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Georgia "minors display" law found unconstitutional

On October 23, U.S. District Court Judge Horace T. Ward found the new Georgia "minors display" law (Act 785) unconstitutional. Passed by the Georgia House of Representatives 127-0 and by the Georgia Senate 54-1 and signed into law by Governor George Busbee earlier in the year, the statute prohibits the sale or display of any item (picture, drawing, sculpture, photograph, book, or magazine) "the cover or content of which contains descriptions or depictions of illicit sex or sexual immorality, or which is lewd, lascivious, or indecent, or which contains pictures of nude or partially nude figures posed or presented in such a manner to provoke or arouse lust or passion or exploit sex, lust or perversion for commercial gain." The suit was filed by the American Booksellers Association, the Association of American Publishers, and the Freedom to Read Foundation, among others.

Having temporarily enjoined enforcement of Act 785 in July, Judge Ward concluded that the law "is not drawn to comport closely with" its concern for minors and with "the applicable constitutional guidelines"—and is therefore overbroad and vague. Despite the defeat, Representative Roger Williams, who sponsored the original bill, said he plans to rewrite it to avoid constitutional problems. Hinson McAuliffe, defendant in the suit, said he would rather wait for a suitable revision than appeal the court's decision. As of September, according to Publishers Weekly, *twelve other states have introduced or passed similar "minors display" legislation.*

Excerpts from Judge Ward's opinion follow.

I. Background

. . . Plaintiffs contend that the Act is facially invalid on the grounds, *inter alia,* that it is overbroad and vague, constitutes a prior restraint on speech and press, and unconstitutionally infringes upon their protected rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution. Defendants contend that the plaintiffs do not have standing to litigate the Act's constitutionality, and that in any case the State has fashioned a statute to control the availability of materials to minors in a manner that does not violate constitu-

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in review

Freedom of Expression
By Archibald Cox. Harvard University Press, 1981. 89p. $2.95 paper.

Richard Nixon's four appointees to the nation's highest bench—Burger, Blackmun, Powell, and Rehnquist—were nominated in fulfillment of campaign promises bordering on threats to give the country "conservative" judicial leadership. Although there is never any guarantee that a justice will conform to presidential expectations or media predictions (witness the careers of Felix Frankfurter and Earl Warren), none of Nixon's nominations gave any cheer to intellectual freedom advocates used to basking in the sunshine of the Warren Court. Even when the Burger Court came out on the right side, as it did early in the 1970s in the Pentagon Papers case *(New York Times Co.* v. *United States)*, few skeptics were persuaded.

Were our fears justified? Now that a decade has passed with the Supreme Court under the leadership of Warren Burger, we can ask: How well has the Burger Court done in nurturing First Amendment freedoms?

Two prominent constitutional scholars—Archibald Cox of Harvard and Thomas Emerson of Yale—have asked themselves the question. Their answers don't entirely agree. Professor Cox seems to think the Burger Court has frequently reached the correct conclusion. He would give it, say, a solid *B* on its results, despite its decisions refusing to protect the secrecy of editorial processes *(Herbert* v. *Lando*, a libel action against CBS's "60 Minutes") or editorial files *(Zurcher* v. *Stanford Daily)*.

Cox is clearly less pleased by the Burger Court's ability—or rather its inability—to articulate a coherent view of First Amendment guarantees. On this point the Court's mark is barely passing, a low *C* at best. In particular, Cox is distressed by the fragmentation of the Court, which manifests itself in a multitude of opinions in support of one holding and which results in blatant inconsistency. For example, the Court's five votes upholding a ban on union picketing appealing directly to consumers required no fewer than three opinions *(NLRB* v. *Retail Store Employees Local 1001)*. And on the same day, the Court struck down a precisely parallel ban on commercial advertising by electrical utilities.

Professor Emerson (writing in the May 1980 *California Law Review)* is also displeased by the Burger Court's inability to develop legal doctrines that would transform the values of free expression into a coherent body of law. But on this point he faults the Warren Court as well. He gives both Courts low marks. Differing from Cox in his low opinion of the Burger Court's results, Emerson concludes that the Burger Court has displayed "far less sensitivity" to the First Amendment than did its predecessor and that it has frequently taken advantage of openings in Warren Court decisions to halt the growth of First Amendment freedoms.

In Emerson's eyes, the Warren Court may not have developed much in the way of formal doctrine, but plainly its heart was in the right place. At the core of its decisions lay a conviction that the First Amendment occupies a "preferred position" in our constitutional system. The Warren Court gave exacting scrutiny to almost every restriction on free expression that came before it. Contrast this, Emerson says, with the Burger Court, which too often acts as if restrictions on free expression were so many regulations on fat content in hamburger.

Emerson cites these holdings of the Burger Court in support of his contention: Nude dancing can be prohibited in bars, whether or not the dancing is unprotected because "obscene." Severe restrictions can be placed on the location of "adult" theaters, whether or not they show "obscene" films. A city can bar political ads from its mass transit cars, even though it permits commercial messages. The news media have no First Amendment right to obtain access to a county jail whose operation is a matter of public controversy, or access to a pretrial criminal proceeding.

One decision of the Burger Court that disturbed Cox, perhaps more than any other, was its summary affirmation of lower court actions adverse to Frank Snepp, former CIA agent and author of *Decent Interval.* In upholding the CIA's no-publication-without-prior-approval rule, which the CIA imposes by

contract on its agents, the Court ignored the fact that Snepp's book contained no classified information. What's worse, it simply brushed aside the enormous public policy question of control of the nation's vast cloak-and-dagger industry. "Who shall guard the guardians?" is not a concern of Burger & Co.

On the other hand, Cox was buoyed in 1980 by the swiftness with which the Burger Court concluded that criminal trials must be open to the public (*Richmond Newspapers, Inc.* v. *Virginia,* overturning the Virginia Supreme Court). It may, he says, "come to outrank in importance all other First Amendment decisions of the Burger Court."

Cox's essay first appeared in the November 1980 *Harvard Law Review,* so one trip to a local law library should yield easy access to both Cox's and Emerson's carefully woven analyses. Read together they give a very thorough overview of the First Amendment at the outset of the 1980s. *—Reviewed by Roger Funk, co-editor of the* Newsletter *from 1973 to 1980.*

editorial

The November 1981 issue of *The Phyllis Schlafly Report* contains an article every librarian should read. "How to Improve Fairness in Your Library" is, in part, a patchwork of invective, claiming librarians, reviewers, and publishers are engaged in a concerted and largely successful effort to make "conservative, pro-family, [and] patriotic" books unavailable to the reading public. The essay is also burdened with a number of misrepresentations. Mrs. Schlafly states, for example, that "most libraries buy a tremendous quantity of pornographic and trashy fiction," that powerful feminists "are able to prevent publishers from accepting manuscripts from conservative authors," and that the American Library Association is "the librarians' *union.*" Finally, the article is a blatant exercise in self-promotion, mentioning a biography of Mrs. Schlafly and one of her books four times each in two pages and once again in the bibliography.

Particularly disturbing is Mrs. Schlafly's allegation that "all the ALA resolutions about 'standing firm' against citizens' pressure groups that want to remove obscene books from libraries are as phony as a $3 bill." She makes this statement in reaction to the ALA's support of the boycott of unratified ERA states. She evidently believes that the ALA is guilty by association of book banning, since Mrs. Schlafly considers "the pro-ERAers" to be the most effective book-banning group "in the history of America." Mrs. Schlafly challenges "the ALA to prove that it can be fair in allowing anti-ERA books in libraries." However, I believe the "burden of proof" is not on the ALA, as she contends. It is on Mrs. Schlafly.

Beneath the storm of partisan rhetoric, however, Mrs. Schlafly has a point—which the American Library Association has been making for many years: "Books should be readily available to the general public and to students on all sides of controversial issues of public importance. But often they are not." Furthermore, says Mrs. Schlafly, "It is the affirmative duty of libraries to seek out" such books and the responsibility of citizens interested in "improving fairness in local and public school libraries" to examine library collections, determine what is missing, and try to get the "other side" represented. Of course, Mrs. Schlafly is primarily concerned about the availability of "conservative," especially anti-ERA, books. Nevertheless, the principles by which she justifies this concern—fairness, balance, and the right to know—are sound, and they are applicable to *all* book selection practices, whether the practitioner is a liberal or a conservative.

Appended to the essay is a two-page bibliography of books which, claims Mrs. Schlafly, have been systematically excluded from library collections. As a librarian committed to the *Library Bill of Rights* and to the principles Mrs. Schlafly articulates, I would hope that at least some of the books listed—under the rubrics "pro-defense," "pro-family," "pro-basic education," and "pro-life"—are presently available in all libraries. If they are not, they should be considered for selection according to such traditional criteria as appropriateness, significance, and competence. Some of them might not satisfy strict materials selection standards, but not all the materials in our collections do. Another of our responsibilities is to make sure all points of view are represented, and to accomplish this we sometimes bend the selection criteria. As librarians, we occasionally are faced with incompatible objectives, and we are sometimes unaware of our own biases. Despite the tone and the inaccuracies, "How to Improve Fairness in Your Library" serves to remind us of both problems, and for that we are indebted to Phyllis Schlafly. Forewarned is forearmed.—*JFK*

Tampa *triste*

After City Attorney Joe Spicola determined that the Tampa City Council is, according to a 1969 statute, empowered to control public library acquisitions, removals, and restrictions, the Council voted 5-2 to order the Tampa-Hillsborough County Public Library to move six sex-education books from the children's section to the adult section of the library: *Where Did I Come From?* by Peter Mayle, *Where Do Babies Come From?* by Margaret Sheffield, Eric W. Johnson's *Love and Sex in Plain Language,* Colette Portal's *The Beauty of Birth, The Wonderful Story of How You Were Born* by Sidonie Matsner Gruenberg, and Steven Schepp's *How Babies Are Made.* The Council

also voted to form a committee charged with making recommendations "regarding the supervision and control of the library" and studying "the possibility of drawing guidelines for book placement and selection."

The directive followed a similar vote taken a month earlier, in which the Council asked Mayor Bob Martinez to request that the library reshelve the books (see *Newsletter,* November 1981, p. 161). This vote, in turn, came in response to the library board's decision, supported by library director Leo H. Meirose and a book review committee, to keep the books in the children's section (see *Newsletter,* May 1981, p. 65; July 1981, p. 102).

Between the two City Council votes, residents of the city of Tampa and Hillsborough County exchanged viewpoints in local newspapers and at public hearings. Dana Gustafson, housewife and member of Women for Responsible Legislation, called the books "pornographic." Patricia Lucardie, leader of a group opposed to reshelving the books, said, "The public library cannot permit some parents in the community to limit or decide the reading of all children or young adults in the community." Sue Parrish, of the Hillsborough County League of Women Voters, asked Council members if they have a general policy on violent as well as sexual subject matter, if they have established criteria for the placement of all library books, if they plan to inventory all books according to these criteria, if they intend to read and review all books ordered by the library staff in the future, and if they have determined the cost of setting up and carrying out a thorough review process.

Strongly opposed to the City Council decision, library director Meirose said that the Council order undermines the position of the library board and professional library staff, suggests that the library may follow its written selection policies up to the point at which "someone or some group objects loud enough," and creates "an atmosphere of fear." He was particularly concerned about placing "an artificial barrier" between the reshelved books and the readers for whom they were written.

Mayor Martinez has not publicly stated his position on the issue. His hands tied by the 1969 statute, he has objected to the placement of the public library under the authority of the City Council. At present, it is the only city department outside his control. In a memorandum to Council members, he recommended that the library system be established as a department under his jurisdiction. Reported in: *Tampa Tribune,* October 1, 10, 28.

Witnesses want Windham to teach creationism

Pete Sirkolit, presiding overseer of the Willimantic (Conn.) Congregation of Jehovah's Witnesses, asked Windham (Conn.) Public School officials to add a course on creationism to the school curriculum. By way of spreading his message, Serkolit distributed copies of *Awake,* the Watchtower Bible and Tract Society magazine, to school administrators. Windham High School Principal Donald Berkowitz said copies had been sent to science teachers for an evaluation.

Sirkolit said that one reason for encouraging the teaching of creationism is to provide students with the promise of "a bright future." Another reason is that creationism supports faith in God, without which "everyone is going to run wild." School superintendents in nearby Coventry and Mansfield insisted, however, that students are already being taught a number of different theories of human origins. But Sirkolit disagrees, and he is prepared to fight. "The controversy is going to get broader," he warned. Reported in: *Willimantic Chronicle,* October 13.

Amanda Bible honored

In February 1980, Columbus County (North Carolina) Library Director Amanda Bible began a successful defense of the library's right to keep Judy Blume's adult novel *Wifey* on its shelves (see *Newsletter,* July 1980, pp. 72-73). In October 1981, during the biennial meeting of the North and South Carolina library associations, Bible was recognized for her courageous stance. The recipient of the first plaque ever presented by the North Carolina Library Association Intellectual Freedom Committee, Bible was also given a $500.00 cash award, donated by Social Issues Resources Series, a Florida publisher. Another five hundred dollars was presented to the Columbus County Library Board. Also honored were Steven Stobbe of North Iredell High School in Statesville, North Carolina (see *Newsletter,* March 1981, p. 48), and Christine Miller of Buncombe County Schools, Asheville, North Carolina (see *Newsletter,* May 1981, p. 74; July 1981, p. 103).

The controversy in Columbus County began with a complaint to the County Board of Commissioners, which resulted in an order to remove *Wifey* from the library. Then the North Carolina Attorney General ruled that minors be denied access to adult books unless accompanied by parents. Bible resolved the conflict by recommending that restricted cards be given to children of parents who ask for them. The compromise seems to have satisfied everyone concerned,

including the five percent of the library's patrons who have requested restricted cards for their children. Ironically, *Wifey* became the most asked-for book in the county library after the complaint was raised, and it has remained popular for the last year and a half. Reported in: *Carolina,* September 30; *News Reporter,* October 8.

Gideon-giving banned in Oregon school district

Members of the Josephine County (Ore.) School District board voted 3-2 to ban the distribution of religious materials at seventeen area schools. The decision came after the local chapter of the Gideons International submitted its annual request to distribute Bibles to fifth-graders. "I'm a staunch supporter of the Gideons," said board chairperson Sherman Newman, who cast the deciding votes. "But it's the law." A majority of board members had evidently been persuaded to end the 16-year-old practice by a state attorney general's opinion and the advice of local lawyers. Nearby Grants Pass School District passed a similar ban last year. Reported in: *Salem Statesman-Journal,* November 11.

Time vp warns pay-tv group to proceed cautiously

Speaking at a Washington (D.C.) Cable Club luncheon, David Levin, Group Vice President of Video for Time, Inc., warned pay-TV programmers to stand firmly against censorship but to give due attention to cable television's "moral" critics. He reminded his audience that attempts had been made in Florida, Massachusetts, Utah, and Kansas to prohibit R-rated movies and "indecent" programs in general. Although such endeavors had failed, he said, groups like Morality in Media were getting more sophisticated, hiring better lawyers, and using slicker public relations people. On the one hand, he added, cable television is designed to offer the widest possible choice to viewers. On the other hand, however, broadcasters should select "mature material" carefully, include "content advisories" with controversial programs, and use every possible means of keeping children away from potentially offensive programs. Reported in: *Variety,* September 23.

(some) writers unite

On September 10, at a dinner meeting in New York City, the American Society of Journalists and Authors launched a nationwide campaign to fight censorship. Speakers were Bob Guccione, publisher of *Penthouse;* Sol Stein, author of *The Magician* (banned in Wisconsin); and Eve Merriam, author of *The Inner City Mother Goose.* According to Evelyn Kaye, ASJA secretary and co-chair of the Professional Rights Committee, the organization of six hundred regularly published freelance writers will distribute "I read banned books" buttons and campaign literature to chapters in several major U.S. cities.

One month later, three thousand writers, many of them sporting ASJA buttons, attended the American Writers Conference at the Roosevelt Hotel in the same city. Sponsored by *Nation* magazine and funded by Mobil Foundation, NBC, and the New York Times Company Foundation (among forty cosponsoring organizations), the mass meeting was unattended by some major writers who had lent their names to the event, including Norman Mailer, J. K. Galbraith, Bernard Malamud, Robert Penn Warren, and William Styron. Nevertheless, the tone of the conference reportedly ranged from the bemused to the splenetic, especially on such topics as U.S. imperialism, government secrecy, and cultural repression. Five panels on censorship explored the problems of self-censorship, publishers' and TV networks' control over the literary marketplace, the difficulty of defining "pornography," and the increase in censorship fomented by Moral Majority-type groups. According to a writer in the *Wall Street Journal,* the conference was an exercise in self-flagellation, focusing as it did on America's political, social, and economic sins. But the *Journal* writer referred to only three particularly inflammatory topics out of more than fifty panels, hearings, and caucuses devoted to a variety of subjects, many of which were downright nonflammable, including "Writers and New Technology," "Writers and Social Responsibility," and "Screenwriting"—that is, bread-and-butter writers' problems.

More fairminded, the *Village Voice* sent two reporters to the conference, one of whom considered the event an exercise in futility—"overbooked, underorganized, and generally ghastly," and one of whom lamented the confusion but praised the feeling of unity that the conference both engendered and expressed, the high point of which was a favorable resolution on unionization. The low point was a 97-89 vote to boycott all writers and artists who lend credibility to the apartheid regime in South Africa—a vote *for* censorship, passed by a handful of "weary survivors" after most of the two thousand writers attending the final plenary session left the conference. Said Kurt Vonnegut, "Yes, it's a farce . . . but this is the best humanity can do." Reported in: *Publishers Weekly,* October 2; *Wall Street Journal,* October 16; *Village Voice,* October 14.

boycotts: MM watches while K of C organizes

Speaking at a Hollywood Women's Press Club symposium, Dr. Lou Barnes, head of both the Moral Majority of California and its tax-exempt foundation, Californians for Biblical Morality, said that the television industry is currently on probation and that it will be subjected to a boycott if it does not survive a 90-day monitoring period in the fall of 1981. Claiming to represent half a million God-fearing Californians and working closely with the Coalition for Better Television, Dr. Barnes's group has demanded that the networks and program sponsors cut back on the portrayal of sex outside wedlock, murder, rape, and glorification of drugs and alcohol.

While the Moral Majority is hanging fire, however, the Knights of Columbus is moving into high gear in its boycott of objectionable programs and sponsors. At its annual meeting in Louisville, the organization voted unanimously to buy products only from sponsors of "worthwhile" programs and to "withhold patronage from sponsors of objectionable programs." Lashing out at "ever-increasing quantities of unwarranted crime, profanity, gratuitous sex, sacrilege, and blasphemy," the society planned to hold a series of meetings to decide how to carry out its watchdog and boycott programs. Reported in: *Advertising Age,* August 24; *Variety,* September 23.

"peek-a-boo, I see you"

In July, Washington, D. C., Mayor Marion Barry sent Congress a bill intended to reform the District's sex laws, which presently proscribe all sexual relations except those between married persons in a face-to-face position. After a five-hour floor-fight, the House voted 281 to 119 to kill the measure, D. C. Act 4-69. The Associated Press reported that the vote represented Congress's first defeat of a D. C. City Council proposal that did not infringe on federal prerogatives. According to an editorial in the April *Moral Majority Report,* the proposal was not simply an attempt to get the government out of the bedroom but an effort to legalize "adultery, fornication, and sodomy," in the words of James A. Hickey, Catholic Archbishop of Washington.

Writing in the October *Moral Majority Report,* Deryl Edwards said that Moral Majority Vice President Dr. Ronald Goodwin and the vice president of the Citizens Association of the District of Columbia, George Frain, argued against the act before a Senate subcommittee. Local citizens' groups carried on "an intensive lobbying effort to defeat the measure." The Reverend Cleveland B. Sparrow, chairperson of the D.C. Moral Majoritiy, asked District clergymen for support and collected ten thousand signatures on a petition opposed to the law. "Following a nationwide alert by the Moral Majority outlining the potential effects of D.C. Act 4-69, Capitol Hill legislative offices were flooded with calls and letters objecting to the highly liberalized sexual reforms." And Dr. Jerry Falwell himself condemned the proposal in a news conference on September 9.

Congressional opposition to the measure came from Representative Philip Crane (R-Illinois) and Senators Jeremiah Denton (R-Alabama), Jesse Helms (R-North Carolina), and Orrin Hatch (R-Utah). The October *Moral Majority Report* listed all the members of the House who voted to support the D.C. City Council proposal under the heading "Congressmen Who Voted for Sodomy." Reported in: *Chicago Tribune,* October 2.

back to basics: dismantling the Freedom of Information Act

Although the most frequent users of the Freedom of Information Act are businesses seeking data about competitors, the Act has enabled investigators to uncover otherwise unavailable information on the My Lai massacre, the FBI's illegal domestic surveillance activities, the CIA's involvement in the overthrow of Chilean President Salvador Allende, shoddy products, fraudulent advertising, and unsafe working conditions. Despite the obvious usefulness of the FoIA, however, the Reagan Administration seems bent on severely reducing the kind and amount of information the Act has made available in the past.

In May, for example, Attorney General William French Smith broadened the criteria by which agencies can refuse to comply with a request for information under the FoIA (see *Newsletter,* July 1981, p. 100). As a result, agencies no longer need to show that release of data would be "demonstrably harmful" to the government. Shortly afterward, Senator Robert Dole (R-Kansas) introduced an even more stringent proposal to restrict information concerning trade secrets (see *Newsletter,* September 1981, p. 123). To make matters worse, critics say, agencies typically ignore time restraints and routinely use evasive tactics to slow down the compliance process.

At the same time, Senators Alfonse D'Amato (R-New York) and John H. Chafee (R-Rhode Island) introduced legislation intended to exempt almost all information about the CIA from release (see *Newsletter,* September 1981, p. 124). In September, CIA Director William Casey proposed that all U.S. intelligence agencies be

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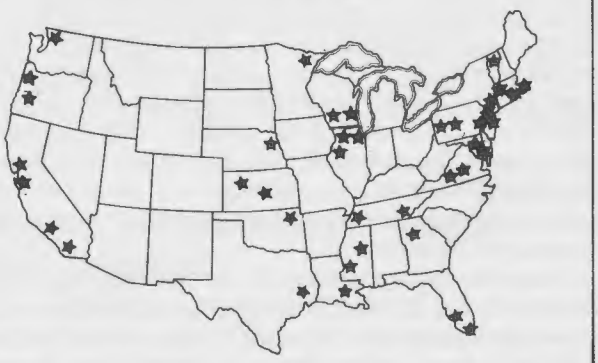
censorship dateline



libraries

Livermore, California

A Livermore Valley Unified School District book selection committee, including an administrator, a librarian, two teachers, and three parents, voted to remove Evan Hunter's *The Chisholms* from the Granada High School library. The decision came after parent Robert Ferro, director of an on-campus Christian outreach program, registered a complaint to Jack Snodgrass, principal of the school. The committee criticized the book for poor literary quality, four-letter words supposedly not in use during the period the book covers, and gratuitous violence, as well as explicitly sexual passages.

Jeanne Kolar, president of the Livermore Educational Association, said the committee's decision put her into a somewhat difficult position. On the one hand, she considers herself a civil libertarian and would fight for a book like *The Catcher in the Rye.* On the other hand, however, she expressed doubts about the literary merit of *The Chisholms* and is concerned about the decline in values. "I'm not willing to use *The Chisholms* to fight a First Amendment case," she concluded. Superintendent Leo Croce also defended the committee and said he hoped the school board would accept the committee's book banning.

Teacher William Arrieta, who helped formulate book review policies, objected to the manner in which the committee's review was conducted—privately and without any indication of the content of the discussion or the final vote. School trustee Jan Brice thought the review was a waste of time. Having read the book and studied the policy, she warned her fellow board members about setting a bad precedent. "Where do you stop?" she asked.

Principal Snodgrass will make a final report to Superintendent Croce, who will make the final decision on whether the book should be permanently removed. Reported in: *Oakland Tribune,* October 11, 20; *Hayward* (Calif.) *Review,* October 21.

San Diego, California

Officials of the Christian Research Center have asked city school administrators to keep Isaac Asimov's *In the Beginning* out of all high school libraries. Nell Segraves, the center's administrative assistant who sued San Diego public schools for teaching evolution, is threatening to sue again. She also plans to appeal to the Moral Majority for support and to complain to local and state school board members. Segraves said that because books promoting the creationist view are barred from school libraries, Asimov's book should be excluded, too. She referred to *In the Beginning* as a commentary on the Bible whose "only use would be a case study in anti-Christian and atheistic propaganda."

School officials are standing firm. Norman Wollitz, director of instructional media services, said that a five-member committee comprised of specialists in science and social science read the book, studied reviews, and recommended purchase. According to a review in the *American School Board Journal,* Asimov "represents creation and the Bible as seen through the eyes of a scientist. But he doesn't imply that religious belief is inadequate or antiquated. . . . He doesn't view science and the Bible as competing systems." To Robert Kofahl, the Christian Research Center's science coordinator, however, Asimov "subjects the Bible to merciless and unremitting destructive attack." Reported in: *San Diego Tribune,* September 3.

San Jose, California

Tom Oback, a clerk at the Hillview Branch Library, quit his job after refusing to check out two books that he considered to be pornographic and racist to a ten-year-old boy. Although he hadn't read it, Donald Gaines's *Whoreson* appeared to Oback to be pornographic because of its title. The second book, whose title he could not remember, seemed to be racist because its cover depicted a black man about to attack a white woman. Oback was chastized by his supervisor for not issuing the books, but he said he refused to "put temptation into children's hands." Oback added that he wouldn't take his job back unless the library commission or the city council changed its open-access policy. To that end, he has asked the San Jose City Council to remove City Librarian Homer Fletcher. Oback thinks that library clerks should decide which books should be allowed to circulate and to which patrons they should be issued.

Deputy City Librarian Richard Rendler explained that under the Library Bill of Rights, approved by the city council in 1971, the library does not censor or restrict access to books. "We do not restrict in terms of age, sex, or any other discriminatory element," he said. "It's one of our strongest policies." According to Rendler, the parents—not the library—should decide

what their children read. The city attorney's office recently gave an opinion supporting the free-access policy after a man complained to city council about the availability of *The Joy of Gay Sex* in San Jose libraries: "Any attempt to remove or restrict [books] is censorship and would be a restraint on freedom of expression." Reported in: *San Jose Mercury,* September 25.

Alpha Park, Illinois

At its September meeting, the Alpha Park Library Board created a new class of books called "certain popular non-fiction treatments of sexual topics," placed one book in the category, put it in "storage" on the second floor of the library, and denied borrowing privileges to patrons under eighteen years old unless they have written parental consent. The book, Nancy Friday's *Men in Love,* was restrictively shelved because several area residents objected to its "vulgarity."

After Delores Harrell filed a complaint, Library Director Sue Jackson suggested putting the book on the second floor, where many books are stored because of space shortages and where patrons are not permitted. Ms. Jackson said the restrictions represented "a good compromise." She believes the book should at least be kept in the library and made available to adult borrowers because it is in demand. "It had circulated fifteen times in a year," she said, "which makes it one of our better read books." Board President John DePinto also argued against removing the book completely. "I'm not defending the book, I'm defending people's right to read it."

Jeannie and Jerry Smith, dissatisfied with the library board's decision, have organized a petition drive to have *Men in Love* banned from Alpha Park. And Ms. Harrell has developed a complex social theory to explain her reasons for wanting it out. First, taxpayers' money is wasted on the purchase of such pornographic books. Then, people who read them may be more likely to commit sex-related crimes. And, finally, taxpayers must pay for prosecuting the criminals. "It's a vicious snowball," she said. "It's like the government footing the bill for people to drink and take drugs." Mrs. Smith's solution to the problem is equally ingenious. Excerpts from prospective books should be read aloud to a roomful of adults. If the topic is offensive to anyone in the room, the book shouldn't be purchased.

According to Ms. Jackson, letters and phone calls to the library support keeping *Men in Love.* Few local residents have spoken out strongly, however, with the exception of Ed and Pat Landes. The couple cited the board's decision as part of a nationwide upsurge in censorship and questioned the restriction as precedent-setting. Mrs. Landes considered it a matter of "government interference" and an "infringement on the First Amendment."

The last time somebody complained—about a teenage son who had checked out a Harold Robbins novel—the library board created access cards for young readers, restricting their borrowing privileges. Reported in: *Peoria Journal Star,* October 11, 20.

Whatcom County, Washington

Quick hands, sharp scissors, and small minds have combined to eliminate *Playboy* and *National Lampoon* magazines from the shelves of the Whatcom County Library. All but one branch of the county library system stopped subscribing to *Playboy* because copies were either stolen or cut up. Then the library board decided to go the rest of the way and, overruling the library staff's recommendation, voted to cancel the one remaining subscription. *National Lampoon* was similarly dealt with in the upsurge of moral fervor. Polly Hanson, library director, said she considers *Playboy* a valuable part of the library's collection because it contains stories and articles by outstanding writers. She regretted the board's decision because offensiveness to some patrons is not a valid reason for removing books or magazines. Every library "should have material that someone will find offensive," she said.

Whether library patrons will continue to be deprived of the magazines, however, remains to be seen. The Olympia-based Immoral Minority, originally formed as a tongue-in-cheek opponent of the Moral Majority, has offered to donate subscriptions to *Playboy* and *National Lampoon* to the county library system. Tom Riley, spokesperson for the group, said the gift is intended to "ensure that personal and individual rights are protected." Converted to seriousness and vigilance by the magazine ban, the Immoral Minority is now "a nonprofit organization standing in defense of individual liberties and freedoms." Reported in: *Seattle Times,* October 20.

Solon Springs, Wisconsin

After a Solon Springs School Board member complained about *Ms.* magazine to his fellow board members, they voted to remove the magazine temporarily from the library of Solon Springs High School, pending review. The reason for the objection has not been announced, but it is alleged to be the classified ads on lesbianism, which appear in the back pages of the magazine. The matter has been referred to a complaint committee comprised of the librarian, the principal, a board member, the person who complained, and a neutral citizen.

School librarian Fran Levings, who removed *Ms.* "under protest," met with the board at its regular meeting in November. She said that no book or magazine has been removed from the high school library

during her fifteen years as librarian. Although it is school policy for the librarian to discuss complaints with the persons who submit them, Levings added, no complaint has been officially registered. Levings said she hopes the board will return *Ms.* to the library. If it doesn't, she plans to ask for a public hearing. Reported in: *Capital Times,* November 19.

schools

Schaumberg, Illinois

Claire Miezio, a member of Eagle Forum, has spent much time in the last few months poring over her daughter's school textbooks and making line-by-line analyses. She is primarily concerned about anti-American, anti-free enterprise, and anti-Christian values in the books. She has asked school officials to change textbooks, but Board President Dr. Edgar Feldman has refused. "She is a committee of one and we have ten thousand parents in the district at least," he said.

One offshoot of Ms. Miezio's attempt to make her neighbors aware of what their children are reading in school was a special candidate-screening process conducted by the Republican Organization of Schaumberg Township at its endorsement meeting. Candidates were shown passages from *Our Bodies, Ourselves* and given to understand that their position on public school books would affect the vote of the screening committee. Although one committee member resigned in protest after characterizing the actions of the group as "McCarthyism," the committee apparently endorsed candidates favorable to censorship.

Earlier this year, Ms. Miezio sent an angry letter to U.S. Representative Philip Crane (R-Illinois), protesting an educational technique used in the district and known as "Magic Circle," in which children are asked such questions as "What are you afraid of?" Ms. Miezio regards the teaching device as an evasion of the basic curriculum and an invasion of students' and parents' privacy. Reported in: *Arlington Heights Herald,* September 20.

Hays, Kansas

In response to parents' complaints about a sex-education film shown at a Hays High School assembly and a discussion afterward led by members of Planned Parenthood, the school board voted 5-2 to establish a written policy for handling "sensitive" and "controversial" topics—i.e., sex education. The policy states that the teaching of such issues will be done henceforth in individual classrooms rather than in general school assemblies. Only materials approved by the school board can be used. Furthermore, when controversial issues are to be discussed, parents will be informed in advance and given the option of excluding their children from such instruction.

The policy satisfied members of the board who were caught between the opposing sides. On the one hand, Shirley Green, who regarded the decision as "an erosion of freedom," said that the policy goes too far. She believes that the use of assemblies for teaching sex education should be retained and that parents should be given the choice of letting their children stay or leave. "I don't like to see the majority deprived of that educational value because the minority doesn't want their child exposed to it." On the other hand, Helen DeWitt, a member of Right to Life, said she was completely opposed to the teaching of sex education in schools—whether in classrooms or assemblies. Reported in: *Wichita Eagle,* October 4.

Wichita, Kansas

When she found her sixth-grade daughter reading a book about a teenage girl from a broken home, Sheila Hillman complained to the school principal. The book in question, Frank Bonham's *Gimme an H.E.L.P.,* was ordered by Ms. Hillman's daughter through Teen Age Book Club, a division of Scholastic Books. Her teacher at Kellogg Traditional Alternative School, Ernest Anderson, said the club's book brochure might have been sent to his class by mistake, because he had taught junior high school last year and had apparently been kept on the publisher's mailing list. He added that although the book chosen by Ms. Hillman's daughter might not be "a very good one," he assumed that Scholastic "checks the books out" for appropriateness of subject matter. Containing no sex or violence, *Gimme an H.E.L.P.* portrays a girl whose suicidal fantasies and hatred for her mother are vividly, if melodramatically, described.

James Howell, reading director for Wichita schools, defended the district's policy of allowing mail-order publishers to sell books to students at all grade levels. In reference to Bonham's book, he added, "There's no question that reading material has to catch a student's interest." Kellogg Principal Elsie Zimmerman emphasized that students and parents are suposed to decide whether they want to order books, and to choose the books they want. She said she intended to discuss Ms. Hillman's complaint at the next principal's meeting but added that she was a little miffed when the parent went to a local newspaper with the story. Reported in: *Wichita Eagle,* October 2.

Buckland, Massachusetts

A western Massachusetts dairy farmer, born-again Christian, and selectman, has asked the superintendent of the Mohawk Trail Regional High School to remove Alexander Solzhenitzin's *One Day in the Life of Ivan Denisovich* from a twelfth-grade required reading list. Edmund F. Smith, father of a student in whose class

the book was being used, objected to the book's profanity—"not just three paragraphs, as some of the media reported," he said. "There are a dozen sections in the book containing these words."

The trouble started when Smith's son showed him a passage in the novel and asked him what he thought of it. Smith found it disgusting, went to District Superintendent Bruce Willard, and requested the book be removed. Willard said he will first meet with the head of the English department to discuss book selection policies and then make a recommendation to the Regional School Committee at its next meeting.

Smith believes that an adequate substitute can be found. "There's plenty of good literature in the United States," he said, "without taking something out of Russia that doesn't even use the English language properly." (The exiled Solzhenitzen lives in Cavendish, Vermont, eighty miles north of Buckland.) However, Willard said he is reluctant to censor the book. "Once you start censoring, the question is where do you start and where do you end?" He added that he had read the novel before Smith complained about it and "thought it was a good book with a good message." "I don't like the language," he continued, "but it must be read in context. In my mind, Solzhenitzin is a very important author." Whatever the superintendent decides, Smith said he intends to hold his ground. "I'll keep this stand even if I have to stand alone," he said. Reported in: *Boston Globe,* September 25; *New York Times,* September 25; *Greenfield Recorder,* September 26; *Springfield Union,* October 14.

Mississippi

After receiving complaints from a national right-to-work organization, the Mississippi Textbook Commission voted to drop thirty-two textbooks from its approved list. The Concerned Educators Against Forced Unionism claimed the textbooks are biased in favor of organized labor. Jo Seker, researcher for the group, said the textbooks "glorified unions and present it [sic] as the norm instead of pointing out there is a choice." The CEAFU has been monitoring books for the last five years and has submitted lists of objectionable books to most of the states that have statewide adoption committees.

In Mississippi, a seven-member rating committee chooses materials for the approved list by ascribing points to each publication and then determining which have the most points. The ratings are based on recommendations by a review committee made up of twenty-eight educators and on criticisms submitted by various interest groups. Although he couldn't determine how much pressure is put on the rating committee, Commission Director Robert Barrett commented, "We cannot live in a society where we're constantly being restricted in what we can place in front of our children." Gordon Gibson, of the Mississippi ACLU, said the selection criteria are "murky" and conservative groups exert too strong an influence on the selection process. Reported in: *Jackson Clarion-Ledger,* November 1.

Bellevue, Nebraska

Jim Davis, assistant superintendent of schools, announced that two pages of an advanced biology text used at both local high schools have been glued together and a section of another page blacked out. The decision was made because the pages contain information on contraception, sterilization, and abortion, subjects proscribed by a ten-year-old administrative policy which states that "schools will not advise or prescribe specific methods of birth control."

Lt. Col. William Swick, member of a parental advisory committee that voted unanimously against censoring the material, said he "elected not to make waves" when the school administration decided to delete the pages. He added that it might be time for a public review of the "life education" policy. Reported in: *New York Times,* October 9; *Omaha World-Herald,* October 10.

Roseburg, Oregon

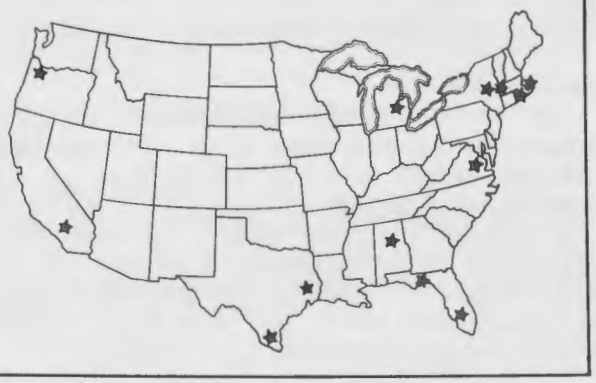
School Superintendent Murl Anderson announced at a school board meeting in October that "Dungeons and Dragons" has been banned from local schools. He explained that the controversial children's game was outlawed because residents from conservative churches had complained. While acknowledging that "Dungeons and Dragons" is a useful teaching tool in some respects, Anderson emphasized that it teaches "fantasies of evil." Jacie Pratt, board member, considered the ban unnecessary. But Anderson said that taking the game out of the schools would "avoid a brouhaha over something controversial that has no place in the schools." Similar objections led to the dissolution of an after-school program in Heber City, Utah, in which "Dungeons and Dragons" was used (see *Newsletter,* July 1980, p. 77). Reported in: *Statesman-Journal,* November 11.

Warrington, Pennsylvania

After months of discussion with parents of students enrolled in Central Bucks County schools, a committee of teachers and school officials has decided to remove *The Adventures of Huckleberry Finn* from the required reading list at Tamamend Junior High immediately and from reading lists in all area junior high schools by September. However, the book will be retained in all school libraries and used in a tenth-grade English class. The decision is a compromise intended to satisfy parents of a student who was verbally and physically abused by his fellow students in an eighth-grade

(Continued on page 18)

from the bench



U.S. Supreme Court

On October 12, the U.S. Supreme Court agreed to review *Pico* v. *Island Trees Union Free School District.* The granting of *certiorari* came in response to a request by the school board in the face of a U.S. Second Circuit Court of Appeals decision to remand the case for trial. In a 2-1 vote, the Second Circuit Court concluded that the First Amendment rights of the students had been violated and that the criteria for the removal of the books were too general and overbroad. The school board was instructed to show it had not violated the students' constitutional rights (see *Newsletter,* January 1981, p. 4). Having refused to review a similar case in 1972, the Supreme Court is now evidently willing to rule on an issue that has plagued the federal judiciary for years and has resulted in widely different decisions in different district and circuit courts.

The case began in 1975, when three members of the Nassau County, New York, school board attended a meeting of conservative parents at which a list of "objectionable" books was distributed. In 1976, after eleven listed books had been found in the high school library, the board voted to ban nine of them: *Slaughterhouse-Five, The Naked Ape, Down These Mean Streets, Best Short Stories by Negro Writers, Go Ask Alice, A Hero Ain't Nothin' But a Sandwich, Soul on Ice, A Reader for Writers,* and *The Fixer. Laughing Boy* was returned to the shelves, and *Black Boy* was made available only with parents' permission.

In 1977, the ACLU filed suit against the board on behalf of five students. In 1979, U.S. District Court Judge George Pratt ruled that the board's action was "misguided" but not in violation of the First Amendment (see *Newsletter,* November 1979, p. 141). This decision was immediately appealed, and a friend-of-the-court brief, funded by the Freedom to Read Foundation, was filed by the American Library Association and the New York Library Association (see *Newsletter,* January 1980, p. 1). Finally, in October 1980, the Court of Appeals ordered the case back to district court for a fuller exploration of the board's motivation and the books' merits.

Alan Levine, lawyer for the students who are challenging the board's action, considers the case "profoundly important": "I hope the court uses the opportunity to limit the power of school boards to censor ideas they consider offensive." However, Barbara Bernstein, executive director of the Nassau branch of the New York Civil Liberties Union, would have preferred "to get a full airing of the merits of the case" at the trial level. Harvard Law School Professor Alan Dershowitz said the Supreme Court's decision to hear the case without trial testimony is "a dangerous development. My fear is that the court took the case in order to tell school boards that they have great powers to censor books."

Briefs were submitted by the end of December, and the high court is expected to make its decision near the end of the 1981 term. Reported in: *Garden City* (N.Y.) *Newsday,* October 14; *National Law Journal,* October 26.

The Supreme Court also agreed to decide whether the NAACP must pay merchants for losses they sustained as a result of a 1966 civil rights boycott. The NAACP started the three-year boycott to dramatize what the organization considered to be blatant discrimination in public and private services and employment in Clairborne County. The Mississippi Supreme Court affirmed a lower court decision that found the NAACP guilty of engaging in threats and violence, but judged the $1.25 million penalty to be excessive.

According to civil rights leaders, the boycott involved only constitutionally protected activities, such as demonstrations, picketing, and distributing leaflets. The court concluded, however, that the protesters engaged in violence and thereby lost their free-speech rights. Reported in: *Washington Post,* November 10.

In 1980, the U.S. Court of Appeals, 5th Circuit, ruled that a statute forbidding anyone under age seventeen from playing coin-operated video games in an arcade is a violation of teenagers' "right of association." Now before the U.S. Supreme Court, the case has aroused more levity than light. When Justice O'Connor, apparently puzzled by the ban, asked why the city adopted it, City Attorney Ellard Archer answered, "The city fathers find these children shouldn't be spending money on these games." Lawyer Philip W. Tone, of Chicago, provoked some smiles when he insisted that playing video games involves "freedom of expression." When Justice Rehnquist wondered if First Amendment protection extended to

a beer-guzzling contest, Tone replied, "I guess I would not view that as rising to the level of protected expression."

Justice Stevens said that some teenagers would disagree. The justices spent more than half of the one-hour argument debating whether they should be reviewing the case. Reported in: *Baltimore Sun,* November 11.

By a vote of 6-3, the U.S. Supreme Court upheld a ruling of the U.S. Court of Appeals, Ninth Circuit, that the state of Washington cannot close down stores or theaters displaying sexually explicit materials before proving that the materials are obscene. The court stated that such shutdowns are unconstitutional because they impose a "prior restraint" on free speech—as a friend-of-the-court brief filed by the Freedom to Read Foundation had argued. According to the Washington law, businesses can be forced to close if they are "moral nuisances"—that is, if they exhibit "lewd films or publications." Dissenting Justices Burger, Powell, and Rehnquist said that federal courts should not intervene until the law is used and tested in state courts. A similarly broad public-nuisance law in Idaho, which has been upheld in state courts, will probably be challenged in federal court in the near future.

The Supreme Court refused by a vote of 7-2 to hear appeals of a Sixth Circuit Court decision upholding the convictions of three men and two corporations for violating federal obscenity laws in circulating *Deep Throat.* Found guilty by a Memphis, Tennessee, jury three years ago, the defendants argued unsuccessfully that a national standard should be used in determining whether a nationally distributed film is obscene. Reported in: *Chicago Sun-Times,* November 10.

schools

Kingsville, Texas

In 1972, Janet Cooper experimented with an innovative teaching method called "sunshine simulation," in which role-playing was used to introduce students to the problems of segregation and integration. Playing roles of blacks and whites in a make-believe Southern city during the Reconstruction era, Mrs. Cooper's students learned what life is like when a racially segregated society becomes racially integrated. Unhappy with Mrs. Cooper's educational experiment, the Kingsville school board decided not to renew her contract and dismissed her without a hearing.

In September, U.S. District Judge Owen D. Cox ordered the school district to pay Mrs. Cooper $81,826 in back pay and lawyers' fees of $37,700. She returned to work as a history teacher this fall because of a teacher shortage. At this point, school officials seem unwilling to pursue the case further. Reported in: *New York Times,* September 23.

Grand Blanc, Michigan

In October, Genessee Circuit Judge Donald R. Freeman dismissed a lawsuit against Anderson Elementary School teacher Marilyn Coe for causing psychological harm to a black student by reading aloud Jesse Jackson's *Call Me Charley* to a fourth-grade class. Filed in 1978 by the child's parents, the McFaddens, the suit charged that Ms. Coe failed to take "proper precautions for the well-being of pupils," particularly the parents' son Marc.

Jackson, a lecturer at Appalachian State University in North Carolina, testified at the trial that he wrote the book to promote understanding between black children and white, and based the story on his own childhood experiences in Columbus, Ohio. "I wanted to be a peacemaker," he said. Ms. Coe used the book because she heard that Marc McFadden—the only black in a class of thirty—had been the butt of racial name-calling during recess. The McFaddens claimed that the book's use of the words "nigger," "coon," and "Sambo" and its depiction of a boy's experiences similar to their son's made him feel even worse.

Judge Freeman said that the complaint accused the teacher of maliciously intending to harm her student. "It is somewhat sad . . . that the defendant has had to face that kind of accusation and be answerable to it when no one established that that was her intent." Reported in: Apalachian State University press release, October.

colleges and universities

Tallahassee, Florida

Florida Circuit Judge John Rudd ruled in September that the state legislature can cut off funds to any college or university that allows groups advocating "sexual relations between persons not married to each other" to meet on campus. In October, however, U.S. District Court Judge Ben Krentzman issued a temporary restraining order preventing the state from cutting off funds to the University of South Florida after the Student Senate passed a resolution advocating premarital sex.

The case is based on an amendment to the state budget, sponsored by State Senator Alan Trask and State Representative Tom Bush, and a challenge to the amendment filed by Education Commissioner Ralph Turlington. The amendment was aimed primarily at homosexuals but also includes free-love groups. The state had threatened to cut off funds to USF unless the administration agreed to prevent Sigma Epsilon Chi (SEX) from using university facilities.

In upholding the amendment, Judge Rudd said, "The Constitution should and does protect freedom of speech and other rights, but not in such a way as to

allow a majority to render the minority impotent." Turlington challenged the judge's decision on grounds that the amendment was unconstitutionally attached to an appropriations bill and also that it violates First Amendment rights. The case is now before the Florida Supreme Court. Reported in: *Fort Lauderdale News,* September 15; *Jacksonville Times-Union,* September 19; *Tallahassee Democrat,* October 14.

Portland, Oregon

U.S. District Court Judge Robert Belloni ruled that the Portland Community College student newspaper, the *Bridge,* does not have the right to reject advertisements solely because they "lessen the *Bridge's* credibility in any of its editorial policies." Under the direction of James Magmer, head of the college's journalism program, the newspaper had rejected ads from the Women's Health Center containing abortion information but accepted ads from Birthright, a pregnancy-counseling organization that recommends alternatives to abortion. Magmer's decision was appealed to Dean James Van Dyke, of the school's division of social sciences and communications, who supported the newspaper's policy but ordered Magmer to stop publishing Birthright ads also.

Judge Belloni found that the Women's Health Center ads contained accurate statements, did not promote an illegal activity, and did not interfere with the educational program at Portland Community College. Furthermore, because the newspaper is supported by public funds and distributed free to students at the college, it is subject to tighter constitutional restraints than a private newspaper would be. Citing the Fourteenth Amendment and quoting a 1972 Chicago case, the Judge said, "Under the Equal Protection Clause, not to mention the First Amendment, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views."

ACLU representative Michael Wells hailed the decision as a First Amendment victory. "It establishes the right to publish in public-funded publications," he said. Magmer, who also rejects ads for X-rated movies, drug paraphernalia, students looking for roommates of the opposite sex, and photographers seeking nude models, said he isn't sure how school officials will respond to the ruling. "If the decision has some broader implications, suggesting that students have no right to edit what goes in the paper," he said, "it would be an attack on journalism education." Reported in: *Oregon Journal,* September 10.

broadcasting

Alabama; Houston, Texas

In two recent decisions, the U.S. Court of Appeals for the Fifth Circuit supported the right of two public television stations to cancel a scheduled showing of *Death of a Princess.* In a 2-1 vote, the court upheld a district court ruling that the cancellation of the film by Alabama Education Television Network was not a violation of viewers' First Amendment rights (see *Newsletter,* November 1980, p. 134). Along with a dozen other stations, the Alabama network decided not to air the program because of protests from the Saudi Arabian royal family and several Alabama companies with employees living in Saudi Arabia.

Judge Howard T. Markey wrote, "It would demean the First Amendment to find that it required a public referendum on every programming decision made every day by every public television station." In a dissenting opinion, Judge Thomas Clark said, "When the government operates a form of the media, it is not free to pick and choose between issues of public controversy."

The second decision reversed a lower court ruling in a suit filed against KUHT-TV, the University of Houston's public television station (see *Newsletter,* March 1981, p. 50). University Vice President Patrick Nicholson ordered the station not to show the film because it would increase Middle East tensions. Houston Judge Gabrielle K. McDonald had based her order to air *Death of a Princess* on her view of state-owned television networks as public forums, the use of which cannot be denied for political reasons. David Berg, representing the plaintiff in *Barnstone* v. *University of Houston,* said, "We have always thought the Supreme Court would decide this issue." Reported in: *Houston Chronicle,* September 23; *New York Times,* October 28.

right to demonstrate

Broward County, Florida

After deliberating for only twelve miniutes, a six-member jury decided that Mercedes Duvallon of Miami had the right to picket a Jehovah's Witnesses convention at Gulfstream Race Track in Hallandale. Mrs. Duvallon was protesting the church's alleged failure to publicly condemn her husband for living with another woman. After hanging a sign around her neck and standing at an entrance to the grandstand, she was arrested by local police for trespassing and disturbing a religious assembly. Judge Patricia W. Cocalis had dismissed the trespassing charge earlier, and the State Attorney's Office decided to drop another trespassing charge scheduled for hearing the next day. Saved from sixty days in jail and a $500 fine, Mrs. Duvallis said, "That's what was on trial today, the First Amendment." Reported in: *Ft. Lauderdale News,* October 7.

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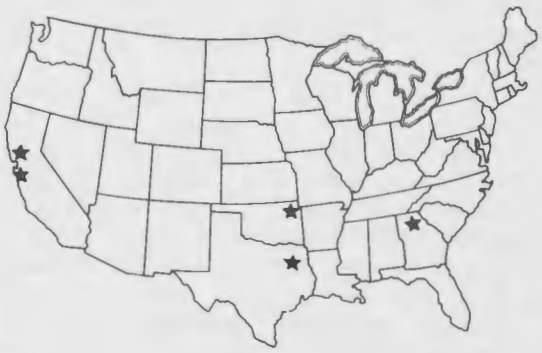
is it legal?



libel

San Francisco, California

Two police officers filed a $20 million libel suit against the *Bay Area Reporter* for publishing the allegations of a speaker at an open meeting. Under the headline "SFPD Brutality Aired," reporter John Karr stated that a person identified as "RF" claimed that two policemen knocked down a friend of his, referred to as "W," and jabbed "RF" in the chest and mouth with a billy club. Counsel for officers Holly Pera and Corbett Dickey called the story "libelous on its face." Publisher Robert Ross said, however, that Karr was simply reporting what someone said during a public discussion of police conduct sponsored by the Alice B. Toklas Memorial Democratic Club. Ross added that the meeting had been tape-recorded and that the tape would verify the reporter's allegations. Reported in: *San Francisco Examiner,* October 15.

church and state

Adair, Oklahoma

Michael and Julie Budde have filed a $310,000 lawsuit in U.S. District Court against the Adair School District and school officials for allegedly conducting a mandatory religious program in the public schools. When Mrs. Budde tried to tape-record one of the religious classes, conducted by "Miss Norma" and "Miss Helen," her tape-recorder was confiscated and she was taken to the principal's office by uniformed sheriff's deputies. Afterward, the suit claims, the couple's children were verbally abused and harassed by fellow students.

The week-long nondenominational Bible classes, which have been offered for nearly forty years, are forty minutes long and are held in all classes and all grades. They are given eight times a year in Adair by two elderly women whose last names are not known and who charge nothing for the lessons. Students may either sit in classes or wait in the hallway during the religious discussions.

The Buddes have since taken their children out of the Adair school and are sending them to a school in nearby Claremore. Several townspeople said they were shocked by the lawsuit, considered the Buddes to be meddlers, and defended the Bible classes as a local tradition. The suit calls for $250,000 in punitive damages and $60,000 in actual damages. A federal court hearing was scheduled for November 12. Reported in: *Oklahoman,* October 26.

magazines

Cumming, Georgia

Three Forsyth County convenience stores have been sued by the Forsyth County branch of the Northeast Georgia Council on Moral Affairs for violating the state's obscenity law. State Court Judge Richard A. Gault, a member of the church that is the principal organizer of the local Moral Affairs group, ruled that the case should be heard by an appellate court because it raises constitutional issues.

The anti-pornography campaign was started by the Rev. Robert Robinson, pastor of the Sharon Baptist Church, after NGCMA Director Charles Sutton successfully rid nearby Hall County of all "girlie" magazines. Robinson and his Monday-night prayer group joined the organization after they bought copies of offending magazines and took their case to court. Reported in: *Atlanta Constitution,* September 22.

student newspapers

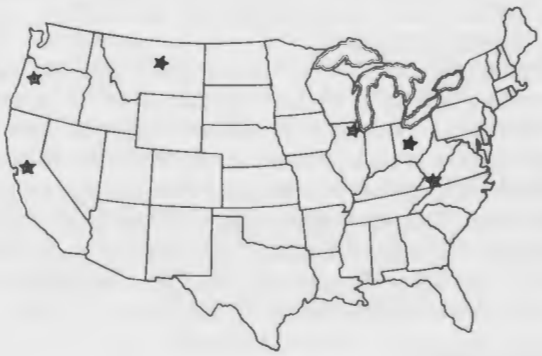
Marin County, California

Sylvia Jones, academic adviser to the *Redwood Bark,* a newspaper published by students at Tamalpais Union High School, filed suit in federal court against the school district for allegedly violating her civil rights. Specifically, Ms. Jones charged that in sending her a reprimand, school officials were punishing her for exercising her First Amendment rights. In addition, in requiring her to consult with the high school principal before publishing anything that might involve the school "in serious legal risk," school authorities were imposing a "prior restraint" on her constitutional right to free expression.

In May 1981, Michael Woodke, then principal of Redwood High, sent Ms. Jones a letter of reprimand, which criticized her for encouraging minor students to buy liquor as part of a research project on the sale of alcohol to minors. The letter stated that while her intentions were honorable, Ms. Jones used "extremely

(Continued on page 28)

success stories



libraries

Albany, Oregon

After listening to comments made by students, parents, and psychologists, the Albany Public Library Board voted unanimously to keep *Changing Bodies, Changing Lives* in the library's collection. The Random House book, a collection of interviews with teenagers on such subjects as puberty, sexuality, and other adolescent concerns, was formally challenged by a library patron who complained that the book was a "how-to" manual and would lead its readers to experiment with sex. Before voting, board member Jerrie Crook said the library must serve the needs of the whole community. "Each family has to assume the responsibility for what they read and what they choose to read," she added. Under present library policy, anyone over twelve years old may borrow books from the adult section, but children under twelve must have parental consent. Reported in: *Salem Statesman-Journal,* September 23.

Abingdon, Virginia

At a meeting in late September, the Washington County Library Board voted 7-1 to forget about library complaints and get on with other library business. Weary from a ten-month-long battle with a local Baptist minister, the board also voted unanimously to remove from library shelves any book ruled pornographic by a court of competent jurisdiction. Board member Don Wright suggested that the board study a "restricted access" system by which parents who want to restrict their children's reading could submit a list of authors they don't want their children to read. Jack Kestner, president of the five-hundred-member Friends of the Washington County Library, gave a copy of Sidney Sheldon's *Rage of Angels* to board member Don Leonard and challenged him to take it to court. If the court found the book to be pornographic, Kestner said, he would resign as president of the Friends of the Library. After a heated exchange between Leonard and Kestner, however, the latter said, "It's time the county has a rest." With that, he withdrew his proposal, and the board voted to put the past behind.

On November 1, CBS' "60 Minutes" presented a brief history of the Washington County Library dispute, featuring Library Director Kathy Russell and the Rev. Tom Williams. The nationally televised program followed a long line of media reviews of events in Abingdon, including a series of articles in the *Village Voice* by Nat Hentoff, a debate between Williams and Sheldon on ABC-TV's "Good Morning, America," and national newspaper coverage. Reported in: *Washington County News,* October 1; *Roanoke Times and World News,* October 21.

colleges and universities

Chicago, Illinois

The Rev. John Richardson, president of De Paul University, reversed an order by the Rev. Thomas Croak, dean of the university, to shut down the school's sixty-year-old newspaper, the *De Paulia.* The dean stopped publication because the paper printed a story about the rape of a thirty-year-old graduate student in a fifteenth-floor washroom in the university's Lewis Center. Although the woman had not asked the newspaper not to publish the story and her name was not mentioned in it, Dean Croak said he "wanted to protect the victim from any more trauma or discomfort." Editor Vince Keller said school officials had told him not to run the article, but he said he went ahead with it in order to protect the safety of De Paul students.

After the shutdown, representatives of the Chicago ACLU said they would study the incident to determine whether the university had violated students' constitutional rights. In a public statement, President Richardson promised that neither the *De Paulia* editor nor his staff would be penalized. A university committee on publications was established to formulate guidelines for future editorial policy. Reported in: *Chicago Tribune,* October 11.

schools

Fresno, California

At a crowded meeting at which community residents discussed a request to ban a Houghton Mifflin reading series, the Fresno Unified School District Board voted to retain the textbooks which are currently being used in most of the district's public schools. The series was the subject of a complaint filed by Interested Monitoring People Against Contemporary Textbooks (IMPACT), a seven-member group which claims to

have the backing of the Moral Majority, Californians for Biblical Morality, the Pro-Family Coalition, Pro-Family Forum, and the Gablers' Education Research Analysts of Texas. Most of the members serve on one of the state's textbook review committees.

Carol Magee, organizer of IMPACT, said she considers the books to be anti-family and anti-American. At the board meeting, she indicated which passages she found offensive and also criticized the books' emphasis on "evaluative and creative thinking," which she considers to be a violation of the Hatch Act. (The act proscribes the use of psychological tests to obtain private information from school children.) "There is a right and wrong," Magee stated. "Children aren't being taught absolutes." Defending the reading series, adopted eleven years ago and readopted by a committee of teachers, administrators, and community members in 1976, school officials said the books had never been challenged before and had been approved by the state board of education.

The school board's decision came after a committee of nineteen educators reviewed the books and voted unanimously to retain them. Support also came from the Fresno League of Women Voters, the American Association of University Women, and the Fresno City Council PTA. In the wake of the vote, Magee said she would take her concerns to the community and planned to refer legal questions to the state board. Reported in: *Fresno Bee,* September 3, 4.

Enon, Ohio

On September 24, the Mad River-Greene Local School Board voted 3-2 to prohibit the use of Judith Guest's *Ordinary People* in a Greenon High School English class for juniors and seniors. On October 8, however, the board voted 4-1 to rescind its ban. The dispute started when a student's parent, Terry Craig, objected to the best-selling novel's "obscene" language. Teacher Kevin Kruse gave the student the option of reading another book, and the problem seemed settled. But when board member Jack Mounts, Jr., decided that no one should be reading the book, he brought the matter to the board, proposed the ban, and persuaded two other members to support it. The board apparently voted as it did partly because *Ordinary People* is not on the board's list of approved books. But Kruse claimed that none of the books he uses have been approved and that he had used Guest's novel last year without incident. After the complaint, he submitted a two-and-a-half-page report to the high school principal and the school board explaining his reasons for using the book.

Before the board reversed its decision, many area residents expressed opposition to the move, and a poll of parents taken by Kruse showed only one opponent of the book besides Craig. When the vote was taken, two board members announced they had made a mistake when they approved the ban. Mounts continued to support it. And Craig said to the board, "You're all sick!" Reported in: *Dayton News,* October 2, 3, 9; *Dayton Journal Herald,* October 9.

Onida, South Dakota

After a few minutes of discussion, the Sully Buttes School Board decided not to ban its second book in 1981. Although Joy Cook, a teacher at a Christian school in Pierre, requested that William Golding's *Lord of the Flies* not be assigned to her daughter and that it be dropped from the Sully Buttes High School required reading list, the board voted unanimously to retain the book. Principal Coleta Jones said the student was assigned another book and excused from class during the discussion of Golding's novel. In so voting, the board adopted the recommendation of a review committee made up of the high school principal, a teacher, three parents, a student, and a school librarian. In March, the board voted to remove *Run, Shelley, Run,* by Gertrude Samuels from the school library, primarily because of its objectionable language (see *Newsletter,* May 1981, p. 65). Reported in: *Sioux Falls Argus-Leader,* October 13.

obscenity

Montana

Three cities in Montana voted to reject a strict obscenity ordinance sponsored by Citizens for Decency through Law. The statute would have made it illegal for adults to purchase so-called obscene materials now proscribed under state law only to minors. In Bozeman, citizens defeated the proposed law by a 58-42 percent margin. The anti-obscenity movement started after an adult bookstore opened in Bozeman in May. Members of Citizens for Decency debated with members of the American Civil Liberties Union at several public meetings, but arguments that the cost of enforcing the statute would be more than the city could afford seem to have outweighed the appeals of the anti-obscenity group.

In Livingston, the city council reversed its 5-0 vote of approval two weeks ago for a similar law by a vote of 7-0. City Councilman Al Fior said, "I don't think the seven of us should be telling eight thousand people of Livingston what to do." The Hamilton City Council defeated the same proposal 5-0, and Councilman Jack Edmonds suggested that supporters of the obscenity law fight "things much more detrimental to young people," such as underage drinking and drug abuse. Speaking of the Bozeman decision, Rick Scorum, spokesperson for the Citizens for Decency, said, "If they want to allow smut in their community that's what they'll have." Reported in: *Bozeman Daily Chronicle,* September 16, October 6; *Billings Gazette,* September 16; *Ravalli Republic,* September 16.

(Censorship dateline . . . from page 11)
English class in which Twain's novel was required reading (see *Newsletter,* November 1981, p. 162).

Originally, the parents of the student, Mr. and Mrs. John J. Jones, wanted the book removed from all reading lists and all libraries. They felt that the novel, despite its strong anti-slavery and anti-racist theme was too difficult for eighth-graders to understand. They also insisted that Twain's frequent repetition of the word "nigger" inspired white students to use the word in reference to black students. A committee made up of librarians, teachers, and parents will try to find a substitute for *Huckleberry Finn* in the eighth-grade course on prejudice. And, in the future, teachers will meet with black students and their parents to discuss "possible objections and alternatives" if the novel appears on a junior high school reading list again. Reported in: *Philadelphia Inquirer,* September 24.

Richford, Vermont

Eight parents have complained to school officials about the inclusion of John Steinbeck's *Grapes of Wrath* on a required reading list for high school English students. The objection is based on the book's language and portrayal of a former minister who recounts how he took advantage of young women. Claire Doe, who is leading the campaign against Steinbeck's classic novel, said, "We wouldn't want anyone coming into our home using that language. It's using the Lord's name in vain." A committee of school representatives, parents, and community leaders is planning to discuss the complaint at an upcoming special meeting. Barry Steinhardt, executive director of the ACLU in Vermont, said his organization will take legal action if the book is banned. He intended to send a letter to the committee explaining the constitutional issues. Reported in: *Hartford Courant,* November 12.

student newspapers

Collier County, Florida

The Collier County School Board is in the process of writing a policy statement governing the content of student publications. The most important section of the policy as it now stands is under the heading "Guidelines": "The writer shall not prepare for, nor shall the school permit, the publication or distribution of material which can or has caused disruption of school or community activities." The statement represents an attempt to deal with the kind of problem that arose last year at Naples High School when the student monthly newspaper published a series of articles on teenage sex. A parents' group tried to stop publication of the last article in the series on the grounds that it was pro-abortion, but a court decided that the article should be published.

School attorney Jim Siesky said the policy properly puts the power to decide whether controversial material should be published in the hands of the principal. One board member wanted to make the policy more comprehensive and more specific. Board chairperson Gerri Kalvin claimed, however, that the statement before the board merely reiterates the old policy and in no way protects the board or school officials from potential legal entanglements. In the fight for decision-making power, she said, "the student almost always wins if the material is not libelous or clearly obscene." Reported in: *Naples News,* October 2.

confidentiality

Waukesha, Wisconsin

In early October, two 10-year-old girls reported to local police that a man who had followed them home the day before had stared at them as they were sitting on a porch, walked toward them, and ran away when the older brother of one of the girls came onto the porch. The police had a possible clue to the man's identity when they found that the briefcase he dropped in his escape contained three books from the Waukesha Public Library. When police asked City Librarian Dorothy Naughton to identify the person who had checked out the books, however, she refused to reveal the name without permission of the library board. The next day, the board voted unanimously to release circulation records only under court order. Then, Ms. Naughton's problems started.

Because no crime had been committed, police were unable to get a subpoena. Wanting to question the library patron, they appealed to the mayor and city attorney, whose intervention with the library board on behalf of the police failed. Later, a police officer and a detective asked Ms. Naughton to poll the board by telephone. When she did so, the policeman asked to speak to board members who still voted no. In the end, a majority of them changed their minds and advised the librarian to release the name. Still, she refused. Finally, on receipt of a court order, the library board voted formally to provide police with the information.

The Waukesha Library Board has considered adopting the American Library Association's policy on confidentiality, which recommends that circulation records be kept confidential unless the request for them is accompanied by a court order or the governing body of the library deems the release appropriate. An open records bill approved by the State Senate and now before the Assembly would establish similar criteria. Reported in: *Waukesha Freeman,* October 13, 14, 15.

colleges and universities

Baltimore, Maryland

Tipped off that the county police vice squad would seize the film and arrest students, Vice Chancellor Scott Rickard cancelled a screening of *Debbie Does Dallas* in a University of Maryland-Baltimore lecture hall. Student Government President Terry Nolan called Barbara Mello, ACLU attorney, who persuaded the ACLU board to support Nolan. Although he didn't see the film at a special viewing given for administrators, lawyers, and student government members, Rickard said, "It was bad." Mello, who attended the screening, commented, "It's not the kind of thing I want to see again. But that's no reason to censor it." She said the ban violated the constitutional rights of the students, because it imposed prior restraint.

Nolan wants the university administration to admit publicly that it erred in cancelling the film and to promise never to ban student government-sponsored movies again. But Rickard, who said the film has never been seen in Maryland, thought he had acted properly, in light of the possible legal consequences. *Debbie Does Dallas* was scheduled to be shown at Johns Hopkins University, also in Baltimore, some time in November. Reported in: *Baltimore Sun,* October 29.

Baton Rouge, Louisiana

Louisiana State University officials have ordered the student newspaper to stop running an advertisement for condoms from a local drugstore. The ad shows two wine glasses and a package of condoms with the caption "The Perfect Nightcap." Chancellor James Wharton called the ad "insulting to decent people." Vice Chancellor Lynn Pesson suggested prohibiting the ad after receiving complaints from area residents. He said students are responsible for the editorial content of *The Daily Reveille,* but administrators have ultimate control over business operations, including selling ads. Accordingly, the director of the Office for Student Media, who had approved the ad, has been told to reject it in the future and to exercise more careful control.

Ecton Theriot, managing editor of the paper, said he fears administrative restraints on news stories. Victor Andrews, editor, objected to the fact that students were not consulted before the ban was ordered. To John C. Merrill, director of the School of Journalism, *The Daily Reveille,* which is not connected with his school, is a constant source of embarrassment. "I think it's about a fifth-rate university paper," he said. Reported in: *Baton Rouge Advocate,* September 17.

While all this was going on, the student newspaper came out with an editorial critical of the NAACP's stand on a higher education desegregation suit. The editorial was accompanied by a cartoon many regarded as racist. George Eames, president of the local NAACP publicly protested and threatened an economic boycott of the university. Yvonne McGhee, director of the Black Student Affairs Committee of the Student Government Association, said she would like to see an apology, and state NAACP President Rupert Richardson reported that she intends to seek advice about taking legal action.

The cartoon, showing an Aunt Jemima-type woman speaking in stereotyped black dialect, prompted a meeting among black student organizations and NAACP representatives. This led to a closed-door meeting with LSU Chancellor Wharton, who afterward said he would announce his plan for resolving the conflict later in the week. Reported in: *Baton Rouge Advocate,* September 22, 24, 25.

Omaha, Nebraska

David M. Ambrose, chairperson of the University of Nebraska-Omaha marketing department, asked the publisher of *Marketing Management: Text and Cases* to delete seven pages because they contain a case study dealing with a firm that sells contraceptive devices. To make things easier, the publisher, John Wiley & Sons, requested that Ambrose cut out the offending material, which was done by the university's bookstore staff after 25 copies of the book were delivered. "I have more respect for the students and the parents of the students than to parade that type of material in class," Ambrose said.

Bookstore manager Michael Schmidt said this was the first time in eleven years that a deletion was ordered because an instructor found some material offensive. Sam Walker, president of the Nebraska Civil Liberties Union and criminal justice teacher at the university, said he was both surprised and angered by the incident. "We are shocked and outraged by his censorship," Walker said, "and we are disturbed by the growing pattern of censorship, especially in the area of sex education and abortion and birth control." Reported in *Omaha World-Herald,* October 10.

Princeton, New Jersey

The Princeton University marching band has come under fire lately because of its satirical half-time shows, which have included skits with sexual innuendos and puns read over the stadium public address system by a student announcer. After the band's performance at the Princeton-Delaware game, at which the band spoofed E.I. du Pont de Nemours on its own turf, Dean of Student Affairs Karen Tibor was quoted as saying, "There are several individuals who feel the band could be replaced, but I certainly hope it won't come

to that." Band president Michael Sanford said school officials have strongly suggested that the band clean up its act. Worse yet, the band was banned from performing in West Point, N. Y., at the Princeton-Army game by U.S. Military Academy administrators. It marked the first time in 49 years that the musical organization has not played at a Princeton football game. Reported in: *New York Post,* October 12.

Pittsburgh, Pennsylvania

In early October, Sister Jane Scully, president of Carlow College, canceled an invitation to Sarah Waddington to speak at the Roman Catholic school on the subject of women in government. Waddington, who was President Carter's adviser on women's issues, argued for abortion rights before the U.S. Supreme Court and thereby contributed to its 1973 decision to invalidate state laws banning abortion. Shortly after the cancellation, however, Sister Scully asked to be publicly censured for withdrawing the invitation without consulting the faculty, calling it a violation of the principles of academic freedom. The faculty voted to send a letter to the board of trustees supporting her censure request. Reported in: *Philadelphia Inquirer,* October 21.

Blacksburg, Virginia

Having noted the success of a calendar displaying photos of female students, published last year by a Virginia Tech fraternity, Keith Moler decided to hire models, photograph them (fully clothed) in color, and put together his own calendar. Ten thousand dollars and a year later, "The Girls of Virginia Tech" went on sale at the University Bookstore, where merchandise manager Henry Pittard had agreed to market the calendars on consignment. After protests from feminists, however, the calendars were removed and the sale discontinued.

"My intention was not to make money," Moler said, "but to break even. I did it for the fun and the experience." Those who were not amused described the calendar as "exploitative" and "raunchy." Some women students pulled ads for the calendars off bulletin boards, and some faculty members objected strongly. Virginia Tech Information Director Ken Haines said he would have preferred the calendar coeds to have been chosen on the basis of their academic achievements. "But," he added, "I am also the first to defend the right of the students to pose, the right of the photographer to take the pictures, the right of the businessman to sell the product, and the right of the retail establishment to decide if they want to market the product." The calendars are available at a privately-owned store on the university mall. Reported in: *Richmond News Leader,* October 20.

films

Houston, Texas; Chattanooga, Tennessee

Houston Mayor Jim McConn told City Council members he intended to ask a local theater manager not to show the new R-rated version of *Caligula* at the five theaters planning to screen it. The reason? Those who have seen the film think nobody else should. Mary Jane Ruhl and Jim Ribbeck, both of Morality in Media; the Rev. Jim Vanderholt, director of the communications department of the Roman Catholic Diocese of Beaumont; and Geneva Kirk Brooks, founder of Citizens Against Pornography, objected vehemently to the movie. Brooks showed *Penthouse* magazine photographs of scenes from the X-rated version to council members and called it "the most degrading film I've ever seen."

In Chattanooga, the censorship shotgun was wielded by State Representative Bobby Wood, who said he intended to ask the manager of the theater in which *Caligula* is booked to cease and desist. Representative Wood, who has not seen the film, said it "contains things that are degrading and against all morals and principles that our community holds." Although an Atlanta federal court ruled that the movie is not obscene, Wood plans to appeal to the Film and Tape Commission in Nashville if the local manager does not cooperate. In a moment of moral illumination, he realized that what he was doing might be called censorship. "The only real solution to pornography and obscenity is for the public not to buy tickets," he said. But the moment fled, and Wood reasserted his intention to block the screening. Reported in: *Houston Chronicle,* October 15; *Chattanooga News-Free Press,* October 23.

broadcasting

Hollywood, California; Lynchburg, Virginia

In mid-September, TV producer Norman Lear launched his now famous attack on the New Right and Religious New Right at a Hollywood Radio and TV Society luncheon. Lear characterized the leaders of these groups as "a new breed of robber barons who have organized to corner the market on morals." Recommending that Hollywood send writers, producers, and directors around the country to defend the television industry, he also urged members of the audience to join a counterrevolutionary group called People for the American Way. He said that thirty spokespersons should be sent out and that his production companies would fund their share of the communications project.

Lear particularly criticized members of the New Right for labelling their opponents anti-Christian and

anti-family. He noted that the Religious New Right already owns 1,500 radio stations, 40 independent TV stations, and three television networks. And he added that they are not only powerful but slick. "These are smooth, buttoned-down, middle-American, evangelical business-oriented charismatics," he said. "These are revivalistic salesmen."

In response to Lear's indirect attack on groups like the Moral Majority, MM President Jerry Falwell sent a letter to his constituency calling Lear "the no. 1 enemy of the American family." The four-page money-raiser is worth quoting at length:

> Incest, adultery, homosexuality were only a few of the major themes that took Norman Lear to fame! It is no wonder that—after viewing many of his programs—anyone could say Mr. Lear has perhaps contributed more than any single person to the decline of moral values in our nation! Many, many people believe he is the man who has successfully brought filth and sexual perversion into our living rooms and led the way to today's gutter programming!

For a little cash promptly remanded, the Rev. Dr. Falwell promises, not only to "set the record straight" about his falsely slandered and unfairly discredited organization, but also to send out a "Confidential Report on Norman Lear." Reported in: *Variety,* September 23; *Chicago Sun-Times,* October 25.

Moline, Illinois

The Moline City Council voted 11-1 to ask the city attorney to find out whether the "spicy sex scenes" shown on Escapade, a cable television station, violate the city's obscenity law. The channel check was proposed by Major Robert Anderson, who said he was unhappy that what he called "hard-R" movies are available in Moline. "I feel there is a direct connection between what kids see and what they are doing today."

Alderman Larry Fossbinder, the lone dissenter, said he didn't think it was the city council's business to monitor what people watch on television. Robert Keller, general manager of Cox Communications, which offers the special channel to HBO subscribers, said his company has received no complaints in any of the ten communities now receiving Escapade programs. Reported in: *Rock Island Argus,* September 9.

Florham Park, New Jersey

Sean T. Flanagan, founder of the Committee Against Pornography (Morris County) announced that he is reviving the organization and joining the Coalition for Better Television's petition drive against the NBC television mini-series "Princess Daisy." Flanagan said he sent 30,000 letters to families in the area asking them to sign a petition and join the National Federation for Decency. Included in the letter are photocopies of salacious passages from the novel on which the mini-series will be based, a best-seller by Judith Krantz, which depicts scenes of lesbian sex, incest and adult-child sex. "It's utter pornography," Flanagan said.

The Committee Against Pornography has conducted a number of successful anti-smut campaigns. According to Flanagan, the group closed down two Morristown theaters that showed X-rated movies and also picketed newstands selling sexually explicit books and magazines. CAP's greatest coup, however, was in persuading five Morris County communities to pass anti-pornography resolutions. Flanagan said he was alerted to the CBTV drive against "Princess Daisy" by Moral Majoritarian Richard E. Reeder, head of Let Our Values Emerge (L.O.V.E.), which campaigned to restrict minors' access to sexually explicit books in the Library of the Chathams. Reported in: *Morristown Daily Record,* September 14.

New York, New York

After issuing press releases announcing AFL-CIO President Lane Kirkland's Labor Day address, CBS radio decided to cancel the broadcast. Although the network has given the union fifteen minutes of air time on Labor Day for more than thirty years, the Kirkland speech was dropped, allegedly because it was "devoted almost exclusively to an attack on the national administration and its policies." Similar addresses by labor spokespersons went ahead as scheduled on NBC and Mutual. One critic of the CBS move noted that CBS' categorization of the free annual fifteen minutes as "public service time" is questionable because in recent years the labor addresses had been subjected to the same kind of "instant analysis" by CBS News as that given to Presidential speeches. Reported in: *Variety,* September 23.

Pittsburgh, Pennsylvania

KDKA-TV blacked out a movie about a prostitute because the main character had the same name as a 13-year-old Pittsburgh-area girl. The girl's father, John F. Letner, Jr., had petitioned to block the showing in U.S. District Court, but Judge Paul A. Simmons refused. Letner said that his daughter was subjected to vicious, vulgar taunts by her junior high school classmates after advertisements for the program appeared in local newspapers. In response, the judge said he was sympathetic but that censorship was not the answer. "Censorship is irrational," he said. "If I were on the plaintiff's side, I wouldn't do anything. By publicizing this, you make things worse."

Thomas Goodgame, vice president and general manager of KDKA-TV, said he decided to cancel the program because of his concern for the family, not the lawsuit. "No judge in the country would deny us the right to run the show," he said. "I'm the father of six children. I have sympathy for these people." Goodgame

indicated that the program would probably not be shown at any time in the future. Said Judge Simmons, "Only an irrational person would confuse a 13-year-old girl with a prostitute in a movie. Kids are cruel. It's all part of growing up. That's how life is." Reported in: *Pittsburgh Post-Gazette,* October 15.

Providence, Rhode Island

In an effort to prevent cable television systems from showing X-rated material, including movies and other TV fare, the Rhode Island Public Utilities Commission has issued guidelines proscribing programs containing obscene material and requiring all homes equipped with cable television to be supplied with "lockout" devices. The PUC said it would establish service area advisory committees to determine what programs are obscene according to state law or "contemporary community standards." In effect, a committee from one Rhode Island town could consider a particular program obscene and recommend its cancellation while a committee from another town could call the same program not obscene and allow it to be shown. The "lockout" device is an attachment to the channel selector, which, properly coded, prevents viewers from watching the locked-out channel. In this way, parents can be away from home without fearing that their children might be watching R-rated movies. Reported in: *Pawtucket Times,* October 21.

magazines

Newark, New Jersey

New Jersey Assemblyman Charles Hardwick (R-Union) sent a telegram to Port Authority Chairperson Alan Sagner asking him to enforce the laws protecting minors from access to adult magazines at Newark Airport. A state ordinance requires that sex-oriented magazines be kept away from children in places they frequent. Hardwick said, "It is appalling to see adult magazines blatantly displayed within easy sight and reach of minors." Claiming to have watched young children at the airport pick up such magazines and noting the expression of shock on their faces, the state legislator attributed the illegal display to "economic greed." Since newsstands and convenience stores in his district are complying with the law, Hardwick said, he sees no reason why Newark Airport should violate it. Reported in: *Elizabeth Daily Journal,* September 10.

newspapers

Edgartown, Massachusetts

Approximately two years ago, Gerald R. Kelly, editor of and writer for *The Grapevine,* a Martha's Vineyard weekly, received an anonymous tip scribbled on a postcard that led to a year-long investigation of a local hospital administrator. After 30 stories in *The Grapevine* and a hospital inquiry, Edward V. Hanify, Jr., was fired from his $40,000-a-year job as executive director of Martha's Vineyard Hospital. He pleaded no contest to a charge of falsely claiming in writing to have a University of Massachusetts master's degree.

Since then, Hanify has filed a $1 million lawsuit for slander and libel against four doctors at the hospital. At pretrial hearings, his lawyer demanded that Kelly turn over all the notes on his stories, and Superior Court Judge Eileen Griffin gave him 30 days to comply. When the deadline arrived, however, Kelly refused, citing his rights as a journalist under the Massachusetts and U.S. constitutions and his unwillingness to reveal the names of his sources. He said he uses unnamed sources only when he is sure of their credibility, and if he identifies them in this instance, his future investigations will be compromised because people who don't want their names to be used will be reluctant to tell him anything. Reported in: *Boston Globe,* November 6.

art exhibits

Mount Angel, Oregon

The subject of complaints since its first showing at a Bicentennial exhibition in Philadelphia, the Rev. Robert Pospisil's bronze sculpture of the Virgin Mary has been voluntarily removed from the Benedictine Sisters' exhibit at Mount Angel Seminary because of recent protests. Part of a 14-piece show by the Jesuit priest, "Yes! The Annunciation" is a statue of a young woman dressed in a long smock smiling and rocking backward while holding her knees. Pospisil, who teaches at Matteo Ricci College in Seattle, said he decided to move the sculpture to a separate room, where it is still available for viewing, because of complaints that it depicts Mary as having sensuality. Termed "pornographic" and "sacriligeous" by some critics, the statue merely shows that the Virgin Mary was human, according to Pospisil. Reported in: *Oregon Journal,* September 22.

Providence, Rhode Island

John J. Leyden, head of detectives on the Providence police force, persuaded promoter Frank Russo to close down an exhibit at the Civic Center of drawings by the late John Lennon, called *Bag One.* Part of a 100-city tour, the show consisted of fourteen lithographs sketched by Lennon in 1969. Police Chief Anthony J. Mancuso said Russo was asked to close the exhibit because it was held "in a public foyer" and therefore accessible to children attending a nearby Northeast Energy Expo. Russo noted, however, that the exhibit

was partitioned off and that no one was permitted to enter without paying a $3.00 admission charge. Leyden said he would have closed the show if Russo hadn't.

Steven Brown, Rhode Island ACLU executive director, criticized the police's action and said that they should not have cancelled the exhibit unless they believed it violated the state obscenity law. The last time Providence police closed down an art exhibit was in 1978. Police raided the show, charges were thrown out in U.S. District Court, and the Rhode Island Supreme Court declared the state'sobscenity law, under which the raid was conducted, unconstitutional. Reported in: *Providence Bulletin,* September 21.

libel

Tulsa, Oklahoma

In 1980, David Robinson published a book on the life of the eighty-nine-year-old founder of the Worldwide Church of God, Herbert Armstrong, claiming that he and other church leaders had engaged in sexual activities which violated the church's moral code. Two church members immediately filed suit alleging that *Herbert Armstrong's Tangled Web,* published by Interstate Book Manufacturers in Olathe, Kansas, was based on conversations between ministers and church members—that is, privileged communications whose secrecy is protected by law. A temporary restraining order stopped the release of the book. District Judge Richard Comfort rescinded the order, however, unless the plaintiffs were willing to post a four-hundred-thousand-dollar bond. They weren't, so the book was released.

In the meantime, Robinson countersued for fifty million dollars for prior restraint and eventually accumulated legal bills totaling thirty-three thousand dollars. The two church members finally agreed to settle out of court for twenty-five thousand dollars. But the conflict between rights—the right to privacy and the right of free speech—remained unsettled. Now manager of a Tulsa office complex and part-time minister to former members of the Worldwide Church, Robinson is currently writing a novel on the same subject. Reported in: *Tulsa Tribune,* October 21.

closed hearings

Los Angeles, California

In a paternity suit filed by Sheilah Scott against actor Chad Everett, Superior Court Judge Raymond Cardenas denied the defense attorney's request to bar news media representatives from the courtroom. However, the judge issued a publicity gag order, at Everett's lawyer's request, forbidding attorneys and litigants to talk about the case with reporters. Reported in: *Los Angeles Herald-Examiner,* October 8.

San Diego, California

A newspaper reporter has been barred from a hearing involving the dismissal of a former Immigration and Naturalization Service officer for having "a personal relationship with a female alien." Arthur Golden, staff writer for the *San Diego Union,* was asked to leave the hearing at the behest of Linda Stewart, a Justice Department labor relations specialist. A lawyer for the newspaper claimed the case was a matter of public business and that the paper therefore had a right to cover it. The arbitrator, William S. Rule, insisted, however, that the dispute was a private one between employer and employee and that the hearing was closed to non-Immigration and Naturalization Service personnel. Reported in: *San Diego Union,* October 16.

Santa Cruz, California

Municipal Court Judge William Kelsay issued a gag order preventing police and court officials from releasing new information about murder suspect David Joseph Carpenter. The judge also closed the three-week preliminary hearing to press and public but temporarily denied defense attorneys' request to keep the news media from publishing virtually anything concerning Carpenter's past. Accused of being the "trailside killer" responsible for the deaths of two Santa Cruz women and five Marin County residents, Carpenter has a long history of crimes of sex and violence. The order would have barred reporters from discussing Carpenter's criminal record, the evidence against him, and his psychiatric history. Reported in: *San Jose Mercury,* September 22.

Miami, Florida

When a *Miami News* reporter tried to attend a contempt hearing for a witness who has refused to testify before the Dade County Grand Jury, State Attorney Janet Reno argued that the hearing was part of the grand jury proceeding and should therefore be closed. Despite the protests of a lawyer for the Miami newspaper, Dade Circuit Court Judge Leonard Rivkind agreed. The attorney for the *News* contended that all contempt proceedings are public matters, but Judge Rivkind ruled that all aspects of the grand jury process are covered by grand jury secrecy, except the "adjudication and sentencing" of witnesses for contempt of court. Reported in: *Miami News,* September 26.

Atlanta, Georgia

In the murder trial of James Samuel Walraven, accused "bathtub strangler," DeKalb County Superior Court Judge Clyde Henley issued a sweeping gag order prohibiting photographs of defendant, attorneys, and jury, and forbidding release by the news media of

information pertaining to Walraven's criminal record, reputation, statements made after his arrest, and psychiatric records. Fearful that more publicity might be deemed prejudicial and result in a mistrial, Judge Henley nevertheless modified the gag order after hearing objections from media lawyers that the order was unconstitutionally broad. Also dissatisfied with the modified ruling, however, which requests rather than orders the news media not to release proscribed photographs and information, reporters planned to submit objections to the judge and the district attorney. Reported in: *Atlanta Constitution,* September 23; *Atlanta Journal,* September 23.

Reading, Pennsylvania

Claiming that press coverage might jeopardize defendants' rights to a fair trial, Berks County Judge Arthur E. Saylor barred press and public from the pretrial hearing. The ban was requested by defense lawyers for two Cuban refugees accused of murdering a clerk in a Reading restaurant. Before the ruling, Richard A. Bauscher, attorney for the *Reading Times,* said, "We think that to bar the press from this courtroom in this proceeding is a violation of the constitutional rights" of the newspaper. Citing decisions of higher courts, however, Judge Saylor agreed with defense attorneys to conduct the hearing behind closed doors. Reported in: *Reading Times,* October 9.

Memphis, Tennessee; Miami, Florida

Citing legal precedent for their decisions, two judges have rejected petitions for closed hearings.

- In the murder trial of Laron Williams, Memphis Criminal Court Judge Joseph B. McCartie denied a defense motion to bar news media from pretrial hearings.
- Miami Circuit Court Judge Rhea Pincus Grossman turned down a request by plaintiffs in a libel suit against the *Sun Reporter* to prevent local newspapers from reporting pretrial testimony. Reported in: *Memphis Press-Scimitar,* September 18; *Miami Herald,* October 3.

commercial speech

Baltimore, Maryland

The Chesapeake & Potomac Telephone Company refused to print an ad in the *Yellow Pages* on the grounds that it might offend someone. The two-by-three-inch display shows a sketch of a woman in a bikini, the name of the company, Sex-A-Peel-A-Gram, the phrase "the telegram with the BARE FACTS for every occasion," and a telephone number. Jerry and Sharon Evnitz, owners of the company, said they help celebrate birthdays and other special occasions, for a fee of $55.00. The person being honored is visited by a Sex-A-Peel employee who strips down to a bathing suit and recites a poem summarizing the facts of the person's life. "No profanity, nothing like that all," said Sharon Evnitz. "We did it right in the middle of the Equitable Bank Center downtown," Jerry Evnitz added. C & P spokesperson Walter Haschert commented, however, that "the combined effect of the firm name, the picture, and the copy in the ad is potentially offensive and not tasteful." Reported in: *Baltimore Sun,* September 15.

CIA

Washington, D.C.

In September, the House of Representatives voted 354-56 in favor of a law that would make the disclosure of the identity of undercover American intelligence agents illegal (see *Newsletter,* November 1980, pp. 125-26). The bill came to the floor with a requirement that disclosure would be considered criminal only if made with the "intent to impair or impede the foreign intelligence activities of the United States." However, Representative John M. Ashbrook (R-Ohio) successfully moved to delete the "intent" provision. And now, even negligent or inadvertent name-droppers would be criminally liable if the law is passed by the Senate. Furthermore, the disclosure of names of agents derived from unclassified sources is considered felonious under the proposed law.

In October, the Senate Judiciary Committee passed a narrower version of the bill sponsored by Sen. Joseph R. Bidens, Jr. (D-Del.), which included an "intent" provision and specifically excluded journalists who are primarily interested in exposing intelligence agency abuses. Sen. Jeremiah Denton (R-Ala.) said, however, that he would try to persuade his colleagues to adopt the more sweeping language of the House bill when the Senate bill comes to the floor. Bidens's version is supported by news organizations and civil liberties groups. Reported in: *New York Times,* September 24, October 7.

etc.

Ottawa, Canada; Flemington, New Jersey

By being banned in Canada and challenged in New Jersey, comic books might have regained the respectability they've lost in recent years—that is, if they hadn't been the product of a virulently anti-Catholic fundamentalist who works out of Chino and Cucamonga, California. The comics, *Double Cross* and *The Big Betrayal,* published by Jack T. Chick, have been described by the *Catholic League Newsletter* as

"religious hate literature" and "sectarian pornography." Sold by the thousands in the United States and Canada, the comic books were purchased by two people in Edmonton, Alberta, who wrote to Roger Kohut of the Canadian Tariff Programs and Appraisals Division of the Customs and Excise Department in Calgary. Although the Canadian tariff act prohibits mainly hard-core porn, Kohut thought the comics were sufficiently "immoral" and "indecent" to be banned.

In New Jersey, the Flemington Religious Council, an ecumenical group comprised of priests, ministers, and rabbis, unanimously condemned comic books by the same publisher as well as the store that sells them. Edward J. Leadem, executive director of the New Jersey Catholic Conference, said he was exploring legal avenues for stopping the sale of the comics. The Rev. Marcus Pomeroy, pastor of Flemington Baptist Church, said he personally asked the bookstore's owner to stop selling the comics, but the "Christian" entrepeneur refused.

Part of Chick Publication's *Crusader Comics* series, the volumes seized and banned in Edmonton and criticized in Flemington, tell the story of Alberto Rivera, portrayed as a Jesuit priest, and his attempt to rescue his sister, portrayed as a nun, from her home in England, portrayed as a convent. According to the Protestant magazine *Christianity Today,* however, Rivera was not a Catholic (let alone a Jesuit priest) but a Protestant expelled from a Protestant seminary in Costa Rica "for continual lying and defiance of seminary authority" and later employed by Protestant churches. The woman he supposedly rescued was not a nun but a housemaid working in a private home in London. Reported in: *Philadelphia Inquirer,* September 24; *Los Angeles Times,* October 27.

Washington, D.C.

The United States International Communication Agency canceled John Seiler's government-sponsored tour of Africa because Seiler has criticized the Reagan Administration's policy in southern Africa. The cancellation, made "at the highest levels," was based on Seiler's forthcoming article, "Has Constructive Engagement Failed? An Assessment of Reagan's Southern African Policy." The ICA has drawn criticism lately for proposing to cut back international exchange programs, and American scholars fear that previously arranged lecture tours will be subjected to ideological tests. Regarded as a Republican by inclination and a supporter of moderate rapprochement with the Union of South Africa, Seiler believes U.S. policy is alienating black nations and not exacting enough from South Africa. He said of the ICA decision, "This will be enormously disappointing to those who have understood that independent scholarship had a role in foreign policy." However, John Hughes, ICA associate program director, said the Administration fears that foreign audiences might be "confused by someone who could not articulate our policy fairly." Reported in: *New York Times,* November 8.

Baltimore, Maryland

The First Unitarian Church stopped its Sunday morning service on October 4 to engage in a symbolic book burning. Led by the Rev. Robert L. Zoerheide, the congregation burned slips of paper, each containing a "sexist" passage from Martin Luther, Thomas Aquinas, the Koran, St. Augustine, St. Ambrose, St. John Chrysostom, a Hindu book, an anonymous Chinese author, the Old Testament, Soren Kierkegaard, and Karl Barth. Before the burning, nine women read passages aloud and commented on them. Afterward, Rev. Zoerheide gave a sermon in which he defended a proposal made last June at the Unitarian convention in Philadelphia to delete references to God in the current bylaws "purportedly because the name is sexist." Reported in: *Baltimore Sun,* October 5.

Virginia, Minnesota

Three days of spiritual meetings culminated in a "destruction celebration" at which an estimated three thousand dollars worth of records, books, and magazines were destroyed by two hundred and fifty members of the Virginia Assembly of God Church. Into the bonfire went album covers of the Beatles, Alice Cooper, and Kiss; children's Halloween witch stories; a worn copy of *Peyton Place;* an unraveled stereo tape; *Playboy* magazines; and a mail-order catalogue. The crowd sang "In the Name of Jesus," and church pastor Richard Scherber confessed his past sins, crimes, and attendance at rock concerts—too many to be recounted here. "Rock music promotes the moral decay in our society," said Scherber.

The person indirectly responsible for the conflagration is the Rev. Dan Peters, minister of the Zion Christian Life Center in North St. Paul, who with his brothers, Steve and James, has been smoking the devil out of the midwest's small towns since 1979 (see *Newsletter,* Nov. 1980, p. 139; Jan. 1981, p. 26; Mar. 1981, p. 116; July 1981, p. 105). A nationally recognized opponent of rock music, Peters rolled into Virginia on Friday night, led a seminar at the revival, and rolled out Sunday night in a blaze of book-burning glory. So far, he estimated, his religious "seminars" have kindled the destruction of about three million dollars worth of toxic texts and poisoned platters. Reported in: *Duluth News-Tribune,* October 20.

New York, New York

The New York Transit Authority ordered posters removed from the walls of subway stations because of complaints heard from Women Against Pornography. The posters, advertising the movie *Tattoo,* show the body of a nude woman covered with tattoos and bound at the ankles. Women Against Pornography and other women who complained said they found the ad offensive because it condones bondage and might stimulate sexually violent acts. The film's distributors, 20th Century-Fox, said the action is an infringement of First Amendment rights, and the producer's lawyer, Louis Nizer, said he would fight the poster-ban in court.

The contract between New York Subways Advertising Company and the Transit Authority gives the latter the right to remove posters or signs that are "objectionable to the Authority." Earlier in September, the Transit Authority banned a poster for Pro-Keds sneakers showing five black youths listening to a large radio in a subway car. Lt. Governor Mario Cuomo and Mayor Edward Koch considered the ad inflammatory and racially offensive. Earlier in the year, the NYTA removed ads for Jou-Jou jeans, which pictured a jeans-clad figure facing away from the camera and apparently nude from the waist to the top of the thighs. Reported in: *New York Times,* September 27.

foreign

London, England

Proposed by Conservative MP Timothy Sainsbury, the Indecent Displays (Control) Act passed the House of Commons and immediately led shop owners all over London's red light district to cover up exposed flesh on billboards, posters, and signs. The law also applies to magazine covers but does not affect the contents of magazines or the goings-on inside bookstores and movie theaters. Having walked through Soho and checked on merchants' compliance with the law, Sainsbury said the response was "patchy." Outside London's so-called sin bins, signs have gone up warning that "persons passing beyond this notice will find material or displays which they may consider indecent." Praising Sainsbury's action, anti-porn crusader Mary Whitehorse said that a battle had been won but that the war against the "tide of titillation engulfing civilization as we know it" has a ways to go. "It has only just begun," she added. Reported in: *Baltimore Sun,* October 28.

Athens, Greece

The new socialist government of Premier Andreas Papandreou announced that censorship of movies and songs will be terminated and that leftist groups that fought the Nazis in World War II will be duly recognized by the government. Press censorship in Greece ended in 1974, with the overthrow of the military dictatorship, but conservative governments have since maintained tight control over the distribution of films. Although the decision will lead to greater freedom for Greek citizens, the influence of the Greek Orthodox Church will continue to be felt in the area of "pornography." Melina Mercouri, long-time opponent of the dictatorship, has become Minister of Culture in the new government. Reported in: *Philadelphia Inquirer,* October 24.

Wellington, New Zealand

Customs officials seized a book sent by a Michigan woman to her friend in New Zealand. The reason? It's pornographic. The book? Feminist Andrea Dworkin's *Pornography: Men Possessing Women,* an attack on the pornographic portrayal of women. The case was scheduled to go to trial in November. Reported in: *New York Post,* November 9.

Rawalpindi, Pakistan

After meeting in Karachi in August and protesting strongly against government censorship (see *Newsletter,* November 1981, p. 172), Pakistani journalists and other newspaper workers organized protest meetings in five cities in October to demand an immediate end to censorship by the martial-law regime of Mohammed Zia ul-Huq. In Rawalpindi, two hundred policemen tried to stop the meeting of the Pakistani Federal Union of Journalists and the All-Pakistani Newspaper Editors' Convention. Journalists defied the police, however, and speakers denounced the government for "concealing the truth and promoting falsehood." Reported in: *New York Times,* October 16.

(From the bench . . . from page 14)

libel

Los Angeles, California

When Grant Wood's sister Nan, now eighty-one, and family dentist, Dr. Byron McKeevee, now deceased, posed for Wood's famous "American Gothic" in 1930, they surely had no idea that the painting would become—in the words of the Iowa Historical Society—the "most caricatured painting of all time." No doubt continually embarrassed by public exposure from political cartoons and the like, Nan Wood Graham suffered quietly until 1968, when *Playboy* magazine displayed a topless version of the painting. She sued and received a modest, undisclosed payment. In 1977, seeing yet another topless treatment of her brother's work, this time in *Hustler* magazine, she sued again—for $10

million. Los Angeles Superior Court Judge Eli Chernow ruled, however, that the satirical version of the painting was neither defamatory nor libelous. Reported in: *Los Angeles Times,* October 21.

Manassas Park, Virginia

A Circuit Court petit jury, deliberating for little more than an hour, found the *Manassas Journal Messenger* not guilty of libel in 1979 against then Mayor J. Frank Murphy, who had sued the newspaper and four employees for $1.05 million. The *Journal Messenger* had run a series of articles and an editorial relating to Murphy's award of a roofing contract to a personal friend and co-worker. The former mayor claimed the articles were biased and damaged his personal and political reputation. The newspaper argued that it was within its rights in criticizing a government official and publishing information in the public interest. Defense attorney Richard Potter said, "If you decide in favor of the plaintiff, criticism of public officials will become slimmer and slimmer for fear of more suits being filed." Reported in: *Editor & Publisher,* October 24.

nude dancing

Boston, Massachusetts

Anthony J. Venuti, Jr., owner of the Blue Max Casino, has been presenting nude dancing without a license since 1979. In 1978, the Boston Licensing Board denied Venuti's application for an entertainment license and later suspended the club's liquor license because of the nude dancing. Jury trials, however, resulted in innocent verdicts in both cases. The Boston Licensing Board permits nude entertainment in what is locally called "the combat zone" but applies a state law forbidding the activity in other areas of the city.

In September, U.S. District Judge Andrew A. Caffrey found the statute unconstitutional for being so "overbroad and vague that it also could have been applied against a harpist performing at the Tearoom at the Ritz." Caffrey said the law violated the First and Fourteenth Amendments because it gives unlimited discretionary powers to public officials and provides no standards whatsoever. "It grants officials power to discriminate, to achieve indirectly through selective enforcement a censorship of communicative content that is clearly unconstitutional when achieved directly," he added.

The judge emphasized, however, that a statute limited to liquor establishments, providing narrow and definite standards, and aimed at certain kinds of conduct might pass a constitutionality test. Andrea Wasserman Gargiulo, BLA chairperson, asked the state attorney general's office for a stay and promised to appeal the ruling "all the way up to the U.S. Supreme Court." Reported in: *Boston Globe,* September 18; *Variety,* September 23.

commercial speech

Los Angeles, California

A Los Angeles Superior Court ruled that the publisher of the *Christian Yellow Pages,* a business directory, cannot exclude advertisers who are not "born-again Christians." The suit was filed in 1977 by the Anti-Defamation League of B'nai B'rith on behalf of two Jewish businessmen who were refused advertising space in the Orange County edition of the directory. The ADL claimed, and the court agreed, that the publisher's policy violated a state law prohibiting businesses from discriminating against buyers or sellers "because of race, creed, religion, or color."

David Llewellyn, defense attorney, said the ruling of the court violates First Amendment guarantees of freedom of the press and freedom of religion. Representing the directory's publisher, W. R. Tomson, head of the Family of Faith Foundation in Modesto, California, Llewellyn said the purpose of such directories is to "permit born-again Christians to associate with other born-again Christians in a metropolitan area." The scriptural basis for this goal, he continued, is Psalms 1:1—"Blessed is the man who does not walk in the counsel of the ungodly." Reported in: *New York Times,* November 8.

Lenox, Massachusetts

The Massachusetts Appeals Court ruled that a Lenox bylaw banning all off-premises signs does not violate the First Amendment right of a billboard company to engage in commercial speech. In a written opinion, Judge David A. Rose said that billboards can be prohibited by laws intended to protect a municipality's "interests in traffic safety and the appearance of the city." The court fight began after the state Outdoor Advertising Board turned down a billboard company's application for renewal of permits for off-premises advertising that had appeared on Lenox streets for about forty years. Assistant Attorney General Ann Rogers said that the decision is consistent with a U.S. Supreme Court decision on billboard law made earlier this year.

In the case referred to, the high court overturned San Diego's 1972 blanket prohibition of billboards by a vote of 6-3, but indicated that a ban on commercial signs might be upheld. Four justices, represented by

Justice Byron White, held that commercial speech is less stringently protected than noncommercial speech by the First Amendment. The dissenting justices supported the right of a community to ban all billboards without distinguishing between kinds of speech. Whether the Supreme Court decision justified the Massachusetts ruling is open to question, however, because it does not explicitly condone prohibitions of commercial speech. Reported in: *San Diego Union,* July 3; *Boston Globe,* October 29.

church and state

Pawtucket, Rhode Island

U.S. District Court Judge Raymond J. Pettine ruled that the City of Pawtucket cannot use a Nativity scene as part of an annual downtown Christmas display. Although the practice has been going on for forty years, the judge decided that public employees setting up city-owned figures is a violation of the constitutional separation of church and state. The decision does not pertain to the activities of private persons using privately-owned materials. Reported in: *Baltimore Sun,* November 11.

etc.

Albany, New York

U.S. District Judge Howard B. Munson ruled that Governor Hugh Carey's cancellation of a rugby game between an American team and the South African Springboks was a violation of the teams' First Amendment right to free speech. Carey had ordered the match stopped because of the controversy surrounding the Springboks' U.S. tour and the threat of violence at the game. The decision raised questions among lawyers and teachers about the applicability of the First Amendment to sports activities. Defending the Springboks' right to play, the ACLU cited a recent U.S. Supreme Court decision extending constitutional protection to nude dancing. The ACLU argued, "There is no obvious reason why nude dancing viewed through a coin-operated booth in an adult establishment should be entitled to greater protection" than a sporting event. Others said the game derived its status as speech because it had become politically charged and thereby conveyed ideas.

However, Professor Geoffrey R. Stone, of the University of Chicago Law School, said that the game was not "speech" and therefore not entitled to protection. Concurring, Professor Laurence H. Tribe, of the Harvard Law School, contended that Governor Carey was right to cancel the rugby match because of the possibility of violence. "When the state reasonably determines that there is a serious threat of violence," he said, "it surely has the authority to withhold access to a municipal facility for the athletic event that poses the threat."

Judge Munson concluded that the denial of a public forum would deprive the rugby players of their right to withstand political criticism by pursuing an activity which some persons viewed as political. "By enjoining the scheduled sporting event, the Governor of New York seeks to destroy the very constitutional freedoms that have ennobled the more than century-long struggle to insure racial equality in this country." Reported in: *New York Times,* September 22; *West's Federal Case News,* October 9.

(Is it legal? . . . from page 15)

poor professional judgment" in condoning the violation of law by students in her charge. Ms. Jones is asking for damages of over $10,000 and an injunction against both retaining the letter of reprimand in her personnel file and using it to harm her personal reputation or professional career. Reported in: *San Francisco Examiner,* October 20.

etc.

Dallas, Texas

On August 13, comedians John Bowley and John Wilson were handcuffed on the stage of Bowley and Wilson's Easy Parlor and taken to jail by Texas Alcoholic Beverage Commission agents. Nabbed for singing and talking dirty, the former graduate students at Southern Methodist University were charged with obscenity by the Dallas County district attorney's office, a move ordered by E. P. McCracken, ABC District Supervisor. The complaint originated with a sixteen-year-old girl, who had seen the comedy act and told her mother about it. Before the arrest, Bowley, Wilson, and Robert Peterson, owner of the club, were offered the option of paying a $1,500 fine, taking a voluntary ten-day suspension, or changing the comedy act in ways McCracken refused to specify. If found guilty, the pair face possible one-year jail terms and $2,000 fines.

The arrest was based on the Alcoholic Beverage Code, which outlaws lewd and vulgar language in establishments serving alcoholic beverages. ABC attorney Allen Johnson said the code is routinely enforced in Texas, although Bowley and Wilson claim they have been using the same routine for twelve years and scores of topless dancing bars have never been visited by ABC agents. Thomas Wilson, ABC Houston chief, said that once a complaint is received, an ABC investigator is dispatched to determine whether obscenity is being condoned. Asked to define

obscenity, Wilson hedged. "It depends on the man who goes out on a particular case. What might be obscene to one agent might not to another," he said. Then, once a complaint is registered, valid or not, a hearing must be held, unless club owners choose to pay the fine or voluntarily suspend operations. McCracken said he has been given no standards by which to determine whether language is obscene or not. In the Bowley and Wilson case, he read an agent's report—"and to me it was vulgar." Reported in: *Dallas Times-Herald,* September 6; *Houston-Post,* October 11.

("Minors display" law . . . from page 1)

tional standards. For the reasons below, the court holds that the Act is unconstitutionally overbroad and vague, and enforcement of the Act must be permanently enjoined.

II. Findings of Fact

Plaintiffs are individuals and associations comprised of retailers, bookstores, distributors, publishers and writers who may engage in activities prohibited by the Act. Plaintiffs' witnesses included, among others, two authors, the Acting Director of the Public Library System for Fulton County and the City of Atlanta, and the president of the Association of American Publishers, which is comprised of members who together publish 85% of the books published in the United States. In anticipation of the Act's enforcement and prior to the commencement of this action, a retailer removed books from display in her bookstores, a store buyer placed a hold on orders for new fall season books for all Rich's stores, an author made plans to cancel an autograph session to promote her book at a department store, and the American Booksellers Association, Inc., voted not to return to Georgia for its annual convention and display of books in 1984. The effect of such decisions is to deny adults as well as minors access to communicative materials. . . . Defendants appear to contend that the Act is not overbroad because it only prohibits dissemination of "harmful, sexually explicit" materials to children. However, because the Act prohibits materials whose cover or contents contain descriptions or depictions of persons of the opposite sex without clothes, or of "illicit sex or sexual immorality which is lewd, lascivious, or indecent," many works of art and literature would have to be removed from display. These materials could include best-seller novels as well as the classic plays and sonnets of Shakespeare and volumes on the history of art.

Defendants also contend that the Act is not vague because it is clearly directed at the "display and sale of pornography to children." Further, defendants state that the prohibited materials are described in "detailed, simple, everyday words" which provide a guide for law enforcement and prevent arbitrary enforcement. There was considerable and convincing evidence, however, that many of the phrases of the Act were uncertain and without specific meaning. Witnesses testified that it was difficult to decide which "nude or partially denuded figures" would "provoke or arouse lust or passion," since people would differ in finding that a particular picture did or did not arouse lust or passion. Witnesses also testified that it was difficult or impossible to determine what materials might be "lewd, lascivious, or indecent" under the Act. The testimony of defendant's witnesses supports the finding that it is difficult to determine what is prohibited under the Act. Those witnesses had differing viewpoints on the general suitability and appropriate placement of materials. It cannot be disputed that many of the terms have more than one dictionary definition or colloquial meaning. Moreover, terms such as passion, lust, immoral and indecent, have some meanings unrelated to sexual conduct. Further, the term "illicit sex or sexual immorality" is inconsistent with the definition in the Act which describes certain conduct that cannot be *per se* "illicit" or "immoral."

III. Conclusions of Law

A. Presence of a Case or Controversy and Standing

Plaintiffs have invoked the court's jurisdiction under 28 U.S.C. SS1331, 1343(3) and (4), 2201 and 2202. Defendants maintain that the plaintiffs have failed to show that they are subject to prosecution under the Act, and that therefore a "controversy" is not present and plaintiffs lack standing to litigate the Act's constitutionality. However, plaintiffs' test of the constitutionality of the Act by an action for declaratory judgment is properly before the court. The plaintiffs have demonstrated a "case or controversy" mandated by Article III of the Constitution and they have standing to challenge the Act. . . .

. . . One of the purposes of striking down statutes which are "overbroad" is to assure the public that the dissemination of materials protected by the First Amendment will not be suppressed. The United States Supreme Court has considered the issue of what materials are constitutionally protected or not "obscene." The court set down three basic guidelines for determining whether material could be judged obscene and therefore regulated by the State:

> (a) whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;
>
> (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
>
> (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Miller v. *California,* 413 U.S. 15, 24 (1973). Moreover, certain material has been specifically found to be protected expression and not obscene. *See, e.g., Jenkins* v. *Georgia,* 418 U.S. 153 (1974) (holding the film *Carnal Knowledge* to be constitutionally protected); *United States* v. *One Book Entitled Ulysses,* 72 F.2d 705 (2d Cir. 1934) (holding the book *Ulysses* by James Joyce to be protected).

These standards must be applied to the Act in question notwithstanding the fact that it purports to regulate only those materials obscene as to minors. It is true that the State's interest in protecting the well-being of its youth and in aiding parents' right to rear their children permits the State a greater degree of latitude in restricting materials determined to be obscene as to minors. *Ginsberg* v. *New York,* 390 U.S. 629, 640 (1968). However, an examination of the Act reveals that it infringes on the protected rights of adults. The language includes a public display prohibition which necessarily prevents perusal by, and limits sale to, adults. The Act does not contain any standards resembling the *Miller* guidelines, and the Act's failure to incorporate such standards results in the prohibition of non-obscene, protected material. Accordingly, the Act is unconstitutional.

C. Overbreadth and the Rights of Minors

Even if the Act could be said to be solely a regulation of dissemination of materials to minors, the Act would still be overbroad. Minors are accorded significant First Amendment protection. The Supreme Court has upheld a statute regulating the "sale" (not display) of obscene materials to minors. *Ginsberg* v. *New York,* 390 U.S. 629 (1968). . . . The Court stated that it was constitutionally permissible for New York to accord to minors under 17 a more restricted right than that assured to adults to judge and determine for themselves what material they may read or see. *Id.* at 636-37 (footnote omitted). When the New York statute is compared to the Georgia Act, it is clear that the Georgia Act lacks similar guidelines. Specifically, the Act does not restrict a minor's access to material which *taken as a whole* (a) predominantly appeals to the prurient interest of minors; (b) contains patently offensive depictions or descriptions of sexual conduct specifically defined by applicable state law to be unsuitable for minors; and (3) is utterly without redeeming social value (or lacks serious literary, artistic, political or scientific value). Accordingly, the Act is unconstitutional.

D. Vagueness

The Act prohibits dissemination of works which may contain written passages or pictures which describe "sexual immorality" or which are "lewd" or "lascivious" or "indecent," or which are designed "to provoke or arouse lust or passion" or to "exploit sex, lust, or perversion for commercial gain." These phrases are not defined in the statute.

The purpose of striking down statutes which are "vague" is to prevent the arbitrary enforcement of laws that fail to give officials or the public any notice of what is prohibited. In analyzing the Act, the court must apply the same constitutional standards relating to vagueness that it would apply if it were dealing with a statute pertaining to adults. The Supreme Court has stated:

> the permissible extent of vagueness is not directly proportional to, or a function of, the extent of the power to regulate or control expression with respect to children.

Interstate Circuit, Inc. v. *City of Dallas, supra,* 390 U.S. at 689. The findings of fact support a ruling that the Act's language is vague as to materials prohibited and the manner of complying with the Act. Moreover, the Supreme Court has rejected standards for sexually related materials, such as those adopted by this Act, that went beyond the guidelines embodied in legal precedent. See *Interstate Circuit, Inc.* v. *City of Dallas, supra,* 390 U.S. at 686, 684-690. Further, the Supreme Court has held that certain terms used in the Act are without a definite meaning and are therefore unconstitutionally vague. *See, e.g., Interstate Circuit, Inc.* v. *City of Dallas, supra* ("sexual promiscuity"); *Rabeck* v. *New York, supra* ("magazines which would appeal to the lust of persons under the age of eighteen years"). In sum, Justice Harlan's words are appropriate:

> One man's vulgarity is another man's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.

Cohen v. *California,* 403 U.S. 15, 25 (1971).

In light of the foregoing, the court concludes as a matter of law that the Act is invalid for overbreadth and vagueness. Further, it cannot be saved by a narrowing judicial construction. The defendants maintain that the Act is designed to "protect children from sexually explicit pornography." That phrase is not contained in the Act. This court could not change the meaning of the Act without changing the language entirely. *See U.S.* v. *Great Northern Ry. Co.,* 343 U.S. 562 (1952). In making the rulings in this opinion, the court is mindful of public concern for the youth of the state. However, the Act is not drawn to comport closely with this concern and the applicable constitutional guidelines. An order will be entered in accordance with this opinion.

the obscenity game

As usual, hundreds of bookstore and theater operators from coast to coast were arrested this fall for state and local obscenity law violations. And, as usual, those who were arrested fought back by countersuing and challenging the constitutionality of the laws.

- Little Rock, Arkansas. Owners of two movie theaters filed suit in Chancery Court to determine which of the state's obscenity laws is now in effect, after which they will test the validity of the law in federal court. Reported in: *Arkansas Democrat,* October 24.
- Englewood, Colorado. Pleading innocent in county court to a charge of promoting obscenity, the manager of two bookstores is testing the state's new obscenity law, which prohibits the distribution of "indecent" as well as obscene material. Reported in: *Rocky Mountain News,* October 14.
- Garden City, Idaho. Two adult bookstore owners petitioned the U.S. District Court to declare unconstitutional the Idaho Moral Nuisance Abatement Act, which allows authorities to close down shops that sell obscene materials—and keep them closed for one year. Reported in: *Boise Statesman,* August 22.
- Kittery, Maine. The owner of an adult bookstore at which live "sex shows" were presented has countersued in County Superior Court on grounds that a local 1980 obscenity ordinance is unconstitutional. Six other towns in York County with similar laws are awaiting the outcome. Reported in: *Portsmouth* (N.H.) *Herald,* September 10.
- Mt. Morris, Michigan. After winning similar cases in Grand Rapids and Flint, the owner of thirteen bookstores and massage parlors throughout Michigan filed suit in U.S. District Court against the township. The plaintiff claims to have won forty-two out of forty-three cases in which he was arrested for violating obscenity laws. Reported in: *Flint Journal,* August 18.
- Minot, North Dakota. Attorneys for a bookstore have appealed to the U.S. Supreme Court a decision of the North Dakota Supreme Court upholding the right of municipalities to impose special licensing fees and zoning restrictions on adult shops. Reported in: *Minot Daily News,* October 13.
- Pittsburgh, Pennsylvania. In the first two cases to come to trial under the commonwealth law against display and dissemination of obscene materials, a defense lawyer asked a Common Pleas Court judge to rule the eight-month-old law invalid. Reported in: *Pittsburgh Press,* September 3.
- Rock Springs, Wyoming. The manager of a bookstore intends to challenge the constitutionality of state obscenity statutes when his case comes to trial in U.S. District Court. Reported in: *Rocket-Miner,* September 25.

Partly because of such countersuits and partly because of the difficulty of enforcing obscenity laws, at least at the federal level, city attorneys have been advising city governments either to proceed very carefully or not to bother passing obscenity ordinances at all.

- Salem, Illinois. A county state's attorney turned down a request by the Salem Ministerial Alliance to enforce a city obscenity law because an attempt at prosecution "would be a frivolous waste of taxpayers' money." Reported in: *Taylorville* (Ill.) *Breeze-Courier,* September 24.
- North Kingston, Rhode Island. The town solicitor advised the town council to drop its plan to establish a panel empowered to determine whether materials purchased from bookstores are obscene because such determinations must be made by juries. Reported in: *Providence Journal,* September 9.
- Gillette, Wyoming. The city attorney recommended that the city council not pass an obscenity ordinance drafted by the local chapter of Citizens for Decency because the risk of involving the city in civil rights violations was too great under the proposed law. Reported in: *Gillette News Record,* October 6.

Nevertheless, obscenity laws—some consistent with U.S. Supreme Court guidelines in *Miller* v. *California,* and some not—recently have been enacted and proposed all over the country. Restrictive zoning laws have been passed in Manalapan, New Jersey; Charleston, West Virginia; and Elkton, Maryland. Nude dancing has been banned in Atlanta; new porno shops in Portland, Maine; sexually explicit movies in Norfolk, Virginia; all pornography in Plantation, Florida; and exhibitions of the pubic area of any person—regardless of age—in Chicago. City obscenity ordinances have been proposed in Portland, Oregon; Cook County, Illinois; Jackson, Mississippi; West Boylston, Massachusetts; Longview, West Virginia; East Hartford, Connecticut; Hollywood, Florida; and Folsom, New Jersey. In Windham, Maine, the town council decided to go ahead with a public hearing on an obscenity law, despite warnings about unenforceability by the town manager, the council chairperson, and several council members. The Butler, Pennsylvania, City Council passed an obscenity statute over the protests of a councilman who raised similar objections.

The difficulty of stopping city governments from passing obscenity laws—even on the grounds of unenforceability and in the face of countersuit threats—is illustrated by a recent controversy in Fort Lauderdale, Florida. In May, local clergy and business men founded the Alliance for Responsible Growth, an anti-pornography group. Then, armed with a model law framed by the Phoenix chapter of Citizens for Decency through Law, the Alliance took its case to the city commission.

Led by an Alliance member, Mayor Virginia Young, the commission debated the proposal, which would empower the commission to determine whether material is obscene and then instruct city attorneys to sue the shops that sell it. One commissioner raised the enforceability question. The local newspaper announced that similar laws had been found unworkable in Washington, Pennsylvania, Idaho, and California and reminded commissioners that five previous anti-pornography campaigns in the county had failed. But with passions against local smut peddlers aroused and perhaps some commissioners thinking about an upcoming election, the legislative body passed the ordinance at its first hearing—unanimously.

Immediately after the vote was taken, however, a local lawyer who has represented most defendants in obscenity cases in the area said that the bookstore owners were well prepared to test the law's constitutionality in court. Asked how she would define "obscene," Mayor Young said, "I heard a man say if it looks like a chicken and sounds like a chicken, it's a chicken. We'll know it when we see it." Reported in: *Fort Lauderdale News,* September 15, 16, 29, 30.

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totally exempted from inquiries under the FoIA. Contending that U.S. allies have stopped sharing information out of fear of disclosure, that classified material has been inadvertently released, and that the cost of supplying information is too high, Casey also insisted that the public is sufficiently protected from official abuses by congressional watchdogs.

In October, the Reagan Administration submitted a proposal to Congress restricting use of the Freedom of Information Act and granting the Attorney General the right to determine what information to release on terrorism, organized crime, and foreign counter-intelligence operations. The proposal came in response to law enforcement agencies which have contended that the FoIA hampers investigations. The recommendation also permits inquiries only from American citizens and resident aliens, allows the government to charge more for processing information requests, and requires federal agencies to notify individuals or businesses about whom information is sought, to allow them to contest the release of such information. Major industrial groups like the National Association of Manufacturers have complained that the act makes sensitive business information available to competitors.

Although the proposal is described by Assistant Attorney General Jonathan C. Rose as a modification of the FoIA, to which the present Administration is fully committed, journalists think otherwise. Jack C. Landau, director of the Reporters Committee for Freedom of the Press, said, "These are not minor modifications or fine-tuning of the act; these are a frontal assault on the act." Representatives of the American Society of Newspaper Editors and the American Newspaper Publishers Association described the proposal as an attempt to gut the FoIA and block legitimate inquiries. Other critics, including research operations like the Center for National Security Studies, contend that the amendments to the act would allow federal agencies to exempt almost any information submitted by business and would permit law enforcement agencies to exempt all data included under the category "records and information compiled for law enforcement purposes." Reported in: *Washington Post,* September 25; *New York Times,* October 16; *Editor and Publisher,* October 24.

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