

newsletter
on
intellectual
freedom



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ISSN 0028-9485

November 1982 Volume XXXI No. 6

Pico and the challenge to books in schools

By William D. North, President, Freedom to Read Foundation. The following remarks, slightly edited, were first delivered before the American Bar Association in July. Full legal citations have been dropped in the interest of readability and space.

On June 25, the Supreme Court rendered its decision in *Pico, et al. v. Board of Education, Island Trees (New York) Union Free School District*. But that decision, far from resolving the issues presented by challenges to book removal, did nothing more than establish that these issues are unlikely to be resolved by this Supreme Court, at least as presently constituted, under any rationale commanding even a majority of the Justices, let alone a consensus.

The *Pico* case, even though it did not produce a majority opinion is, however, one of the most significant First Amendment decisions to be rendered by the Supreme Court since its obscenity decisions of June, 1973. Like the obscenity decisions, *Pico* reflects the continuing and fundamental schism existing between two factions of the Court concerning the scope and application of the First Amendment.

The issue presented by *Pico* was whether or not ". . . the First Amendment imposes limitations upon the exercise by a local school board of its discretion to remove library books from high school and junior school libraries." The case involved the right of one junior high school and four high school students to challenge as unconstitutional the removal by the Island Trees Union Free School District Board of all copies of nine books¹ from the school libraries under the Board's control. The Board removed the books because they were, in the Board's view, "anti-American, anti-Christian, anti-Semitic and just plain filthy." The Board justified the removal on the ground of its ". . . duty, or moral obligation, to protect the children in our schools from this moral danger as surely as from physical and medical dangers."

Five of the books were removed even though the report of a Book Review Committee appointed by the Board itself recommended their retention under standards of "educational suitability," "good taste," "relevance," and appropriateness to age and grade level. The Board gave no reasons for rejecting the recommendation of the Committee it had appointed.

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

Newsletter on Intellectual Freedom is published bimonthly (Jan., March, May, July, Sept., Nov.) by the American Library Association, 50 E. Huron St., Chicago, Illinois 60611. Subscriptions: \$10.00 per year. Change-of-address, undeliverable copies, and orders for subscriptions should be sent to the Subscriptions Department, American Library Association. Editorial mail should be addressed to the Office for Intellectual Freedom, 50 E. Huron St., Chicago, Illinois 60611. Second class postage paid at Chicago, Illinois and at additional mailing offices.

✔ VICTORY! Island Trees board throws in the towel

Perhaps the most celebrated case of school library censorship in U.S. history, litigated over a five-year span up to the U.S. Supreme Court, ended on August 12, when the Island Trees (New York) School Board voted to return to school library shelves the nine books it had removed in 1976 because they were "anti-American, anti-Christian, anti-Semitic, and just plain filthy," and to permit high school and junior high school students to take them out without restriction. The 6-1 vote, however, included a stipulation that the librarian must send written notice to parents that the student had checked out a book containing material the parents might find objectionable.

The action came in the wake of the U.S. Supreme Court's June 25 decision in *Pico, et. al. v. Board of Education, Island Trees Union Free School District*, which upheld an Appeals Court ruling overturning a lower court order. In a divided and limited 5-4 decision, the high Court mandated further trial proceedings to determine the underlying motivations of the board, thereby preserving the First Amendment claims of the students and rejecting the notion that there are no potential constitutional constraints on school board actions in this area (see article p. 195 and *Newsletter*, September 1982, p. 149). "Going to trial is like playing Russian roulette," said board Vice President Frank Martin, "except for us there would be four bullets and one empty chamber."

According to sources at the executive session where the board reached its conclusion, debate over the softened position was intense. Newer members of the board, opposed to any restriction at all on the books, were able to win the concession from older members. The lone dissenter, Christina Fasulo, said, "I cannot in good conscience return filth to a school library when they have access to the book at a public library."

"It's a clear victory for the First Amendment," commented former Island Trees student Steven Pico, whose original lawsuit against the ban was filed by the New York Civil Liberties Union. "It's a victory," he said, "but I'll wait to see what the board's decision is on *The Fixer*." The board voted to put off a decision on whether the novel by Bernard Malamud—one of the titles returned to the library—would be returned as part of the school curriculum.

The other books returned to the shelves by the board are: *A Hero Ain't Nothin' But a Sandwich*, by Alice Childress; *Best Short Stories by Negro Writers*; *Down These Mean Streets*, by Piri Thomas; *Go Ask Alice*, author anonymous; *A Reader for Writers: A Critical Anthology of Prose Readings*, compiled by Jerome

Archer; *Slaughterhouse Five*, by Kurt Vonnegut; *Soul on Ice*, by Eldridge Cleaver; and *The Naked Ape*, by Desmond Morris. Reported in: *Newsday*, August 13.

. . . and Baileyville follows suit

A consent decree signed in mid-August forbidding removal of the book *365 Days*, by Ronald Glasser, from the Woodland High School library in Baileyville, Maine, brought to a close *Sheck, et. al., v. Baileyville School Committee*, another highly publicized school library confrontation. The decree came a month after the Baileyville School Committee, which had sought to have the book removed for allegedly offensive language, voted 3-2 to settle the case out of court. In January, U.S. District Court Judge Conrad Cyr temporarily enjoined the Committee from banning the book, a collection of vignettes about American soldiers in Vietnam, and ordered it returned to the library shelves (see *Newsletter*, March 1982, p. 33).

"The First Amendment is alive, well and living in Baileyville," said Michael Sheck, a former Woodland High student who, along with other Baileyville students and their parents, filed the initial complaint against the School Committee. "I'm pleased and more than a little relieved they've decided to give up."

According to the terms of the decree, any future library materials contested by the Committee must be reviewed under a new school policy. The policy was established under Judge Cyr's direction following the granting of the temporary injunction. The decree provides payment of about \$21,000 in legal fees to attorney Ronald Coles, who successfully argued the case. Reported in: *Augusta Kennebec Journal*, July 17; *Boston Globe*, August 22.

Show Me! withdrawn

As a result of the recent U.S. Supreme Court ruling in the case of *People v. Ferber*, which upheld a New York state law barring child pornography, St. Martin's Press has withdrawn *Show Me!*, a picture book for children about sex that has sold almost 150,000 copies in hard-cover and paperback. "We're withdrawing our book and no longer fulfilling orders for it," said Thomas McCormack, president of the New York-based publishing house. "We'll have to do so not only to protect St. Martin's but also to protect all those bookstores out there that could find themselves liable under the law."

The high court's July 2 decision upheld by a vote of 9-0 a law banning the use of children in sexually explicit films, photographs or performances. The law, which also prohibits the production and sale of such films and photographs, applies whether or not the material itself is legally obscene (see *Newsletter*, September 1982, p. 153; May 1982, p. 73). Some twenty states reportedly have enacted similar laws, including Pennsylvania, where St. Martin's maintains a book warehouse.

The book had stirred heated reaction since its U.S. publication in 1975. Booksellers were brought to court on obscenity charges in Massachusetts, New Hampshire and Oklahoma for selling *Show Me!*, but in two pre-trial hearings and in an actual trial in New Hampshire, judges ruled the book was not legally obscene.

In late 1980, the Chicago suburb of Oak Lawn was wracked by controversy when local residents sought to have the book removed from the public library as "a threat to the community." The incident garnered considerable publicity, but the Oak Lawn Library Board refused to take the title off the shelves (see *Newsletter*, January 1981, p. 5). In the wake of this decision, Illinois state Senator Jeremiah Joyce (R.-Oak Lawn) sought unsuccessfully to remove the affirmative defense for librarians from the state's "harmful matter" statute.

According to McCormack, over the years St. Martin's spent "well over \$100,000" in legal defense of the book. "Until the Supreme Court decision of July, it was not against the law to sell the book," he said. "Now the court has said in so many words that it is. It's the first time in my memory that a book already judged not to be obscene, libelous, plagiaristic or guilty of any other breach accepted as not being protected by the First Amendment is nevertheless suppressed by court order." Reported in: *New York Times*, September 19.

Texas textbook selection under fire

After California, Texas is the largest market for school textbook sales, accounting for about eight percent of the nation's textbook purchases. Each August, a fifteen-member state-wide textbook committee, teachers involved in the areas under consideration and appointed by the State Board of Education, meets to consider proposed texts and to hear objections from their critics. Publishers may respond to criticisms lodged against their books. In November, the State Board of Education selects no more than five textbooks approved by the textbook

committee in each category. Texas school districts may then choose from among the approved selections. Once selected, the books are used for six to eight years, a lucrative publishing contract. Many experts agree that a book rejected by the Texas board is almost guaranteed to be an economic failure nationally.

Who really determines which books will be used in Texas classrooms? Pamela Bonnell, a Dallas librarian and member of the Executive Committee of the American Library Association's Intellectual Freedom Round Table, and Michael Hudson, coordinator of the Texas branch of People for the American Way, say controversial textbook critics, like Mel and Norma Gabler of Longview, self-styled defenders of traditional values, boast undue influence. The problem, they say, is that while critics like the Gablers may address their objections to the textbook committee—this year, six of ten volumes of criticism submitted to the review body were produced by the Gablers, who addressed the committee for six hours,—only publishers' representatives may defend materials under consideration. The hearing rules make no provision for citizen participation except in opposition to textbooks.

Now, however, the rules are being challenged on two fronts. First, in July, Hudson, whose organization is campaigning against the Gablers' influence, wrote the committee requesting that his group be permitted to speak at the August 9-13 hearings in defense of textbooks and in opposition to their critics. "In the past, any citizen could freely protest a book, but none, unless connected with a publishing house, could defend one," he wrote. "We believe that the right for all citizens to be heard is basic in a democratic society and necessary if the best possible books are to be selected." In response, Texas Education Commissioner Raymon Bynum ruled that the group could file written comments, but could not formally address the committee, which People for the American Way representatives did over the objections of the Gablers.

Then, on August 5, in a separate action, Ms. Bonnell filed suit in Travis County District Court, seeking to have the entire textbook selection process declared unconstitutional. "I have a right to speak before the State Textbook Committee," Ms. Bonnell said. "As a parent, I'm not allowed to speak in favor of a textbook." According to her attorney, Michael Aranson, the current system allows a minority group to overwhelm the committee and prevent adoption of a text that might be favored by the majority. "Only the people who protest have input," he complained.

Ms. Bonnell's suit was triggered by the board's decision to remove the *Merriam-Webster New Collegiate Dictionary* from the adoption list. This action left only one dictionary on the list—other titles having been deleted previously. Board rules forbid only

one title in a subject area, hence no dictionaries remain on the list. Commissioner Bynum defended the action, though, noting that he and others were offended by the definitions of several "smutty" words in the dictionary. *Merriam-Webster* editors refused on principle to delete the words for the Texas market.

The Bonnell suit and the People for the American Way campaign represent the first serious challenges to the influence of the Gablers, who, Hudson charges, "have captured the Texas [textbook selection] process" and "are a significant part of the New Right's agenda for changing America." In twenty-one years of textbook monitoring, the couple has built a kitchen-table operation into a \$120,000-a-year organization known as Education Research Analysts, which boasts a national following. They claim eight employees and their research is utilized by such prominent New Right groups as the Rev. Jerry Falwell's Moral Majority, Phyllis Schlafly's Eagle Forum, and others.

Some observers, however, say that the Longview couple do not exercise the kind of power attributed to them, that they are only the most visible of many critics. While their opponents say the Gablers kept seven social studies texts from being adopted in Texas last year, in fact of thirteen texts offered, they had objected to eleven. Of the five selected, four had been criticized by the Gablers. This year fifty-five groups or individuals registered objections to textbooks under consideration in Texas, including several chapters of the National Organization for Women. The Gablers protested aspects of forty-five of one hundred and eighty proposed texts. Reported in: *Dallas Morning News*, August 6, 8, 14; *Dallas Times-Herald*, August 9; *Houston Post*, July 30; *Washington Post*, August 16.

censor foe steps down

Kathy Russell White, the librarian whose resolute stand opposing the efforts of a fundamentalist preacher to remove best-selling novels by Harold Robbins and Sidney Sheldon from the Washington County Public Library in Abingdon, Virginia won her nationwide recognition and a 1981 Hugh Hefner First Amendment Award (see *Newsletter*, January 1981, p. 5; November 1981, p. 156), resigned her position as Library Director in September. Her resignation came three months after the County Board of Supervisors moved to cut the library's requested \$187,000 budget by some \$17,000, which could mean a total loss in state and federal aid of up to \$50,000.

The motion to cut the library budget was made by Supervisor Bobby Sproles who has been an ally of the Rev. Tom Williams, pastor of the Emmanuel Baptist Church in Abingdon, in Williams' efforts to remove

"perverted" literature from library shelves. Williams has said he would rather see the library closed than providing books like Sheldon's *Bloodline* and Robbins' *Once is Not Enough*. He and Sproles once urged that the county cut off funds to the library until the books were removed.

White denied that the censorship controversy was a factor in her resignation, attributing it instead to the rigors of a lengthy commute from her home in Bluff City, Tennessee and a desire for some "peace and quiet." Williams said the librarian "was never the issue. I've never tried to get her to resign," he said. "The issue is whether it's right to force people to use taxes to satisfy perverted nature." Reported in: *Northern Virginian*, September 18; *Roanoke Times and World-News*, June 26.

CIA director: "abolish FOIA"

In a speech to the 64th national convention of the American Legion in Chicago on August 24, CIA Director William J. Casey called for abolition of the Freedom of Information Act, to protect U.S. security. Casey said the act gives foreign intelligence agents "legal license to poke into our files," forcing the United States to adopt "budget-busting" programs to protect itself. The nation's security will continue to be threatened, he declared, "unless we get rid of the Freedom of Information Act." According to Casey, the act has enabled the Soviet Union to steal or purchase information that has helped it improve the accuracy and power of its weaponry. He said that secrecy is an accepted practice in the medical and legal profession and in business, and that it should be applied to government as well. "Secrecy is essential," he argued. Reported in: *Philadelphia Inquirer*, August 25.

library pact approved by Tampa, Hillsborough County

The long-simmering feud between the city of Tampa and surrounding Hillsborough County over control of the city-county library system came to an end July 8 when the Tampa City Council approved an agreement with the county on library operations and the establishment of a joint Public Library Board. While under the agreement county commissioners will appoint half of the 14-member board, the board itself will serve only in a "recommending capacity." "Basically, the city is administratively in charge," said George Pennington, chief of staff to Tampa Mayor Bob Martinez, who had opposed county attempts to transform the Library Board into an independent

authority with responsibility for policy decisions.

The conflict erupted in 1981 after a Library Board decision supporting then-Library Director Leo Meirose's refusal to transfer six sex education books for children out of the children's section. In October 1981, the Tampa City Council overruled the board and ordered the books moved to a different part of the library, prompting county officials to push for more say in library affairs. In May, Meirose submitted his resignation. Many attributed his "early retirement" to pressures arising from the controversy (see *Newsletter*, July 1982, p. 115; January 1982, p. 4; November 1981, p. 161; July 1981, p. 102). Reported in: *Tampa Tribune*, July 2, 9.

New York to publishers: "Darwin must stay"

Three high school biology textbooks have been rejected for use in the New York City public schools because of what Board of Education officials say is an inadequate treatment of the Darwinian theory of evolution. The publishers of two of the three books have been told their texts are additionally unacceptable because of what officials termed uncritical endorsement of the creationist theory, which is based on the Bible.

The New York action comes at a time when school systems throughout the country are under pressure to acknowledge the creationist viewpoint. In the last year, legislators in 11 states have introduced bills that would require inclusion of the creationist approach in biology texts. None of those bills have yet been approved. Two other states, Arkansas and Louisiana, previously passed such laws. The Arkansas statute, however, was declared unconstitutional last January (see *Newsletter*, March 1982, p. 53) and a similar challenge to the Louisiana law is being litigated.

Charlotte Frank, executive director of the New York City system's division of curriculum and instruction, informed publishers of the rejections in June. One of the books rejected was *Life Science*, published by Prentice-Hall of Englewood Cliffs, New Jersey. In her letter Ms. Frank said, "This book does not state that evolution is accepted by most scientists today, and presents special creation without characterizing it as a supernatural explanation that is outside the domain of science."

Another rejected text, *Natural Science: Bridging the Gap*, published by Burgess Publishing Company of Minneapolis, included, among other things, the following passage deemed objectionable by New York officials: "Another hypothesis about the creation of the universe with all its life forms is special creation, which gives God the critical role in creation. In some school

systems, it is mandated that the evolution and special-creation theories be taught side by side. That seems a healthy attitude in view of the tenuous nature of hypothesis."

The third book, *Experiences in Biology*, published by Laidlaw Brothers of River Forest, Illinois, won approval more than a year ago, but was rejected on reexamination. It completely omits the word evolution and makes no mention of Darwin. "We deleted the term evolution from the textbook because we wanted teachers to be permitted to teach biology without being forced to face controversy from pressure groups," said Eugene Frank, director of publications at Laidlaw Brothers. "We are developing a supplementary chapter on evolution for this book, and it will be available in the fall for those school districts that want it."

The New York decision was applauded by Wayne A. Moyer, executive director of the National Association of Biology Teachers, who said, "Every community concerned about the honest teaching of science ought to take a similar stand." The *New York Times* also commented favorably on the rejections. "There is nothing wrong with divine creation except that it has no more place in biology textbooks than has Darwin in the book of Genesis," declared the newspaper in a June 28 editorial. "Censorship is shameful, but bowdlerization is ridiculous. Textbook publishers commit both when, in surrender to certain fundamentalists, they put out texts in biology that soft-pedal its unifying explanatory system, the theory of evolution." Reported in: *New York Times*, June 24, 28.

it's a family affair

It is our policy not to get into the thorny question of whether or not parents have the right to control what their *own* children may read or watch on television. We couldn't help but ponder the issue, however, when we opened our mail to discover a most interesting press release from a company called Censorview Ltd. of Costa Mesa, California. It seems Censorview is marketing "an electronic device that can block home television signal reception." According to the press release, the device, marketed under the name Censorview 1200, is "designed for parents who wish to selectively control reception of any or all television programming" and "is the only product of its kind in the country." Only one device will control all the sets in a household, blocking not only unwanted commercial, cable and Pay TV programming, but "the playing of video games, and video cassette recorders as well." Frankly, we really don't know what to make of this extravagant locking on-off switch, but, if you're interested, they're priced at \$199.95 and can be ordered direct from the manufacturer. Happy non-viewing!

managing the news

By Elie Abel, Chandler Professor of Communications, Stanford University. The following remarks were presented before the ALA Intellectual Freedom Round Table in Philadelphia, July 10, 1982.

In the opening chapter of his classic study, *Public Opinion*, Walter Lippmann tells of an offshore island where a small community of Englishmen, Frenchmen, and Germans lived together peaceably. It was the sort of place where the mail was delivered by steamer, once every 60 days. There was no cable linking the island to the European mainland. Radio was still a scientific-naval curiosity, not a working reality. One afternoon in mid-September, 1914, the islanders assembled on the quay to meet the mail boat with the latest news from Europe. The news they heard from the steamship captain was shattering: Britain and France had been at war with Germany since the first days of August. "For six weeks," Lippmann wrote in 1922, "they had acted as if they were friends, when in fact they were enemies."

Let me concede that the human condition affords graver deprivations than not being sure which of one's neighbors to hate. But Lippmann was making a more important point: That the behavior of men and women is governed by what he called the picture of reality inside their heads, a picture that in this case was out of date to the point of being false. These good folk had thought Europe was at peace when in fact it was at war. We are all of us—and this surely is Lippmann's enduring point—captives of the stereotypes in our heads, stereotypes that may be the product of outdated, distorted, incomplete, or false information.

Lippmann felt it was the task of the press—and later on also of the electronic media—to project a picture in the minds of its readers, listeners, and viewers that, while necessarily incomplete, was as faithful to reality as human intelligence, conscientious dedication to truth-seeking, and journalistic craft could make it. He believed, as I suppose everyone in this room believes, that American journalism has a large and daunting responsibility to inform the nation on the theory that only an informed public can make those informed decisions upon which the democratic process depends.

How well, or how indifferently, our media carry out that responsibility is difficult to assess. There are in the United States some 1700 newspapers, more than 7,000 radio stations, roughly 750 commercial television stations and more than 200 so-called public stations. Any attempt to sum up their performance in a single

glittering generalization is bound to mislead, tarring the reputation of some that deserve better while sparing others that deserve outright condemnation, all for the sake of debating a point. I prefer to share with you some thoughts about the best and the worst of them, in full recognition of the fact that a great many media institutions are neither very good nor very bad but somewhere in the mediocre middle. I propose further—for that is my assignment here this morning—to talk about how the news we get every day is managed.

What do I mean by managing the news? I do *not* mean what the late Arthur Sylvester had in mind when, after the Cuban Missile Crisis of 1962, he argued: "It is the government's inherent right to LIE if necessary to save itself when faced with a potential problem involving national security." That was in a speech before a professional group. Sylvester also said that "news generated by the action of a government as to content and timing are part of the weaponry that a President has." Sylvester was speaking of news management by government at the source of information. That is a serious concern, or ought to be, not only for journalists, but for all thoughtful Americans who look to the media for illumination of national policy decisions. It is not, however, a startling new practice that dates from the Kennedy Administration. Every President I have known (that is, seven altogether from Truman through Carter) practiced news management at the source. Each tried, in short, to manage or manipulate the release of official information in a fashion that would reflect favorably on his own administration, or to limit damage from the release of information that was, to a greater or lesser degree, unfavorable.

As far back as the presidency of Theodore Roosevelt, the White House was playing that game. T.R. was heard to boast, for example, that he had "discovered Mondays." What he meant by that cryptic phrase was this: He had discovered that most newspapers on most Mondays have more free space than on other weekdays; that's because they are written and edited on Sundays, when government and industry and commerce are mostly at a standstill. Teddy Roosevelt, in short, having learned that lesson, tended to hold back certain news items until Sunday evening on the theory—a theory fully justified by the results—that his version would be displayed more prominently and at greater length in the Monday morning newspapers than would be the case on Tuesdays or Thursdays.

Teddy Roosevelt's less-than-blinding revelation, incidentally, has been a matter of firm dogma for several generations of public relations people, who still try to make their clients look good by taking advantage of the news vacuum that exists on Sundays in most American newsrooms and—for that matter—on radio

and television, as well.

Let me turn now to news management of another sort, the process by which editors (and their broadcast counterparts, who prefer to be known as producers) decide what is news—and therefore warrants publication—and what shall be consigned to what George Orwell has described as the memory hole. This is the heart of the editorial process and, I suggest, its most vulnerable point. Every newspaper or magazine, every news broadcast on radio or television, confronts the inescapable compulsion to select, that is, to make judgments about the relative value and significance of the endless cycle of information that flows across the desks of its editors and producers. No newspaper, regardless of its political orientation, can possibly publish every item of news that is gathered and written by its own reporting staff or that clatters in from the wire services, in this country chiefly the Associated Press and the United Press International. The flow is simply too swift and too encyclopedic. Not even the *New York Times*, with all those intimidating gray columns to fill, can print much more than 10 percent of the material it receives day by day. The limits of time and space are immutable. What standards, then, do editors apply in selecting what shall be published or broadcast?

To begin with, editors make judgments with their readers in mind. They take pride in their ability to anticipate the reader's interests and concerns, a totally unscientific process, admittedly, but one that in present circumstances is reinforced or corrected from time to time on the basis of readership surveys.

One newspaper, say, the *Daily News* in New York, makes much of crime while another paper in the same city, say, the *New York Times*, devotes much of its staff time to reporting international news and news of government, business and finance, science, and the lively arts. That's because the editors of the *Times* have one audience in mind, the editors of the *News* another. I dare say one can make some such distinction here in Philadelphia between the *Inquirer* and the *Philadelphia Daily News*. The two are owned by the same corporation, but they are designed to reach and to please different audiences made up of—dare one say it in this supposedly classless American society?—different classes of Americans.

Some criteria of news are accepted across the board, whether the paper's audience is upscale or downscale: proximity, for example, or broad local interest. Both the *Times* and the *News* devoted thousands of man-and-woman-hours to reporting the federal bailout when New York City faced bankruptcy a few years back. The two papers diverged, however, in their treatment of the story: *Times* reports were longer, more detailed, somewhat more analytical, and more sensitive to the

broader implications for other old American cities in the Northeast and Middle West. When Cleveland and Detroit encountered similar problems a year or two later, that was still considered news worth printing by the editors of the *Times*; they saw it as another dimension of the same urban crisis. The editors of the *News* paid less attention to these out-of-town problems.

Timeliness is another sure-fire criterion. The wars in the Falklands and in Lebanon were reported day by day, as was the downfall of the Shah in Iran. Stories of this sort have the additional ingredient of drama, conflict, high emotion. They compel the reader's attention, unlike so much news of government, whether at the local, state, or national level, which tends to bore or intimidate many readers.

I apologize if what I have been saying till now sounds rather elementary to this sophisticated audience. It is, let me suggest, all but impossible to discuss the managerial role of editors without sketching, no matter how briefly, the function of the men and women communication scholars call the *gatekeepers* of the media. For it is the gatekeepers, much like those assigned to guard the turnstiles at a football stadium, who determine what goes in and what stays out. By making choices, they set the tone of any publication or broadcast news program. They determine what the audience, national or local, will be told about the state of the nation and the world on any given day; it is they who broaden or narrow our vision of events, they who give us the big picture, sharp and clear or fuzzy and perhaps distorted, they who control the space allocations that, in turn, govern the completeness of the accounts we read, see, and hear.

If Americans today are less informed than we might be, much of the responsibility rests with these gatekeepers. The fact—and it is a fact—that most of us get our picture of the world from television is, as I see it, cause for distress. An academic colleague of mine once tried to work out a hierarchy of communication media that tells the story. Radio, he said, is the *alerting* medium. It tends to be the first of the media that tells us something has happened. Unfortunately the account tends to be sketchy, containing not much more detail than a headline. Television is the *involving* medium. It engages the emotions more completely, and more quickly, than the others. Print, he added, is the only *informing* medium. Of the three, print alone is capable of handling complexity. To the extent that Americans are reading less than they did 20 years ago, reading newspapers less, that is, the picture in their minds threatens to become all peaks and no valleys, events disconnected from context, a jumble of happenings (some real, some contrived) that make many viewers uneasy and some downright alarmed.

George Gerbner and Larry Gross, of the Annenberg

School of Communications at the University of Pennsylvania, have suggested that there is a direct link between the number of hours spent watching television and the viewer's perception of the real-life world. Heavy TV watchers, they have found, tend to overestimate the dangers of physical violence in the real world, owing to the prevalence of violence in the programs they watch. Anxiety and outright fear was found to be most acute among children and, in particular, among young women, who are so frequently depicted as victims of mayhem on television. Let me suggest that this effect is not limited to shoot-em-up programs of the sort that are ground out of the Hollywood dream factories week by week, as if they were so many sausages. Watch your local TV news program any evening and ask yourselves whether anything more significant has happened during the day in your own community—more significant, that is, than the daily round of fires, auto accidents, robberies and murders. I don't know whether this is a case of life imitating art or the other way around. I do know that most news programs, particularly the local variety, are filled with what Paddy Chayefsky once described as "the rubble of banality."

There is a story in this highly competitive trade, doubtless apocryphal, about the TV executive who was looking at the evening news on one studio monitor alongside the competing station's news program on a second monitor. "Oh, no," he exclaimed. "Their flames are higher than our flames." A colleague was quick to comfort him. "Its okay," he said. "Our nun is crying harder than their nun."

Nor are the networks, in spite of their generally higher standards, wholly immune to the same disease. Consider the half-hour nightly news program on all three commercial networks. Subtract eight minutes for commercials touting cures for acid stomach, denture adhesives or cleansers, hemorrhoid salves and extra-strength headache pills. You are left with 22 minutes to somehow cover, or at least touch upon, all the national and international news of the day.

It's an impossible job of selection and compression, all the more so (as we have seen in recent weeks) when television had to deal with three wars at a time: one in the Falkland Islands; a second in Lebanon—both reported day by day; and a third, between Iran and Iraq, which cost more lives than the other two combined but received only intermittent attention, although I believe a great deal more was at stake in the neuralgic Persian Gulf area than in the stormy South Atlantic. Neither the British nor the Argentines were allowing western camera crews within several hundred miles of the fighting. Censorship was imposed. Yet the Falkland story got top billing for weeks. Television is, of course, a visual medium; so we got pictures over which the

anchorman or correspondent could speak his piece. Most of those, you will recall, were still photographs or old footage fished out of the files and tricked up to simulate action, with lots of moving arrows, blossoming explosions, and arc-like tracings of dummy missiles hitting dummy destroyers, courtesy of the animation department, and about as true to life as PACMAN. More compelling pictures were available from the battlefield in Iran, the real thing this time, but very little of it reached our home TV tubes. The reasons, I would guess, are both technical and cultural: First, the fact that the network camera crews overseas were deployed elsewhere: London and Buenos Aires and Jerusalem, primarily; second, the fact that the Iran-Iraq war had dragged on so long that it had lost the essential component of novelty; finally, the fact that, unlike newspapers, TV is not equipped to handle more than one major crisis at a time. A newspaper can put several international crises on the front page the same day. Networks have only one lead position at the top of the news. The moment Israeli troops moved into Lebanon, you will recall, the Falkland crisis was shunted into a subordinate position. President Reagan, who was visiting the crowned and uncrowned heads of Europe at the time, also found himself upstaged.

Unlike the advertisers on the evening news, I have no magic remedy to prescribe, other than longer, more detailed programs, say an hour long, i.e., 44 minutes after the double dose of commercials. But even that forward step, which the networks have been talking up for a good many years—and the affiliate stations keep rejecting—is not likely to change matters very profoundly. I can recall the day, back in the sixties, when the network evening news programs got the go-ahead to double their allotted time from 15 minutes to a half-hour. Excitement ran high among broadcast journalists. At least, they said, we'll have time enough to make sense of the daily news as it unfolds: no more tyranny of the clock; we'll have time to explore deeper dimensions, time for explaining what the news means and how it may affect people. Yet I'm not absolutely certain we're getting more information from the half-hour format than we were getting in the quarter-hour. More pictures, certainly; more animation and graphic display; also a great deal more fluff and no perceptible increase that I can detect in the solid-information quotient. The broadcast gatekeepers have their own self-imposed conventions; they think they know just how long an American audience will hold still for serious stuff and, inverting the motto of the *New York Times*, they broadcast "all the news that fits."

(Continued on page 218)

in review

Fighting Words: Imperial Censorship and the Russian Press, 1804-1906. By Charles A. Ruud. University of Toronto Press, 1982. 327 p.

This scholarly monograph tracing the evolution of pre-publication censorship in nineteenth century imperial Russia will be of interest mainly to a rather narrow readership of historians, although its subject matter also has appeal for a broader audience of intellectual freedom advocates. Unfortunately, what these less specialized readers will find is not only disappointingly narrow and dry, but, to a considerable degree, questionable in its argument.

It is an all too common weakness of book reviewers to criticize an author for failing to write the book the reviewer would prefer to read. But in this case such a complaint can hardly be avoided, since Charles Ruud's delimitation of his topic and the terms he uses to define it in key respects predetermine his conclusions. Briefly put, Ruud argues that

the autocracy granted extensive publishing freedom, governed by law, and did so to a degree far greater than westerners realize. . . . Judged in the Russian historical setting, the creation and dismantling of a preliminary censorship system during the span of the nineteenth century accorded with the growth patterns of the Russian press and its readership and with the reform efforts of the autocracy. As in the West, the government eventually found censorship a political liability, abolished it, and introduced press freedom, in turn making greater use of judicial restraints on the printed word.

Such conclusions dovetail with an "optimistic" reading of nineteenth and early twentieth century Russian history which this reviewer finds flawed at best. No doubt the tsarist regime was not the monolithic ogre portrayed by its opponents and the complexities of its reform efforts are by no means unworthy of serious study. But to portray the regime as largely marching along the well-worn nineteenth century paths of European modernization and liberalization, albeit a bit slowly, rather late, and prodded in no small measure—as were the other European powers—by seething revolutionary pressures, is an even greater distortion. With respect to censorship, such an argument can be supported only if key terms are defined in the most narrow manner, which regrettably is what Ruud does.

In this study, censorship is used to mean only "the

formal pre-publication prohibition by a government of words it finds unacceptable," and press freedom defined as "the right to circulate printed works subject only to the limits set for all citizens by the criminal code." In the U.S. today, such definitions would seem fundamentally apologist, useful mainly to would-be censors seeking refuge behind a legal cloak. And although tsarist Russia is not Reaganist America, I tend to find these formulations almost as obfuscatory for that historical context.

Certainly as the popular press (and the revolutionary and liberal movements) developed in Russia, the scope of permitted expression broadened. But the changes in censorship were principally—though not solely, to be sure—ones of form, not principle, as the careful reader may conclude even from Ruud's account. Abandonment of preliminary censorship and its replacement by judicial review, a development which Ruud correctly perceives in every major European state, was certainly of no little significance. But to make of this the heart of the story grievously distorts the picture and robs the study of its real relevance. Thus, Ruud's arguable contention that "Imperial Russia's system of controls contrasts sharply with what followed in the Soviet Union" and that "no organic connection exists between the two systems" depends on making the administrative distinction between pre- and post-publication censorship more determinative than perpetuation of the censorious mentality itself from one system to the other.

Ruud has, however, made a solid, if modest, contribution to the political, administrative, and legal history of imperial Russia. His detailed and able discussion of the background, promulgation, and implementation of the censorship statute of 1865 offers the knowledgeable reader a look at the Alexandrine reform era from an unusual angle. One finds interesting information as well on the emergence of the popular press and the history of journalism, though here Ruud must still take a back seat to the more penetrating efforts of Jeffrey Brooks and Gary Marker. Yet by limiting the conceptual scope of his inquiry, Ruud has foregone the opportunity to probe beyond the administrative structure to the essence of the censorship problem, thereby perpetuating a falsely rosy picture. Libraries with collections in Russian history should not fail to acquire this monograph, but those seeking the kind of thought-provoking study in the history of press freedom implicit in the title (its "sexiness" no doubt imposed on Ruud by the fiscal realities of scholarly publishing) would best proceed with caution.—*Reviewed by Henry F. Reichman, Associate Editor, Newsletter on Intellectual Freedom.*

→ censorship dateline



libraries

Cotati, California

September 5-11 was Banned Books Week, sponsored by the American Booksellers Association, the National Association of College Stores, and the American Library Association, but in this northern California community, Joan and Peter Podchernikoff, joined by at least three other parents, marked the occasion by formally filing an appeal to the Cotati-Rohnert Park School Board to remove at least two books, *Deenie* and *Forever*, both by Judy Blume, from school libraries. According to Mrs. Podchernikoff, Blume's writing "titillates" and "stimulates" children "to the point they could be prematurely awakened sexually." In response to the appeal, the district appointed a special committee composed of four teachers, a library aide and a principal to review *Deenie* to see if it should stay in the library at Richard Crane Elementary School, be moved to an upper grade school, or be removed entirely.

Warned by another parent of Blume's controversial reputation, Mrs. Podchernikoff says she was dismayed when her ten-year-old daughter brought *Deenie* home to read. After reading the book herself, she decided it "teaches social values contrary to my teachings . . . I feel it's wrong for any book in schools to teach social values. This country was formed on Judeo-Christian values and it seems we're getting far away from them."

Speaking of the sexual passages in the book, Podchernikoff argued that, "these are things she [her daughter] really doesn't understand. These are things we want to tell her, not Judy Blume." Arguing for a tough stand, Podchernikoff declared, "You have to draw the line somewhere. If you don't

legislate morality, you are legislating immorality." Reported in *Sonoma County Press Democrat*, September 19.

Dubuque, Iowa

A group of 79 petitioners has called on the Carnegie-Stout Public Library to cancel its Saturday morning sessions of *Dungeons and Dragons*, calling the popular fantasy game "unchristian." The game is played in the library auditorium. Between 15 and 25 children, most between the ages of 10 and 15, usually attend. The library does not provide materials or classes, furnishing only a place to play and a monitor to insure the players do not become too noisy. The program began when the State Library Commission chose "Dragon Summer" as its theme for summer programs.

"I think it's a very healthy game for them," children's librarian Tashiko Osada said. "It requires a lot of imagination." Patti Schroeder, who initiated the petition drive, disagreed. She contends the role-playing game, which features mythological creatures, demons and magic spells, encourages development of un-Christian attitudes and values by allowing participation in an activity tied to witchcraft and the occult.

One game-playing regular, 14-year old Pat Welu, responded to the request for cancellation by collecting some 200 signatures of adult taxpayers who support the right of the children to use the library's facilities. Welu said more signatures could have been collected, but "we only had one day." Reported in: *Des Moines Register*, August 17.

Raleigh, North Carolina

Two Howard Fast novels, *The Immigrants* and *Second Generation*, removed from the school library in May because of allegedly obscene language and explicit sex (see *Newsletter*, Sept. 1982, p. 158), will be made available to high school students at the Governor Morehead School who have parental permission, according to an August 6 decision of the board of directors of the state-supported school for the visually impaired. The board voted, however, to continue the ban for students in kindergarten through the eighth grade.

The books will not be returned to the shelves. At the beginning of school, parents of high school students will be sent permission slips that must be returned before the student can check the books out. School Director Samuel J. Cole has also been instructed to appoint a committee to review all books in the library to determine whether any more are objectionable. Board Chairperson Jane Purser said the situation at the school was unusual because parents don't have daily op-

portunity to supervise their children's reading. "We were sensitive to what we'd do as parents," Ms. Purser said. "This school functions in the absence of parents." Reported in: *Raleigh News and Observer*, August 7.

schools

Carlsbad, New Mexico

Some 100 copies of the *Merriam-Webster New Collegiate Dictionary* were removed from sixth-through-twelfth-grade classrooms in Carlsbad schools in late September after a parent complained about obscenity. "Think of the most obscene words imaginable and they're in there," explained Earl Bush, assistant superintendent for instruction, who authorized the removal. An older edition of the dictionary, which does not contain the offensive entries, will be used until new dictionaries arrive. Moreover, according to Superintendent of Schools Roger Harrell, students "who blatantly use the kind of words found in the dictionary in question" will be suspended. Reported in: *USA Today*, October 1; *New York Post*, September 30.

colleges

Miami, Florida

Student editors of the University of Miami *Hurricane* are in the eye of a censorship storm. The controversy centers on a special extra-large edition of the paper, mailed to 4,500 incoming freshmen and transfer students in July, in which changes were made after university administrators raised objections. The changes included removal of the word "probation" in a caption to a picture of university officials announcing the NCAA action against the school's football team, elimination of a swastika in a 1970 picture about a protest of the Kent State shootings, the softening of a description of Miami as a "combat zone," and substitution of the "right" picture of university President Edward T. Foote II. The paper's staff registered its dissent by obliterating the swastika and printing the word "censored" in its place, and by inserting a disclaimer in small print under the name of the paper in the box identifying the staff.

The special edition for new students is the only issue of the paper in which the administration must approve copy. As a result, news editor George Haj explained, the staff went to great pains not to include stories which might be deemed controversial. "While we would not have presented a negative view," he concluded, "it is too rosy a view because of the

fear of censorship." The paper's editor in chief said he will ask that the system be changed when classes resume. Reported in: *Miami Herald*, July 18.

Bremerton, Washington

Each year the Olympic College Writers Club publishes a booklet of articles entitled *Navigator*. And each year the students present the planned copy to the college president for review prior to printing. In June, the staff submitted copy for the 1982 edition and the president prohibited the printing of three advertisements: one for a local "head shop," one for ERA, and one from a peace organization. Club members protested, but discussion with the administration proved fruitless. The ads were withdrawn and in their place appeared the following statement, signed by the club's adviser, Arthur Wicks. "To supplement funds for the 1982 *Navigator*, the Olympic College Writers Club had intended this space as a page for advertisements. Certain of the advertisements, found to be objectionable by the Olympic College Administration, lead to a wrangle. To facilitate publication of the *Navigator*, all advertisements have been dropped." Reported by: ACLU of Washington.

newspapers

Memphis, Tennessee

An exhibition of photographs taken by Sandy Felsenthal, staff photographer for the *Memphis Commercial Appeal*, was removed September 7 from the Memphis Publishing Company lobby after some employees protested the display was "very offensive." Joseph R. Williams, general manager of the company, and Milton R. Britten, editor of the *Memphis Press-Scimitar*, decided to remove the exhibit, which Felsenthal had been asked to provide by employees responsible for lobby displays. The photographs had been shown for just one day.

The decision came after nine employees outside the company's news departments signed a petition complaining it was "in very poor taste to display such trash." Britten himself said he had been offended by a photo of two male motorcycle gang members kissing and by a close-up down the throat of a punk rock singer. Williams and Britten said they would not change their minds despite petitions against the removal signed by 140 employees, including about 100 from the editorial staffs.

Commercial Appeal editor Michael Grehl, who dissented from the removal decision, said, "The one thing that does dismay me is the apparent lack of understanding . . . as to what constitutes outstanding con-

temporary photo-journalism." Mr. Felsenthal said he was "very surprised" by the decision to remove the photos, several of which have won national awards. Reported in: *Memphis Commercial Appeal*, September 9.

Washington, D.C.

The *Washington Times*, financially backed by the Rev. Sun Myung Moon's Unification Church, was reported September 18 to have quashed a critical, full-length review of the war movie *Inchon*, which was produced by a Moon associate with financial support from the Unification Church.

According to the *Washington Post*, the decision not to print the highly critical review, written by staff film critic Scott Sublett, was made by *Times* publisher and editor James Whelan. He told Sublett the newspaper faced a conflict of interest in reviewing the movie. The only mention of *Inchon* in the paper was a one-paragraph, blisteringly negative synopsis which appeared in the *Times*' Friday magazine section. It was written by Sublett as part of an eleven-movie "Short Takes" column.

Inchon was produced by One Way Productions, headed by Japanese businessman Mitsuharu Ishii, a close associate of Moon. The Moon church reportedly loaned Ishii about \$30 million to complete the picture. At the film's close, one of the first credits reads: "Rev. Sun Myung Moon: Special Advisor on Korean Matters." Reported in: *Washington Post*, September 18; *Baltimore Sun*, September 19.

government secrecy

Norfolk, Virginia

A prominent government scientist has been barred from addressing a conference sponsored by the country's first "test-tube baby" clinic because it was feared the speech might violate a federal ban on funding such facilities. Dr. Gary Hodgen, chief of the pregnancy research branch at the National Institute on Child Health and Human Development, said Dr. Mortimer Lipsett, head of the institute, told him September 9, three days before the start of the conference, to cancel his appearance. The meeting, sponsored by the Eastern Virginia Medical School, which last year produced this country's first "test-tube baby," attracted some 200 physicians and scientists.

Hodgen said his planned talk did not deal specifically with in-vitro fertilization, but with "tangentially related research opportunities." Yet Lipsett, recently appointed by Health and Human Services Secretary Richard Schweiker to head the Bethesda, Maryland institute, said his decision stemmed from a 1974 moratorium on

federal funding for test-tube baby projects. In recent years, many clinics, including the privately-funded one in Norfolk, have been criticized by right-to-life groups who claim in-vitro conception is scientific tampering with human life. Reported in: *Washington Post*, September 14.

Washington, D. C.

The Defense Department blocked the presentation of about 100 technical papers just before they were to have been delivered to the 26th annual international technical symposium of the Society of Photo-Optical Instrumentation Engineers held in San Diego August 22-27. The action eliminated about one of every six papers scheduled. The last-minute security crackdown appears to have been the most sweeping effort yet by the Reagan Administration to prevent unauthorized disclosure of sensitive technical data that officials believe could be of use to the Soviet Union or its allies. According to *Science News*, which had a reporter at the symposium, the censorship actions were "unprecedented in their timing, in the large number of papers removed, and in the scope of the papers' content."

Although the conference had been advertised for months, Pentagon officials raised serious objections only two or three weeks before the meeting, leading Richard Wollensak, a vice-president of Itek Corporation who is president of the photo-optical society, to complain that the intervention came "too late in the game" to allow an orderly clearance procedure. Faced with a blizzard of last-minute warnings, many speakers were confused about their rights to free speech and just how sensitive their presentations were considered. "People didn't know what to do," said one participant. "Rather than take a chance of violating some regulation, they decided not to present their papers."

About 2,700 technical experts from all over the world including the Soviet Union attended the sessions and a few who traveled thousands of miles to hear papers which were not delivered have demanded a refund of their registration fees. Reported in: *New York Times*, September 5.

film

Miami, Florida

The producer of the movie *Scarface* announced August 30 that he will shoot the film about a Cuban refugee-turned-drug-kingpin anywhere but in Miami because of criticism of the film's content in the Cuban community. Martin Bregman, the producer, had earlier threatened to move the company out of the city, but was dissuaded by Florida Governor Robert Graham. His position changed, however, after the *Miami Herald*

published two opinion columns by staff writer Guillermo Martinez and Roberto Fabricio, editor of the paper's Spanish edition, critical of the project. The columnists argued the decision to make the protagonist a Mariel refugee perpetuates the refugees' image as criminals. *Herald* Executive Editor John McMullan said he personally disagreed with the columnists, but denied the pieces were inflammatory as Bregman charged. "The *Herald* editorially has stated that Mr. Bregman is entitled to freedom of expression, and that includes the right to make the film," McMullan added. "But *Herald* columnists are also entitled to freedom of expression." Reported in: *Miami Herald*, August 31.

Louisville, Kentucky

Thanks to the advertising department of the *Louisville Courier-Journal* and *Louisville Times*, the Brazilian film *I Love You*, starring "sex goddess" Sonia Braga won't be seen in Louisville. The movie was to open at the Village 8 Theater, which has been trying to establish itself as a showcase for imported films that had previously only rarely found their way to Kentucky. The Louisville theater had been selected by the film's distributor, Atlantic Releasing, to "test market" a dubbed version of *I Love You*, which had been highly successful with subtitles in Boston, New York and Los Angeles.

But Atlantic failed to take into account the watchful eye of Louisville advertising "ombudsman" Lenora Mulrooney. Based on the newspapers' advertising guidelines, Mrs. Mulrooney found the ads for the film distasteful and set out to make them "more presentable." The original ad showed Ms. Braga with a low-cut neckline, legs apart, staring seductively at the reader. Mrs. Mulrooney wanted the actress' neckline raised, her legs closed and the word "erotic" removed from a quote from a Los Angeles critic. Atlantic refused, and the picture was withdrawn.

According to Louisville columnist Dudley Saunders, "every theater operator in Louisville can cite a long list of ads that were censored before publication in Louisville, yet ran in respected papers all over the country." Among the more absurd instances he reported was the killing of an ad for Ken Russell's *Savage Messiah* because the person in the ad was using a jackhammer, which it was felt some readers might interpret as a phallic symbol. Critics of the advertising policy claim that several double standards are in operation. While ads for the Burt Reynolds and Dolly Parton film *The Best Little Whorehouse in Texas* breezed through, an adult film parody called *The Best Little Whorehouse in Dallas* was changed to *The Best Little House in Dallas*. Theater operators also charge that department stores regularly

run lingerie ads that are far more revealing than ads for films which have been rejected. As if to emphasize the absurdity of the situation, the *Times* ran both the original and censored versions of the *I Love You* ad alongside Saunders' column about the incident. Reported in: *Louisville Times*, August 6.

Baltimore, Maryland

"The movie *Life of Brian* will not be shown this Sunday, September 19. It has been brought to our attention that it is listed on the Catholic Restriction List. We are sorry for the disappointment!" So read the announcement in the September 17 "News Briefs" section of *The Greyhound*, student newspaper at Loyola College, a Jesuit-Sisters of Mercy institution in Baltimore. But students at the co-educational college suspected the film's presence on the list didn't fully explain the ban. It was pointed out that in past years other films on the condemned list had been shown without incident, including *Animal House* and *The Exorcist*. "Surely the real reason for what amounts to censorship must be the fact that *Life of Brian* is a parody of the life of Christ," concluded *The Greyhound* in an editorial condemning the film's censorship.

Joseph Yanchik, vice-president for student affairs, had initially approved the film's selection, but at the last minute he altered that decision. Yanchik offered to assume any financial loss which the cancellation might cause the Film Series Committee, but the sponsors were able to work out an arrangement in which the picture was exchanged for a Neil Simon movie. Reported in: *The Greyhound*, September 17, 24.

art

Ogunquit, Maine

It may just have been a misunderstanding, but artist Stephen Nicholson believes he was pressured into covering one of his own paintings at a sidewalk art show sponsored by the Ogunquit Chamber of Commerce August 18. According to Nicholson, the painting of a female nude was covered after judges at the show "implied that I would not be considered for the judging if I did not cover it." Judge John Bartok claims, however, that "there was no coercion, no saying he had to do it." Bartok says he simply approached the artist as an individual, noting that there would be some among the spectators who would be offended by the painting. "If he decided to do anything, it was his own choice," the judge concluded.

Nicholson, however, has sought legal counsel and has demanded payment of \$150 to cover his expenses in preparing for the show and a written letter of apology. He said the incident caused his picture to become like a "peep show," with people approaching the work and

peering under the cover. "They made a very innocent painting become pornographic by their response to it," he said. Reported in: *Kennebunk York Coast Star*, August 25.

rock records

Miami, Florida; Danville, Virginia

"Either you're for God or you're not," said twenty-three-year-old Joe Pila as he destroyed his Abba album and some disco records, along with his favorite mellow jazz, "the music I used to woo women with, a glass of wine in hand." Pila was one of more than 300 mainly Hispanic youths who gathered at the Baptist Gethsemani Church in Miami, August 14, to smash rock and disco albums into pieces and toss them into a metal drum where they were set on fire. When played backward, some rock'n'roll music has a satanic message, the Rev. Luis Gallo told his parishioners, demonstrating it with the popular Led Zeppelin song, "Stairway to Heaven." According to the tape played by Rev. Gallo, heard backward the song says, "I live with Satan."

A month later, on September 15, about 100 Danville youths, all members of the Westover Drive Church of God, gathered in like manner in the church parking lot to destroy records of such groups as Kiss, AC-DC, Alice Cooper, and Yes. "The idea was sort of a spontaneous thing," said Pastor Richard Davis, who describes some rock music as sacreligious. Before the ceremony, however, several early Beatles and Elvis Presley albums were pulled from the pile and returned to their owners because they were considered too valuable. Could it be that some record-smashers are really rock traditionalists? Or maybe they just like to invest in collectibles. Reported in: *Miami Herald*, August 15; *Washington Times*, September 17.

evolution

Hudsonville, Michigan

A display depicting the origin of plant life may be removed from the Hager Hardwoods Arboretum because a Baptist minister considers it "blasphemy." Hudsonville Baptist Church Pastor Roger Walcott contends the exhibit, titled "Life Begins in the Sea," one of seventeen display cases showing plant development, teaches evolution. In early September, Walcott complained about the exhibit to Ottawa County Commissioner Jean Laug (R-Coopersville) whose offer to remove the words "Life Begins in the Sea" was rejected.

"I suggested it be dismantled, and they employ someone to erect a beautiful exhibit of the six days of creation by our creator, God," Walcott said. "Evolution is a first cousin to communism and humanism."

LeRoy C. Merritt Humanitarian Fund

If you are a librarian threatened with loss of employment because of opposition to censorship, or have been a victim of discrimination, the LeRoy C. Merritt Humanitarian Fund may be able to offer financial assistance. And if you are a supporter of intellectual freedom and an opponent of discrimination, you may want to contribute to the Fund.

The LeRoy C. Merritt Humanitarian Fund was established in 1970 to provide direct financial aid for the support, maintenance, medical care, and welfare of librarians who are or have been

threatened with loss of employment or discharged because of their stand for the cause of intellectual freedom, including promotion of freedom of librarians to select items for their collections from all the world's written and recorded information.

The Merritt Fund is supported solely by donations from concerned groups and individuals. Because direct financial aid is given to individuals, contributions do not qualify as tax deductions for donors.

A board of three trustees elected by the donors authorizes grants in response to cases brought to their attention. Applications for aid and donations should be sent to: The Trustees, LeRoy C. Merritt Humanitarian Fund, 50 East Huron Street, Chicago, Illinois 60611.

According to Walcott, the exhibit is offensive to thousands of church-goers in the area and could influence "impressionable" school children. "If we are offending people by having it open, we will close it," County Board Chairman Jack Smart responded. Reported in: *Grand Rapids Press*, September 17.

etc.

Washington, D.C.

According to the Secret Service, *This is Judy Woodruff at the White House*, the NBC correspondent's newly published memoir, posed a threat to executive security not for its content, but for the jacket photograph of Woodruff's White House press pass, reproduction of which is illegal. In late September, after most copies of the book had been distributed to stores, Secret Service agents notified the publisher, Addison-Wesley of Reading, Massachusetts, of the violation and gave the house the choice of prosecution or accepting a cease-and-desist order prohibiting further distribution. Addison-Wesley chose to desist, and

agents seized the film, plates and leftover jackets. By agreement, however, "copies already in the stores will not be seized," a Secret Service spokesman stated.

"They told us that they had a problem with the jacket and asked us if we'd be willing to change it," Donald Hammonds, president and chief executive officer of Addison-Wesley, said. "Frankly, it's no problem as far as I'm concerned. When the Secret Service has a potential security problem, we just say, 'Look, boys, we never thought about that—we'll do it for you.' It's just good corporate practice." Reported in: *Washington Post*, September 28.

foreign

Athens, Greece

Greece's socialist government introduced legislation September 22 liberalizing the law on indecent publications and legalizing works by the Marquis de Sade. The proposals were introduced after Greek police confiscated thousands of books by de Sade on September 17, following a court ruling that also resulted in a two-year prison term for a Greek publisher of the 18th-century French writer's works. Forty-seven other Greek publishers who were charged with the same offense have yet to come to trial, but many of them also reported police action. The convicted publisher, Themis Banousis, was set free pending appeal of his conviction. The publishers have been supported by the Union of Greek Writers and the International Pen Club, which termed the ban on De Sade "unjustifiable and exhibiting a medieval mentality." The confiscated works are *120 Days of Sodom*, *Juliette*, and *Philosophy of the Bedroom*. Reported in: *New York Times*, September 16, 18, 23.

New Delhi, India

In an unprecedented collective challenge to government efforts to curb press freedom, most of India's 10,000 newspapers closed September 3 to protest an antipress measure adopted in Bihar, the country's second most populous state, and tacitly supported by Prime Minister Indira Gandhi. With the exception of the *National Herald*, organ of Gandhi's Congress-I Party, all papers in Bombay, Calcutta and New Delhi were closed, along with the two national wire services.

The Bihar press bill, adopted amid pandemonium in the state legislature on July 31, prohibits publication, sale, and possession of any printed matter that is "scurrilous" or "grossly indecent," or "intended for blackmail." Editors say the bill is worded so vaguely that it could be interpreted to prohibit any critical reporting on the conduct of public officials. Moreover, according to Satchidanand Sahay, chairman of the

Press Guild of India, an amendment to the penal code transfers authority for enforcing press restrictions from judicial to executive magistrates, who are political appointees answerable to the state government that drafted the bill.

"That means any journalist the government doesn't like can be locked up without bail for practically anything he writes," Sahay said. "The whole idea is to terrorize journalists into submission." Reported in: *Washington Post*, September 4.

Nairobi, Kenya

George Githii, editor-in-chief of Kenya's second-largest daily newspaper, *The Standard*, was dismissed July 21 after publishing an editorial criticizing the Kenyan government for detaining people without trial, intimidating journalists, and creating "fear and insecurity in the body politic." The government was not publicly involved in the dismissal, but pressure was exerted by Cabinet ministers on the newspaper's management, which, in a special edition announcing Githii's departure, labeled the editorial provocative and contentious. *The Standard* is owned by a British conglomerate. Reported in: *New York Times*, July 22.

Jerusalem

Israeli security officials have closed down a Palestinian press service which, since Israel's invasion of Lebanon, furnished many Hebrew articles in translation for use by the Arab press. The Jerusalem Office for Translations and Newspaper Services, which began operations only a week before the outbreak of the Lebanon conflict, was ordered closed September 14 for six months "for the sake of public safety and order."

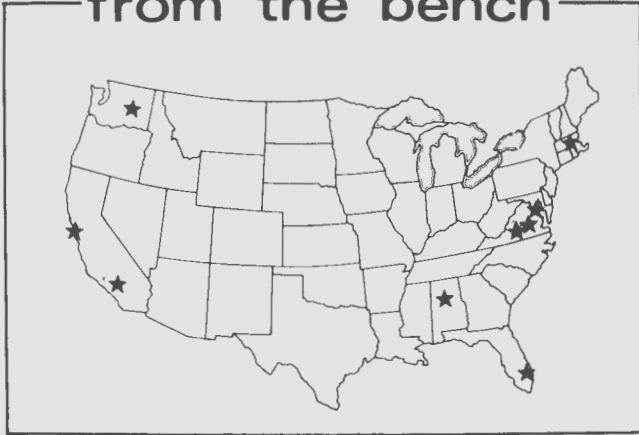
Since hostilities began in Lebanon, Arab editors have complained that Israeli censorship has virtually forced them to fill their papers by translating Hebrew reports and commentaries from the Israeli press. According to Arab editors, however, they have been barred even from publishing many of these features, even when they have already appeared in Israeli papers.

"The war has made the Israeli censors very sensitive," said Radwan Abu Ayash, a commentator for the left-wing daily *Al Shaab*. He said his paper had been barred from publishing articles which had appeared in the Hebrew dailies *Haaretz* and *Al Hamishmar*. "They allow *Yedist Ahronot* and *Haaretz* to publish local news about the West Bank, but at the same time they didn't allow us," Abu Ayash charged.

Reporters from *Al Shaab* and *Al Fajr*, another Arab paper, said that at the height of the Lebanon fighting almost no local news from the West Bank was allowed

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from the bench



U.S. Supreme Court

The Supreme Court opened its 1982-83 term by setting a dozen cases for argument and by turning down appeals in hundreds of others. Among the latter was an appeal by Victor S. Navasky, editor of *Nation* magazine, who had requested the Central Intelligence Agency to reveal the authors, titles, and publishers of the 1,000 books whose publication it financed in the 1960s. The Court let stand a ruling by the federal appeals court in New York that the agency is not obliged to release the requested material under the Freedom of Information Act. Reported in: *New York Times*, October 5.

libraries

Richmond, Virginia

On June 30, a U.S. District Court judge in Richmond granted summary judgment in favor of the Richmond Public Library and against Arnold Via, Director of the Virginia Chapter of American Atheists, who had filed suit after the library rejected his 1980 offer to donate a gift subscription to *American Atheist*, his organization's magazine. In *Via v. Richmond Public Library*, the plaintiff alleged that by refusing to accept and display his gift subscription, the library violated his rights under the First Amendment to the U.S. Constitution regarding the free exercise of religion. The court granted summary judgment after determining that Via had not produced "any evidence to suggest that at trial [he] will be able to dispute the librarians' explanation for the library's decision. The librarian stated under oath," the ruling continued, "that the publication was of low quality, that there was little or no indication of interest by the reading public, and that the subject matter was dealt with by better quality publications and books." Further, the ruling argued, "there is

a complete absence of any evidence to support plaintiff's claim that the reason plaintiff's gift subscription offer was refused was because the library did not want to display a magazine espousing the cause of atheism."

political advocacy

Washington, D.C.

The so-called "Blitz Amendment," which denied CETA funds to anyone who has "advocated the violent overthrow of the government in the last five years," was declared unconstitutional May 14 by U.S. District Judge Barrington Parker, just six months after it quietly became law when included by Congress in the 1981 continuing budget resolution. The amendment was first introduced in 1980 by Rep. W. C. Daniel (R-Virginia), who was incensed to learn that two alleged members of the Communist Workers Party, Dorothy and Allen Blitz, were enrolled in a CETA training program in his district (see *Newsletter*, May 1981, p. 72). The constitutionality of the statute was challenged by Ms. Blitz, who, in early 1982, had sought to reenroll in her bricklaying classes after having a baby, but was told she would be dropped from the program unless she affirmed she did not advocate overthrow of the government.

In arguing the case, government attorneys admitted that, as written, the amendment stood in blatant violation of the Supreme Court's landmark 1969 decision in *Brandenburg v. Ohio* which declared that mere advocacy of violence is indeed protected speech. Instead, the deputy attorney general argued that because the current Secretary of Labor understood this, and interpreted the amendment in this spirit, the act was constitutional.

The Judge Parker vehemently rejected this argument. "The secretary's interpretation is simply woven from whole cloth," the judge declared. "He does not contend that a plain reading of the amendment could possibly withstand constitutional scrutiny. The reason is simple. The First Amendment clearly bars the government from penalizing mere advocacy of any idea, including violent revolution." Reported in: *Inquiry*, August 1982.

government secrecy

San Francisco, California

The CIA may keep secret not only the names of American colleges where it has intelligence sources, but also the names of those where it doesn't, a federal appeals court ruled September 28. The U.S. Court of Appeals for the Ninth Circuit, upholding a lower court, rejected a student's request under the Freedom of

Information Act for the CIA either to confirm or deny that it had covert contacts on any campus of the University of California.

"To admit that the CIA had such contacts at this university would allow foreign intelligence agencies to try to zero in and identify specifically what was the nature of those relationships or with whom," the court said. At the same time, "if the agency were required to indicate those schools with which it had no covert contact, the work of foreign intelligence bodies would obviously be much easier. They could and would concentrate their efforts on the remaining American colleges and universities, and their sphere of activity could be appreciably narrowed," the justices ruled.

The CIA has acknowledged it uses American academics and students at American schools as intelligence sources. Reported in: *Washington Post*, September 29.

Washington, D.C.

The U.S. Court of Appeals for the District of Columbia ruled September 21 that Harrison E. Salisbury, retired associate editor and correspondent of the *New York Times*, was not entitled to National Security Agency documents that mention his name because their release would harm national security. The three-judge panel ruled unanimously that the agency was correct in withholding the documents and that a lower court judge had properly upheld the decision.

Salisbury said he learned from requests made under the Freedom of Information Act that the CIA and FBI had maintained records on him that were supplied by the National Security Agency. But the agency asserted that revealing "the fact of interception would jeopardize the national security." Reported in: *New York Times*, September 22.

schools

Palm Beach, Florida

Federal District Judge Jose A. Gonzalez has ordered the Palm Beach School Board to allow anti-war and anti-draft groups to distribute material in county schools. But Gonzalez did not uphold the right of anti-draft groups to appear at career forums featuring military recruiters.

A former student newspaper editor, a Lake Worth parent and a draft counselor had taken the board to court in June 1981, after a year's debate. In the spring of 1980, adults distributing pamphlets about conscientious objection were told to leave the Lake Worth High School grounds. Soon after, administrators prohibited the high school paper from accepting an

advertisement from the Palm Beach Area Draft Counseling Group, a non-profit organization.

Commenting on the decision, Schools Superintendent Thomas Mills said, "Basically, what I see is that we've won some things and they've won some things." While the order permits distribution of anti-draft literature in guidance offices and other locations, Mills said he thought draft counselors still "don't have access to the students, I'm talking about direct access, presentations. If my interpretation is correct," he said, "I think I can live with it." Reported in: *Miami Herald*, September 28.

Mead, Washington

Ruling that the plaintiffs had failed to state a cause of action, on September 13, U.S. District Court Judge Robert McNichols dismissed the case of *Grove v. Mead School District*, in which the Moral Majority of Washington (now known as the Bill of Rights Legal Foundation) had sued the Mead School District to remove *The Learning Tree*, by Gordon Parks, from sophomore English class reading lists.

The suit was filed by the Moral Majority after a district evaluation committee of community members and educators reviewed the book and found *The Learning Tree* an appropriate element in the sophomore curriculum. The Board of Directors of the Mead School District upheld the committee decision on appeal. The plaintiffs had stated that use of the book violated their free exercise of religion by establishing a religion of secular humanism. Moral Majority of Washington Director Michael Farris argued that *The Learning Tree* contains passages that are "anti-Christian," including obscene language, lewd behavior, violence and murder. Farris says he will appeal the decision to the Ninth Circuit Court of Appeals. Reported by: ACLU of Washington.

school prayer

Birmingham, Alabama

Less than a month after Governor Fob James signed into law Alabama's school prayer statute, Federal Judge W. Brevard Hand, of the Southern District of Alabama, issued a preliminary injunction preventing it from being implemented. A trial will follow to settle the constitutional issues.

In a brief submitted to the court in defense of the statute, Fob James III, the governor's son, relied heavily on religious argument. The brief began: "The Lord God is One. He is the God of George Washington and Abraham Lincoln." It ended with, "For twenty

(Continued on page 217)

is it legal?



government secrecy

Washington, D. C.

In a report issued in August, the House Committee on Government Operations declared that it can find no justification for President Reagan's executive order of April 2 which gave federal officials broader authority to withhold information from the public on grounds of national security (see *Newsletter*, July 1982, p. 116). According to the Congressional committee, explanations of the order offered by the administration were "inadequate, inconsistent, incomplete or not credible."

The report predicts that the order will significantly increase the amount of information that can be classified as top secret, secret or confidential. "In fact," the study contends, "there is virtually nothing new in Executive Order 12356 to inhibit the overclassification of information," long acknowledged to be a problem at federal agencies. "In addition," it says, "the order has a direct and immediate impact on the availability of information under the Freedom of Information Act." Documents properly classified under the order are exempt from disclosure under the Act.

The report also expresses concern about a section of the Reagan order giving official authority to "reclassify" information already declassified. In hearings, administration officials said they would not ordinarily employ physical force or illegal entries to recover reclassified materials, but, according to the report, they refused to rule out such tactics. The committee further found that "the Reagan Administration made no effort to inform the public of its plans to revise the security classification rules or to solicit public comments at a meaningful time during the revision process."

Commenting on the Reagan order, Senator David Durenberger (R-Minnesota) said: "This is an order that

only a bureaucrat could write. It was drafted by security bureaucrats, who think only of how to keep everything secret, and legal bureaucrats, who think only of how to get away with filing fewer affidavits." Durenberger has introduced a bill to amend the Freedom of Information Act by requiring the government to show a likelihood of "identifiable damage" to national security when it wants to bar disclosure of classified documents.

Federal officials estimate that 800,000 to one million documents are classified each year. Another sixteen million are classified because they contain information taken from other classified documents. Reported in: *New York Times*, August 10.

government regulations

Washington, D.C.

In what it claims is an effort to "depoliticize" the funding of its grants and contracts, the Department of Education is considering a proposal which would amend the Department's grant and contract regulations to set up "special approval procedures" for "high-risk" applicants who file suits, lobby, or engage in other forms of "propaganda." The proposals, circulated in a confidential July 13 memo from Deputy General Counsel Hugh Joseph Beard, Jr., would affect groups that are new, have never won a government contract before, get most of their money from the government, sue any federal, state or local government, or engage in "propaganda."

Covered applicants would be required to provide additional information to the Department, including their constitution, bylaws, and "a list of all matters upon which the organization has been engaged in propaganda." Propaganda, the memo said, includes participating in a campaign, lobbying on a bill or regulation, or assisting others in litigation.

A Department spokesperson said the proposals are still under consideration. "There are a number of laws prohibiting use of federally appropriated funds for lobbying activities. However, in the past these laws have not been effectively enforced," he said.

Rep. Don Edwards (D-California), chairman of the House Judiciary Subcommittee on Constitutional Rights, said the ideas in Beard's memo "smack of McCarthyism" and would have "a chilling effect on a person's right to speak publicly on any issue." The memo comes at a time when leaders of the New Right are campaigning against federal aid to organizations they see as having a liberal or leftist bent. But the Department spokesperson denied any connection, arguing, "We are trying to depoliticize federal funding, left, right and center." Reported in: *Washington Post*, August 14.

obscenity

Miami, Florida

"I don't know how to define it, but I know it when I see it," declared Miami Mayor Maurice Ferre. Ferre is spearheading a drive to keep "indecent" displays of flesh off cable television in Miami. Earlier this year, he sponsored a non-binding straw ballot in which Miami voters gave an extremely narrow 51-49 percent victory to those wishing to ban cable sex films. In the wake of the vote, Ferre urged that a committee be named to decide what's "indecent" in Miami. When Leroy Griffith, proprietor of the Pussycat Theater, filed suit to stop the committee, however, Ferre abandoned the proposal. Instead, the mayor pledged to put a charter amendment on soft core pornography before Miami voters. Unlike the previous straw poll, the amendment would specifically define what is "indecent." Determining which specific films meet this definition would be left to the courts. Ferre said the City Commission will enact the ordinance and then submit it to the voters. If the measure is defeated, Ferre said, he would vote to repeal the ordinance. Reported in: *Miami Herald*, September 18, 28.

freedom of assembly

Meriden, Connecticut

After several months in which the two sides failed in efforts to resolve their differences out of court, Meriden city attorneys have filed a formal response to a Connecticut Civil Liberties Union complaint that the city's eleven-month-old ordinance governing parades and assemblies is unconstitutional. In a written brief submitted to the U.S. District Court in Bridgeport, the city said it does not believe the civil rights of any individual or group are denied by the ordinance.

The CCLU complaint was filed on behalf of both the Ku Klux Klan and the anti-Klan Committee of Conscience after the city revoked a permit granted the Ku Klux Klan for a March 20 demonstration and denied a permit to the committee for a counter-demonstration the same day. A federal judge eventually approved a temporary injunction against the city, permitting the Klan demonstration, but denied the committee's request.

On June 3, Corporation Counsel Dennis Cenevia said the ordinance could be revamped so that only an "informational" paper, not an application for a permit, would be required of groups planning to assemble. But by mid-July, the CCLU had grown impatient with the lack of concrete action and filed a motion for default. At that point, the city decided to answer the motion with a defense of the ordinance. Reported in: *New Haven Register*, August 26.

colleges

Oxford, Mississippi

Twenty years ago in September, James Meridith brought integration to a reluctant University of Mississippi. Now John Hawkins, a junior in banking and finance, has become the center of a fresh controversy which threatens to reopen old racial wounds. Hawkins is the first black cheerleader at Ole Miss, and on September 4 he was scheduled to carry the traditional Confederate flag at the school's football season opener. He refused, citing the flag's symbolic connections to the Civil War, slavery and white supremacy.

After he was elected cheerleader last spring, Hawkins suggested that he carry instead the state of Mississippi flag, which has a small Confederate flag in the upper left-hand corner and red, white and blue horizontal stripes. School officials agreed to consider the suggestion, but Ole Miss alumni inundated them with calls of protest. "We had meetings with black committees, and blacks have made their concerns known, but we just decided not to," said Edwin Meek, university public relations director. "We think that the Rebel flag is a spirit flag that symbolizes tradition and athletics, not a symbol of the Confederacy. So we at the school did not think the flag should be changed."

Hawkins disagrees: "Blacks feel the Rebel flag is holding them back. Whites say it is just school spirit. Ole Miss is the spirit, and spirit ain't nothing but jumping up and yelling at the games. Spirit is emotion. But the flag is the only thing keeping everyone from yelling together. We need a symbol everyone can relate to." University officials say it is fine with them if Hawkins himself does not wave the flag, but that won't mean the Stars and Bars can't be waved by other cheerleaders. Reported in: *Atlanta Constitution*, September 3.

elections

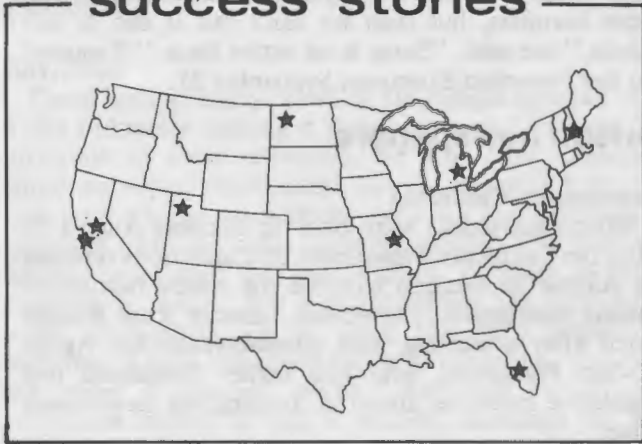
Coral Gables, Florida

Having the wrong bumper sticker or touting a local candidate out of season could put a driver on a collision course with a new law under consideration in Coral Gables. The new statute would restrict the display of political ads for local elections, including bumper stickers, until the final sixty-three days before a city election or until a candidate formally qualifies for office. Violators could be fined up to \$500 or face sixty days in jail.

As of late September, a majority of the city's commissioners had given preliminary approval to the

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success stories



libraries

Polk County, Florida

Kurt Vonnegut's *Slaughterhouse-Five* has evened the score in its second round with Polk County censors. On August 26, a review committee at Lakeland High voted not to ban the book from that school's library. In June, a similar committee at nearby Lake Gibson High decided that the book had obscene language and was not fit for the high school library (see *Newsletter*, Sept. 1982, p. 155).

The Lakeland High complaint was filed by Gordon Taylor, a dentist, who admitted he had never read the book, but claimed passages struck him as obscene. The review committee decision was unanimous against Mr. Taylor. "To take that book out would have been un-American," said Nancy Simmons, a school board member who has fought censorship in schools. "I'm proud of the committee. I think that's the way most of the community feels." Reported in: *Miami Herald*, August 28.

Swartz Creek, Michigan

The Swartz Creek Board of Education September 13 rejected a request by some parents to remove the book *Chopper Cycle*, by Ruth and Ed Radlauer, from the library at Morrish Elementary School. The board also narrowly rejected a proposal to place the book on a special reserve shelf. The school district's only copy of the book is at Morrish.

Chopper Cycle is about a youth who believes the police are harassing him because of his interest in motorcycles, but in the end realizes that they are actually trying to encourage him. Board members Clare R. Jewell and Thomas R. Brooks said they wanted to see the book removed because, despite the ending, they found its approach to law enforcement very

negative. "Any book that is negative toward police or parents should be taken off the shelf," Brooks declared. Reported in: *Flint Journal*, September 14.

Mexico, Missouri

In June, when the Mexico School Board unanimously rejected an appeal to remove the magazine *The Humanist* from school libraries, Joan Lauterbach, mother of five and a leader of Citizens for Academic Excellence, which filed the appeal, said, "If they keep that, they'll keep anything." Perhaps she was right. For the second time, the Mexico board has unanimously rejected an attempt to restrict materials available to students. On August 18, the board voted to retain the book *Julie of the Wolves* by Jean Craighead George and the film *The Lottery*, based on the short story by Shirley Jackson, in district school libraries.

Controversy over the contested materials had divided the town, a largely Presbyterian enclave in Missouri's predominantly Baptist "Little Dixie" region, for months, attracting state-wide media attention (see *Newsletter*, September 1982, p. 156). Speaking for opponents of the materials, Ms. Lauterbach argued that articles in *The Humanist* "advocate Marxism, anti-theism and a one-world government under socialism. And there was one article against pornography that quoted directly and at great length from dirty magazines." She objected to *Julie of the Wolves* because of what she called socialist, communist, evolutionary and anti-family themes.

Both votes by the board came after strong recommendations to retain the materials were made by Superintendent Donald Palmer. "The library is a mighty resource in the free marketplace of ideas and, as such, is especially dedicated to a broad dissemination of ideas," he declared. "It is a forum for silent speech. The communication of ideas within this forum is constitutionally protected from censorship on the basis of the social, political or moral preferences of any individual or group." Reported in *Mexico Ledger*, August 19; *Columbia Daily Tribune*, August 19; *St. Louis Post-Dispatch*, August 1.

Nashua, New Hampshire

Thanks to a gift subscription, *Ms.* magazine will be back on the shelves of the Nashua High School library, but former school board member Alan Thomaier, who has waged a four-year battle against the feminist publication, says he may ask school officials to remove the magazine again. *Ms.* was originally removed in 1978 after a request by Thomaier, but a year later a federal judge ordered the Board of Education to replace back issues and resubscribe. For two years, the Board dragged its feet in implementing the ruling and the

publication remained unavailable (see *Newsletter*, May 1982, p. 83). Last year a review committee recommended the school administration consider subscribing to another feminist publication instead of *Ms.* When the gift subscription was offered, however, the school administration decided to accept it, much to Thomaier's chagrin. "How come they're not following the committee recommendation?" he asked. Thomaier said he's examining possible avenues of further protest, but school board member Barry Harkaway said he believes "legally the issue is moot." Reported in: *Manchester Union-Leader*, August 31.

schools

Minot, North Dakota

Faced with the sudden glare of national publicity, blistering criticism in the local press, and a threatened lawsuit, the Minot School Board voted August 26 to restore *Newsweek* magazine to ninth- and tenth-grade social studies classes. In late July, the school board in this central North Dakota city of 33,000 voted to terminate use of the magazine as a teaching tool after board member Zoanne Flickinger argued it was "too liberal" and "too filled with humanism." The board decided to replace *Newsweek* with *U.S. News and World Report*, but after word of the the action was reported in the national press, the board voted to make both publications part of the social studies curriculum. In 1979, the Minot School Board removed the *American Heritage Dictionary* from school libraries for alleged obscenity. Reported in: *Washington Post*, August 26, 27.

colleges

Fremont, California

Officials at Ohlone Community College have declined to cancel a one-day, non-credit seminar on the occult, despite protests by Christian fundamentalists. College President Peter Blomerly said that by late September he had received 238 form letters and 43 individual pieces of mail demanding cancellation of the October 23 seminar entitled "The Gentle Occult." The form letter claims that, if allowed to take place, the lectures would "open the door for additional classes involving witchcraft, voodoo, seances, and maybe a new location for the Church of Satan as in San Francisco."

The letter drive was spearheaded by Robert Housh, a lay minister who teaches his own class on the occult at the Assembly of God Pentecostal Church in Fremont. According to Housh's wife, Janice Housh, the Bible calls on Christians to stay away from any form of fortune telling, including tarot cards and psychic

phenomena. "Whatever is put into our minds might seem harmless, but then we can't put it out of our minds," she said. "Satan is an active force." Reported in: *San Francisco Examiner*, September 25.

prison newspapers

Sacramento, California

Prison journalists were back in business August 26 after the California Department of Corrections reversed its August 16 decision to close the state's half-dozen inmate newspapers. Corrections Director Ruth Rushen acted after a meeting with Assemblyman Art Agnos (D-San Francisco), who had earlier threatened two legislative measures aimed at keeping the newspapers alive.

"I did not need to use any of the clubs I prepared," Agnos said. "We discussed the need for prison newspapers in view of the conditions in California prisons—they are terribly overcrowded. . . . The papers represent the only hope and voice for prisoners for any kind of attention to their conditions. The director is a humane and thoughtful person; she was moved to consider her position and agreed voluntarily without any threats from me to allow them to start publishing again immediately."

The Department had contended that shutting down the papers was principally an economy move aimed at saving \$58,000 a year and that the papers, often embroiled in censorship controversies, were of "very little value." Prison journalists disagreed. Vic Diaz and Eric Martin, editors of the award-winning *Vaca Valley Star*, argued that the shutdown represented an intensification of efforts to silence critical expression, citing the minutes of a Vacaville executive staff meeting in which Associate Superintendent James Kane argued the paper was "being used by a very small number of inmates to drive a wedge between the inmate population and staff."

According to a Corrections Department spokesperson, "Since the state pays for the newspapers they are subject to the full editorial control of the department." But, the same spokesperson later noted, "We've never been able to convince the inmates they were an instrument of the management and not an independent voice for inmate expression." In May, the warden of San Quentin Prison confiscated 6,000 copies of the *San Quentin News* because it contained an empty box headlined "Censored" in place of an editorial on capital punishment killed by the warden (see *Newsletter*, Sept. 1982, p. 161). The department is facing contempt of court hearings in Marin and Solano counties for persisting in censoring prison newspapers despite court orders to the contrary. Reported in: *San Francisco Examiner*, August 18, 26; *Sacramento Bee*, August 19.

cable TV

Roy, Utah

Faced with an angry crowd of 600 people opposed to a city ordinance making it illegal to show "indecent" materials on cable television, the Roy City Council withdrew behind closed doors July 26, emerging a short time later with an amendment removing anti-obscenity language from the cable licensing statute. The public hearing arose after the abrupt cutoff of cable movie channels to some 1,500 Roy subscribers the previous week. Community TV of Utah, the city's licensee, explained it took the action to avoid operating "under the threat of criminal status." Although ordinance supporters vowed to lead a petition campaign for a referendum on the issue, their speeches at the hearing were met with hoots and catcalls. "The issue is not taking away Channel 6 (the HBO movie channel)," said one subscriber, "but taking away another freedom—watching what I want to in my own home."

Before it was amended, the Roy ordinance defined indecent material as "an erotic representation . . . of a human sexual or excretory organ or function . . . or of nudity or of ultimate sexual acts, normal or perverted . . . or of masturbation which under Roy City community standards for television is patently offensive." Both the definition and the word "indecent" were dropped by the council. An attorney for the cable company said that had the change not been made, he was prepared to file suit contending the provision violated the First Amendment. Reported in: *Ogden Standard-Examiner*, July 28.

(Censorship dateline . . . from page 210)

in Palestinian papers. Out of 37 articles submitted for an English digest version of *Al Fajr*, 15 were banned, 3 were censored so heavily they could not be printed, 6 were partially altered, one was "returned for revision" and 12 were approved as written, according to the reporters. Reported in: *New York Times*, September 16.

Managua, Nicaragua

For the third time in four days, *La Prensa*, the only opposition newspaper in Nicaragua, did not publish August 13 because the paper refused to print only a government communique about an incident involving a Roman Catholic priest who charged that police had forced him into the street naked. *La Prensa* also did not publish August 10 and 12 in a dispute over a letter from Pope John Paul II to the Nicaraguan church hierarchy urging the church to be "a sign

and instrument of unity."

Nicaragua's press is subject to censorship as part of the state of national emergency decreed March 15 by the Sandinist government, which argues the emergency measures were necessitated because counterrevolutionary forces are trying to overthrow it. The government also halted press runs at the pro-government *Nuevo Diario* and the official organ, *La Barricada*, to prevent publication of photographs said to be of the unclothed priest in the street. Reported in: *New York Times*, August 14.

(From the bench . . . from page 212)

years the U.S. Supreme Court has defiled the Constitution, and has set itself up as a god over the people of this country. The people of Alabama wish to pray to their Creator, and no court on earth has jurisdiction over their prayers." Reported by: Civil Liberties Union of Alabama.

broadcasting

Los Angeles, California

U.S. District Court Judge Malcolm M. Lucas has ruled that a federal law prohibiting editorializing on public television and radio stations is unconstitutional, violating guarantees of freedom of speech and of the press. The prohibition is included in the Public Broadcasting Act, which provided funds for public TV and radio and established the Corporation for Public Broadcasting.

The suit was filed in 1979 against the Federal Communications Commission by the Center for Law in the Public Interest, a public-advocacy law group, on behalf of the League of Women Voters, the Pacifica Foundation, and U.S. Rep. Henry Waxman (D-California). In his opinion, Judge Lucas said the government failed to prove that federally funded broadcasters would become government "propaganda organs" if allowed to air editorials. "There aren't any special characteristics of the broadcast media," he said, "which justify the application of 'special' less stringent First Amendment standards." Reported in: *Wall Street Journal*, August 11.

prisoners' rights

Norfolk, Massachusetts

Suffolk Superior Court Judge William Carey ruled July 16 that Norfolk State Prison officials were within their rights to confiscate fifty nude pictures of inmate Charles Hawkins' wife, a professional model, but that they could not destroy the photographs. Hawkins, complaining that prison officials permit him to look at

pictures of nude women in *Playboy*, *Penthouse*, and *Hustler*, but not at his own wife, sued to have the photos returned to him. Correction Department lawyers argued that allowing Hawkins to keep the pictures might lead to fighting among the inmates if someone made an inflammatory comment about his wife's physical attributes.

"It's censorship," Hawkins said. "The issue is whether an individual has the right to have pictures of his wife, regardless of the nature of the pictures." In June, the U.S. Court of Appeals for the Ninth Circuit ruled that the state of Montana must allow prison inmates to have nude photographs of wives and girlfriends (see *Newsletter*, September 1982, p. 173). In that case, prison administrators also argued that security problems arise when inmates make derogatory remarks about the pictures. Reported in: *Boston Herald-American*, July 17.

Powhatan, Virginia

The Virginia Department of Corrections can bar publications, whether obscene or not, if prison officials conclude that possession of the materials increases "the likelihood of disruption of prison order and stability," U.S. District Court Judge Robert R. Merhige, Jr. ruled August 25. Merhige's decision came in response to a lawsuit filed by David L. Gilmer, an inmate at the Powhatan Correctional Center, who alleged his rights were violated when prison officials refused to let him possess two sexually explicit magazines, *Chic* and *Companion*, in July 1981. "There is no requirement that sexually explicit materials be judicially declared obscene prior to the disapproval by prison officials," Merhige said. "Where the content of the publication, whether it be obscene or not, may cause a breakdown of institutional stability, the publication may be barred." Reported in: *Richmond News-Leader*, August 26.

(Is it legal . . . from page 214)

measure on the recommendation of the city's Planning and Zoning Board. Planning Board member James Peck said the board recommended the restrictions for aesthetic reasons, but Mayor William Chapman admitted that local political considerations were also a factor. "It just seems like a very foolish ordinance," commented a spokesperson for the Florida ACLU. "I would think political expression would be more important than signs and bumper stickers making the City Beautiful unbeautiful." Reported in: *Miami Herald*, September 24.

etc.

Newport News, Virginia

Universal City Studios has warned a college professor against continuing to distribute a brief, self-published pamphlet in which he compares the movie *E. T.—The Extra-Terrestrial* with the life of Jesus Christ. An attorney for the studio notified Albert E. Millar, Jr., chair of the English department at Christopher Newport College, that sales of the booklet "without our consent, permission or authorization . . . infringe upon the proprietary rights which we own." Millar's four-page pamphlet constitutes "unfair competition," the studio alleged. "It's like using an atomic bomb to kill a flea," the professor responded. Millar's attorney has indicated the author did not print the pamphlets with commercial intent and that a \$1 charge was solely to help recover printing cost. As of September 27, Millar had sold twenty-three copies of the booklet and distributed several free. Reported in: *Chicago Tribune*, September 27.

(Managing the news . . . from page 203)

Now none of this amounts to censorship. It is not done at the request or command of government, or the church, or any pressure group. The brutal compression I mentioned earlier is forced upon the broadcasters, many of them model citizens, good fathers, reasonably sophisticated folk, readers of books and serious periodicals, by economic constraints that are built into our system of commercial broadcasting. It is, as I have suggested, a highly competitive business, also enormously profitable. But the industry's sole source of earnings is the advertiser, and the rate-per-minute that prudent advertisers will pay depends upon the size of the audience, as measured by the ratings you've heard so much about. The transaction amounts to this: Network A, which happens to have clinched first place by catching and holding the attention of a sizeable slice of the national audience, then sells (or leases, if you prefer) that audience to an advertiser in snippets of 30 or 60 seconds each. It is an exchange of audience mass for money. Guarantee the advertiser a truly vast audience and the going rate reaches stratospheric numbers—\$690,000 for a full minute and \$345,000 for a 30-second spot during the 1982 Super Bowl.

It goes without saying that television stories must be simple and short, else they risk losing at least part of the audience and thereby cutting into network revenues. That caution explains why even at the height of the hostage crisis in Teheran the networks did not attempt to explain what the Islamic revival was about, or the doctrinal differences between Shia and Sunni Moslems. What we got instead, most days, was the same, endlessly repeated piece of street theater outside the American embassy with a chorus of Iranians shouting "Death to Carter," as if on cue, day after day.

There is also, of course, the constraint imposed by the fact that camera crews cannot be everywhere at one and the same time. If an event occurs beyond the range of a network camera, it will get short shrift on the evening news. It may be *mentioned* by Dan Rather or Roger Mudd but not dwelt upon because there are no moving images to carry the story along. One or two short sentences will have to do.

As television journalism has developed in recent years, its overseas reporters are permanent transients, shuttling from flashpoint to flashpoint on a moment's notice. Often they know little of the country into which they have just been dispatched—its language, its history, its culture. Time was when the networks maintained a corps of *resident* correspondents in several parts of the world, but their ranks have been decimated by the advent of jet travel, satellite communication, and electronic cameras. It is cheaper, I suppose, to keep them shuttling from place to place than to station a highly paid correspondent in one country long enough for him to understand the interplay of social and political forces in his assigned territory. The few overseas bureaus the networks still maintain (London, for example) are today not much more than forward bases from which they can dispatch cameramen and their equipment to Timbuktoo or Quagadougou or wherever. I do not for a moment question the honesty or courage of these network people. It is not their fault that they are shunted around like chessmen and that they can't stay long enough in most places to learn much about them. Their product, seen on the evening news, looks marvelously fresh, almost instantaneous. It is also marvelously superficial.

Perhaps we are asking more of commercial television than it can reasonably be expected to deliver. There is room for improvement, obviously. But as it is structured today, TV is likely to remain a medium that cannot—or dares not—be too far out of step with the national consensus. In most countries, let us remember, TV operates as an arm of the state. Yet even in the United States, where government does not control TV content, competitive business pressures tend to assure that its programming will not offend or alienate significant portions of the audience—or the advertisers.

I believe, in short, that only the print media can be looked to for nuance, depth of background, some sense of the meaning of events. Reality does not, after all, come neatly packaged in two- or three-minute lengths. Raw history is filled with contradictions, ambiguities, ragged edges. It is not, in fact, regarded as history until the event has been weighed, measured, compared, and assessed by a person trained to make judgments of this sort. Newspapermen are not historians. They work too fast to hand down definitive judgments. But they are freer than broadcast reporters to dig and to mull, to dip into musty records of the past, to ask tough questions, to attempt what the late Philip Graham once called the first rough draft of history.

What about the gatekeepers of our newspapers? They are for the most part under fewer constraints than their counterparts in broadcasting. They are even, in this era of vanishing afternoon newspapers, freed from competitive pressures in cities as large as Philadelphia, Washington, Cleveland. In Cincinnati and San Francisco, and now also in Seattle, and in several other cities, papers under separate ownerships have entered into joint operating agreements with their former competitors to share revenues and profits, thanks to an antitrust exemption called the Newspaper Preservation Act.

Head-to-head competition for street sales can no longer be blamed for sloppy, cynical, sensationalized reporting. True, odd remnants of the old Front Page mentality survive in a few places (say, the *New York Post* under Rupert Murdoch's ownership); but most of our newspapers today have attained a degree of respectability that would have astonished, also horrified, Ben Hecht and Charles MacArthur. Hell-raising has gone out of style. Yet, I submit there is truth still in James Reston's quip of perhaps twenty years ago that "The American newspaperman would rather break a story than understand it." The passionate urge to be first survives, somehow, even when the competition is 250 miles away, as in the case of the *Washington Post* and the *New York Times*; both editors refuse to acknowledge that a rival newspaper worthy of their steel exists in their own circulation areas. The editors of the *Post*, embarrassed and humiliated by the belated discovery that Janet Cook's little epic about a 7-year-old drug addict named Jimmy was a hoax, got a measure of consolation when the *Times* was forced to admit that a story published in its Sunday magazine, which purported to be an eyewitness report of events inside Kampuchea, was another phony, written by a fellow who had never been there.

When the best of our elite newspapers can screw up that way, what is one to make of their run-of-the-mine contemporaries? Here a species of infectious timidity is at work much of the time. When Bob Woodward

and Carl Bernstein of the *Post's* city staff started to unravel the mysteries of Watergate ten years ago this summer, only a handful of editors across the country thought enough of their stories to publish them.

Now the long series of Watergate exposes was followed up by other elite newspapers, notably the *New York Times* and the *Los Angeles Times*. And the reports of Woodward and Bernstein were distributed to more than 300 other newspapers that subscribe to the Los Angeles Times-Washington Post News Service. There could be no question, in short, that the information these young reporters kept digging up was broadly available across the land. The pity is that so very few gatekeepers saw fit to reprint it. Hundreds of editors, quite literally, spiked the Watergate story. We heard a lot of excuses after the fact: Some editors did not trust this seemingly implausible story about criminal activity by the White House staff. Others were afraid to publish the stories, they said, because they might be accused of partisan bias in the midst of a Presidential election year. In effect, Watergate was not news to them—until October 1972, when the CBS Evening News (which also had kept its distance from the Watergate story through the summer) devoted two long segments on successive nights to a summary of the *Washington Post* findings. It was Walter Cronkite, said to be the most trusted newsman in the country, who legitimized the Watergate affair by retelling his national audience what readers of the *Washington Post* already knew. Suddenly Watergate became front-page news in papers across the land. That episode tells us a great deal about the herd instinct among gatekeepers. Many of them, conceivably a majority, seem incapable of independent judgments about the significance of major developments on the national scene. They react when led by others.

I have spoken of gatekeepers being at fault. This is not, as I see it, a matter of scattered individuals who carry the title of editor. Whole editorial bureaucracies are infected with the timidities I have mentioned. It is an attitude that trickles down from the top, from publishers and editors-in-chief.

The bottom line is important, no question of that. A newspaper that cannot pay its bills should not be expected to demonstrate courage, broad vision, independent judgment. But the vast majority of American newspapers are *profitable*, some *immensely* profitable. And, as I suggested earlier, the excuse that competition forces them into unwholesome practices won't wash in this age of mostly monopoly newspapers. In less than three percent of American cities today do newspapers under separate ownerships compete for readers and for advertising, head to head.

I wonder whether the gatekeepers I am criticizing are not caught in a time warp. They have failed to look around them and discover that the glory days of

Hearst and Pulitzer are long past. Those glaring black headlines don't sell newspapers as they did in the twenties and thirties. When I first came to New York as a graduate student many years ago, the city had nine daily newspapers of general circulation, not counting those published in German, Italian, Yiddish, and other foreign languages. Today there are three or, as my colleague Fred Friendly likes to say, two and a half. One after another, the most flamboyant of them have vanished from the scene.

What these gentlemen have failed to notice (and they are mostly males even in this enlightened age) is that quality combined with intelligent management pays off. It may surprise you to learn that the only New York City newspaper operating at a profit right now is the *New York Times*, the least sensational of the lot and the one that spends more than any other on editorial quality. On the West Coast it is the sober, bulky *Los Angeles Times* that dominates the market. Nationally, I suggest, the most spectacular growth pattern has been traced by the *Wall Street Journal*, which to this day publishes no photographs, no banner headlines, no puzzles or games.

There is perhaps a glimmer of hope in this trend. If we have fewer daily newspapers in the United States today than we had in 1912, there are (I submit) fewer *bad* newspapers . . . and a growing number that are far *better* newspapers under chain ownership than they were when locally owned—say, the *Inquirer* here in Philadelphia or the *Times Herald* in Dallas.

It ought to be clear to everyone in this room that I am, nevertheless, a critic of our modern media systems. I worry about insensitive gatekeepers and about the still spreading blight that is killing afternoon newspapers across the country. I can work up a spectacular rage against those editors and publishers who live in neurotic fear of admitting error and publishing corrections and against those whose reflexive response, when criticized with good cause, is to stonewall and take refuge in the First Amendment.

Finally, lest there be any doubt on this crucial point, I share your anxiety over the vigilantes who want to purge our libraries of Salinger and Vonnegut and, heaven help us, Mark Twain. But no useful purpose is served, I believe, by confusing the legitimate, inescapable editorial process of news selection with mindless, capricious censorship of the library shelves. The shortcomings of our newspapers and broadcast services cannot fairly be traced to censorship or self-censorship. As I have tried to suggest, every editor in every society, regardless of politics or ideology, has no choice but to practice selection. One may quarrel with the choices many editors make—I certainly do from time to time—but one cannot sensibly quarrel with their need to make choices.

nominations for FTRF board

Nominations for candidates to run in the 1983 election for the Board of Trustees of the Freedom to Read Foundation are now being accepted. The election, to be held May 1—June 1, 1983, will fill four vacancies on the Board of Trustees. Nominations should be sent to:

Mr. Richard P. Kleeman
Association of American Publishers
2005 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Serving with Mr. Kleeman on the Nominating Committee are Lee B. Brawner, Executive Director, Metropolitan Library System, 131 Dean A. McGee, Oklahoma City, OK 73102, and Russell Shank, University Librarian, University of California at Los Angeles, 405 Hilgard Avenue, Los Angeles, CA 90024.

(*Pico* . . . from page 195)

The District Court granted summary judgment in favor of the Board of Education, holding that

While removal of such books from a school library may . . . reflect a misguided educational philosophy, it does not constitute a sharp and direct infringement of any First Amendment right.

On appeal to a three-judge panel of the United States Court of Appeals for the Second Circuit, the judgment of the District Court was reversed by a two-to-one majority and the case remanded for trial.

On *certiorari* to the Supreme Court, the decision of the Second Circuit was affirmed by a vote of 5 to 4, with Justice Brennan writing the plurality opinion, in which Justices Marshall and Stevens joined and in which Justice Blackmun joined with the judgment and concurred in part in a separate opinion. Justice White concurred in the judgment, thereby constituting the majority, while Chief Justice Burger and Justices Powell, Rehnquist and O'Connor dissented in four separate opinions, with Justices Powell, Rehnquist and O'Connor joining in Chief Justice Burger's dissent and the Chief Justice and Justice Powell joining in Justice Rehnquist's dissent.

Although Justice White clearly opposed the grant of *certiorari*, the issue presented by *Pico* was preeminently ripe for consideration by the Supreme Court. Starting in 1971 and continuing throughout the decade of the 1970s, courts were encountering with increasing frequency cases in which school boards were accused of, and even admitted to, removing books from their school libraries, not because of obsolescence, lack of

shelf space, or lack of relevance, but rather because the books were deemed inconsistent or contrary to the "value inculcation" objectives of the curriculum. As in *Pico*, these cases consistently involved the removal of a library work previously identified as worthy of acquisition under accepted book selection criteria. Likewise, they involved books which were elective reading and not part of the required curriculum. Moreover, they were invariably removed without regard for established procedures for "culling" or "winnowing" works no longer deemed appropriate for retention.

The earliest of the school library book suppression opinions was the Second Circuit's 1972 decision in *President's Council District 25 v. Community School Board No. 25*. There, the Court upheld the removal of *Down These Mean Streets* by Piri Thomas from the library over the objection of parents, teachers, the local PTA, librarians, and students, as well as the principal of a junior high school in the District. The Court declined "to review either the wisdom or the efficiency of the determination of the Board" on the ground that it was precluded by the Supreme Court's decision in *Epperson v. Arkansas* from intervening "in the resolution of school systems and which do not directly and sharply implicate basic constitutional values."

In *President's Council*, the Court did not perceive the elimination of the book as involving an effort to aid or oppose religion as did the state statute prohibiting texts teaching evolution which *Epperson* condemned. Nor did the Court perceive the elimination of the book from the library as analogous to the ban on non-disruptive silent speech which the Supreme Court condemned in *Tinker v. Des Moines Independent School District*.

In 1976, the Court of Appeals for the Sixth Circuit was confronted, in *Minarcini v. Strongsville City School District*, with a challenge to the School District's removal of Joseph Heller's *Catch 22* and Kurt Vonnegut's *Cat's Cradle* and *God Bless You, Mr. Rosewater* from its school library. The Court found that the "Board removed the books because it found them objectionable in content and because it felt it had the power, unfettered by the First Amendment, to censor the school library for subject matter which the Board members found distasteful."

In contrast to the Second Circuit, the Sixth Circuit held that "[t]he removal of books from a school library is a much more serious burden upon freedom of classroom discussion than the action found unconstitutional in *Tinker v. Des Moines Independent Community School District* . . ." It based this holding first, on its perception that "[a] library is a mighty resource in the free marketplace of ideas," and, second, on its understanding that the First Amendment protects the "right

to know" because, as Justice Blackmun stated in *Virginia State Board of Pharmacy v. Virginia Citizens Consumers Council, Inc.*, "... where a speaker exists . . . the protection afforded is to the communication, to its source and to its recipients both."

Relying on the *Minarcini* rationale, in 1978, the Massachusetts federal district court required a Chelsea School Committee to return to the high school library an anthology entitled *Male and Female Under 18*, which included a poem the committee found "objectionable," "obnoxious," "filthy," "vile and offensive garbage." (*Right to Read Defense Committee v. School Committee of the City of Chelsea.*) The *Chelsea* Court found the poem "tough but not obscene," and that "no substantial governmental interest was served by cutting off students' access to *Male and Female* in the library."

As in *Minarcini*, the Court distinguished between the school board's power to control curriculum content and its power to control library collections, and also between the school board's power to select books for the library and its power to remove books, once selected.

Adopting the *Chelsea* analysis, the Federal District Court for New Hampshire required the Nashua Board of Education to return to its high school library copies of *Ms.* magazine which had been expunged because they allegedly "contained advertisements for 'vibrators, contraceptives, materials dealing with lesbianism and witchcraft and gay material' as well as advertisements for trips to Cuba, records by communist folk singers, and a pro-communist newspaper." (*Salvail v. Nashua Board of Education.*) The *Nashua* Court found that the Board failed "to demonstrate a substantial and legitimate government interest sufficient to warrant the removal of *Ms.* magazine from the Nashua High School library."

The 1980s opened with two Circuits presented with three cases challenging removal of materials from high school libraries. In two of these cases the challenge was rejected. The third case was *Pico*.

The Seventh Circuit rejected the challenge in *Zykan v. Warsaw Community School Corporation*. There, the School Board ordered the removal of several books from the high school library, including *Growing Up Female in America*, *Go Ask Alice*, *The Bell Jar*, and *The Stepford Wives*.

The uncontroverted record in *Zykan* showed that the school board turned at least one "offending" book over to complaining citizens who caused it to be publicly burned. While the Court condemned this ceremony as "contemptible," it nevertheless concluded that the complaint failed to state a cause of action. The Court held that

... two factors tend to limit the relevance of 'academic freedom' at the secondary school level. First, the student's right to and need for such freedom is bounded by the level of his or her intellectual development. . . . Second, the importance of secondary schools in the development of intellectual faculties is only one part of a broad formative role encompassing the encouragement and nurturing of those fundamental social, political, and moral values that will permit a student to take his place in the community.

By the operation of these factors, the Court concluded that

... complaints filed by secondary school students to contest the educational decisions of local authorities are sometimes cognizable but generally must cross a relatively high threshold before entering upon the field of a constitutional claim suitable for federal court litigation.

While the Seventh Circuit was deciding *Zykan*, the Second Circuit was presented with two opportunities to reconsider its 1972 *President's Council* opinion. The first was *Pico* and the second was *Bicknell v. Vergennes Union High School Board of Directors*. Decided the same day, by the same panel, both *Pico* and *Bicknell* involved the removal of books of considerable literary reputation from the school library.² The dismissal of the complaint in *Vergennes* was affirmed and the dismissal of the complaint in *Pico* was reversed, both by 2 to 1 majorities. In each case, one judge saw both cases as an unconstitutional effort to purge the school library of ideas deemed inconsistent with the value inculcation objectives of the curriculum. Also in each case, one judge saw both cases as an appropriate and constitutionally proper exercise of the value inculcation function traditionally assigned secondary education. The deciding judge distinguished between *Bicknell* and *Pico* on the basis of the Board's motive for removal. In *Bicknell* he found the motive to be the books' "vulgar and indecent language," which justified the removal, while in *Pico* he found the motive to be the books' "ideas" or content, apart from vulgar or indecent language, which did not justify removal.

While all of these cases, including *Pico*, arose in the context of First Amendment challenges to the removal of books from school libraries, they all turned on differences in judicial perceptions of the proper role of school officials in the educational process. As a consequence, the primary effect of the Supreme Court's consideration in *Pico* was to identify what must be characterized as a fundamental philosophical dispute between two substantially equal and determined factions of the Court over the nature and function of elementary and secondary education in America.

One faction led by Chief Justice Burger clearly perceives elementary and secondary education to be "indoctrinative" or "prescriptive" in purpose. The other faction, led by Justice Brennan, clearly perceives such education to involve an "analytic" objective which cannot constitutionally be subordinated to or frustrated by the indoctrinative function.

Under the indoctrinative or prescriptive concept of education, information and accepted truths are furnished to a theoretically passive absorbent student. The function of teacher, school and educational materials is to convey these truths rather than create new wisdom. On the other hand, the analytic educational concept contemplates the examination of data and values in a way that involves the teacher, school and students in a search for truth.

The self-evident source of Justice Brennan's concern with Chief Justice Burger's perception of schools as "... vehicles for 'inculcating fundamental values necessary to the maintenance of a democratic political system'" is that, so used, students will become nothing more than "closed circuit recipients of only that which the State chooses to communicate."

Justice Brennan's concern with laws, official conduct and policies which "cast a pall of orthodoxy over the classroom" has been a consistent, recurrent, and intensifying theme in opinions he has written in First Amendment cases since he first expressed it in *Keyishian v. Board of Regents*. There he contended that: "The classroom is peculiarly the 'marketplace of ideas,'" and that

The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues, [rather] than through any kind of authoritative selection."

In his dissent in *Paris Adult Theatre I v. Slaton*, Justice Brennan revealed, perhaps most clearly, the source and nature of his fear of the "value inculcation" model of education. There he quoted the following language from the Court's decision in *Meyer v. Nebraska*:

In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and entrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relations between individual and State were wholly different from those upon which our institutions rest

Justice Brennan's insistence that schools function as "marketplaces" of ideas as well as a means of "promoting respect for authority and traditional values be they social, moral or political" reveals his doubt about the ability of a political majority to resist imposing its orthodoxy at the expense of individual inquiry and intellectual freedom.

As Justice Brennan's First Amendment opinions consistently reflect his abiding concern for individual freedom of inquiry, Justice Burger's First Amendment opinions, in *Pico* and other cases, reflect his equally abiding concern for the promotion and protection of the "social interest in order and morality." Having concluded that schools may legitimately be used for inculcating "fundamental values," Chief Justice Burger

has no hesitation in granting school authorities "broad discretion to fulfill that obligation" including the right to make "content based decisions about the appropriateness of retaining materials in the school library and curriculum." Justice Burger's concern with the conduct of school authorities is not that they may impose orthodoxy in the classroom, but rather that they may impose an orthodoxy that does not accurately reflect community values. This risk, however, Chief Justice Burger dismisses summarily on the basis of the following syllogism:

"[L]ocal control of education involves democracy in a microcosm" because "in most public schools in the United States the parents have a large voice in the school" and therefore "through participation in the election of school board members, parents influence, if not control the direction of their children's education." And because "a school board is not a giant bureaucracy far removed from accountability for its actions; it is truly 'of the people and by the people.'" It follows that "a school board reflects its constituency in a very real sense and thus could not long exercise unchecked discretion in its choice to acquire or remove books." And therefore "if the parents disagree with the educational decisions of the school board, they can take steps to remove the board members from office."

It is more than a little difficult to understand from whence Chief Justice Burger derived his "democracy in a microcosm" model of parent-teacher-student-school board relationships. Certainly he is aware that less than twenty percent of the voters are parents of elementary and secondary school children; certainly he is aware that the six year average term of a school board member makes change in board composition and orientation a process requiring years; certainly he is aware that in most communities of this nation the school system, governed by the school board, is larger in terms of bureaucracy, budget and manpower than any other governmental activity.³

But, it is even more difficult to understand how Chief Justice Burger could propose such total reliance on participative political solutions to controversies involving value inculcation in view of his unavoidable knowledge of the circumstances which almost invariably produce the removal of library materials. In *Zykan*, the removal was demanded not by parents, but by an organization of senior citizens which then burned the books; in *Chelsea*, the offending book was removed on the complaint of a single parent and over the objection of many; the celebrated Kanawha County, West Virginia textbook controversy prompted death threats, school boycotts, attacks on school buses, and bombing of schools; even in *Pico*, the books were banned from the library, not on the basis of a complaint from a

parent of an Island Trees school student, but on the basis of an "objectionable book list" prepared by an organization called Concerned Citizens and Taxpayers for Decent School Books of Baton Rouge, Louisiana, distributed to three members of the Island Trees School Board at a meeting of a "conservative" organization in Watkins Glen, New York.

As inexplicable and unreal as is Chief Justice Burger's "democratic" solution to the failure of a school board to reflect correctly the community values to be inculcated by the secondary school, it is nothing compared to his solution for those whose values are not represented in the curricular orthodoxy. "They," says Chief Justice Burger "have alternative sources to the same end. Books may be acquired from book stores, public libraries or other alternative sources unconnected with the unique environment of the local public schools."

Here again is conclusive evidence that the Burger faction perceives secondary schools as having no significant role as a marketplace of ideas. Justice Rehnquist, in his dissent, joined by the Chief Justice, expressed the same perception in these words:

When it acts as an educator, at least at the elementary and secondary school level, the government is engaged in inculcating social values and knowledge in relatively impressionable young people. . . . In short, actions by the government as educator do not raise the same First Amendment concerns as actions by the government as sovereign.

That no less than four Justices of the Supreme Court could accept and endorse this view of the First Amendment's application to secondary education is a striking and, in my opinion, frightening indication of the philosophical change which has occurred on the Court since it held, in *West Virginia State Board of Education v. Barnette*, that "[T]he Fourteenth Amendment, as now applied to the States, protects the citizens against the State itself and all of its creatures—Boards of Educations not excepted."

But, even more to the point, is Justice Jackson's observation in *Barnette* that

Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials may compel youth to unite in embracing. . . . the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings.

The concept that secondary school can, consistent with the First Amendment, be reduced to a purely indoctrinative function serving the will of any transient political majority which might gain control of the system is anathema to the very purpose for which the Amendment was adopted. That purpose was not to protect the rights of the majority, but rather to protect the rights of the minority from the majority. As Justice Jackson put it:

This liberty was not protected because the forefathers expected its use would always be agreeable to those in authority or that its exercise always would be wise, temperate, or useful to society. As I read their intentions, this liberty was protected because they knew of no other way by which free men could conduct representative democracy.

But aside from its gross inconsistency with the philosophical premise of the First Amendment, the concept that the secondary school can constitutionally be restricted to a value-inculcating mechanism is affirmatively counterproductive to the society and the people in at least three fundamental respects.

First, the concept absolutely guarantees that secondary schools will become political and ideological battlegrounds. It assures the "winner" of the competition for control of the school system, for the time he can remain in control, the right, not only to control curriculum content, but also to purge the school library of competing ideas. This is an opportunity no demagogue or ideologue can or will resist, and the Kanawha County chaos will be the norm and not the exception.

Second, the concept is in direct opposition to the objective of educational integration recognized by the Supreme Court as a constitutional mandate since *Brown v. Board of Education*. The success of such integration is a function of, and is measured by, not merely the numerical mix of races, religions, and nationalities in a school, but also in the capacity of the school to accommodate a variety of cultural, social, economic, and political perspectives and values. Educational parochialism is a fountainhead of bigotry and such parochialism is promoted, not deterred, by an indoctrinative mechanism which brooks no opposing viewpoints and values. Indeed, the very utility of the school as an "assimilative force"⁴ in our society is frustrated if the values which it inculcates are mere functions of the accident of geography, school district boundary or school board composition at any point in time.

Finally, and perhaps most offensive to the "values on which our society rests", is the concept that the secondary public school, unlike the institution of higher learning, can be restricted to a narrow indoctrinative function. This constitutes nothing more nor less than constitutionally protected "educational elitism." The distinction which Justice Rehnquist makes in *Pico* between the application of the First Amendment to secondary schools and its application to institutions of higher education is implicitly based on the unsupported and unsupported conclusions of the Seventh Circuit in *Zykan* that "high school students lack . . . intellectual skills necessary for taking full advantage of the marketplace of ideas," and that the student's need for academic freedom "is bounded by the level of his or her intellectual development."

This theory that access to the marketplace of ideas is reserved only to those who have the financial, physical, or mental capacity or the personal or professional interest to enter what the *Zykan* court described as "the rarified atmosphere of the college or university," seems fundamentally at variance with the great tradition of American public education. Of particular concern is the notion that the "need" for access to the marketplace of ideas is a function of intellectual development when most educators recognize such access as "indispensable" to intellectual development.

The plurality opinion in *Pico* rejects the concept that there are no limits to the measures or means which secondary school authorities may employ to inculcate values in their students. It does so by recognizing a constitutional "right to receive information." Although such right is condemned by Justices Burger, Rehnquist, and Powell as having simply "no application to the one public institution which, by its very nature, is a place for the selective conveyance of ideas," even they do not deny that the "right to receive information" has long been recognized by the Court as an indispensable and constitutionally protected corollary to the rights of free speech and press. As James Madison, who chaired the committee which drafted the First Amendment, expressed it: "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both."

Specific recognition of the "right to receive information" is long overdue in what has now become a "knowledge society." Knowledge is power and access to knowledge is access to all our society has to offer. The existence of the "right to receive information" does not negate the indoctrinative function of secondary schools. It merely requires that such function be performed by persuasion and example, by focus and emphasis, and by selection and presentation, rather than by suppression and excision.

I recognize that these remarks have been limited exclusively to the right to resist the removal of works from secondary school libraries. I have not discussed such other important First Amendment issues as the constitutional parameters of state-wide book selection programs (*Loewn v. Turnipseed*), and the ultimate limits on curricular content control by school boards (*Pratt v. Independent School District No. 831*). Moreover, I have not considered the theories and techniques which are being used to attack books in schools and libraries.

This limitation is in part a function of space, in part a function of the special role the library plays in the marketplace of ideas, and in part a recognition of the sad reality that those who would purge our schools

and libraries seem to need little education or training in the ways to do it. Most censors know by instinct or practice that the most effective censorship is the self-censorship librarians, teachers, and school boards impose on themselves out of fear for their jobs, fear of harrassment, and fear of community controversy.

The recognition in *Pico* of a "right to receive information," however limited in its support among the Justices, nevertheless constitutes another significant line of defense against censorship. The hope which *Pico* represents for the cause of intellectual freedom could not be more timely. Our historic institutions, values, and traditions are being buffeted by the winds of change. But the proper response to challenge is to defend our ideas with confidence and conviction born of knowledge. It is all too true, as Justice Potter Stewart once said, that "censorship reflects society's lack of confidence in itself." But, as President Kennedy observed,

"Freedom and security are but opposite sides of the same coin—and the free expression of ideas is not more expendable but far more essential in a period of challenge and crisis."

¹The nine books were: *Slaughterhouse Five*, by Kurt Vonnegut, Jr.; *The Naked Ape*, by Desmond Morris; *Down These Mean Streets*, by Piri Thomas; *Best Short Stories by Negro Writers*, edited by Langston Hughes; *Go Ask Alice*, written anonymously; *Laughing Boy*, by Oliver LaFarge; *Black Boy*, by Richard Wright; *A Hero Ain't Nothin' But A Sandwich*, by Alice Childress; and *Soul on Ice*, by Eldridge Cleaver.

²The books at issue in *Bicknell* were: *The Wanderers*, by Richard Price, and *Dog Day Afternoon*, by Patrick Mann.

³Source: National Association of School Boards, Washington, D.C. (based upon U.S. Census data).

⁴J. Dewey, *Democracy and Education* 26 (1929).

Statement of Ownership and Management

The *Newsletter on Intellectual Freedom* is published bimonthly (Jan., March, May, July, Sept., Nov.) by the American Library Association, 50 E. Huron St., Chicago, Illinois 60611; American Library Association, owner; Judith F. Krug, editor, 50 E. Huron St., Chicago, Illinois 60611. Known bondholders, mortgagees, and other securities: none. Extent and Nature of Circulation:

("Average" figures denote the average number of copies for issues during preceding 12 months. "Actual" figures denote the actual number of copies of single issue published nearest filing date.) Total number of copies printed: Average, 3500; Actual, 3500. Paid circulation through dealers and carriers, street vendors, and counter sales: Average, none; Actual, none. Paid circulation through mail subscriptions: Average, 3025; Actual, 3250. Total paid circulation: Average, 3025; Actual 3250. Free distribution: Average, 90; Actual, 90. Total Distribution: Average, 3115; Actual, 3340. Office use, left over, unaccounted, spoiled: Average, 385; Actual, 160. Total: Average, 3500; Actual, 3500. Statement of Ownership, Management and Circulation (PS Form 3526, July 1981) filed with the United States Postal Service in Chicago, August 31, 1982. I certify that the statements made by me above are correct and complete.

/s/ Judith F. Krug.

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NEWSLETTER ON INTELLECTUAL FREEDOM
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