outside a chapel in Buckhannon, W.Va., on January 15 with signs reading, "Thank God for Dead Miners," "God Hates Your Tears" and "Miners in

Hell." At military funerals, the group typically carries signs with slogans such as "Thank God for IED's," (the explosive devices responsible for many American casualties in Iraq) and "Thank God for Dead Soldiers" in addition to their usual "God Hates Fags" signs. A group of motorcyclists, known as the Patriot Guard, has responded by attending funerals to counter-protest the Phelps family. They chant messages of support and cheer the families of dead soldiers, blocking Westboro church members' signs by waving American flags.

The Westboro Baptist Church website, www.godhatesfags.com, states that its purpose in protesting such events is to "cause America to know her abominations." They protest at military funerals because they say soldiers are fighting to protect a nation that "enables sin." The Church has stated that it will go to court to fight any law that steps "one inch over the line" of reasonable time, place and manner restrictions on protests, and have stated that they will fight any law that restricts a protest to more than 100 feet from a funeral or memorial service. It is likely that most states will find a "reasonable distance" to be farther than this, but some of the very long distance restrictions could end up being challenged.

The State Laws

Some of the statutes amend existing laws that already address disorderly conduct, as in Virginia; for other states, the proposals are freestanding. Each of the laws share a few basic characteristics. All contain some form of time, place and manner restrictions. Most prohibit demonstrations of any kind within a certain number of feet from a funeral or memorial service, and for a certain number of hours.

Definition, Manner of Activity

States such as Missouri, Vermont, Kansas, Louisiana, New Jersey, Nebraska, Ohio, Tennessee and South Dakota categorize the demonstrations as "picketing," usually coupling that term with activities described as protesting. Wisconsin and Illinois categorize the restricted activity as "loud protest," with Illinois adding terms such as "loud protests," "singing," "chanting," "whistling" and "yelling."

Indiana focuses on disorderly conduct, but nothing specifically refers to funerals. Iowa, on the other hand, defines disorderly conduct as it directly relates to funerals, including "direct abusive epithets" and "threatening gestures" which might provoke a violent reaction in a reasonable person. Florida legislation describes activity that "willfully interrupts or disturbs" people gathered for a funeral or memorial service. Georgia's legislation focuses on "unwanted impediment, disruption, disturbance or interference" with regard to funerals.

Notably, Michigan legislation does not prohibit demonstrations, but makes provisions for potential protesters to obtain a permit to demonstrate, so long as application for the permit was completed before the event. Michigan's bill leaves it up to local

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government officials to impose reasonable fines for any violations.

Time Restrictions

Most states impose time restrictions as to when demonstrations can take place. Most states (for example, Missouri, Louisiana, New Jersey, Ohio, Iowa, Georgia, Minnesota and Wisconsin) prohibit demonstrations one hour before, during, and one hour after funerals, memorial services, and in some cases, funeral processions and burials. Illinois prohibits demonstrations for 30 minutes before, during, and after, while Kansas and Michigan set one hour before and two hours after services as limits. Vermont prohibits demonstrations for two hours before and after any funeral.

Place Restrictions

The majority of states' legislation prohibits demonstrations at funerals or memorial services. A few added other sites, such as mortuaries, churches, synagogues, cemeteries, and in the case of Minnesota, South Dakota, and Ohio, private residences. Other states include the funeral procession in the list of prohibited spaces (Iowa, Vermont, New Jersey, Louisiana, Tennessee and Indiana).

Many of the states impose distance restrictions, with legislation limiting demonstrations to a certain number of feet away from the funeral activities. For example, Minnesota, Tennessee and Louisiana bar demonstrators from being closer than 1,000 feet to funeral activities, while Georgia, New Jersey, Vermont, Wisconsin, Indiana, Michigan and Iowa impose 500 feet restrictions. In contrast, Kansas, Ohio, and Illinois set limits of 300 feet, while Nebraska restricts demonstrators to 100 feet.

Penalties

Many states, including South Dakota, Kansas, Nebraska, Illinois, Minnesota, Tennessee, Louisiana, Georgia, New Jersey, Vermont, Ohio, Wisconsin, Iowa, Indiana, Florida, Virginia, and Missouri make it a misdemeanor to violate the new legislation. Of those states, several of them impose tougher penalties for the subsequent violations of the law in the form of increased fines and jail time. For example, in Wisconsin, a demonstrator violating the law could be fined up to \$1,000 and be imprisoned for up to 90 days or both for a first offense. However, subsequent violations could result in a \$10,000 fine and up to three and a half years in jail. The laws in Vermont and Louisiana are not as stringent, with Louisiana imposing fines of \$100 and/or a possible six month jail term, and Vermont a \$500 fine and/or a 30 day jail term if convicted.

South Dakota legislation includes provisions permitting a circuit judge to enjoin a demonstrator and to award damages to family members of the deceased. Minnesota legislation also provides civil remedies to surviving family members, allowing them injunctive relief and compensation.

Challenges to State Legislation

Funeral protest laws that impose only time and distance restrictions for any demonstrations are more likely to withstand protests from civil liberties groups.

Nevertheless, the fact that the laws have all been drafted in response to the Westboro group is inherently troublesome from a First Amendment perspective, because any law that singles out a particular viewpoint for regulation is constitutionally suspect. Tom McCoy, a professor at Vanderbilt Law School, told the First Amendment Center, "It is crystal clear that government officials cannot censor, regulate or suppress [Phelps'] anti-gay speech because of a dislike for the content of his message." However, McCoy also noted that "a funeral is not a public forum."

Laws limiting demonstrations are not new in the United States. Since Sept. 11, 2001, some states have passed laws limiting protests near airports. Protests are also generally limited within a certain number of feet from the Presidential motorcade, and are prohibited within federal buildings. Public protests are barred from private events and places by general trespass regulations. Until Feb. 28, 2006, federal extortion and anti-racketeering law including the Hobbs Act (18 U.S.C. 1951), were used to protect abortion clinics from organized protest groups that intimidated and assaulted clinic employees and doctors, harassed women visiting the clinics, and damaged clinic property. On Feb. 28, 2006, a ruling by the U.S. Supreme Court, *Scheidler v. NOW*, 126 S. Ct. 1264, rejected the premise that the extortion and racketeering laws could be used to curb protests. The Freedom of Access to Clinic Entrances Act (18 U.S.C. 248), passed in 1994, protects clinics by fixing parameters for protests and guaranteeing safe access to clinics.

According to Gene Policinski, Executive Director of the First Amendment Center, courts generally "recognize time-place-and-manner kinds of restrictions that are appropriate." However, laws that would ban only certain types of protests, or at certain types of funerals or memorial services, may raise constitutional issues. Geoffrey Stone, a professor at the University of Chicago School of Law who writes frequently on the topic of constitutional law, told the Associated Press, "You can prohibit noise near a school or a hospital or presumably near a funeral parlor as long as it is done neutrally."

During the consideration of Minnesota's proposed legislation, state Sen. Don Betzold (DFL-Fridley) told the *Minneapolis Star Tribune*, "It's a sad commentary that we have to do something like this, and nobody's saying we're going to repeal the First Amendment, but we're just saying, 'let these people have some space.'" According to Chuck Samuelson, executive director of the American Civil Liberties Union of Minnesota, the law is unlikely to face a constitutional challenge by his group because it does not directly target a viewpoint. "Placing restrictions of time, place or manner, but not on the content of speech, can serve a compelling public interest," Samuelson told the *Star Tribune*. "This is not a constitutional issue, it's a public policy issue."

As for Phelps, he plans to challenge Missouri's funeral laws, according to the *Kansas City Daily*

Freedom of Speech

Historian David Irving Found Guilty Under Austria's Holocaust Denial Law

British historian David Irving was sentenced on Feb. 20, 2006 to three years in an Austrian jail after pleading guilty to violating domestic laws against denying the existence of the Holocaust. Austria's federal court in Vienna found that statements Irving made 17 years ago violated the country's 1947 anti-Holocaust denial legislature, known as the Verbotsgesetz, (StF: StGBL. Nr. 13/1945, §§3a - 3g).

"Had there been an English law against Holocaust denial, we might never have had the chance to demonstrate that denial is just a web of lies. My defeat of Irving was sweet because it was based on reason."

— Author
Deborah Lipstadt

According to the Associated Press, the Verbotsgesetz legislation, passed in 1947 and amended in 1992 as a result of a resurgence of Nazi activities in Austria, makes it a crime to deny the Holocaust. Section 3h of the legislation provides a prison term of up to ten years for "whoever denies, grossly plays down, approves of or tries to excuse the [Nazi] genocide or other [Nazi] crimes against humanity in print publication, in broadcast or other media." Complete text of the law in German is available online at <http://www.unet.univie.ac.at/~a9806511/materialien/verbotsgegesetz.htm>.

Irving's arrest warrant dated back to 1989, when he gave two speeches and one interview in Austria during which he denied the existence of gas chambers in Auschwitz, claimed Hitler had not been involved in the murder of Jews but to the contrary had tried to protect them, and said that the infamous Kristallnacht pogrom was carried out by agitators dressed as Nazis, not actual Nazis. Irving was arrested in November 2005 while driving in Austria on his way to speak to a far right wing student group.

In addition to the activities for which the warrant was issued, Irving has written several books on World War II, focusing on Hitler and the Nazis. Much of his work, however, has been discredited by scholars. But during the trial, Irving claimed that his views on the Holocaust changed in 1991 after research involving the paper written by Nazi architect Adolph Eichmann convinced him that there was a Nazi plan to exterminate Jews. Irving further told the Associated Press in a Feb. 23, 2006 interview that his work contending there were no gas chambers at Auschwitz was the result of an error in his methodology. "The Nazis did murder millions of Jews," Irving told the Austrian federal court during proceedings.

State prosecutor Michael Klackl argued, however, that Irving was merely trying to avoid a prison sentence. "He's continued to deny the fact that the Holocaust was genocide orchestrated from the highest ranks of the Nazi state," Klackl said. He cited examples of statements Irving made in interviews during the 1990s after he had supposedly changed his views, including one incident in 1994 when he said the gas chambers were "a great lie."

Trial judge Peter Liebetreu agreed, stating during proceedings, "We did not consider the defendant to have genuinely changed his mind. The regret he showed was considered to be mere lip service to the law."

A Feb. 20, 2006, (London) *Times* article quoted the presiding judge as calling Irving a "falsifier of history

dressed up as a martyr" who had denied the "greatest crime of the 20th century." The article also quoted Irving as saying it was "ridiculous" to be tried for expressing an opinion and stating, "Of course it's a question of freedom of speech . . . I think within 12 months this law will have vanished from the Austrian statute book." The article is available online at <http://www.timesonline.co.uk/article/0,,13509-2049360,00.html>.

The Times further reported that Irving was surprised by the court's verdict, stating that he was "visibly stunned" as he left the courtroom. Irving was quoted as saying, "I'm very shocked and I'm going to appeal."

It is unusual for those charged under the Verbotsgesetz legislation to serve prison terms, resulting in concern that with this sentence, Irving could become a martyr for the far right. According to *The Times*, 724 people were charged under the Verbotsgesetz legislation in 2004, but few of them actually went to jail.

This was not the first time Irving has dealt with an unexpected trial result. In *Irving v. Penguin Books Ltd.*, a case tried in the Queen's Bench Division in 2000, Irving sued American professor Deborah Lipstadt and her publisher, Penguin Books, for libel. Irving claimed that passages in Lipstadt's book, *The Growing Assault on Truth and Memory*, was "part of a concerted effort to ruin his reputation as a historian," according to court transcripts. By suing in a British court, where the burden of proof is on the defendant to prove the truth of the statements made, Irving believed he stood a better chance of winning the case. However, Lipstadt and her defense team hired historians to prove her case.

One of the experts testifying for the Lipstadt trial, Cambridge professor Richard Evans, characterized Irving's scholarship as questionable, stating that "Not one of [Irving's] books, speeches or articles, not one paragraph, not one sentence in any of them, can be taken on trust as an accurate representation of its historical subject. All of them are completely worthless as history, because Irving cannot be trusted anywhere, in any of them, to give a reliable account of what he is talking or writing about."

Irving lost the Lipstadt case, was ordered to pay court costs and eventually filed for bankruptcy. More information about that trial can be found online at <http://www.holocaustdenialtrial.org/> or in Lipstadt's book *History On Trial: My Day in Court with David Irving*. Transcripts of the trial are also available online at <http://www.fpp.co.uk/Legal/Penguin/transcripts/index.html>.

In an article for *Newsweek International*, Lipstadt compared Irving's Verbotsgesetz trial with the 2000 libel trial. "To be sure, denying the Holocaust has a different resonance in Germany and Austria. But would it not be more effective if they shunned and marginalized those who glorify Hitler or deny his wrongdoings, rather than banned them? I countered Irving's hate speech – for that is what it is – with

Holocaust, continued on page 7

Government Restrictions on Information

Governor Prevails in Suit Filed by *Baltimore Sun*

A Feb. 16, 2006 ruling by federal judge Paul Niemeyer of the Fourth Circuit U.S. Court of Appeals has upheld a lower court's ruling that Maryland governor Robert L. Ehrlich did not violate *The Baltimore Sun's* First Amendment rights when he sent a November 2004 memo to state public information officers ordering them not to speak to David Nitkin, *The Sun's* State House Bureau Chief, or Michael Olesker, a *Sun* columnist. Ehrlich had issued the ban because he claimed the two Sun reporters had failed to "objectively report on any issues dealing" with Ehrlich's administration. (See "Access to Government: Maryland Governor Forbids Employees to Speak to Reporters" in the Fall 2004 issue of the Silha *Bulletin* and "Access to Government: Judge Upholds Maryland Governor's Ban on State PIOs Speaking to Two *Baltimore Sun* Reporters" in the Summer 2005 issue of the Silha *Bulletin*.)

The ruling in the case, *Baltimore Sun v. Ehrlich*, 437 F.3d 410 (4th Cir. 2006), was argued before a three-judge panel that included Judges J. Michael Luttig and William B. Traxler. According to Niemeyer, *The Sun* argued that Ehrlich's ban "intended . . . to coerce Nitkin and Olesker to conform their speech to his understanding of objective reporting" and that "a reasonable reporter's speech would be chilled by [Ehrlich's] manifest and expressed purpose."

Niemeyer, writing for a unanimous court, disagreed. Although Nitkin complained that phone calls to the governor's office were not returned, Niemeyer noted that the governor's office still responded to Nitkin's requests for information under Maryland Public Information Act (MPIA), §§ 10-611 *et seq.*; that he was still sent press releases and invitations to public press conferences (three of which he attended), and that since the ban, Nitkin was able to complete 43 articles about state government. Niemeyer stated that Olesker, unlike Nitkin, had not asked to be included on the governor's notification list. Olesker wrote only one article about state government since Ehrlich's ban, the same number as he had written in the eight weeks before the ban was imposed. Niemeyer further noted that "other reporters for *The Sun* have had their phone messages and e-mails returned, and they attended and reported on both press briefings from which Nitkin was excluded or not invited."

Although Ehrlich's ban may have appeared to single out Nitkin and Olesker, Niemeyer contended that it did not. He pointed out that it is common practice for politicians to favor some reporters while "declining to speak to reporters whom they view as untrustworthy because [they] have previously violated a promise of confidentiality or . . . distorted their comments." . . . [Allowing] *The Sun* to proceed on its retaliation claim . . . would 'plant the seed of a constitutional case' in 'virtually every' interchange between public officials and the press."

Niemeyer said Ehrlich's ban could not be characterized as retaliation against *The Sun* because it neither contained private information about Olesker or Nitkin, nor did it threaten, coerce or intimidate the newspaper.

In a February 15 *Sun* article, Nitkin stated, "I'm terribly disappointed by the decision. A fundamental point of this case is whether a governor gets to choose which reporters cover his or her administration. I'm thankful that the managers of *The Sun* took this case so seriously and fought so hard. . . . All we ever wanted was for the ban to be lifted and if that's still possible it would be great."

Olesker did not comment in the article, as he resigned from *The Sun* in January 2006 following accusations of plagiarism. (See "Media Ethics News: *Baltimore Sun* Columnist Fired for Plagiarism" on page 22 of this issue of the Silha *Bulletin*.

Sun editor Timothy A. Franklin stated, "The governor can't retaliate against any citizen, not just a journalist, based on what they say or what they write. We don't agree with the ruling at all, but we've decided not to take it up with the U.S. Supreme Court on appeal."

—ELAINE HARGROVE

SILHA FELLOW AND *BULLETIN* EDITOR

Holocaust, continued from page 6

honesty. In court we proved that every one of his claims was bunk. The judge's overwhelming ruling in my favor was devastating for all Holocaust deniers, as their core arguments collapsed under the light of day. Ironically, had there been an English law against Holocaust denial, we might never have had the chance to demonstrate that denial is just a web of lies. My defeat of Irving was sweet because it was based on reason."

Austria Today reported that on March 6 the Vienna county court banned Irving from speaking to the media. The ban extends to any representative of domestic or foreign media either in person or by phone, and includes reporters from radio, television, or print organizations. Family and close friends, however, may still visit him.

In interviews given between the time of his sentencing and imposition of the ban, Irving "not only reinforced his revisionist statements" but had also "concretely offended" the Republic of Austria during interviews from his jail cell. In one of these statements, Irving claimed there was no evidence that Nazis carried out a mass extermination of Jews, according to *Agence France Presse*. In another interview with the BBC, Irving questioned the number of Jews killed at Auschwitz, saying that it was "absolutely wrong" that Hitler was aware of an organized means to kill Jews, according to *Deutsche Presse-Agentur*. These statements and others may bring charges that Irving broke Austrian laws against Nazi revivalism, *Deutsche Presse-Agentur* reported, and seems to cast doubts on Irving's claims that he has changed his views on the Holocaust, as he stated during trial proceedings. Whether or not Austria brings additional charges, Irving's statements during recent interviews may impact appeals to lower his sentence.

—ASHLEY EWALD

SILHA FELLOW

—ELAINE HARGROVE

SILHA FELLOW AND *BULLETIN* EDITOR

"Allowing *The Sun* to proceed on its retaliation claim would 'plant the seed of a constitutional case' in 'virtually every' interchange between public officials and the press."

— Judge
Paul Niemeyer

Government Restrictions on Information

Reclassification Policies Revised at National Archives

Less than two weeks after *The New York Times* disclosed the existence of a controversial program aimed at reclassifying documents previously open to the public, National Archivist Allen Weinstein announced a “moratorium” on further reclassifications until an audit could be completed to determine which documents needed to be classified.

The Feb. 21, 2006, article, entitled “U.S. Reclassifies Many Documents in Secret Review,” brought national attention to the issue that was first noticed by historians in December 2005. Intelligence historian Matthew M. Aid was alerted to the problem when he discovered dozens of documents that he had photocopied in the past had been removed from the National Archives’ shelves.

Aid was quoted in *The Times* article as saying, “The stuff they pulled should never have been removed. Some of it is mundane, and some of it is outright ridiculous.”

Reclassified materials range from documents previously published in the State Department’s historical series *Foreign Relations of the United States* to papers that may have been reclassified because they are embarrassing, such as a report in which the CIA completely miscalculated whether or not Communist China would intervene in the Korean War in the fall of 1950.

After Aid and others complained to the Archives’ Information Security Oversight Office (ISOO), the group’s director J. William Leonard reviewed a sample of 16 documents that had been reclassified and concluded that none of them should have been made secret. “If those sample records were removed because somebody thought they were classified, I’m shocked and disappointed. It just boggles the mind,” Leonard was quoted as saying.

The ISOO launched an audit to review some of the 55,000 documents that had been reclassified since the program began in 1999. Details about the reclassification program itself have been scarce since it is itself classified. Archivist Weinstein said he knew “precious little” about it until the publication of *The Times’* article.

The Times reported on March 3, 2006, that the program includes the CIA, the Defense Intelligence Agency, and the Air Force.

In a press release dated Feb. 22, 2006, Weinstein said, “Inappropriate declassification can subject our citizens, our democratic institutions, our homeland security, and our interactions with foreign nations to potential harm. Inappropriate classification (and reclassification) needlessly disrupts the free flow of information and can undermine our democratic principles which require that the American people be informed of the activities of their Government.”

The statement also noted that the ISOO audit will “result in a public report designed to provide the greatest feasible degree of transparency to this classification activity” likely to be released within 60 days.

In a separate press release issued on the same date, Rep. Christopher Shays (R-Conn.), Chairman of the House Government Reform Subcommittee on National Security, Emerging Threats and International Relations, announced he will convene an oversight hearing on policies governing handling of sensitive information on March 14.

“We’re spending a great deal of time and money hiding information from ourselves,” Shays said. “Policies and procedures on classification, declassification, reclassification and designation of ‘sensitive but unclassified’ material have run amok. The Cold War intelligence machinery churns on, impervious to post-9/11 realities, and we’re literally drowning in faux secrets.”

— ASHLEY EWALD
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Wiretap Updates

Administration's Domestic Spying Program Raises Constitutional Questions

“Months after the Sept. 11 attacks, President Bush secretly authorized the National Security Agency to eavesdrop on Americans and others inside the United States to search for evidence of terrorist activity without the court-approved warrants ordinarily required for domestic spying, according to government officials.” So began James Risen and Eric Lichtblau’s Dec. 15, 2005 article in *The New York Times*, disclosing to the world what they had known but kept quiet about for a year – that the government was and is spying on American citizens. (See “Wiretap Updates: *New York Times* Held Story About Domestic Spying Program Over a Year” on page 11 of this issue of the *Silha Bulletin*.) In the process, the two created a maelstrom of public outcry directed alternately at the president for authorizing the program, the protesters for criticizing it, *The New York Times* for holding the story, and *The New York Times* for publishing the story, depending upon who was speaking.

Congressional hearings on the issue began in February 2006. The Department of Justice, meanwhile, opened a criminal investigation into who leaked the classified program’s existence to the media. On March 7, 2006, *The New York Times* reported that Republicans had worked out a deal with the White House to increase Congressional oversight of the program and at the same time avoid a full-scale investigation that Democrats and some Republicans had been calling for. On March 13, 2006, Sen. Russell Feingold (D-Wis.) introduced a resolution to censure President Bush, though it had gained little public support from congressional members of either party as of press time.

The original Risen/Lichtblau article revealed that Bush signed an executive order in 2002 authorizing the National Security Agency (NSA) to monitor e-mail and telephone calls between U.S. citizens and persons abroad suspected of being terrorists or linked to terrorists, even indirectly. Prior to Bush’s order, the NSA had to obtain warrants to monitor U.S. citizens. These warrant requests were generally handled by the Foreign Intelligence Surveillance Court (FISC), which meets in secret. The FISC already has a lower burden of proof for granting warrants than traditional criminal courts and permits monitoring for up to 72 hours before a warrant is required. The FISC was created by the Foreign Intelligence Surveillance Act (FISA), which imposes strict rules on domestic intelligence gathering after concerns surrounding the issue grew in the 1970s. The Court is equipped to handle emergency warrant requests, and has only rarely turned down any warrant requests. (For more on the FISA Court, see “Balancing National Security and Civil Rights: Foreign Intelligence Surveillance Appeals Court Reverses Lower Court” in the Fall 2002 issue of the *Silha Bulletin*).

Nevertheless, the Bush administration said that the FISC could not act quickly enough in all cases to grant urgent warrants to monitor large groups of people with suspected terrorist affiliations,

necessitating the revised surveillance program. Bush has cited both his constitutional Article 2 powers as Commander in Chief and the congressional authorization passed in late September 2001 (known as the Authorization for the Use of Military Force or “AUMF”) delegating him broad power to fight the war on terrorism as the legal authority for his program.

The deal between the White House and congressional Republicans would allow the administration to conduct wiretaps without a warrant for up to 45 days, after which the attorney general would be required to certify the need for continued surveillance without a warrant to a “terrorist surveillance subcommittee.” A March 7 *Times* article quoted Sen. John D. Rockefeller IV (D-W.Va.), the Vice Chairman of the Senate Intelligence Committee, as saying, “The committee is, to put it bluntly, basically under the control of the White House.” But Senator Mike DeWine (R-Ohio), who helped draft the proposal, said the deal would bring the program “into the normal oversight of the Senate intelligence committee.”

Attorney General Alberto Gonzalez has said there is a long history of wartime surveillance conducted under presidential authority. A Jan. 25, 2006 *Washington Post* article quoted him as saying, “It is an early-warning system with only one purpose: to detect and prevent the next attack on the United States.”

The article also quoted a news release from the September 11th Advocates, a group of relatives of victims from the attacks, which countered that the “Bush administration has continually used 9/11 as an excuse to break the laws of our great nation.”

During his State of the Union address on Jan. 31, 2006, President Bush stated that the government “failed to connect the dots of the [9/11] conspiracy.” He continued, “So to prevent another attack based on authority given to me by the Constitution and by statute I have authorized a terrorist surveillance program to aggressively pursue the international communications of suspected al Qaeda operatives and affiliates to and from America.” He contended that the program had helped prevent attacks and “remains essential to the security of America.”

In response to the President’s remarks, Feingold told the Senate on Feb. 8, 2006 that Bush’s arguments were “misleading.” Feingold said, “Defeating the terrorists should be our top national priority, and we all agree that we need to wiretap them to do it. In fact, it would be irresponsible not to wiretap terrorists. But we have yet to see any reason why we have to trample the laws of the United States to do it.”

He continued, “The President’s decision that he can break the law says far more about his attitude toward the rule of law than it does about the laws themselves.”

Fourteen law professors from across the political spectrum repudiated Bush’s arguments in a letter sent to Con-

During his State of the Union Address, President Bush contended that the program had helped prevent attacks and remains essential to the security of America.

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gress and later published Feb. 9, 2006 in *The New York Review of Books*, available online at <http://www.nybooks.com/articles/18650>. In that letter, they maintain that the AUMF cannot be reasonably interpreted to authorize warrantless surveillance when FISA specifically defines how surveillance may be conducted and allows it without court approval only for the first 15 days of a war. They argue that to interpret the AUMF in such a way as to allow unchecked wiretapping would raise "serious questions under the Fourth Amendment."

They further argued that presidential authority can be and is checked by congress' constitutional power to make laws, in this case FISA. They cited Justice Robert H. Jackson's famous concurrence in *Youngstown Sheet & Tube Co. v. Sawyer* (343 U.S. 579, 637 (1952)), that the president's power is at its "lowest ebb" when he acts in defiance of "the expressed or implied will of Congress." The professors also pointed out that "Attorney General Alberto Gonzales has admitted that the administration did not seek to amend FISA to authorize the NSA spying program because it was advised that Congress would reject such an amendment. The administration cannot argue on the one hand that Congress authorized the NSA program in the AUMF, and at the same time that it did not ask Congress for such authorization because it feared Congress would say no."

Former Senate Minority Leader Tom Daschle argued in a Dec. 23, 2005 op-ed piece in *The Washington Post* that, moments before the vote on the AUMF, the White House attempted to add language that would have allowed the president to use "all necessary and appropriate force in the United States against those nations, organizations or persons [the president] determines planned, authorized, committed or aided" the attacks of September 11.

According to Daschle, "This last-minute change would have given the president broad authority to exercise expansive powers not just overseas where we all understood he wanted authority to act but right here in the United States, potentially against American citizens. I could see no justification for Congress to accede to this extraordinary request for additional authority. I refused."

In a Jan. 5, 2006 memorandum, the nonpartisan Congressional Research Service, a public policy research arm of the U.S. Congress, concluded that "it appears unlikely that a court would hold that Congress has expressly or impliedly authorized the NSA electronic surveillance operations here under discussion, and it would likewise appear that, to the extent that surveillance falls within the definition of "electronic surveillance" within the meaning of FISA or any activity regulated under Title III, Congress intended to cover the entire field with these statutes." The full text of the memorandum is available online at <http://www.fas.org/sgp/crs/intel/m010506.pdf>.

First Amendment Implications

Although the controversy over the surveillance program centers on the Fourth Amendment, it also has First Amendment implications.

On Feb. 28, 2006, *The New York Times* reported that it had filed suit against the Department of Defense

under the Freedom of Information Act (FOIA) requesting "internal memorandums, meeting logs and e-mail messages about the National Security Agency's program of wiretapping in the United States without court warrants." According to the story, reporter Eric Lichtblau filed a request for the documents on Dec. 16, 2005, received an acknowledgement of his request on Dec. 30, 2005 on a preprinted postcard, but has heard nothing further since. FOIA requires a government agency to respond to a request for records within 20 business days by providing the records, denying the request, or seeking an extension of time.

The nature of the program itself may cause reporters to have second thoughts about contacting certain sources. Writing in the *Chicago Daily Law Bulletin* on Feb. 8, 2006, Douglass W. Cassell, Jr. noted that, "A limited proviso protects free speech [under the FISA statute]. Americans cannot be deemed agents of a foreign power based solely on *First Amendment* activities. If a reporter e-mails a member of al-Qaida to ask a journalistic question, she may not be targeted by a FISA wiretap (although the al-Qaida member may be a target). But if there is probable cause to believe she is conspiring with al-Qaida, she may be targeted." The surveillance program may blur that distinction by eavesdropping on any conversation between an al-Qaida operative and an American citizen, even if the citizen is a reporter.

Major telecommunication companies like AT&T, MCI and Sprint have cooperated with the government's surveillance program. Details on the inner workings of the program remain classified, but a Feb. 5, 2006 article in *USA TODAY* reported that officials familiar with the program said a four-step process is used to decide whether to monitor someone's calls or emails.

According to the article, intelligence first turns up a terrorist target who is communicating with someone in the United States. Next, one of three NSA officials goes through a 48-point checklist to determine whether there is a reasonable basis for believing a terrorist link may be involved and monitoring should therefore begin. Third, after an oral request from a government official, the telecommunications company grants the government access to their system without a warrant. Finally, if the surveillance turns up information, the NSA notifies the FBI or other federal agencies for follow-up.

The *USA TODAY* article noted that "Call-routing information provided by the phone companies can help intelligence officials eavesdrop on a conversation. It also helps them physically locate the parties, which is important if cell phones are being used." The article is available online at http://www.usatoday.com/news/washington/2006-02-05-nsa-telecoms_x.htm.

A Dec. 29, 2005 *Chicago Tribune* article reported that telecommunications companies providing assistance to the government is nothing new. Bob Atkinson, policy research director of the Columbia

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Wiretap Updates

New York Times Held Story About Domestic Spying Program Over a Year

The New York Times waited for a year to publish an article that finally ran Dec. 16, 2005 which revealed President Bush's authorization of warrantless domestic eavesdropping by the National Security Agency (NSA). That admission was included in the article, written by James Risen and Eric Lichtblau, and has created controversy in the media world, as critics and professionals have wondered exactly why the story was held, and whether *The Times* knew about – but did not write about – the contentious spying program before the November 2004 presidential election. Several debates have arisen since publication of the article, from balancing national security with the public interest in open government, to confidential sources and reporter's privilege. Though the domestic spying program has arguably created the larger controversy nationally, *The Times'* role in waiting to disclose it raises important ethical questions for media practitioners and audiences.

The original article, titled "Bush Lets U.S. Spy on Callers Without Courts," included the following paragraph as the only indication of the story's reporting and editorial timeline: "The White House asked *The New York Times* not to publish this article, arguing that it could jeopardize continuing investigations and alert would-be terrorists that they might be under scrutiny. After meeting with senior administration officials to hear their concerns, the newspaper delayed publication for a year to conduct additional reporting. Some information that administration officials argued could be useful to terrorists has been omitted."

As *Times* Public Editor Byron Calame wrote, that paragraph "caused major concern for scores of *Times* readers.... The mention of a one-year delay, almost in passing, cried out for a fuller explanation. And the gaps left by the explanation hardly matched the paper's recent bold commitments to readers to explain how news decisions are made."

In response to readers' concerns, *Times* Executive Editor Bill Keller issued two statements the day the article was published. "A year ago, when this information first became known to *Times* reporters, the Administration argued strongly that writing about this eavesdropping program would give terrorists clues about the vulnerability of their communications and would deprive the government of an effective tool for the protection of the country's security," Keller's statement reads. According to Keller, at that point administration officials "assured senior editors . . . that a variety of legal checks had been imposed that satisfied everyone involved that the program raised no legal questions. As we have done before in rare instances when faced with a convincing national security argument, we agreed not to publish at that time."

This may seem a surprising decision by the paper notably famous for its 1971 publication of the "Pentagon Papers," despite the national security concerns raised by then-President Nixon's administration. However, in that case the paper had

the "Pentagon Papers" in its possession for three months, and published the articles only once it deemed them ready. See *New York Times Co. v. U.S.*, 403 U.S. 713 (1971). Similarly, as Keller emphasized in his statement, it was further reporting over the course of that year that convinced *The Times* to publish the article. Specifically, Keller isolated two factors that led to *The Times* to reconsider its decision to hold the article. First, despite the earlier assurances of the program's legality, Keller wrote that "a fuller picture of the concerns and misgivings that had been expressed during the life of the program" came to light, and the accompanying "legal and civil liberties questions . . . loomed larger within the government than we had previously understood." Second, Keller wrote, the subsequent reporting showed that an article about the program could be successfully written without revealing "any intelligence-gathering methods or capabilities that are not already on the public record." Keller's statements suggest that it was the additional reporting done over the past year that led to the decision to publish an article they regarded as "complete," yet not threatening the national security concerns raised a year earlier.

Scott Armstrong, a former *Washington Post* reporter and currently the co-chair of an ongoing discussion between intelligence agencies and the media, told NPR's *On the Media* that removing sensitive information from national security stories is par for the course. "Almost every important national security story has something that is not in the story. It's not the job of the national security reporter to do something that might damage the national security. So there are things that you begin to say, 'Gee, I wonder if I really need to say that?'" Armstrong said. He also drew the distinction, however, between reporters listening to intelligence sources and administration officials: "... we've been trying to get reporters more educated about what it is that the intelligence professionals, as opposed to the political actors in the administration, what they're really sensitive about, because it hurts the intelligence business."

That distinction is at the heart of another, more contentious step in the NSA story's editorial history. *Newsweek's* Jonathan Alter revealed on December 19 that a meeting took place on Dec. 6, 2005 between administration officials and two executives at *The Times* – Publisher Arthur O. Sulzberger Jr. and Executive Editor Bill Keller – just days before *The Times* ran the NSA story. During that meeting, according to Alter, President Bush himself made a "futile attempt to talk them out of running the [NSA] story." The fact that this time around, *The Times* did not find those concerns compelling enough to continue to hold the story has puzzled readers and reporters alike. Furthermore, according to *Editor & Publisher*, *The Times* has not confirmed that the meeting took place. *The Washington Post's* Howard Kurtz noted on December 26 that the White House

***The Times'* role in waiting to disclose the story raises important ethical questions for media practitioners and audiences.**

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has not commented on the meeting either, though the meeting was “confirmed by sources who have been briefed on [it] but are not authorized to comment. . .”

Editor & Publisher’s Joe Strupp interviewed several journalists who thought that *The Times’* lack of disclosure was problematic. Jack Germond, a former reporter with *The Washington Star* and *The Baltimore Sun*, told Strupp that the meeting is newsworthy, and that he was “surprised” it wasn’t disclosed. “Why not report it? It is part of the story. You can agree not to discuss the details of the conversation with the president. But the fact that you have such a meeting is not off the record.”

Strupp found that many D.C. journalists were not at all surprised by the fact of the meeting. *CJR Daily’s* Gal Beckerman reported that, in addition to the meeting between *The Times* and the administration, *The Washington Post’s* executive editor, Leonard Downie Jr., has also met with President Bush about articles that involve national security concerns – specifically, a Nov. 2, 2005 *Post* article by Dana Priest which disclosed the existence of secret CIA prisons in eastern Europe. In that case, according to Strupp, Downie confirmed that *Post* officials had met with “senior administration officials,” but gave no further details.

These under-the-radar meetings with administration officials strike many media professionals and readers as inconsistent with media transparency. As Knight Ridder Washington editor Clark Hoyt told *Editor & Publisher’s* Strupp, “In general, readers ought to understand, and we ought to be as transparent as we can, about the process.” On the other hand, former *Times* executive editor Max Frankel told Strupp, “I don’t see what the big deal is in reporting it. I guess it is worth a line in the story, but I can’t get excited about it.”

Although there seems to be consensus that administration pressure over national security concerns is not necessarily unusual, what remains unclear is how papers should respond to it. Specifically, why did *The Times* decide to delay publication of its story in 2004, but not in 2005? “The decision to hold the story last year was mine,” Bill Keller told the *Post’s* Howard Kurtz on December 26. “The decision to run the story last week was mine. I’m comfortable with both decisions. Beyond that, there’s just no way to have a full discussion of the internal procedural twists that media writers find so fascinating without talking about what we knew, when, and how – and that I can’t do.” Ultimately, that lack of information did not bother Sydney Schanberg, formerly of *The Times* and currently at the *Village Voice*. He wrote that regardless of how you look at *The Times’* willingness to hold the story for a year, “the paper should get credit for digging it out and publishing it. But whatever one’s journalistic point of view, *The Times’* decision-making is not the central story here. The president’s secret directive is.”

The next issue, however, will be what the administration will do about the leak. According to NPR’s *On the Media*, the Justice Department began

a leak investigation two weeks after the spy article was published. Reporters Risen and Lichtblau wrote that they had used “nearly a dozen” confidential sources in reporting their NSA article. Referring to the potential that the reporters could be subpoenaed and asked to reveal their sources, *On the Media’s* Brooke Gladstone stated, “It could be a replay of the Valerie Plame case, where the judge didn’t buy reporters’ claims that they have a right to protect their sources.” (See “Reporters Privilege News: Judith Miller resigns from *The New York Times*” and “Reporters Privilege News: Shield Law Update” in the Fall 2005 issue of the *Silha Bulletin*; see “Reporters Privilege News: New York Times’ Judith Miller Released After 85 Days; Dole Suggests Identities Law Not Violated” in the Summer 2005 issue of the *Silha Bulletin*; see “Reporters Privilege News: Supreme Court Denies Cert in Miller/Cooper Cases” in the Spring 2005 issue of the *Silha Bulletin*; see “*In re: Grand Jury Subpoena*, 397 F.3d. 964 (D.C. Cir.)” and “Plame Update: Journalists Miller and Cooper Appeal Their Sentences” in the Winter 2004 issue of the *Silha Bulletin* and “Reporters Privilege: *In re: Special Counsel Investigation*” and “Columnist’s Story Prompts Investigation into Government Leaks” in the Fall 2003 issue of the *Silha Bulletin*.) Geoffrey Stone, a University of Chicago law professor, told Gladstone that, whether or not Risen and Lichtblau are subpoenaed, he believes the leak investigation is mainly being used to distract from the contentious nature of the NSA program. “. . . I have no doubt that . . . the administration is using the investigation in order to focus public attention on the ‘disloyalty,’ in quotes, of the leakers and of the reporters.” *The Times* wrote on February 12 that C.I.A. director Porter Goss has expressed hope that the reporters would be subpoenaed, telling a Senate intelligence committee on February 2, “It is my aim, and it is my hope that we will witness a grand jury investigation with reporters present being asked to reveal who is leaking this information. I believe the safety of this nation and the people [of] this country deserve nothing less.” *The Times* also reported that this investigation may potentially “lay the groundwork” for a grand jury. As the *Bulletin* went to press, a grand jury had not been formally announced, nor had it been announced whether the two reporters will be issued subpoenas.

In a related event, *The Times* reported on February 28 that the paper filed a lawsuit against the Department of Defense (DoD) in Federal District Court in Manhattan, alleging that the DoD failed to comply with a December 16 FOIA request by Lichtblau seeking internal memos, emails, and meeting logs regarding the NSA’s domestic spying program. Though an automated postcard from the DoD acknowledged the request on December 30, according to *The Times* the Pentagon had not made a ‘substantive response’ to the request, as required under the Freedom of Information Act, within the mandated 20-day period.

— PENELOPE SHEETS
SILHA RESEARCH ASSISTANT

Freedom of Information Act News

Transcripts of Guantanamo Tribunals Released

The Associated Press has prevailed in a Freedom of Information Act (FOIA) lawsuit against the Department of Defense (DoD), seeking transcripts from the *ad hoc* military tribunals of Guantanamo Bay detainees that began in August 2004. The case, *Associated Press v. Department of Defense*, 2006 U.S. Dist. LEXIS 2456, (S.D.N.Y. 2006) was decided January 23 by Judge Jed S. Rakoff. With the transcripts in the hands of the Associated Press, detainees' attorneys hope to clear their clients of charges against them, while human rights advocates hope to provide information to detainees' families as well as investigate allegations of abuse.

The Associated Press first filed the request for the transcripts in November 2004 under FOIA, 5 U.S.C. § 552. When the DoD did not respond, the Associated Press filed suit in federal district court in Manhattan in April 2005. The DoD then released redacted copies of the transcripts, with "identifying information" such as detainees' names, interment serial numbers, detainees' nationalities, countries of origin and the names of family members removed. The DoD did not rely on the national security exemption, but rather FOIA's Exemption 6, which protects subjects' privacy by preventing disclosure of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

The DoD sought summary judgment from the court, but before issuing a ruling, Rakoff directed the DoD to "ask the detainees in question whether they wish the redacted information . . . to be released to the Associated Press or not." Detainees were to receive a notice translated into their own languages that read: "You have previously appeared before a United States military tribunal and made statements that were written down in the form of a transcript. The Associated Press, an international news organization, has asked the United States to release copies of those transcripts, so that it can report on the proceedings. The United States has released large portions of those transcripts, but has held back information about your name and identity, believing that the release of such information may be dangerous to you and your family. Before deciding whether this was proper, the Court that is hearing this dispute would like to know your preference." The notice was followed by a form where each detainee could choose between two boxes, one that read: "Yes, I want the identifying information about myself released to the Associated Press" or "No, I do not want the identifying information about myself released to the Associated Press." See *Associated Press v. United States Department of Defense*, 395 F. Supp. 2d 15 (S.D.N.Y. 2005). At the beginning of January 2006, Rakoff reported that "of the 317 detainees who received the form, 63 checked 'Yes,' 17 checked 'No', 35 returned the form without checking either response, and 202 declined to return the form." He denied the DoD's motion for summary judgment. See *Associated Press v. U.S. Department of Defense*, 410 F. Supp. 2d 147 (S.D.N.Y. 2006).

Following that ruling, the DoD filed a motion for reconsideration on the ground that Rakoff had overlooked the alleged privacy interests of detainees' friends, families and other associates. Rakoff wrote in his January 23 ruling that because the DoD had not raised this point previously except in a footnote, it was not significant enough to warrant reconsideration. If this were the case, Rakoff wrote, "disappointed litigants would be forever raising new arguments and there would be no end to litigation."

Rejecting the claim that detainees' privacy rights justified withholding their names and other information, Rakoff wrote that the information contained in "quasi-judicial proceedings before a military tribunal bear little resemblance to medical or personnel files." Furthermore, military tribunal proceedings were "visibly being recorded by the equivalent of a court reporter . . . Nor does it appear that any detainee requested that his testimony be held in confidence." In addition, Rakoff noted: "While the proceedings were closed to the general public, the press was present." (See "U.S. Government and the Media: Media Attending Detainee Hearings Must Follow Rules" in the Summer 2004 issue of the Silha *Bulletin*.)

As to the privacy interests of detainees' friends and family, Rakoff wrote that once a detainee was arrested, their friends and relatives "never had a reasonable expectation that the detainee and/or his captors would not reveal . . . their names." Rakoff therefore ruled for the Associated Press, ordering the DoD to provide the Associated Press with unredacted copies of the transcripts.

According to the Associated Press, an unredacted version of the transcripts was delivered in the form of a CD-ROM by a Pentagon lawyer 20 minutes after the March 3 deadline. However, a few minutes later, the attorney returned, saying the CD contained other documents not intended for release and which were not a part of the Associated Press's FOIA request. A new version of the CD, complete with the unredacted transcripts, was provided an hour later.

On March 5, the Associated Press reported that an examination of the transcripts revealed that the evidence against some of the detainees is flimsy, adding that "Again and again, detainees are told that there is other evidence against them, but they are not permitted to see it. It is impossible to gauge from the transcripts alone whether someone is improperly held at Guantanamo Bay . . ." The article concluded, "[T]he administration itself seems to have acknowledged that many suspects do not belong at Guantanamo. The military has stopped bringing new detainees to the prison and has transferred or released about 270. The Pentagon said it would reduce the detainee population by about 30 percent with more transfers and releases."

On March 14, the Associated Press reported that it has filed another suit for the release of records from the DoD, this time for the release of records identifying all past and current detainees at Guantanamo. That suit was also filed in the U.S. District Court in Manhattan.

With the transcripts in the hands of the Associated Press, detainees' attorneys hope to clear their clients of charges against them, while human rights advocates hope to provide information to detainees' families as well as investigate allegations of abuse.

— ELAINE HARGROVE

SILHA FELLOW AND *BULLETIN* EDITOR

New Justice Alito Addresses the Importance of the First Amendment At Confirmation Hearings

United States Supreme Court Justice Samuel A. Alito, Jr. highlighted the importance of First Amendment rights during his confirmation hearing, but deflected more specific inquiries about his view on the amendment, leaving open the question of how he would vote as the newest member of the high court.

"I think that freedom of speech and freedom of the press and all the freedoms set out in the First Amendment are matters of the utmost importance," Alito said during his January 2006 confirmation hearing. "If anybody reviews the opinions that I've written in the area of freedom of expression and other First Amendment [provisions]... they will see that I strongly support those rights."

Although he did not discuss his personal views on topics such as commercial speech and the establishment clause, Alito encountered those issues many times in his 15 years as a judge on the Third Circuit United States Court of Appeals. Alito wrote majority opinions for 20 First Amendment cases, participated in several per curiam opinions and heard others in which he offered no written opinion. Of his 20 majority opinions, 14 dealt with freedom of expression and six with freedom of religion, the First Amendment Center reported.

During his confirmation hearing, Alito offered his views on public-forum speech, an area he indicated he would strongly support against governmental viewpoint discrimination. An excerpted transcript of the hearing as transcribed by *The Washington Post* is available online at <http://www.firstamendmentcenter.org/news.aspx?id=16306>.

"Viewpoint discrimination really goes to the heart of what the First Amendment is intended to prohibit," Alito said. "If the government opens up a particular forum for discussion of a particular subject, you can't say 'But we're only going to allow people who express this viewpoint and not another viewpoint.'"

Many of Alito's other positions have been left largely to speculation based on his Third Circuit opinions. Those cases reveal that Alito generally has been more protective of categories such as religion and commercial speech but less protective of speech by prisoners. He has shown concern about prior restraints on speech and has been protective of speech in defamation cases. More information on Alito's positions is available online at <http://www.americanprogress.org/site/pp.asp?c=bjJRJ8OVF&b=1309257>.

That general pattern has proven true in recent Third Circuit cases in which Alito took part. In *Franklin Prescriptions, Inc. v. New York Times Co.*, 424 F.3d 336 (3rd Cir. 2005), a libel case decided on September 12, Alito voted to affirm the lower court's holding that *The New York Times* was liable for defamation for an article the paper published with reckless disregard for its falsity. However, the court also affirmed the jury's refusal to award damages because Franklin Prescriptions did not show it had suffered actual harm. See "Defamation News: *Franklin Prescriptions, Inc. v. New York Times Co.*" in the Fall 2005 issue of the Silha Bulletin.

Alito also ruled in favor of speech in *The Pitt News v. Pappert*, 379 F.3d 96 (3rd Cir. 2004). The Third Circuit struck down a Pennsylvania statute that prohibited paid advertising for alcohol in college newspapers. Alito said the statute was not narrowly tailored and unfairly singled out student publications. See "Student Press: *Pitt News*

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— Justice
Samuel A. Alito

Can Run Alcohol Ads" in the Summer 2004 issue of the Silha Bulletin.

In declaring "There is no categorical 'harassment exception' to the First Amendment's free speech clause," Alito, writing for a unanimous Third Circuit, struck down a public school's anti-harassment policy in *Saxe v. State College Area Sch. Dist.*, 240 F.3d 200 (3rd Cir. 2001).

"There is of course no question that non-expressive, physically harassing conduct is entirely outside the ambit of the free speech clause," Alito wrote. "But there is also no question that the free speech clause protects a wide variety of speech that listeners may consider deeply offensive, including statements that impugn another's race or national origin or that denigrate religious beliefs."

Further analysis of Alito's First Amendment opinions is available online at firstamendmentcenter.org/analysis.aspx?id=16003.

Although Alito has been noted as being generally supportive of speech, he has been criticized for siding with the government on the power to wiretap, rather than protecting citizens' rights to speak. "At a time when the nation is faced with revelations that the Administration has been wiretapping American citizens, we find that we have a nominee [now justice] who believes that officials who order warrantless wiretaps of Americans should be immune from legal accountability," Sen. Edward M. Kennedy (D-Mass.) told *The Washington Post*.

While working as a lawyer in the Reagan Justice Department, Alito wrote a memo in 1984 regarding Richard Nixon's attorney general John N. Mitchell, arguing Mitchell should have immunity for wiretapping actions taken to protect the United States from threats such as terrorism and espionage, *The Washington Post* reported. (For more on the current wiretapping controversy, see "Wiretap Updates: Administration's Domestic Spying Program Raises Constitutional Questions" on page 9 of this issue of the Silha Bulletin.)

Alito supporters said the memo, which addressed Mitchell's order to wiretap antiwar activists in 1970, did not defend warrantless eavesdropping, but dealt only with whether government officials, when forced to make immediate decisions, can be sued if they erred, *The Washington Post* reported. The complete article is available online at <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/23/AR2005122301566.html>.

Alito soon will have an opportunity to hear a First Amendment case dealing with the free-speech rights of government employees when the U.S. Supreme Court rehears *Garcetti v. Ceballos*, No. 04-473. The Court announced on Feb. 18, 2006 that it would rehear the case but did not indicate why, *The Washington Post* reported. The calendar for this term is full and the Court did not indicate when it would schedule the rehearing.

Alito received his bachelor's degree from Princeton University and earned his juris doctorate from Yale Law School. Before President George H. Bush appointed Alito to the Third Circuit and he was unanimously confirmed by the Senate in 1990, Alito served as a law clerk for the court. Alito's career history and his background are available online at <http://www.whitehouse.gov/infocus/judicialnominees/alito.html>.

— JESSICA MEYER
SILHA RESEARCH ASSISTANT

Internet Updates

Yahoo, Microsoft, Google, and Cisco Systems Criticized For Complying with Chinese Restrictions

For many Americans, the phrase “Tiananmen Square” brings to mind the June 1989 suppression of student protesters by the Chinese government in Beijing, China. And, searching for that phrase on the “images” portion of the American version of Google (images.google.com) leads to nearly a full page of the event’s iconic picture: a student protestor standing before a line of military tanks. Searching for the same terms on the images portion of the recently-launched Chinese version of Google (images.google.cn), however, turns up a very different set of results. Instead of any pictures of the massacre, pictures of smiling couples and peaceful street scenes abound. Though an argument can be made that both sets of results in this frequently cited example present viewpoints, the dichotomy reflects Google’s compliance with the Chinese government’s censorship requirements, and is a source of ongoing controversy. Yahoo!, Microsoft, and Cisco Systems, together with Google, have come under fire for their compliance with the Chinese government, and all four companies were harshly criticized on Capitol Hill on Feb. 15, 2006, in a joint hearing of the U.S. House of Representatives Subcommittee on Africa, Global Human Rights and International Operations and the House Subcommittee on Asia and the Pacific.

The hearing took place one day after two other developments in the same arena: the State Department announced a new “Global Internet Freedom Task Force,” and Representative Chris Smith (R-N.J.), chairman of the House Subcommittee on Africa, Global Human Rights and International Operations, introduced a discussion draft of his proposed “Global Online Freedom Act of 2006.” Two weeks earlier, the four companies failed to attend a February 1 meeting of Representative Tom Lantos’s (D-Calif.) Congressional Human Rights Caucus, convened “to analyze the role of U.S. business in Chinese internet censorship,” according to *Fortune*. During the February 15 congressional hearing, however, the companies took the opportunity to defend those actions that have recently come under fire in the media.

The ongoing debate over these companies’ activities in China, where media – including the Internet – are tightly controlled, has raised the competing interests of the right to freedom of speech on one hand, and the obligation of businesses to comply with local laws and regulations on the other. Examining the contested activities of the four companies provides a better perspective from which to evaluate the competing interests at stake.

In his opening statement, Smith criticized Cisco for providing the Chinese government “with the technology necessary to filter internet content,” and for doing “little creative thinking to try to minimize the likelihood that its products will be used repressively.” Cisco, a company that manufactures hardware (routers and switches) that transmit Internet

content across networks, was criticized for providing the Chinese government with special technology capable of facilitating increased filtering of content – an allegation Cisco denied during the hearing, stating that “Cisco sells the same equipment in China as it sells worldwide.” The other three companies have been much more widely and publicly criticized for their activities. At the behest of the Chinese government in December 2005, Microsoft shut down a popular blog written by Zhao Jing (writing under the name “Anti”), a Chinese journalist and political blogger who frequently criticized the Chinese Communist Party, according to *The Washington Post*. Yahoo! has been accused of aiding the Chinese government by turning over records that led to the identification and imprisonment of two journalists, Li Zhi, in 2003, and Shi Tao, in 2005, according to Reuters. (See “Endangered Journalists: Yahoo Assists China in Arresting Journalist” in the Fall 2005 issue of the *Silha Bulletin*.)

Finally, Google has been criticized for its recent launch of a censored Chinese search engine, google.cn. Whereas the original version of the search engine, google.com, which is available in China, is subject to censorship by the Chinese government, google.cn is censored by Google itself, in compliance with Chinese regulations. The self-censorship increases the speed with which search results appear, whereas the external imposition of government censorship tends to make searching much slower. Google acknowledged at the hearing that self-censorship was a difficult step for the company to take, but defended taking that step by focusing on the overall benefit to Chinese users, stating “Even with content restrictions, a fast and reliable Google.cn is more likely to expand Chinese users’ access to information.” Yahoo! and MSN also have some censored services in China, but according to CNET’s Declan McCullagh, Google’s version is more stringent. The “Tiananmen Square” image search is one among many examples of censored search results, and was mentioned by Smith in his opening statement.

Yahoo! and Microsoft, like Google, stressed the necessity of complying with local laws in their statements before the hearing. Yahoo! admitted that the facts of the Shi Tao case were “distressing,” but also pointed out that “These issues are larger than any one company, or any one industry. We all face the same struggle between American values and the laws we must obey.” Microsoft also expressed its “deep concern” over the issues raised in the hearing, but added that “... In the end, the legal framework in any particular jurisdiction is not one that private companies are in a position to define for ourselves. National law and policy set parameters in every country in which we do business, and private companies are required to give them due deference as a condition of engaging in business there.”

The ongoing debate over these companies’ activities in China has raised the competing interests of the right to freedom of speech on one hand, and the obligation to comply with local laws on the other.

Google China, continued from page 15

Smith's answer to the issue of complying with local laws and regulations is his proposed "Global Online Freedom Act of 2006," introduced in the house on February 26 as H.R. 4780. The bill aims "To promote freedom of expression on the Internet, to protect United States businesses from coercion to participate in repression by authoritarian foreign governments, and for other purposes," according to its full title. The bill outlines three main policies: "to promote the ability of all to access and contribute information, ideas, and knowledge via the Internet and to advance the right to receive and impart information and ideas through any media regardless of frontiers as a fundamental component of [U.S.] foreign policy; to use all instruments of [U.S.] influence . . . to support, promote, and strengthen principles, practices, and values that promote the free flow of information; and to prohibit any [U.S.] businesses from cooperating with officials of Internet-restricting countries in effecting the political censorship of online content." The bill also establishes an "Office of Global Internet Freedom," which will, among other things, be charged with working with relevant groups "to develop a voluntary code of minimum corporate standards related to Internet freedom." Such "minimum standards" are proposed in the bill as well, including this standard that would ostensibly prohibit the behavior for which Google, at least, is currently being criticized: "Any [U.S.] business that creates, provides, or hosts any Internet search engine may not locate that search engine or content hosting service with a designated Internet restricting country." The full text of the bill and additional information is available online at http://rconversation.blogs.com/rconversation/2006/02/global_online_f.html.

The underlying debate over the appropriate role of U.S. companies in China and in complying with international laws continues. Despite the cacophony of differing opinions in the United States, China also has expressed its official views on the matter. Qin Gang, spokesman for the Chinese Foreign Ministry, defended China's censorship of the Internet, telling the Associated Press, "It is normal for countries to manage the Internet in accordance with law and to guide its development in a healthy and orderly fashion. China has also borrowed and learned from the United States and other countries in the world." An Internet official from China's State Council, Liu Zhengrong, explained the censorship as similar to Internet monitoring approaches used in other countries, including the United States, according to *The New York Times*. For instance, he cited Web sites run by *The Times* and the *Post* that include statements reserving the right to block or remove content from reader discussion groups if editors determine such content to be harmful, in bad taste, or illegal. Liu asked *The Times*, "Major U.S. companies do this and it is regarded as normal. So why should China not be entitled to do so?" Liu also raised the example of the U.S. government's close monitoring of some Web sites and e-mail under provisions of the PATRIOT Act, saying "It is clear that any country's legal authorities closely monitor the spread of illegal information. We have noted that the U.S. is doing a good job on this front."

Despite the many competing views, one idea that seems to have reached a consensus by both the companies under scrutiny and the government, is that, as Nicholas D. Kristof editorialized in *The Times*, "the Internet is a force for change in China." Though it does not appear that any of the four companies will suffer any legal consequences here in the U.S. for its actions, the outcome of Smith's proposed bill could potentially drastically change the nature of the global Internet business.

As the *Bulletin* went to press, Reuters reported that the Chinese government shut down two political blogs, "the latest in a wave of shutdowns as Chinese censors tighten controls in cyberspace."

— PENELOPE SHEETS
SILHA RESEARCH ASSISTANT

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Institute for Tele-Information, told the newspaper, "In the 1960s, I worked for an international telex and telegram carrier in their Washington office. Every day a government agent stopped by to pick up copies of all telegrams that were sent overseas. . . . I asked about it once and was told we'd been making copies available to the government since World War II. I think the practice only ended when people stopped sending telegrams."

The Electronic Freedom Foundation (EFF) filed a class action lawsuit in the United States District Court for the Northern District of California (San Francisco) against AT&T in January 2006 over the practice of handing over customer information to the government without a court order. In its amended complaint filed Feb. 22, 2006, the plaintiffs allege that "AT&T Corp. acted as an instrument or agent of the government, and thereby violated Plaintiffs' and class members' reasonable expectations of privacy and denied Plaintiffs and class members their right to be free from unreasonable searches and seizures as guaranteed by the Fourth Amendment to the Constitution of the United States, and additionally violated Plaintiffs' and class members' rights to speak and receive speech anonymously and associate privately under the First Amendment." The case is *Hepting v. AT&T Corp.*, case number 3:06-CV-00672.

— ASHLEY EWALD
SILHA FELLOW

Privacy News

Federal Appeals Court Finds McDermott in Violation of Wiretap Law

A 2 to 1 ruling by a federal appeals court panel in Washington, D.C., has found that Representative Jim McDermott (D-Wash.) violated the federal wiretap law, 18 U.S.C. §2511 *et seq.*, when he disclosed a tape recording of a phone conversation involving U.S. House Majority Leader John A. Boehner (R-Ohio) and other members of the Republican Party leadership in 1996 that he had reason to know was illegally obtained. The case, *Boehner v. McDermott*, No. 04-7203, was decided March 28, 2006.

As Judge A. Raymond Randolph explained in his majority opinion, in which he was joined by Judge Douglas H. Ginsburg, Boehner's December 21 conversation took place at the time of an investigation by the House Ethics Committee into an ethics charge against then-Speaker of the House Newt Gingrich (R-Ga.). While on vacation in Florida, Boehner, who was chairman of the Ethics Committee, used a cell phone to hold a conference call in which he and others discussed how Gingrich might accept a reprimand and pay a fine in exchange for the Committee's promise not to hold a hearing on the charges against him.

As Boehner continued his conversation, John and Alice Martin, a couple living in Florida, picked up the call on their police scanner and recorded it. After meeting and speaking with then-Representative Karen Thurman (D-Fla.), the Martins were advised to turn the tape over the Ethics Committee. On Jan. 8, 1997, the Martins delivered the tape to the Ethics Committee hearing room with a letter explaining the origin of the tape and stating that even though they were in violation of the wiretap law, they understood they would be granted immunity. Later that evening, McDermott went to the hearing room, opened the envelope and listened to the tape. He then called reporters with the *Atlanta-Journal Constitution* and *The New York Times*. Both newspapers subsequently ran stories about the tape.

On Jan. 13, 1997, the Martins held a news conference and identified McDermott as the congressman to whom they had given the tape. The Martins were then charged with violating the federal wiretap law. They pled guilty and were fined \$500. Meanwhile, McDermott sent copies of the tape to the offices of the House Ethics Committee and then resigned from the committee. He subsequently was also charged with violating the wiretap act.

McDermott's defense relied on the Supreme Court's ruling in *Bartnicki v. Vopper*, 532 U.S. 514 (2001). In *Bartnicki*, a cellular telephone conversation between Gloria Bartnicki, a negotiator in a contract dispute then taking place, and Anthony Kane, president of a teacher's union, was intercepted. In the course of the conversation, Bartnicki made an apparent threat to do damage to the homes of members the local school board. Jack Yocom, president of the group formed to oppose the teachers' union during the negotiation, found the tape in his mailbox, where it had been left with no

indication of the identity of the person who had intercepted or recorded the call. Yocom then gave the tape to radio host Frederick Vopper, who played it on his program.

The *Bartnicki* case made its way through the courts, coming before the U.S. Supreme Court in 2001, where the basis of the Supreme Court's decision in the case turned on the question: "Where the punished publisher of information has obtained the information in question in a manner lawful in itself but from a source who had obtained it unlawfully, may the government punish the ensuing publication of that information based on a defect in a chain?" The majority in *Bartnicki* ruled that because neither Yocom nor Vopper had any part in illegally recording Bartnicki's phone call, and because the recorded conversation touched on matters of public interest, neither of them could be held guilty of violating the wiretap law. (See "Supreme Court to Rule on Wiretap Case" in the Fall 2000 issue of the *Silha Bulletin* and "U.S. Supreme Court Rules in Historic *Bartnicki* Case" in the Summer 2001 issue of the *Silha Bulletin*.) The *Boehner* case also reached the Supreme Court in 2001, where, in the light of the ruling in *Bartnicki*, the high court ordered *Boehner* vacated and remanded to the Court of Appeals.

In the present *Boehner* case, McDermott argued that *Bartnicki* stands for the proposition that "any individual who did not participate in the illegal interception of a conversation has a First Amendment right to disclose it." Randolph disagreed, writing that the letter the Martins included with the tape made the tape's origins clear. "[I]t does not follow that anyone who receives a copy of [an illegally-intercepted conversation] has obtained it legally and has a First Amendment right to disclose it. If that were the case, then the holding in *Bartnicki* is not 'narrow' as the Court stressed, but very broad indeed." (Emphasis added.) Randolph cited the district court's ruling on the case, quoting, "On the other hand, if [McDermott] learned of the contents of the letter at some later time after taking possession of the tape, . . . the case more closely resembles *Bartnicki*."

Randolph continued, "Because there was no genuine dispute that Representative McDermott knew the Martins had illegally intercepted the conversation, he did not lawfully obtain the tape from them. The Martins violated §2511 not once, but twice – first when they intercepted the call and second when they disclosed it to [McDermott]. It is of little moment whether [McDermott's] complicity constituted aiding and abetting their criminal act, or the formation of a conspiracy with them, or amounted to participating in an illegal transaction. . . . It is the difference between someone who discovers a bag containing a diamond ring on the sidewalk and someone who accepts the same bag from a thief, knowing the ring inside to have been stolen. The

"Because there was no genuine dispute that Representative McDermott knew the Martins had illegally intercepted the conversation, he did not lawfully obtain the tape from them."

— Judge
A. Raymond
Randolph

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former has committed no offense; the latter is guilty of receiving stolen property, even if the ring was intended only as a gift.” Randolph concluded, “The difference between this case and *Bartnicki* is plain to see.”

In his dissenting opinion, Judge David B. Sentelle wrote that McDermott should not be found guilty of violating federal wiretap laws. He cited *Florida Star v. B.J.F.*, 491 U.S. 524 (1989), a case involving a reporter who obtained the name of a rape victim that had been erroneously included in public police records. The victim’s name was subsequently published in the *Florida Star*. Sentelle wrote: “The [*Florida Star*] Court concluded, however, that ‘it would be quite remarkable to hold that speech by a law-abiding possessor of information can be suppressed in order to deter the conduct by a non law-abiding third party.’”

Sentelle further explained that although the *Florida Star* case was concerned with personal privacy concerns, it also recognized the importance of the right to publish newsworthy information. “[F]ear of public disclosure of private conversations might well have a chilling effect on private speech,” Sentelle wrote, quoting “The Right to Privacy,” an article by Samuel D. Warren and Louis D. Brandeis that appeared in the *Harvard Law Review* in 1890: “[t]he right to privacy does not prohibit any publication of matter which is of public or general interest.”

Sentelle concluded that the majority’s opinion was “fraught with danger” because it misinterpreted the Supreme Court’s ruling in *Bartnicki*. Neither states nor the federal government “can constitutionally bar the publication of information originally obtained by unlawful interception but otherwise lawfully received by the communicator. . . . I do not believe the First Amendment permits this interdiction of public information either at the stage of the newspaper-reading public, or the newspaper-publishing communicators, or at the stage of Representative McDermott’s disclosure to the news media,” Sentelle wrote.

In a press release posted on his congressional web page, McDermott wrote, “The American people have a right to know when their government’s leaders are plotting to deceive them, and that is exactly what was happening during a telephone call in 1996 involving Republican House leaders, including then Speaker of the House Newt Gingrich and Rep. John Boehner.” McDermott continued, “Our legal counsel is studying the decision, and we will decide on a course of action in the days ahead.” McDermott’s press release is available online at www.house.gov/mcdermott/pr060328.shtml.

— ELAINE HARGROVE
SILHA FELLOW AND *BULLETIN* EDITOR

Funerals, continued from page 5

Record. The state’s law may be unconstitutionally vague, because it prohibits protests from taking place in areas “in front of or about” a church, cemetery, or funeral home. “‘About’ – what does that mean?” University of Missouri School of Law at Columbia Professor Christina Wells told the *Daily Record*. “If you go across the street, are you still ‘about?’”

Brett Shirk, executive director of the ACLU of Kansas and Western Missouri, told the *Daily Record* that he finds the Missouri law also provides no alternative means of communication. “Nobody arrives at a funeral an hour early or stays an hour afterward. The law basically says you can’t convey a message, period,” he told the newspaper. Assuming that the attendees at the funeral are the demonstrators’ intended audience, the law must make provisions for the demonstrators to reach them, Shirk said. The intended audience “is the million-dollar question,” Wells told the *Daily Record*.

The National Conference of State Legislatures (NCSL) reported that, as of April 19, 2006, 31 states have introduced legislation setting limits of various kinds for funeral demonstrations. Those states are: Alabama, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin. According to the NCSL and the Associated Press, as of April 17, ten states had enacted the laws: Arkansas, Indiana, Iowa, Kentucky, Missouri, Nebraska, Oklahoma, South Dakota, Virginia, and Wisconsin.

—SARA CANNON
SILHA CENTER STAFF
— ELAINE HARGROVE
SILHA FELLOW AND *BULLETIN* EDITOR

Privacy News

Free Speech Rights Trump Religious Beliefs in Photography Case

Erno Nussenzweig, an Orthodox Hasidic Jew, has lost a lawsuit claiming that a picture taken of him by photographer Philip-Lorca DiCorcia and later included as part of an art exhibition and accompanying book was an unauthorized use of his likeness as well as a violation of his religious beliefs. The case, *Nussenzweig v. DiCorcia*, 2006 N.Y. Misc. LEXIS 230, was dismissed by state trial Judge Judith J. Gische in Manhattan on Feb. 8, 2006.

DiCorcia, a professional photographer for 25 years whose work has drawn international acclaim and which has been exhibited in art galleries around the world, took the photo sometime between 1999 and 2001 without Nussenzweig's knowledge or consent as one of a series of "candid, unstaged images of people in Times Square as they passed by a particular location," according to Gische's opinion. DiCorcia later selected 17 photographs to be included in what he titled his "HEADS" project. DiCorcia made 13 prints of Nussenzweig's photo, ten of them edition prints, and three artist's proofs.

The HEADS collection, including Nussenzweig's photo, was part of an exhibition that was open to the public at the Pace Gallery in New York City, from Sept. 6, 2001 through Oct. 13, 2001. According to Gische, the exhibition was "advertised and reviewed in local and national media." In addition, a catalogue containing reproductions of all the photographs in the HEADS collection was printed and a "substantial" number of them were distributed to the Gallery's visitors. DiCorcia subsequently sold all ten of the edition prints of the Nussenzweig photo, for a cost ranging from \$20,000 to \$30,000 each. DiCorcia has said he will make no additional copies of the photograph.

Nussenzweig did not learn of the photograph until 2005. At that point, he claims that at least one of the ten edition prints was still being offered for sale, although DiCorcia claims that the last photograph was sold in 2003.

Nussenzweig sued DiCorcia under New York Civil Rights Law § 50 and § 51. Section 50 provides that "A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person . . . is guilty of a misdemeanor." § 51 provides for damages to the person whose image is misused as provided in § 50.

Although DiCorcia agreed that he had taken and used Nussenzweig's photograph without his consent, he claims the photograph was art, and was not used for commercial purposes. Gische agreed, writing, "The [New York] Court of Appeals has repeatedly held that the New York statutory right of privacy restricts the use of one's likeness [sic] against use for advertising and trade only and nothing more. . . . [The courts] have consistently found 'art' to be constitutionally protected free speech, that is so exempt. This court agrees."

Nussenzweig, a Klausenberg Hasidic Jew, claimed DiCorcia's unauthorized use of his likeness was a violation of the Second Commandment's prohibition of graven images, leading Nussenzweig to believe that DiCorcia's photograph of him was "deeply and spiritually offensive." But Gische wrote that Nussenzweig's religious interests are overcome by others' First Amendment rights, stating: "The sincerity of his beliefs is not questioned . . . While sensitive to [Nussenzweig's] distress, it is not redressable in the courts of civil law. . . . [T]he courts have uniformly upheld Constitutional 1st [sic] Amendment protections, even in the face of a deeply offensive use of someone's likeness. . . . [N]otwithstanding that the speech or art may have unintended devastating consequences on the subject, or may even be repugnant. They are . . . the price every person must be prepared to pay in a society in which information and opinion flow freely." (See "Controversial Cartoons Lead to Worldwide Concern for Speech, Press Freedom, and Religious Values" on page 1 of this issue of the Silha *Bulletin*.)

Another issue in the case was whether the statute of limitations began to run from the date of first publication (2001) or last publication (2003). Nussenzweig argued that the statute of limitations should begin to run from the date that he initially discovered the photograph had been taken by DiCorcia (2005).

Gische ruled that "the fact that [Nussenzweig] was personally unaware of the photograph is not a basis to give him an enlarged [sic] statute of limitations." However, because of "a split in the authority among the departments regarding the issue of the accrual of the statute of limitations, the issue is still open for interpretation by the Court of Appeals."

Nussenzweig's attorney, Jay Goldberg, has said his client will appeal the case, telling the *New York Law Journal*, "I think people have to be very careful when they walk on the street that their tie matches their suit, because people have the right to take pictures no matter how flattering or unflattering. [Nussenzweig] has lost control over his own image. . . . The last thing a person has is his own dignity."

However, one of DiCorcia's attorneys, Kenneth Schacter, disagrees. "Our First Amendment rights trump [Nussenzweig's] religious beliefs," he told the Associated Press.

The photograph is available online at <http://www.guardian.co.uk/gallery/image/0,8543,-10904347243,00.html>.

"The courts have uniformly upheld Constitutional First Amendment protections, even in the face of a deeply offensive use of someone's likeness."

— Judge Judith J. Gische

— ELAINE HARGROVE

SILHA FELLOW AND *BULLETIN* EDITOR

Defamation News

Survey finds that Simpsons are Better Known than the First Amendment

A survey conducted by the McCormick Tribune Freedom Museum in January 2006 found that while 72 percent of Americans asked could name one of the rights protected by the First Amendment, only 28 percent could name two or more, just 8 percent could name three or more, and two percent could name four or more. Only one person out of the thousand polled could name freedom to petition the government for redress of grievances.

Freedom of speech was the most recognized First Amendment right, with 69 percent of respondents naming it unprompted. Twenty-four percent named freedom of religion, while just eleven percent and ten percent recalled freedom of press and assembly, respectively. With prompting, those numbers rose to 78 percent recognizing "freedom to worship" as a First Amendment right.

Many of those questioned about other rights incorrectly identified them as being encompassed by the First Amendment. When asked about the right to own a gun, 45 percent said that it was included in the First Amendment. Similarly, 44 percent believed that the Sixth Amendment's right to an attorney is guaranteed by the First Amendment while 38 percent thought that the right against self-incrimination, commonly known as "taking the Fifth" from its Fifth Amendment roots, was instead a First Amendment right.

The survey was conducted by phone with a random selection of 1,000 American adults. Its margin of error was calculated at +/- 3 percentage points at a 95 percent confidence level.

The McCormick Tribune Foundation was established in 1955 as a charitable trust after the death of Col. Robert R. McCormick, the man who built the Tribune Company from a single Chicago newspaper into a major media organization. When the McCormick Museum opens in April 2006, it will place a special emphasis on the First Amendment and the dangers of censorship and information control. It will be housed in Chicago's Tribune Tower on Michigan Avenue and take up 10,000 square feet of exhibit space.

Executive Director of the Museum Dave Anderson indicated that the survey shows the need for a museum dedicated to the First Amendment. "These survey results clearly demonstrate that many Americans don't have an understanding of the freedoms they regularly enjoy. The Freedom Museum is designed to inspire people to understand and value their freedoms," he said in a Museum press release.

The Museum made much of the fact that while only one person in a thousand could name all five First Amendment rights, 22 percent could name all five main characters on the television show "The Simpsons." This was the hook for most of the newspaper stories that covered the survey as well. *Editor & Publisher* ran a March 1, 2006 story with the headline "Homer Simpson, Yes; First Amendment? 'Doh!'" The same day BBC News ran an online story entitled, "Simpsons 'trump' First Amendment, Available online at http://www.editorandpublisher.com/eandp/news/article_display.jsp?vnu_content_id=1002113807.

It should be noted, however, that "The Simpsons" began its run on television in 1989 and is the longest-running sitcom in American history. It benefits from heavy (in some markets, daily) syndication and advertising, which may explain the public's general familiarity with it.

— ASHLEY EWALD
SILHA FELLOW

Appeal in Canadian Libel-Tourism Case Denied

On Feb. 16, 2006, the Supreme Court of Canada denied an appeal by libel plaintiff Cheickh Bangoura, letting stand an Ontario Appeal Court decision holding that the court did not have jurisdiction to hear the case. The Supreme Court ruling is *Bangoura v. Washington Post*, 2006 CanLII 4742 (S.C.C.) and is available online at <http://www.canlii.org/ca/cas/csc-scc-al/2006/2006scc-110091.html>.

An employee of the United Nations who was living in Kenya during January 1997 when *The Washington Post* published articles about him and posted them on its Web site, Bangoura claimed that articles accused him of sexual harassment, nepotism and financial improprieties. Bangoura further claimed that the articles resulted in his being placed on administrative leave and, ultimately, the loss of his employment contract. Eventually cleared of the charges against him, Bangoura later moved to Ontario, where he claimed that *The Washington Post* articles resulted in difficulties for him in finding a job or securing promotions. (See "Internet Updates: Settlement Reached in *Dow Jones v. Gutnick*" in the Fall 2004 issue of the Silha *Bulletin* and "International Libel: Jurisdiction in Libel Suit Against *The Washington Post Online* Rejected by Canadian Appeals Court" in the Summer 2005 issue of the Silha *Bulletin*.)

Paul Schabas and Ryder Gilliland, two attorneys with the Canadian Law Firm of Blake, Cassels & Graydon, LLP, represented *The Washington Post* in the case.

Blakes Bulletin of *Litigation*, a publication of the firm, stated that the Supreme Court's decision "cements an important precedent against libel-tourism in Ontario." The decision furthermore "is a victory for the media and for freedom of expression. It means that Canada, unlike England, which also has 'plaintiff-friendly' libel laws, is unlikely to become a haven for 'libel tourists' who seek redress for Internet publications."

The article is available online at <http://www.blakes.com/english/publications/bdr/february2006/Libel-Tourism.asp>.

— ELAINE HARGROVE

SILHA FELLOW AND *BULLETIN* EDITOR

Media Ethics News

Events at Sago Mine Lead to Confusion for Officials, Media

On January 2, 2006, twelve miners were killed after an explosion in the Sago coal mine in Tallmansville, W.Va. Family and friends of the miners had waited a day and a half for news of their loved ones, who had been forced to retreat deep into the mine and wait for rescue. Meanwhile, those holding vigil at nearby Sago Baptist Church rode an emotional rollercoaster. In the middle of the night on January 3, they received word that the miners had all been found alive. But three hours later, they learned that only one of the trapped miners had survived.

Those initial and erroneous reports of a “miracle” rescue were reported throughout the United States before it was learned that they were false. People all over the country awoke the next morning to incorrect headlines and confusing news reports, leaving many feeling betrayed by both local and national media.

The incident began January 2 when a team of 13 miners entered the Sago Mine, owned by the International Coal Group (ICG). An explosion in the mine at approximately 6:30 a.m. killed one miner and left 12 more trapped. In the hours that followed, all but one of those 12 died of carbon monoxide poisoning while awaiting rescue.

According to reports from family members at Sago Baptist Church, various mine officials from the “command center” placed cell phone calls to those waiting for word around midnight on January 3. Two of them received calls from the mine foreman. According to scattered reports and statements from mine officials, the message was that 12 miners had been found and their vital signs were being checked. Word inside the church spread, and shouts of “twelve alive” followed. To date, no precise source for the news that the miners were alive has been verified.

People rushed out of the church cheering while church bells rang. Journalists waiting outside the church picked up the story. When West Virginia’s Governor Joe Manchin heard the news, he told local media it was a “miracle.” The story of the twelve’s survival quickly spread. The Associated Press attributed the news to the families, and *The New York Times* received a number of dispatches sourcing only the families waiting in the church. Later, local and even national media organizations admitted they did not contact officials at the mine to verify the information.

However, mine officials did not rush to correct misinformation spreading through the Sago Baptist Church. For three hours, authorities at the mine did nothing to contradict the false reports. Not until 3:00 a.m. on January 3 was the news that all the miners but one were confirmed dead was delivered to those waiting in the church.

Dennis O’Dell, administrator of health and safety for the United Mine Workers labor union, claims that he had been barred from entering the mine by ICG officials, who would not allow Union Officials in to investigate because the Sago mine is not a Union operation. Just after 3:00 a.m., O’Dell heard directly from an ICG official that the initial report had been wrong. O’Dell told *Editor & Publisher*, based on his conversations with workers and other mine officials, he surmised that after rescue workers at the fresh air base inside the mine received the communication that 12 miners had been found, they

thought it to mean that all 12 were alive and went to assist with bringing them to safety.

Officials from the mine explained the delay in their update by saying they wanted to “have the facts straight” before releasing further information. According to a National Public Radio (NPR) story, ICG chief executive Ben Hatfield said of the decision to wait to release news of the 12 deaths, “Let’s put this in perspective. Who do I tell not to celebrate? I didn’t know if there were twelve or one alive.”

By 3:00 a.m., many newspapers had been printed with headlines celebrating the survival of the miners. When newspaper editors received word that those headlines were incorrect, some corrected the error. The editor of the *Pittsburgh Post Gazette* stopped the presses at approximately 3:00 a.m., and almost half of the newspapers delivered by the *Post* the next morning carried the correct news. In Minnesota, the *Duluth News Tribune* stopped its presses at 2:30 a.m. central standard time, and was able to get the accurate story in over half of its papers. One West Virginia paper, *The Inter-Mountain*, waited for official information and published the accurate story in all of its editions, but because it is an afternoon publication, the corrected information was already disseminated well before the paper went to press.

Radio listeners received conflicting information as well. At 3:00 a.m. on January 3, NPR reported, “Officials in Tallmansville, W.Va., told families of workers trapped in a coal mine since Monday that all but one miner had survived. But only one worker had been pulled out alive today.” A brief explanation of how the miners could have survived followed, and then the statement, “Family members in the West Virginia town are now being told that there is only one survivor from the coal mine disaster.” The statement implied that the inaccurate news had come from mine officials, which was never verified. According to NPR’s ombudsman, Jeffery A. Dvorkin, “listeners were justifiably appalled that the story could take such a complete turn without further explanation.” By 7:00 a.m., however, another NPR broadcast reported, “There were tears of joy in Tallmansville, W. Va. last night when word spread that 11 of 12 trapped coal miners had been found alive... . But three hours later, the mood turned to shock and anger when mining officials announced there had been a miscommunication. Eleven of the miners had, in fact, died.”

CNN, ABC and FOX broadcast updates to the story all night, and reported the miners alive after initial rumors began to spread. Although their morning broadcasts were correct and complete, broadcasts between midnight and 3:00 a.m. Eastern Standard Time were incorrect. Governor Manchin, who claimed he was caught as much off guard by the subsequent bad news as anyone else, has apologized for spreading the erroneous information.

Preliminary reports from ICG investigations into the disaster indicate that the cause of the explosion was a massive lightning strike.

— SARA CANNON
SILHA CENTER STAFF

[West Virginia]
Governor Manchin
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Media Ethics News

Baltimore Sun Columnist Fired for Plagiarism

"I made mistakes. I would never take somebody else's work and call it my own."

— Michael Olesker,
Former
Baltimore Sun
Columnist

After 27 years of writing columns for *The Baltimore Sun*, Michael Olesker resigned on Jan. 4, 2006, following allegations that he had plagiarized work from other publications. On Dec. 24, 2005, *The Sun* had published a correction to an Olesker article that originally appeared on December 12. In addition to the correction, *The Sun* noted that a paragraph in the story was nearly identical to a story published two years earlier in *The Washington Post*. *The Sun's* correction prompted reporter Gadi Dechter of Baltimore's alternative weekly *City Paper* to examine Olesker's work. He subsequently found several articles where, in addition to *The Washington Post*, Olesker had apparently lifted portions of articles from *The New York Times*, and from colleagues at *The Sun*.

Appearing "clearly dejected," as he cleaned out his desk, Olesker told *The Sun*, "I made mistakes. I would never take somebody else's work and call it my own. I have always tried to serve my readers as honorably as possible."

However, Olesker defended his use of *The Post* paragraph in his December 12 article, explaining to *The Sun* that he had read *The Post* article in preparation for an interview with former U.S. Sen. Max Cleland. Because Olesker did not look at the notes he took after reading *The Post* article for nearly two years, he "mistook the notes for his own work," *The Sun* reported. Olesker said that this information and much of the other work he plagiarized, although "sloppy," is a common problem when writing about ongoing issues.

Tom Rosenstiel of the Project for Excellence in Journalism agreed, telling the *The Post* that because most of the problematic articles included "background factual material rather than descriptive narrative that is in the author's voice" and that it is "not uncommon practice to take background material from clippings." Rosenstiel further stated that Olesker's language was original, and "not identical."

Even David Simon, a former reporter with the *City Paper*, wrote a January 18 editorial characterizing such information as "boilerplate," explaining that reporters are reacting to new developments to stories

that their newspaper has been following for weeks. "You relied on info from the newspaper library, working your way through old clips, changing a word or two, flipping a sentence with a dependent clause . . . [lifting] a large chunk, restructuring a few paragraphs. . . . Having spit out copy at speeds sufficient to make three editions a night for years on end, I am fairly confident that someone, coming behind me, will find instances where my boilerplate material is decidedly similar to its source," Simon wrote.

As an example, Simon cited a National Public Radio (NPR) story where former First Lady Barbara Bush was quoted as saying that since those Hurricane Katrina evacuees who stayed in the Astrodome were "underprivileged anyway," things were "working very well for them." Characterizing the quote as "a remarkable utterance, exclusive to one news source." Simon stated: "Yet within days, newspapers nationwide were citing the quote without crediting NPR."

Simon concluded that under the circumstances under which Olesker resigned, "A lot of people need to be fired."

According to *The Sun*, Olesker's credibility came under question in November 2004, when he wrote an article about a hearing where Gov. Robert L. Ehrlich's communication director, Paul E. Schurick, "struggled mightily to keep a straight face." It was later revealed that Olesker had not attended the hearing, and was cited as one of the incidents that prompted Ehrlich to order state public information officers not to speak to David Nitlin, *The Sun's* State House Bureau Chief, or Olesker. (See "Access to Government: Maryland Governor Forbids Employees to Speak to Reporters" in the Fall 2004 issue of the Silha *Bulletin* and "Access to Government: Judge Upholds Maryland Governor's Ban on State PIOs Speaking to Two Baltimore Sun Reporters" in the Summer 2005 issue of the Silha *Bulletin*. See also "Governor Prevails in Suit Filed by Baltimore Sun" on pg. 7 of this issue of the Silha *Bulletin*.)

— ELAINE HARGROVE
SILHA FELLOW AND *BULLETIN* EDITOR

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Media Ethics News

Author of *A Million Little Pieces* Criticized for Embellishments

James Frey's admission in early 2006 that his best-selling memoir *A Million Little Pieces* is filled with exaggerations and embellishments sparked a wave of lawsuits from disgruntled readers and raised ethical concerns throughout the publishing industry.

"I wanted the stories in the book to ebb and flow, to have dramatic arcs, to have the tension that all great stories require," Frey admitted in a note to readers, which will be included in future editions of the book, and is available online at randomhouse.com. "I altered events all the way through the book."

Lawsuits were filed across the United States at the end of January and into February, challenging Frey and publisher Random House after Frey conceded that the investigative website, The Smoking Gun, was correct in its allegations that the central story to *A Million Little Pieces* was factually flawed and some of the events never occurred.

Under attack is Frey's storyline in which he claimed to have been charged with assaulting an Ohio police officer, inciting a riot, possession of crack cocaine and felony drunk driving, resulting in a three-month stint in jail as a consequence of those actions. The Smoking Gun reported that Frey never served 87 days in jail and that other events of Frey's journey through a drug addiction were grossly embellished throughout the book. The Smoking Gun's report is available online at thesmokinggun.com/archive/0104061jamesfrey1.html.

Frey, who said he spent only a few hours in jail, also admitted, contrary to the story told in the memoir, that he was not involved in a train accident that killed a girl from his school.

"While I was not, in real-life, directly involved in the accident, I was profoundly affected by it," Frey said about the train accident. "I sincerely apologize to those readers who have been disappointed by my actions."

The fallout with *A Million Little Pieces* raised ethical red flags for publishers of non-fiction books. Some agents and publishers have speculated that publishing houses and literary agents may need more extensive fact-checking resources, while others have indicated that such measures may be too costly.

"There is an assumption that authors of serious books — memoirs, works of history, book-length works of journalism — will approach their jobs with integrity and decency," Eric Simonoff, a Janklow & Nesbitt Associates literary agent told the Associated Press. "Going forward, however, I suspect that when editors read a work of non-fiction that is too good to be true, they will think twice and ask more questions."

Writers, readers and journalists, including Oprah Winfrey, whose 2005 endorsement of Frey's book as part of her reading club sent it to the top of the best selling list, have spoken out against publishing embellished stories as non-fiction memoirs.

"There is a difference between truth and fiction," Washington Post columnist Richard Cohen said in

his appearance on the "Oprah Winfrey Show" on Jan. 26, 2006. "We find this out all the time. Now we're finding it out again. This was a betrayal of his readers."

Transcripts and video clips of the January 26 episode of the "Oprah Winfrey Show" are available online at oprah.com.

Riverhead, the publisher of *My Friend Leonard*, the sequel to *A Million Little Pieces*, which is now also considered mostly fiction, announced that it was "reconsidering a contract with Frey for two additional books," USA TODAY reported. Frey also lost his literary agent, Kassie Evashevski, who said she would no longer represent Frey. "[I]t became impossible for me to maintain a relationship once the trust has been broken," Evashevski told Publishers Weekly. "He eventually did apologize, but I felt for many reasons I had to let him go as a client."

Adding to the ethical questions are indications that factual questions were discussed in the early stages of the book's production and that it was originally pitched as a novel rather than a memoir, The New York Times reported. Frey's editor, Sean McDonald, told The Times in September 2005 that there were concerns about the validity of some events since the book's release in 2003. McDonald later said he was certain during the editing process that the events were accurate.

"Throughout the editing process, I raised questions with James about the veracity of events he recounted in the book and in each instance he assured me that his account was accurate and true," McDonald said in a statement, The Times reported on Feb. 4, 2006. "The only things in [A Million Little Pieces] that I understood were altered were the names and identifying characteristics of some of the people in the book to protect their real identities."

Random House has agreed to refund readers who purchased Frey's book, CNN reported. Originally published in 2003, the book sold 1.77 million copies in 2005 and more than 2 million since its release, CNN and The New York Times reported.

The offer to reimburse disgruntled readers has not stopped multiple lawsuits. Complaints have been filed against Frey and Random House in Manhattan, Seattle, Chicago, Los Angeles and Quebec, Canada. Readers seek compensation for having wasted their time reading Frey's book, consumer fraud and unjust enrichment, the Chicago Sun-Times reported. Random House has been attacked for gross negligence for failing to fact-check Frey's story and advertising it as a "brutally honest" account of an addiction, the Mercury News reported.

"All they had to do was call the Department of Corrections to verify that this guy was never in jail," attorney Alan Ripka told the Mercury News.

University of Washington law professor Sean O'Connor told the Seattle Times he thought the

"I wanted the stories in the book to ebb and flow, to have dramatic arcs, to have the tension that all great stories require."

—James Frey,
Author

Media Ethics News

Village Voice Reporter Fabricates Events in Cover Story

Senior associate editor Nick Sylvester has been suspended from his position at *The Village Voice* for fabricating events in a cover story that appeared during the first week of March 2006.

Sylvester ended the article, entitled "Do You Want to Kiss Me," with a fictitious section describing how he and three television writers from Los Angeles spent an evening at a bar in Manhattan testing strategies to pick up women found in Neil Strauss's book, *The Game: Penetrating the Secret Society of Pickup Artists*, the Associated Press reported.

Sylvester's version of the evening, which included the real name, hometown and profession of comedy writer Steve Lookner, never happened.

Lookner wrote a letter to *The Voice*, revealing the fabrications and requesting a retraction. "I just read the article about The Game [sic] where Nick Sylvester, who I know, made up a defamatory and false story about me and used my real name, profession, and hometown in the article," Lookner wrote. "I was never in New York on the trip he claimed and never performed the actions he said I did." His letter is available online at <http://villagevoice.com/specials/0610,letters,72437,7.html>. Shortly thereafter, editors withdrew the story from *The Voice*'s Web site, but the hard copy of the alternative weekly newspaper featuring the cover story had already circulated.

"The scene was a composite of specific anecdotes shared to me primarily by the two other parties . . .," Sylvester wrote in a note posted March 1, 2006 on *The Voice*'s Website, available online at <http://www.villagevoice.com/news/0610,news,72372,2.html>. "Lookner did not share or take part in these anecdotes either. I deeply regret

this misinformation, and I apologize to Lookner for his distress, which I certainly never intended."

Managing editor Doug Simmons indicated in an editor's note, also published on the paper's Web site, www.villagevoice.com, that Sylvester fabricated the combination of stories to enrich the narrative of the story.

In a second editor's note that ran during the second week of March, Simmons wrote that the remainder of the article had been reviewed for accuracy. The editor's note is available online at <http://villagevoice.com/specials/0610,letters,72437,7.html>.

"While a review of the story demonstrated that the bulk of the author's article was accurate, the piece also contained fabrication and composite anecdotes used in the interest of narrative," Simmons wrote. "Sylvester admitted his errors and promptly apologized. He was just as promptly suspended. We regret this shoddy journalism."

Sylvester, who joined *The Voice* in 2005, is a former music writer for *The New York Times* and was the biographer for porn star Jenna Jameson, *Editor & Publisher* reported. Sylvester, who wrote mostly about music for *The Voice*, also wrote for *Pitchfork*, an online music magazine. *Pitchfork*'s Editor-in-Chief Ryan Schreiber told the Associated Press that Sylvester resigned after the magazine asked him to quit following the incident with *The Voice*. No further details concerning the resignation have been reported.

— JESSICA MEYER
SILHA RESEARCH ASSISTANT

Frey, continued from page 23

chances of success on these claims were slim. O'Connor noted that a claim for unjust enrichment, which is a cause of action to prevent persons from benefiting unfairly at another's expense, would face problems because the publisher is willing to reimburse consumers for the cost of purchasing the book. He also contended that valuing lost time would prove difficult because each person's time spent reading the book could have a different value, making a standard payout difficult to justify.

Other lawsuits may attack the story line itself. Alan Page, a Minnesota Supreme Court justice and former Minnesota Viking, is portrayed in the book as having had a drinking problem. Page's wife, Diane Page, told the Minneapolis *Star Tribune* in an e-mail that her husband is not and has never been an alcoholic. Page's attorney, Thomas C. Kayser, told the *Star Tribune* that he was "exploring options."

Neither Frey nor Random House have commented on the lawsuits.

— JESSICA MEYER
SILHA RESEARCH ASSISTANT

Silha Center Events

Kathleen Hall Jamieson Addresses Problems in Campaign Advertising

In the contemporary rhetoric of U.S. politics, Kathleen Hall Jamieson fears that our elected leaders have begun to treat facts and truth as malleable objects, she told the audience at a March 7, 2006 forum on "Truth Telling in Campaign Ads." The forum, co-sponsored by the Center for the Study of Politics and Governance, the Silha Center for the Study of Media Ethics and Law, the Minnesota Journalism Center, and the University of Minnesota, was held in the Cowles Auditorium at the University of Minnesota's Hubert H. Humphrey Center.

Jamieson, Director of the University of Pennsylvania's Annenberg Public Policy Center, centered her remarks around the idea that our national political rhetoric, and particularly our elected leaders, should have what she called "a disposition toward fact." But she argued that there are numerous examples within both parties demonstrating a lack of such a "disposition." Citing examples from the Johnson, Clinton, and current Bush administrations, Jamieson contended that too often, politicians focus on the ideas and the ideology in their speeches, and pay insufficient attention to whether the facts backing up those ideas are accurate. If politicians and citizens did give more weight and attention to facts, she argued, then behavior might change, which could potentially dramatically affect history.

Jamieson posited that because many of our leaders are not as concerned as they could be with 'facts,' the electorate has become accustomed to, and restricted by, the fallacies that abound in politics – especially those so often used in campaign ads. One factor that explains and exacerbates the discrepancy between the facts used by one party and those used by the other, Jamieson said, is what is known to psychologists as the "confirmation bias." Essentially, humans naturally like to hear what they expect to hear, so are more likely to accept even questionable statements from a chosen candidate, and less likely to accept more reasonable statements from that candidate's opponent. Because of our natural inclination to accept farther-reaching claims from sources we like, while discounting the claims of our opponents, citizens are ending up with two entirely different sets of 'facts' in partisan politics. As Jamieson put it, "fact has become an ideological indicator." The broader ramifications is that there is no central "consensual" set of facts upon which both parties agree. And, Jamieson argued, without a common set of agreed-upon facts, it is very difficult to make progress.

Jamieson pointed out that current journalistic practices are both helping and hurting this facet of the political system. Fact-checking done by

journalists and scholars helps to limit the number of false claims used in campaign ads, but it also takes the burden off citizens to check the facts themselves. Citizens and journalists alike, Jamieson argued, should take it upon themselves – regardless their ideology – to verify information coming from both sides, and to hold officials accountable. But, journalists have a difficult time really doing this, Jamieson argued, because of the standard of objectivity. Journalists fear appearing partisan, so reports on factual inaccuracies in campaign ads often end up relying on experts to point out inaccuracies and using ads from both sides to illustrate the larger point. The effect of such objectivity and balance, Jamieson argued, is twofold: one, many inaccuracies that are grossly different in scale end up being treated as equivalent in the news media, and two, these reports further disempower citizens by implying that most ads are false and by relying on "experts" to indicate whether they are or not. Jamieson suggested that instead, the electorate should take control for itself and be cautiously skeptical and engaged. Her upcoming book, tentatively titled *Unspun*, seeks to set out some of the ways and rules by which citizens can become more savvy users of political information and media.

After Jamieson's remarks, Director of the Center for the Study of Politics and Governance Lawrence Jacobs moderated a panel with Jamieson, Thomas F. Horner of the public relations/public affairs firm Himle Horner Inc., and Pat Kessler, WCCO-TV reporter. Horner, like Jamieson, argued that educating citizens was a necessary step toward resolving some of these issues, saying that it is especially necessary to educate citizens when a campaign is not going on. Furthermore, Horner highlighted the fact that in the United States, there is no "culture of second place." He said it would be better if the news media would cover the party currently not in power for their ideas, and not just for their criticisms of the governing party. Kessler contended that journalists are "slowly . . . realizing that all arguments are not equal." The difficulty lies in expressing that to audiences without seeming partisan, biased, or unpatriotic. Kessler said that reporters need to show their audiences that they can be "fair over time," but may not seem objective in any particular piece. All the panelists agreed that the current model of political campaign rhetoric is not ideal, and that changes need to be made at all levels – among politicians, among the media, and among citizens.

Approximately 80 students, faculty, and others attended the event.

— PENELOPE SHEETS
SILHA RESEARCH ASSISTANT

Citizens and journalists alike, Jamieson argued, should take it upon themselves – regardless their ideology – to verify information coming from both sides, and to hold officials accountable.

Silha Center Events

Panel Discusses “The End of Journalism? Why News Still Matters”

On Feb. 20, 2006, panelists and speakers gathered at Coffman Memorial Union Theater on the East Bank of the University of Minnesota’s Twin Cities campus to discuss “The End of Journalism? Why News Still Matters.” The topics the panel discussed ranged from the impact of the Internet on the mainstream media to the over-reliance on official government sources in reporting government matters.

Opening remarks were delivered by the Honorable Paul Anderson, Minnesota Supreme Court Justice and former Chair of the Minnesota News Council, and by Bill Kovach, Chair of the Committee of Concerned Journalists. Panelists included Ted Canova, former News Director for Fox-9/UPN (Twin Cities); Dave Kansas, Editor of the Money Section of the *Wall Street Journal*, and Nora Paul, Director of the Institute for New Media Studies, University of Minnesota. The panel was moderated by Jane Kirtley, Silha Professor and Director of the Silha Center for the Study of Media Ethics and Law.

In his opening remarks, designed to “set the stage and frame the issues,” Anderson discussed how reporting has changed as a result of technological advances such as the Internet. The results are that people expect their news to be delivered immediately, creating problems for editors who, in the rush to get news reported, allow reporters to neglect documenting sources, at times leading to errors. In addition, there is a tendency for reporters to cultivate official government sources rather than doing in-depth research, creating a situation where they are, in effect, “embedded” and risk the loss of objectivity.

Another problem is the current concentration of ownership of the media, with companies such as Time Warner and Disney owning many different media companies, from television stations to movie studios to publishing houses. This can lead to a “boutique approach” in news reporting, reflecting specific political leanings, much the way Fox News reflects a conservative stance.

Anderson concluded his opening remarks by saying that the job of the press as the Fourth Estate is to provide transparency and assessment with regard to current events, particularly politics. The “state of freedom is not the natural order,” Anderson said, adding that in the current atmosphere post-September 11, many Americans are desperate to feel secure. In the process, many are giving their freedom away. Anderson quoted former U.S. Supreme Court Justice Sandra Day O’Connor, who said the commitment at home must be maintained while fighting abroad. “It is important to have a strong news media,” Anderson said. “It must be the free expression of the people.”

“It is important to have a strong news media. It must be the free expression of the people.”

— Justice Paul Anderson

Kovach focused on what he called a loss of confidence in what reporters have always known – that the news media need to be the “authenticators” – a means for citizens to obtain the trusted information they need to make informed decisions. But with today’s technology and instantaneous communications, “journalists continue to stand at the gate, but information flows unchecked,” Kovach said. The process journalists use to obtain their information must be transparent, he urged, and stories need to be deeper and broader, with information organized in a critical way.

Web logs, or blogs, seem to defy checks on the flow of information, Kovach said. It is sometimes difficult to tell whether the flow of information runs from mainstream media to the blogger or vice versa. During the panel discussion of the topic, Paul said that blogs fill in the gaps left by the mainstream media. On the other hand, Kansas said that bloggers often rely on mainstream media to provide the topics for their postings. Furthermore, as Kirtley pointed out, there are others who use technology to play the role of citizen journalists, providing on-the-spot news coverage of events that erupt without warning, as was the case when Londoners sent photos and commentary regarding the Underground bombings to news organizations via their cell phones.

The evening concluded with Kirtley asking members of the panel about their predictions for the next big media issue. Kansas predicted that major news organizations will follow the British model, with reporting reflecting each media organization’s political leanings. Kovach thought that the controversy over the Bush administration’s leak in the Valerie Plame affair could result in the prosecution of reporters under the Espionage Act. Canova thought both training new reporters to “connect the dots” in political matters and to be prepared to replace veteran reporters would be the next big issue. Paul believed that digital power and the opportunities it presents to communications would be the next topic media experts would examine.

The event was co-sponsored by the Minnesota Pro Chapter of SPJ and the Minnesota Journalism Center, the Northwest Broadcast News Association, the Minnesota News Council, the Minnesota Newspaper Foundation, the Upper Midwest Chapter of the National Television Academy and the Silha Center for the Study of Media Ethics and Law. Approximately 100 students, faculty and members of the public attended the event.

— ELAINE HARGROVE
SILHA FELLOW AND *BULLETIN* EDITOR

Silha Center Events

Silha Forum Focuses on Privacy in E-Mail, Internet Use

Many of the students attending the Silha Forum on March 28, 2006 indicated by a show of hands that they do not give much thought to how much of their personal information might be accessible to others when sending e-mails or surfing the Internet. But following the presentation, entitled "Your Email Is Not Yours! Government Surveillance and Digital Privacy," they had a better idea of how vulnerable they could be.

The speakers for the event were Stephen Cribari, University of Minnesota Law School who is also a Former Federal Public Defender, Eastern District of Washington, and a Deputy Defender, District of Maryland; Dick Reeve, General Counsel/Deputy District Attorney for Computer Crimes, Denver District Attorney's Office and who is also an Adjunct Professor, University of Denver College of Law and University College Graduate Program in Computer Information Systems, and Mary Horvarth, Senior Computer Forensic Examiner for the FBI.

Cribari explained that expectations of privacy in computers were not addressed in a Constitution drafted 200 years before the development of this kind of technology. Furthermore, Cribari said, the terms "anonymity," "intimacy" and "privacy" are not interchangeable and may not be constitutionally protected in an electronic world. To illustrate his point, Cribari stated that most people believe electronically deleting an e-mail is similar to throwing away a piece of paper. But until the computer writes over that portion of the hard drive, the e-mail is still retrievable. Cribari also described how expectations of privacy are evolving over time. For example, many people assume they have privacy while speaking on a cell phone in a public place, yet only a generation ago, people using public phones had to close the door to a phone booth to assure privacy.

Reeve addressed some of the privacy issues raised by Internet technology. He explained that e-mail is broken into packets of information and routed through various servers around the world before finally reaching its destination. This being the case, is there realistically an expectation that no one other than the intended recipient will examine the contents? In another example, Reeve hypothesized a drug dealer who stores information about his clientele in a database on a portable USB compatible data storage device, commonly known as a "jump drive," "flash drive," or "thumb drive." Could that thumb drive be considered evidence of a crime and be subject to a search warrant?

Reeve noted that when it comes to determining whether a legal expectation of privacy exists, the judge alone decides. "The public looks to a jury of 12 to make certain types of decisions in our criminal justice system," Reeve said. "But the jury that decides how privacy is played out in a criminal case is a jury of one – the judge."

Horvath's portion of the presentation focused on the technology law enforcement uses to examine a hard drive for evidence in a criminal case. First, an exact copy of a hard drive is made, and examiners work from this so that the original is preserved unmodified. Any inadvertent modifications – in fact, all steps of the process – are carefully documented.

Because so much data can be stored on hard drives and even thumb drives today, law enforcement officials use programs to do automated searches, pulling out only those files that would likely be pertinent to the investigation, eliminating the need to examine every file by hand. Other programs can search for any files which might have been altered or renamed to hide evidence of crimes, such as by changing the extension on a photograph file from .tiff or .jpeg to .txt or .doc in an attempt to make it more difficult to retrieve. Finally, Horvath explained how data can be retrieved from drives that have been damaged by, for example, being submerged in water or pierced by gun fire.

Horvath's advice to the audience was to "either be very careful or don't do anything wrong."

The Silha Forum was attended by approximately 50 students, faculty and members of the public, and was held in the Conference Center located on the first floor of Murphy Hall on the East Bank of the Twin Cities campus of the University of Minnesota. The Forum was co-sponsored by the Institute for New Media Studies and the Silha Center for the Study of Media Ethics and Law, which is designed to stimulate research and debate on topics related to the convergence of ethical and legal principles, media accountability, and First Amendment and freedom of information issues. The Silha Center was established in 1984 with a generous endowment from Otto and Helen Silha.

— ASHLEY EWALD
SILHA FELLOW

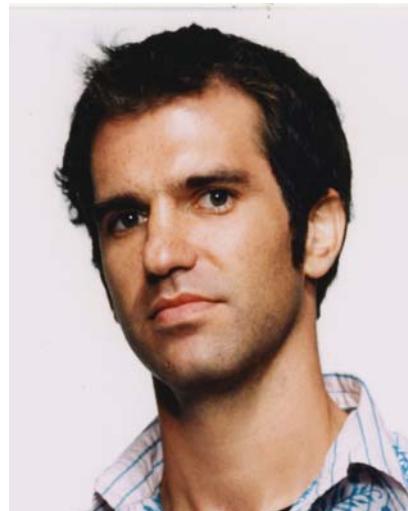
— ELAINE HARGROVE
SILHA FELLOW AND *BULLETIN* EDITOR

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2006 SILHA CENTER SPRING FORUM
SPJ ETHICS IN JOURNALISM WEEK

The Customer is Always Right?

*The Assault on Media Impartiality
from the Empowered American Consumer*



Seth Mnookin

May 1, 2006

7:00 p.m. - 9:00 p.m.

Coffman Union Theater, University of Minnesota
Free and Open to the Public; No Reservations Required
www.silha.umn.edu ~ 612-625-3421



Seth Mnookin is the author of the critically-acclaimed *Hard News: Twenty-One Brutal Months at The New York Times and How They Changed the American Media*. Kate Parry, Readers' Representative at the Minneapolis Star Tribune, will respond to his remarks; Professor Jane Kirtley, Director of the Silha Center, will moderate. Copies of *Hard News* will be available for purchase at the book signing following the forum.

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