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Esther Choi

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NEWS

ISLAMIC COURT SENTENCES NIGERIAN WOMAN TO DEATH BY STONING

By Esther Choi

On August 19, 2002, an Islamic court of appeals in Funtua, Katsina State, Nigeria upheld a death sentence to stone Amina Lawal for giving birth to a child out of wedlock. This decision is based on Islamic Penal Law ("Sharia Penal Law") adopted by increasingly more Muslim Nigerian states. Upholding the death sentence further legitimizes and integrates the Sharia Penal Law into the northern Nigerian government.

"The Nigerian constitution guarantees the freedom from torture and cruel punishments, as well as the right to a fair trial."

At the original trial on March 22, 2002, the Sharia court did not offer defense counsel, nor did the court advise Lawal what the punishment would be if she pleaded guilty. Confessing the truth, Lawal was sentenced to the prescribed punishment for adultery. The court sentenced her to be buried up to her neck and stoned to death.

According to Islam, Nigerian Muslims believe that in order to be a faithful Muslim, one must submit completely to the laws of Allah both religiously and legally. These Sharia supporters feel that it is the right of Muslims to be tried under an Islamic court. Sharia supporters in Nigeria assert this

constitutional right based on the 1999 Nigerian constitution, which guarantees the freedom of religion.

Amnesty International, a major dissenter of the Quranic-based Sharia Law states that this decision is contrary to the Nigerian constitution and the country's "legal obligations under international human rights law and the African Charter for Human and People Rights." Amnesty International, *Death by Stoning Upheld in the Case of Nigerian Woman Amina Lawal*, at <http://www.amnestyusa.org/news/2002/nigeria08202002.html>.

Amnesty International has taken measures to prevent stoning to death, which is considered a cruel form of torture prohibited by the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture. The Nigerian constitution guarantees the freedom from torture and cruel punishments, as well as the right to a fair trial.

Professor Michael J. Howlett, Associate Professor at Loyola University Chicago School of Law, experienced in the field of international humanitarian work through the American Refugee Committee commented, "The Sharia penal laws are another example of laws that are so alien to the western mind that we have difficulty understanding the acceptance of this from people in the same way we have difficulty understanding the laws that enforce genital mutilation on women when they reach puberty and those that

deny education to them."

The case has caused a stir in international politics and Nigerian President Olusegun Obasanjo is being pressured to find a solution. The southern part of Nigeria is predominantly Christian, while the northern part is predominantly Muslim. President Obasanjo is being pressured by both sides to decide whether to uphold the Sharia Penal Law.

Implementation of Sharia Penal Law began in October 1999, after the nation emerged from a long period of military rule and dictatorship and was transitioning into a democracy. The Nigerian states governed by Sharia Penal Law willingly accepted the legislation. Only one of the 12 states that adopted the Sharia Law over the last two years have opposed the penal legislation.

"It is another example of that which is justified as a cultural right but appears to be more to do with male prerogative and control."

— Michael Howlett,
Professor, Loyola,
University Chicago
School of Law

Amina Lawal married at the age of 14, and had two children

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NEWS

DIGITAL REGULATION AND THE IMPACT ON EDUCATION

By Valerie Sarigumba

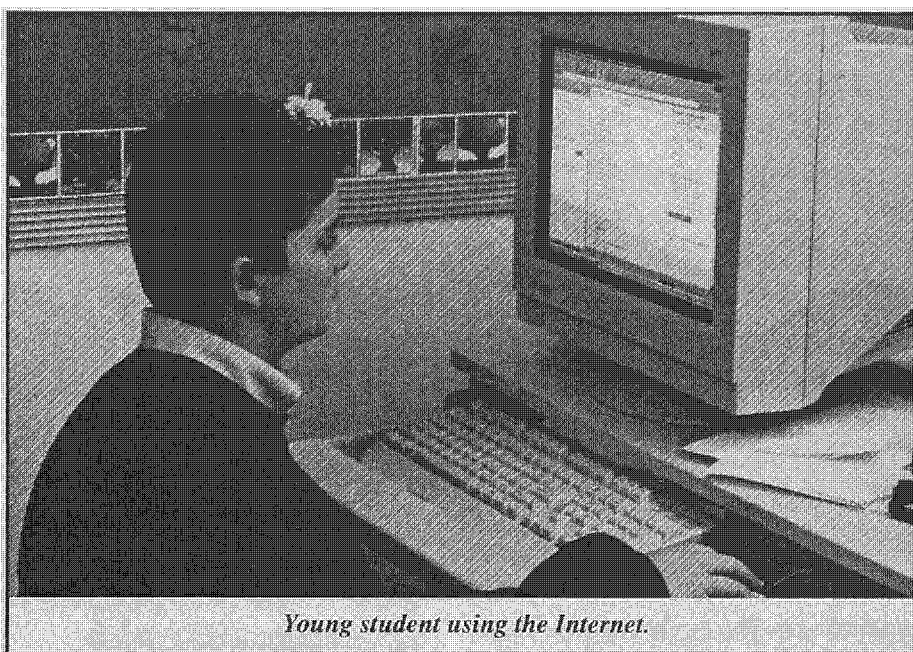
While digital copyright opponents assert that laws enforcing copyright protections restrict education, other legislative action indicates that education is not the proper vehicle for dismantling digital copyright protections.

In July 2002, the American Civil Liberties Union (ACLU), on behalf of David Edelman, sued N2H2, an Internet filtering company, as a countermeasure to prevent N2H2 from suing Edelman for circumventing its encryption software. Edelman wants to circumvent N2H2's encryption to see its list of blocked web sites. The Digital Millennium Copyright Act (DMCA), however, states that it is illegal to circumvent digital protections on software. Pub. L. No. 106-554, 114 Stat. 2763, 2763A-335 (2000).

"The battleground is not education. It really has to do with protecting works from Internet piracy."

— John Genga, intellectual property attorney from Paul, Hastings, Janofsky & Walker

Edelman's purpose for circumventing the encryption is to conduct research for improving filters to allow better access to educational sites while still blocking pornographic sites. Edelman's suit asserts that the DMCA is hampering educational pursuits, but current legislation and court



Young student using the Internet.

cases question whether education is really the proper arena to raise the digital copyright dispute.

In early October 2002, the Supreme Court heard the arguments for *Eldred v. Ashcroft*, which challenges the constitutionality of the Sonny Bono Copyright Term Extension Act. *Eldred v. Ashcroft*, 534 U.S. 1160 (2002); Pub. L. No. 105-298, 112 Stat. 2827 (1998). The act would add twenty years of copyright protection for many works. The lead plaintiff, Eric Eldred, argued that such works no longer have use to their dead authors, and library groups and scholars asserted that the act deprives the public's access to literature, music, and films. The Court, however, did not see any "empirical evidence" that the act substantially limited the availability of works to the public. It also questioned the incentive to extend the copyright protection.

Despite arguments such as those presented in *Eldred*, Congress recently loosened

copyright protections to aid in online education. On October 3, 2002, the Senate approved a bill allowing online-education instructors to use various artistic works on course websites without obtaining permission by the copyright owners. Currently, traditional classrooms are allowed broad use of copyrighted works without permission, but online instructors may only use non-dramatic works. The bill is only awaiting a signature from the President.

Libraries may be especially sensitive to access restrictions following a recent attempt by Congress to give libraries financial incentive for utilizing Internet filtering software to prevent users from downloading sexually explicit websites. To promote filtering use, Congress enacted the Children's Internet Protection Act (CIPA), which required libraries to install Internet filters in order to receive significant government subsidies.

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NEWS

CONSUMER PROTECTION GAINING STRENGTH UNDER STATE ANTITRUST SUITS

By Amanda Strainis-Walker

The recent settlement between attorneys general from 44 states and Salton Inc., a manufacturer of the George Foreman Grill based in Lake Forest, Illinois, highlights the growing independence of multistate antitrust actions and the Illinois Antitrust Bureau's increasing prominence. *State v. Salton, Inc.*, S.D.N.Y. Compl. 02CIV7096.

"The Salton case is unique because it was developed, investigated, and prosecuted without federal assistance," said Blake Harrop, of the Illinois Attorney General's Antitrust Bureau.

The Salton settlement came the same day that 44 state attorneys general filed a civil complaint in New York federal court against Salton for five claims of antitrust violations, following a two-year investigation of the company's sales practices. The main claim focused on the allegation that Salton had coerced retailers to sell the grills at a minimum price that matched the company's selling price of the same product on the Internet and infomercials. While the suit was originally initiated by the New York Attorney General's Office after retailers called to complain about Salton's practices, the Illinois Attorney General's Office co-led the investigation because of the company's local headquarters.

"This is one of the few times that Illinois has taken a lead

role in a multistate antitrust case," said Spencer Weber Waller, Director of Loyola University Chicago School of Law Institute for Consumer Antitrust Studies. "The main reason the state took such a large role was due to the company's location."

"The Salton case is unique because it was developed, investigated, and prosecuted without federal assistance."

— Blake Harrop, Illinois Attorney General's Antitrust Bureau

Under the settlement, Salton is to pay \$8 million in damages over three years to the forty-four states involved in the suit, even though the company did not admit any wrongdoing. In addition to Illinois' share of the \$200,000 allocated for costs and attorneys' fees, estimates indicate that the state will receive \$360,000 for damages on behalf of Illinois citizens to be used for health and nutrition-related causes.

With 44 state attorneys general as named plaintiffs in the suit and several states allocating resources for the antitrust investigation of Salton, this case represents a multistate antitrust effort, a relatively new development in the history of modern antitrust enforcement. State attorneys

general did not receive the authority to seek monetary damages on behalf of their citizens until 1976, when Congress passed the Hart-Scott-Rodino Antitrust Improvements Act ("Act"). 15 U.S.C. § 4c (2002). The Act gave an explicit right to state attorneys general to use their *parens patriae* authority to represent the interests of consumers and seek injunctive relief on their behalf in federal court under the Sherman Act. 15 U.S.C. § 1 (2002).

In the years since the passage of the Act, state attorneys general have built up their antitrust enforcement systems, but have often used their resources in coordination with the Department of Justice or the Federal Trade Commission, the federal enforcement agencies, or private counsel. The state coordination of antitrust enforcement tools is the result of limited resources for antitrust enforcement and vast jurisdictional reach. To overcome these obstacles, states have turned to one another to investigate and prosecute antitrust cases, which often extend beyond state borders.

Even within the multistate approach of enforcement, state antitrust cases generally develop out of federal investigations or in coordination with one of the federal enforcement agencies. For example, a multistate civil action was filed against six major

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NEWS

JOSE PADILLA – GOVERNMENT’S HANDLING OF ALLEGED TERRORIST, U.S. CITIZEN

By Kevin McCloskey

Jose Padilla, a U.S. citizen, has been in the custody of the U.S. government since he was arrested on May 8, 2002 at O’Hare International Airport in Chicago without being charged with a crime. Since June 9, he has been held as an “enemy combatant.”

The classification as an enemy combatant allows the government to hold Padilla indefinitely without being charged, and is constitutional under *Ex Parte Quirin*, a 1942 United States Supreme Court decision. 317 U.S. 1, 11 (1942).

On September 26, 2002, attorneys Donna Newman and Andrew Patel filed motions in federal court asserting that holding Padilla in military custody at a navy brig in Charleston, South Carolina violates Padilla’s constitutional rights.

Through the classification of Padilla as an enemy combatant, he can be brought before a military tribunal rather than the government bringing criminal charges in the court system.

Padilla’s case raises two compelling yet competing issues: the protection of Americans from terrorist attacks and the protection of the civil liberties of American citizens.

Padilla is suspected of plotting with al-Qaeda operatives to release a “dirty bomb” in the United States. A dirty bomb uses conventional explosives to spew potentially lethal radioactive material

across a wide area.

Ruth Wedgewood, a law professor at Yale University, based on the *Ex Parte Quirin* decision states, “If you go to war against your country, you do not have rights to a jury trial, and the answer to the practical question is that we are at war.” Adam Liptak, *Legal Questions on U.S. Action in Bomb Case*, N.Y. TIMES, June 11, 2002, at A18.

Donald Rumsfeld, the U.S. Secretary of Defense, has defended Padilla’s classification based on Padilla’s alleged involvement in terrorist activities. President Bush described Padilla as a “bad guy” who “is where he needs to be — detained.” Mark Potter, *Lawyer: Dirty bomb suspect’s rights violated*, at <http://www.cnn.com/2002/US/06/11/dirty.bomb.suspect/>.

they possess strong evidence connecting Padilla to a construction of a dirty bomb.

Ed Yohnka, Communications Director of the American Civil Liberties Union (ACLU) of Illinois, states, “It is remarkable that after months of holding Mr. Padilla in custody, the government can offer no cogent explanation for his detention. If they have a case, they should charge him and try him in the same way that the government has handled other cases related to terrorism. Such indefinite detention cannot be defended under our constitutional system of government.”

Padilla is being held as an enemy combatant on the basis of hearsay statements, without the access to counsel, and no venue in which to challenge his classification.

Alan Raphael, an Associate

“It is remarkable that after months of holding Mr. Padilla in custody, the government can offer no cogent explanation for his detention.”

— Ed Yohnka, Communications Director of the American Civil Liberties Union of Illinois

Federal prosecutors have said in federal court filings that Abu Aubaydah, a lieutenant of Osama Bin Laden, who is also in U.S. custody, informed officials that Padilla had discussed bomb plots with top al-Qaeda leaders in Pakistan. However, Justice Department officials have recently strayed from the indication that

Professor of Law at Loyola University Chicago, says, “Our federal courts are perfectly capable of handling cases involving sensitive information. Holding a U.S. citizen without the assistance of counsel and without bringing charges based upon probable cause displays a lack

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NEW IMMIGRATION LAW PROVISION MOBILIZES LOCAL LAW ENFORCEMENT

By Heather Egan

The Department of Justice has gained the authority to deputize local and state police officers to enforce immigration laws through a provision of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 that went into effect August 23, 2002. 8 U.S.C. §1357 (1996).

This arrangement will make it so they [state and local police] will no longer have to close their eyes to immigration law violations.

In 1996, Congress approved and President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act. That act included a provision allowing state and local law enforcement agencies to enforce immigration law. The provision, known as Section 133, was never implemented under former United States Attorney General Janet Reno.

Section 133 grants the Attorney General broad authority to enter into written cooperative agreements with state and local governments to accept the services of state officers or employees for immigration law enforcement in an immigration emergency. However, the legislation does little to clarify exactly what constitutes an immigration emergency.

The current Justice Department, under Attorney General John Ashcroft, has said that it would activate the provision only for specific emergencies of

mass immigration on a temporarily and geographically limited basis.

Immigration and Naturalization Services (INS) has 2000 agents for interior enforcement, while local police and sheriff's departments nationwide have roughly 622,000 officers. The potential effect of giving these officers the authority to enforce

immigration law on the fight against illegal immigration and terrorism is enormous.

Diana Bauerle, an immigration attorney from Kempster, Keller & Lenz-Calvo, Ltd., is "concerned that the implementation of this provision will only further encourage those officers who exercise racial and ethnic profiling. They may abuse the wide discretion authorized by the law as an excuse for stopping people who appear to be foreign nationals based on their physical appearance."

A wide range of immigrant-rights and civil-rights organizations have criticized the idea of local police enforcement of immigration law. They fear that in a suspicion-ridden climate, such as the present war on terror, the Attorney General could try to use the new provision to target certain nationalities in the name of homeland security.

Many local police

departments are not eager to get involved in the enforcement of immigration law. Earlier efforts to involve state and local law enforcement officers were plagued by many problems. For example, a 1997 effort on the part of local police to enforce immigration laws in Chandler, Arizona resulted in widespread civil rights abuses, including unjustified arrests of legal residents and citizens of Mexican descent. The municipality suffered severely strained police and community relations as well as substantial monetary liability.

Due to these problems, many state and local police departments and local governments have longstanding policies precluding their officers from becoming involved in immigration enforcement. For these reasons, many municipalities seriously question the implementation of the provision. The previous solution of having a specialized federal agency whose sole responsibility is immigration enforcement makes good sense, as it frees other agencies, such as state and local police, to investigate crime and obtain the cooperation of the communities they serve and protect.

The new provision could cause victims of crimes, witnesses, and others in tight-knit immigrant communities to refuse to cooperate with state and local police, out of fear that they, or close friends and

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NEWS

ACT HELPS HOMELESS CHILDREN SUCCEED IN SCHOOL

By Amber Nesbitt

Earlier this year, Congress reauthorized the McKinney-Vento Homeless Assistance Act ("Act") as part of the No Child Left Behind Act of 2002. 42 U.S.C. §11431 et seq. (2002). The revised Act makes both procedural and substantive changes to the original Act of 1987 in an attempt to reach needy children more effectively.

Congress passed the original Act in 1987 because they recognized that instability at home had a negative impact on school attendance and performance. At the time of the original Act, approximately 50 percent of homeless children were regularly attending school. By 1995, that figure had improved to roughly 86 percent. While this is a significant improvement, there were still certain issues that created an impediment to consistent school attendance.

The revised Act of 2001 began by expanding the definition of "homeless child and youth" to include migratory children and unaccompanied youths (those who are runaways or not in regular contact with their parents). 42 U.S.C. § 11434a (2002). The original definition was already quite broad, and included children who are camping, living in hotels, cars, abandoned buildings, and substandard housing, or are living with another family.

One of the most notable changes to the Act is that every school district or local education agency must designate a liaison for homeless children. This liaison

identifies homeless children within their district, assists them in obtaining educational support services, coordinates federal and state programs, and informs them of their rights. Buzz Calvert, the McKinney Project Coordinator from Berrien County Intermediate School District in Michigan has cited this as being "[t]he most powerful, new component of the recently reauthorized McKinney-Vento Act. For the first time ... we now have a network of individuals who are working with the same focus. ... We believe that by sharing information, communicating about the special problems that we've encountered, and how we solved those problems, that we can develop a body of collective experience that will enable us to ensure that youth in transition are not left behind – socially or academically."

Congress passed the original [McKinney-Vento Homeless Assistance] Act ... because they recognized that instability at home had a negative impact on school attendance and performance.

Under the revised Act, schools are to promote academic and social success by allowing

students to continue attending their school of origin (the school they attended while their family had permanent housing) for the duration of their homelessness. 42 U.S.C. §11432 (2002). Even if their family finds permanent housing in another school district, the students may remain in their original school for the remainder of that year. In order to make this possible, the revised Act also requires the liaison to provide transportation for the children to their school. If the district where the children live is different from the one where they attend school, the two liaisons must coordinate their efforts and funding to ensure that the children can get to school each day.

When homeless children do change schools, the new Act has provisions that make the transition as easy as possible. For instance, children without immunization academic records are still entitled to enroll immediately, and their new school must contact their old school to obtain the necessary records. Additionally, the United States Department of Agriculture is now allowing all liaisons and directors of shelters, in addition to parents, to verify a student's homelessness and expedite access to free meals. These new provisions attempt to minimize any chance of an interruption in the student's attendance and to ensure that the student becomes involved in the new school community as soon as possible.

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INMATE IMPLICATES PRISON GUARDS WITH EIGHTH AMENDMENT VIOLATION

By Anne Leinfelder

Two inmates get into a brawl. One prisoner beats up his cellmate. This may not sound unusual considering prison environments and the tendencies of some inmates. When guards stand by and watch, however, or set up a situation where an inmate is likely to be attacked, the situation looks suspicious.

Two recent cases in the Seventh Circuit Court of Appeals have dealt with inmates suing prison officials or personnel, implicating the Eighth Amendment's prohibition against cruel and unusual punishment. The issue revolves around the officials' awareness of the risk of danger and their actions with regard to that knowledge.

In *Case v. Ahitow*, the Seventh Circuit held that plaintiff Bryan Case had stated a cause of action under the Eighth Amendment and reversed the ruling of the lower court which had granted a motion for summary judgment in favor of the defendants. *Case v. Ahitow*, 301 F.3d 605 (Ill. App. Ct. 2002).

Case, an inmate at the Illinois River Correctional Center, sued prison personnel claiming that they purposely allowed a violent inmate, Phillip Jones, to be unsupervised near him. Case had previously written a letter to the head of the prison system stating that Jones had threatened to rape him and other letters to prison staff indicating that Case was being harassed. Jones had a violent record including armed violence,

forcible detention and the assault of inmates on six prior occasions.

At the time of the incident, Case had just been moved from segregation to a unit where inmates could interact. Jones was working unsupervised in the area when Case walked by, and Jones attacked Case with a broom so violently that Case suffered a permanent loss of hearing.

Case filed this federal civil rights suit against prison officials alleging that the guards were out to

Amendment. *Case*, 301 F. 3d at 607.

The defense pointed out that prisons are dangerous places and inmates fight often, while at the same time stating that none of the defendants was aware of there ever being a fight in the special management unit. The Court found this proposition hard to believe. Judge Posner wrote for a three-member panel of the Seventh Circuit, "Prisons are dangerous but Case was not a victim of the

"If the guards know that the plaintiff inmate faces serious danger to his safety and they could avert the danger easily yet they failed to do so," they will be ... in violation of Eighth Amendment.

— *Case v. Ahitow*, 301 F.3d 605 (Ill. App. Ct. 2002)

"get him" because he was a troublemaker and because of his agreement to testify against a guard in a drug case. He believed they set up a situation where Jones would be unsupervised and if given access to Case, would follow through on his numerous threats to harm him.

The Court held that an issue of fact existed as to whether the behavior of the corrections personnel was "deliberately indifferent." The Court stated the test for this determination as follows: "If the guards know that the plaintiff inmate faces serious danger to his safety and they could avert the danger easily yet they failed to do so," they will be liable for deliberate indifference in violation of the Eighth

inherent, as it were the baseline, dangerousness of prison life, but, if his story is true, either of a plot by the guards to punish him or a failure of protection so egregious as to bring the case within the rare category of meritorious Eighth Amendment claims by prisoners." *Case*, 301 F.3d at 607.

In a similar case where a prisoner was attacked by his cellmate, the Court of Appeals again dealt with this issue of deliberate indifference. *Washington v. LaPorte County Sheriff's Dept.*, 2002 WL 31236311. In the Washington case, the plaintiff inmate had not informed guards that he had

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NEWS

EVICITION SUIT SETTLEMENT SETS PRECEDENT FOR BATTERED WOMEN

By JESSICA HUNTER

C.B.M., a property management group in Oregon, has recently agreed to a settlement in a federal lawsuit arising from the eviction of one of its tenants, a battered woman, Tiffiani Alvera. *U. S. & Alvera v. C.B.M. Group, Inc.*, 01-857-PA (1999). The basis for the eviction was a breach by Alvera's husband of a zero-tolerance-against-violence clause in Alvera's lease; a term that C.B.M. argued was permissible under Oregon law. The lawsuit was brought on Alvera's behalf by the U.S. Department of Housing and Urban Development and various public interest law centers who describe the settlement as a victorious precedent for battered women.

"There has certainly been more reporting of domestic violence against men, but the overwhelming majority of these victims are female."

— Wendy Pollack,
National Poverty
Law Center

In the last 10 years, zero-tolerance policies have become prevalent in both private and public housing throughout the United States. The most common policies prohibit drug-related activity on the tenant's premises. In the event of a breach by any member of the

household or guest, all occupants may be evicted.

Earlier this year the Supreme Court of the United States, in *Oakland Housing Auth. v. Rucker*, had the opportunity to review such policies in publicly subsidized housing. *Oakland Housing Auth. v. Rucker*, 122 S.Ct. 1230 (2002). In upholding the constitutionality of no-fault evictions arising from such policies, the Court noted that a tenant who "cannot control...criminal activities by a household member which threaten health or safety of other residents, is a threat to other residents." *Id.* at 1235. Policies that specifically prohibit violence, such as the one in Alvera's lease, mandate that all members of a household – including the victims themselves – are subject to eviction in the event of violence on the leased premises.

According to her complaint, Alvera was served with a 24-hour eviction notice after she informed her landlord that she had obtained a temporary restraining order against her husband, who had recently physically assaulted her in their apartment.

National women's rights activists involved in Alvera's suit decried the zero-tolerance policy as particularly cruel to victims of domestic violence and charged that its application to such victims is sex discrimination in violation of the Fair Housing Act. The overwhelming majority of domestic violence

victims are female and their abusers are typically their intimate partners. In fact, victims of domestic violence have trouble finding apartments because they may have poor credit and rental and employment histories due to their abuse.

C.B.M. justified its zero-tolerance policies on the same grounds as the Supreme Court in *Oakland Housing Auth. v. Rucker*, citing the need to protect the living environment of all its tenants.

Other critics of the suit question whether the zero-tolerance policy is truly sex discrimination. Although women are disproportionately victims of domestic violence, they claim that men are also victims of such abuse and that the arrests of female perpetrators of domestic violence are rising. Wendy Pollack of the National Poverty Law Center notes, "There has certainly been more reporting of domestic violence against men, but the overwhelming majority of these victims are female." She acknowledges however that sex discrimination may not be the best legal theory with which to attack these policies. She suggests we "should look at it from the stance of the 'innocent victim', which would also protect children who are often victims both of violence in the home and subsequent eviction under the zero-tolerance policy."

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NEWS

CONTROVERSY IN THE DEAF COMMUNITY

By MOLLY MACK

The Michigan Child Welfare Services' decision to implant a cochlear implant in two children has reignited controversy in the Deaf community over the use of the cochlear implants. Lee Larson lost custody, but not parental rights, over her two young children for a non-cochlear implant related issue. While the Michigan not-for-profit has custody over the children they are pushing to have a cochlear implant placed in both children.

Larson and the children's father are both Deaf and have refused the surgery based not only on their rights as parents to refuse elective procedures, but also as Deaf adults who want their children to grow up and embrace the same culture and lifestyle that they enjoy. Proponents of the surgery argue that placing a cochlear implant in a child drastically enhances their quality of life and makes them more capable of succeeding in a hearing world.

Cochlear implants are the only medical intervention that can restore partial hearing in cases of profound sensorial neural deafness. A cochlear implant is placed directly on the brain and transforms speech and sound into electrical signals that the brain can interpret. It bypasses the normal function of the outer ear, hair cells and cochlea, using surgically implanted electrodes and digital signal processors worn on the ear or body to do the work that the damaged or malformed ear structures cannot do themselves.

Terry Zwolen, Ph.D., a clinical associate professor and analyst research scientist at the

University of Michigan Cochlear Implant Program is very positive about the impact that a cochlear implant can have, especially on a young child. After completing a study of 102 children with cochlear implants, Zwolen noted that the sooner a child gets an implant, the sooner speech and language develop. These children also do better on word and sentence recognition tests. However, Zwolen notes that there is no guarantee that these children will lead a normal life.

“...the social service agency ... made a moral decision that the children must be hearing to have any chance at a meaningful life.”

— Howard Rosenbaum,
attorney with Equip for
Equality

This reference to a normal life is one that most bothers people in the Deaf community. Many people who have a hearing disability do not consider themselves disadvantaged. Rather, they feel that the anatomical difference between Deaf people and hearing people has led to cultural differences. That is why it is important to Larson, and many in the Deaf community, that these children not be given a cochlear implant; not only because it will destroy their ties with the Deaf community, but also because they will never fully fit into the hearing society.

Opponents of cochlear implants point to a number of other disadvantages including dependence on the medical community for programming and reprogramming of the cochlear implant, lack of evidence that the device enhances speech perception, the risk of infection from the surgery, and communication problems with the apparatus itself.

Howard Rosenblum, a senior attorney at Equip for Equality, feels very strongly about this issue. As the only culturally Deaf attorney in Illinois, Howard is adamantly against the use of cochlear implants, especially in young children. “Every time a deaf child receives an implant typically the deaf child does not have a choice. What is different about the Michigan case is that the deaf children's parents, who are themselves Deaf, have chosen not to implant their children. Despite the Deaf parent's decision, the social service agency that has responsibility of the children have made a moral decision that the children must be hearing to have any chance at a meaningful life. As anyone can see, Deaf adults do have meaningful lives... We do not need to be fixed, but rather need to be given the same opportunities as everyone else.”

On October 4, 2002, the trial over whether these two children would receive cochlear

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FEATURE: Child Custody

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sues on a daily basis, the voices of those who must face the ultimate tragedy of having their children taken away is just as important in the debate. One such parent is Ms. Washington (who asked that we not publish her real name for privacy reasons). Washington is currently battling with DCFS and the Cook County State's Attorney's Office to get her children back after they were taken away on allegations that her home was unsafe for them.

When asked how she came into the system, she stated that a neighbor called the hotline and after an investigation, her children were taken. Washington admits that she had been struggling to provide for her four children and that many times, they had no food to eat because she could not find a job and she was dealing with substance abuse problems. Her children have now been in foster care for almost three years and although she is doing all the services required by DCFS, there has still been no move to return her children to her.

Washington explains, "I think the major problem isn't that we aren't given jury trials but that no one listens to what the parents have to say. All they want to do is remove the kids; they never give the parents a chance to explain themselves. You walk in the courtroom and you feel like you are the enemy and that you're guilty and everybody thinks you are. I know I caused my own problems but I love my kids and I feel like no one will give me credit for the changes I've made to make a better life for them."

There are indeed many issues and emotions involved and changes that must occur so that everyone who makes the journey through the Cook County Juvenile Court system can say that they were treated fairly, even if they do not agree with the outcome of the case. The Special Committee plans to hold several more hearings to discuss child custody and domestic relations issues, two topics integrally connected to the Cook County Juvenile Justice System. Changes will be slow at best because of the sensitive issues involved. No one can say what changes will be made, but the hearings are the first step in helping children find a permanent place to call home and aiding their families to adequately deal with the challenges they face.

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Pub. L. No.106-554, 114 Stat. 2763, 2763A-335 (2000). The problem with the filtering mechanisms, according to the libraries that sought to have the act stricken, was that they overprotected Internet searches and prevented library patrons from accessing educational information. In May 2002, a Pennsylvania District Court permanently enjoined the Federal Communications Commission and the Institute of Museum and Library Services from withholding federal funds for any public library that failed to comply with CIPA. *American Library Ass'n, Inc. v. U.S.*, 210 F.Supp. 2d 401 (E.D.Pa. 2002).

Outside the online pornography issue, Edelman is not the only researcher who has asserted that educational interests are undermined by digital restrictions on research. Princeton computer-science associate professor Edward W. Felten attempted to meet a public challenge presented by the Secure Digital Music Initiative (SDMI) to break through "watermark" protections on digital music. Felten succeeded and was about to publish his findings for an academic conference when the SDMI threatened him with liability under the DMCA. Felten withdrew his original paper but still published a portion of his research.

Other educational groups have dealt with their insecurities over copyright protections by implementing some of their own restrictions. The Institute of Electrical and Electronics Engineers (IEEE) started a policy in November 2001, requiring all authors to indemnify IEEE for any DMCA liability. Also, leaders of six major higher-education organizations asked college presidents to try stopping the illegal distribution of copyrighted materials, but the request was mainly concerned with commercial online material. In October 2002, the University of Chicago sent a university-wide notice that it would not protect "individuals who distribute copyrighted material without an appropriate license." ("Letter to the University Community," Gregory A. Jackson, Vice President and Chief Information Officer, University of Chicago, October 9, 2002.)

As educators express copyright concerns, the recent leniency shown by courts and the legislature

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from that marriage. The marriage lasted 12 years. After her divorce in 2000, she met a man in her village that promised to marry her and take care of her two children. They began a relationship, during which Wasila, her third child, was born. Three months later, Katsina State adopted the Sharia Penal Law.

Lawal's lawyer, Hauwa Ibrahim, states, "What angers us most about this case is that the judge failed to implement sharia correctly. They convicted her of adultery, but the child was conceived before the law came into effect. It was not a crime when she did it." Dan Isaacs, *Nigerian woman fears stoning before appeals*, CHICAGO SUN-TIMES, Page 8, August 25, 2002. Lawal has been granted 30 days to appeal and is still awaiting the decision of the appeals court.

Under Sharia Penal Law, pregnancy outside of marriage is sufficient evidence for a woman to be convicted of adultery. There is a higher burden of proof in convicting a man of adultery. The act must have been witnessed by four men and he must also confess his crime to the judge.

Professor Howlett commented on the prescribed Sharia death penalty, "It is another example of that which is justified as a cultural right but appears to be more to do with male prerogative and control."

Professor Auwala H. Yadudu, an expert on Sharia implementation in a democratic Nigeria suggests that Muslims in Nigeria are content with Sharia legislation and the concern by human rights activists are looked upon with disdain and suspicion.

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of trust on the part of this administration in the judicial process."

The government classified Padilla as an enemy combatant on June 9, 2002, but before that classification it had faced a deadline to press criminal charges on Padilla by June 11, 2002 due to his detainment.

When Padilla was arrested at O'Hare International Airport he did not have any radioactive material or any other bomb-making equipment. He had with him \$10,526 of undeclared money. After his arrest in Chicago, he was transferred to a high security federal facility in Manhattan.

In the same jurisdiction, Judge Shira A. Scheindlin, a federal judge in a separate case, held that the material witness law could not be used to hold people indefinitely in criminal investigations.

The fear is Padilla, a U.S. citizen, is being classified as an enemy combatant solely because the government is not prepared to charge him with any criminal violations, but wants to keep him detained. Padilla's defense attorneys have accused the government of forum shopping in transferring Padilla from New York.

Professor Raphael said, "Holding a U.S. citizen without the assistance of counsel, without the filing of charges against him, is exactly what due process does not allow. The precedent is horrible and frightening."

The fear for public interest attorneys is that the executive branch of the government has acted alone in its classification of Padilla, and the situation is not the same as when the court decided *Ex Parte Quirin*. The foundation of our system of government is input from all three branches of government, and here a U.S. citizen is being held based on the action of one branch.

Padilla apparently converted to Islam during his time in a prison in Florida, before that he grew up in the Logan Square section of Chicago where he was a member of the gang the Latin Kings.

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have indicated that education may not be the field on which digital copyright battles were intended to be fought. As expressed by John Genga, a prominent intellectual property attorney with the firm Paul, Hastings, Janofsky & Walker in Los Angeles, California, "The battleground is not education. It really has to do with protecting works from Internet piracy." Over the next several months, the courts and the legislature will be making that determination.

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pharmaceutical companies for price-fixing vitamins, among other allegations, on behalf of the damages states' citizens incurred. This multistate case was filed by the attorneys general after the federal government criminally prosecuted the pharmaceutical companies and imposed million dollar fines on the companies. The money collected by the federal government, however, did not benefit the injured consumers. The suit filed by the attorneys general did receive funds on behalf of the states' citizens. In other cases, the attorneys general offices actually help with the investigation and are instrumental in the prosecution of the case, showing that a variety of arrangements between state and federal antitrust enforcement exist.

The Salton case is unique because it did not originate or proceed with the assistance of one of the federal enforcement agencies, indicating a sense of maturity with regard to attorneys general antitrust efforts that is likely to continue to develop with time. The Illinois Attorney General's involvement in this case suggests the office might be preparing for a more active role in multistate actions as the economic benefits from antitrust enforcement becomes clearer. Both the independence of multistate actions and Illinois' increasing role in antitrust enforcement mean more protection for consumers.

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In order to fund these new programs, Congress increased the budget significantly. From 1995 to 2000, the appropriations for these education programs ranged from approximately \$23 million to \$31 million. When the Act was reauthorized, Congress set a maximum spending limit of \$70 million per fiscal year through 2007. In 2002, Congress appropriated \$50 million for 2002. 42 U.S.C. § 11435 (2002).

The revisions made to the Act address virtually all aspects of education. While only time will tell whether or not the revision to the Act will be a success, Calvert is quite optimistic. "I feel that the McKinney-Vento Act offers districts an opportunity to knit safety nets of hope and support for homeless kids... [and] offers [educators] an opportunity to increase our awareness, our understanding, our compassion, and our ability to serve homeless children."

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family members, could face deportation. The new provision could undermine the decades-long efforts of many police departments to win the trust of the community. By putting state and local police into the business of questioning and detaining individuals solely on the basis of immigration status, a wedge could be driven between the immigrant communities and the police.

Supporters of Section 133 argue that the idea behind it was to give law enforcement officers who are closest to the communities the authority to act when they have reason to believe that immigration laws are being violated. Thus, the fact that they have close ties to the community will only help to enforce immigration laws.

This provision does not turn all law enforcement officials into immigration police; their primary responsibility will continue to be the enforcement of local laws. However, this arrangement will make it so they no longer have to close their eyes to immigration law violations.

Since September 11, several jurisdictions around the country have expressed interest in having their police departments trained to identify likely illegal aliens during the course of their normal duties. At least two of the September 11th terrorists had come into contact with local police but were not detained because local law enforcement did not recognize that they were in the country illegally.

Requests for greater state-federal cooperation in immigration law enforcement have come from both South Carolina and Florida. South Carolina's Attorney General Charlie Condon requested to have his state's police officers trained in immigration law enforcement and authorized them to enforce immigration laws. Florida announced in August that it signed the first special agreement with the Justice Department where law enforcement officers will be trained and deputized to arrest immigrants deemed a threat to national security.

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been in a prior fight with his attacker or that he was fearful of further harm. Because of his failure to show knowledge of the risk of serious danger on the part of prison personnel, the Court of Appeals affirmed the lower court's grant of summary judgment for the defendants. This decision states that prison officials will not be held liable simply because a fight breaks out between inmates. The standard is clear that they must have had knowledge of a serious risk of danger and could have prevented it, but failed to take any action.

These two cases set a clear precedent for what an inmate must prove in order to sue prison officials. Further, they serve as a deterrent to prison personnel against allowing fights to erupt between inmates. While an inmate cannot file a suit for any fight he or she is in, corrections officials and personnel must be on their guard to prevent inmate brawls and to protect vulnerable prisoners from attack.

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implants began. Judge Feeney, sitting before the family court heard a great deal of medical testimony about the benefits of using a cochlear implant and many Deaf individuals' testimony regarding the impact having a cochlear implant will make on these children. In the end, Judge Feeney decided that her court did not have jurisdiction to hear this issue because the use of cochlear implants was an elective surgery and the children's hearing loss did not constitute a medical emergency. Even though parents rights were the deciding factor in the Judge's decision, the ruling clearly classifies cochlear implants as an unnecessary device supporting the Deaf culture's view that people with hearing loss can participate fully in the community. Only time will tell whether the current view of these devices will continue.

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Although the case concerned only one victim, under the terms of the settlement, C.B.M. has agreed to halt application of its zero-tolerance policy in the five states (Arizona, California, Hawaii, Nevada and Oregon) where it operates housing facilities and to revise all employee manuals with respect to current eviction proceedings. Alvera's attorneys believe that this settlement will serve as a model for property management companies nationwide.

While no state has enacted laws forbidding landlords from evicting domestic abuse victims under the terms of a zero-tolerance policy, several states offer some protection for victims. Commonly, the laws provide the victim a defense against eviction if she can provide documentation of prior abusive incidents in the form of police reports or restraining orders. Although Pollack reports that there has been work to add a domestic violence exception to this policy at the state level, "advocacy efforts with local housing authorities may prove more fruitful."

In light of a recent survey by the U.S. Conference of Mayors, reporting that 56 percent of cities surveyed cited domestic violence as a primary cause of homelessness, many believe state and local response to this problem is long overdue.

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