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how fair is the fairness doctrine?

By Nancy Herman, Assistant Director, Office for Intellectual Freedom

In the past year, Senator Robert Packwood (Rep.-Oregon) and the Freedom of Expression Foundation, which he founded, have stepped up efforts to repeal the Fairness Doctrine governing access to broadcast time for opposing views. What is the Fairness Doctrine? Do we need it? Who is for it? Who is against it? And, most important, what about the First Amendment?

The Fairness Doctrine, an essential part of the Communications Act of 1934, developed out of the "public trustee" concept of public broadcasting. The federal government, through the Federal Communications Commission (FCC), assigns specific broadcast frequencies to a limited number of qualified applicants. In return for the commercial and noncommercial use of the frequencies for specific renewable periods, licensees must operate their stations in the "public interest, convenience and necessity," make a good faith attempt to present issues of public importance to their communities, and cover controversial issues in a fair manner.

The Fairness Doctrine establishes related responsibilities with which licensees must comply. Radio and television broadcasters are obligated to:

1. Seek out and air programming which addresses "controversial issues of public importance to their community;" and
2. Ensure that programming which discusses any specific controversial issue of public importance is "balanced overall"—that there is a "reasonable opportunity for the presentation of contrasting views."

At the heart of the Fairness Doctrine stand basic First Amendment principles. The Fairness Doctrine, in theory, encourages the widest possible participation in the discussion of controversial issues of public concern—and facilitates access to the electronic media for minority viewpoints on those issues. As a result, the public potentially has at least minimal access to information, opinion and ideas.

The U. S. Supreme Court affirmed the constitutionality of the Fairness Doctrine in the *Red Lion Broadcasting Co.* v. *FCC* (1969) case, wherein it stated: "It is the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences which is crucial here. That right may not be constitu-

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in this issue

targets of censor

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soviet journalist visits NYPL censorship exhibit

Between June 1 and October 15, a major historical exhibit on "Censorship: 500 Years of Conflict" was on public display in the newly restored Gottesman Exhibition Hall of the New York Public Library. The exhibition drew widespread attention and praise (see Newsletter, *September 1984, p. 135) and the American Library Association and various civil liberties groups have sought funding to tour parts of it across the United States. The exhibit also sparked international interest, including, it seems, in the Soviet Union. The following article appeared in the June 13 issue of* Literaturnaia gazeta *(Literary Gazette), weekly publication of the Union of Writers of the Soviet Union, a very popular journal of literary, social and political commentary with more than a million subscribers. Entitled "Dissident Robin Hood," and published under the rubric "This 'Free, Free' World," the article was written by the journal's New York correspondent, Vladimir Simonov. The translation from the Russian is by Henry Reichman, Associate Editor of the* Newsletter.

The guard takes away my attache case. He examines me from head to toe, apparently in search of some large pockets where I might hide some valuable exhibit. Nothing is discovered, and they let me in the hall.

The first thing I come upon is a portable computer. Rhythmically, like drops of water wearing away a stone, names flash on the greenish screen:

Charles Darwin
Theodore Dreiser
William Faulkner
Joseph Heller . . .

Over each name burns the inscription: "Censored."

Where censored? By whom? For what reason? About all this the wise computer knows nothing. The drops grind away at some abstract evil, almost timeless, with no precise boundaries.

I am in the New York Public Library, at the exhibit gloomily entitled "Censorship: 500 Years of Conflict." As the program makes clear, the subject is "the unending struggle between free expression and the threat of repression" with respect to the printed word.

How boldly conceived! And most important, who has displayed such eagerness to defend society? The money to organize the exhibit was donated by the oil giant Exxon Corporation, a certain J. M. Kaplan Fund, the publishing concern Time, Incorporated, and other private philanthropies. Next time you won't say that capital seeks only higher profits.

Surely, if a society arranges such a delicate exhibit, this very fact already testifies to the moral health of that society and to its relative innocence with respect to this evil. Agreed? At the exhibit I learned much about several varied, but curious items.

In 1779, in England, a drawing by an unknown artist became a victim of censorship. Here it is on the wall under glass: a mare has bucked and the rider is hurled earthward in a comic pose. The caption: "The horse America throwing off its master." Yesss . . . I hope the organizers of the exhibit don't get in trouble if some Washington bureaucrat sees in this exhibit preelection agitation for the Democrats.

At a point before the exit to the street the exposition hurriedly touches on the situation in the United States. Well, the Americans too have committed the sin of censorship a bit. There have been some excesses on the historical level. Here we see how a founding father, Thomas Jefferson, composed a first draft of the Declaration of Independence, but someone cut out of it a phrase on women and slaves. And so these categories of citizen missed out on equality and freedom, which, nonetheless, doesn't detract from the value of that historic document.

But then later censorship in America became an extinct creature, in the manner of the Chinese panda. One is reminded of how someone stole a couple of paragraphs from *Uncle Tom's Cabin* by Beecher Stowe, nibbled a bit at Twain's *Adventures of Huckleberry Finn*—and that's all. Since then the valve controlling the rushing flood of ideas has not been closed.

Most of all, the exposition implies: you can't control the typical American by naked censorship alone. "We have become a society where reading has become an unusual form of activity, out of the ordinary," one of the signs reminds us. An ordinary kind of activity, we suppose, is watching television. So, why shred books if, after all, there are few who read them!

Here the path of the exhibit leads out to the street. I exit and enter again. For me something is missing. Where is the "point" of the exposition? Where is the most important hall?

The play of imagination sketches out for me the details of its contents. In one corner, piled in a mountain up to the ceiling, stand those 600 book titles which have today been thrown off the shelves of public libraries in the U.S.A., driven from schools and recorded on publishers' black lists.

To Kill a Mockingbird by Harper Lee sits beside *The Diary of Anne Frank;* Shakespeare's *Merchant of Venice* is next to *The Crucible,* by Arthur Miller.

Various books, various accusations. In one there is too much violence, even though the topic is war.

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Indianapolis anti-pornography ordinance challenged

The Freedom to Read Foundation joined the American Publishers and others in filing a complaint American PUblishers and others in filing a complaint challenging an "anti-pornography" ordinance passed by the Indianapolis City Council and signed by Indianapolis Mayor William H. Hudnut, III, on May 1, 1984 (see Newsletter, *July 1984, p. 119). The ordinance, similar to the one vetoed twice by Minneapolis Mayor Don Fraser, classified pornography as a civil rights violation. According to the ordinance, pornography creates and maintains sex as a basis for discrimination, and perpetuates the "systematic practice of exploitation and subordination based on sex which differentially harms women. The bigotry and contempt it promotes, with the acts of aggression it fosters, harms women's opportunities for equality of rights. . . "*

The statute defines pornography as "the sexually explicit subordination of women, graphically depicted, whether in pictures alone or in pictures as amplified by accompanying words," where women are presented as sexual objects who enjoy one of several specific types of violent behavior.

The ordinance gives a cause of action to any woman who is acting against the subordination of women and who can allege "injury by pornography in the way women are injured by it. . . ."

An injunction was entered against the enforcement of the ordinance just days after the bill was to have gone into effect. Hearings on the constitutionality of the ordinance were held July 30 before U.S. District Court Judge Sarah Evans Barker. A ruling is expected in the early fall. It is also expected that the losing side will appeal to the U.S. Supreme Court.

The complaint filed by the FTRF and others argues that the ordinance is unconstitutional, void and of no effect in that it goes beyond the standard for obscenity established by the United States Supreme Court; imposes an unconstitutional prior restraint; is unconstitutionally vague and unconstitutionally restrains access to First Amendment-protected materials.

In addition, the Freedom to Read Foundation has filed an amicus curiae *brief on behalf of the Indiana Library Association and the Indiana Library Trustee Association. The following are excerpts:*

The library is a unique and precious First Amendment institution. Historically, the purpose of the library has been two-fold: (1) to acquire and to preserve library materials; and (2) to offer library patrons the most effective and economical access to the widest range of intellectual resources and information. The scope of a library's collection is a measure of the community's access to ideas; it is the forum for the fountainhead of that robust interchange of ideas so necessary to the functioning of our constitutional republican form of government . . . and is the predicate for the advancement of knowledge and the improvement of the human condition . . . .

Amici are vitally interested in the Indianapolis Ordinance before the Court. From an institutional perspective, the Ordinance violates the integrity of library collections. Many of the works that fill the shelves of libraries in Indianapolis fall within the Ordinance's vague and boundless definition of "pornography"—a definition that encompasses far more than the limited class of speech the Supreme Court has held to be unprotected by the Constitution. To deny libraries and their patrons access to any work, under the guise that the work, by its nature or by its contents *is* sex discrimination, squarely conflicts with the First Amendment's mandate that government shall impose no prior restraint on the freedom to speak and cuts to the heart of the library's mission to present the broadest range of ideas to the public.

The Ordinance threatens librarians with suit for damages and injunctive relief for doing nothing more than fulfilling their obligations as librarians—responding to the public's need for access to information and education. It is an effective threat since librarians and other passive circulators of information have little incentive to risk their jobs, reputations, and freedom to defend their patron's right to read if confronted with controversy. By allowing "any aggrieved person" who is offended by the works in a library collection to file a claim for sex discrimination against librarians for the works on their shelves, the Ordinance erects a barrier of fear which neither public need nor interest can surmount. The Ordinance operates on the library and librarian as a mechanism for the silent suppression of controversy and a source of community consensus through coercion.

More than any other institution or persons impacted by the Ordinance, the interest of libraries and librarians in the controversy before the Court is immediate and direct for it challenges the very *raison d'etre* of the profession and the *sine qua non* of its vitality—intellectual freedom. . . .

ARGUMENT

I

The Overbroad Ordinance Violates The Integrity Of The Library Collection and Forces Librarians To Evaluate Materials Based Upon An Unconstitutional Definition Of Pornography

The Supreme Court has long recognized that "sex and obscenity are not synonymous." . . . . The First Amendment protects a broad range of sexually related—indeed, sexually explicit—materials which fall outside the narrow definition of proscribed obscenity. Three strict prerequisites must be satisfied in order to find that a particular sexually related form of speech is obscene and thus outside the protection of the First amendment:

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

The root constitutional infirmity of the Indianapolis Ordinance is that its sweeping definition of "pornography" fails every element of this three-part test. First, the Ordinance ignores "community standards" and is not confined to appeals to "prurient interest." Instead, it creates a new and undefined category of speech—speech that in the eyes and ears of the beholder counsels the "sexually explicit subordination of women." Second, the Ordinance does not "specifically" define proscribed sexual conduct. No definition is given as to what "graphic, sexually explicit subordination of women" may mean; presumably it means something that "also includes" the six items in paragraph 16-3(q)—items which themselves are vague and undefined, *e.g.,* "sex object," "scenario of degradation," conditions that are "sexual." Finally, the Ordinance offers no protection for works with "literary, artistic, political, or scientific value."

The very foundation of the Ordinance's definition of "pornography" is wholly inconsistent with the philosophy of the First Amendment. Government cannot constitutionally premise legislation on the desire to control the content of a person's private thoughts. Yet, the Ordinance aims principally at eliminating "the bigotry and contempt" (clearly personal beliefs and attitudes) that pornography allegedly promotes and from which allegedly flow acts of aggression and broad-based discrimination against women . . . Notwithstanding the complete absence of empirical evidence to support this claim, this preemptive attempt to "cleanse" a person's mind violates the settled principle that "the deterrents ordinarily applied to prevent crime are education and punishment for violation of the law," not the suppression of ideas.

Here, the Ordinance condemns shelf-upon-shelf of accepted literary works. Sex and sexuality have been subjects of absorbing interest to humanity since the beginning of time. . . . The *Bible* itself contains passages which, to some, may present the "graphic sexually explicit subordination of women." The same can be said of a multitude of works from established classics like Voltaire's *Candide* to contemporary best sellers like LeCarre's *Little Drummer Girl,* Rossner's *Looking For Mr. Goodbar,* Jong's *Fear Of Flying* and Walker's *The Color Purple.* Countless works could be accused of presenting women as "sex objects," "in scenarios of degradation," or as "inferior in a context that makes these conditions sexual."

Even if the Ordinance were limited to library works with pictures alone, it would still run afoul of the First Amendment. No library could have a standard work of art history without exposure to prosecution and suit for damages. Works of Rubens, Ingres, Poussin, Copley and others, depicting nudes and rapes, all fall under the Ordinance's terms. . . .

The Ordinance draws other constitutionally protected, yet controversial, materials within its broad sweep. Sexuality education, although a subject of scientific, educational, medical and psyshological value, is also a subject of religious, moral and political controversy. Some groups condemn any depictions of sex, even in educational materials. We fear that well-intentioned but zealous citizens, armed with threats of damage actions, will use this new Ordinance as a tool to "purify" the libraries—to purge them of materials which they personally find morally or socially reprehensible.

The constitutional infirmity of the Ordinance's overbreadth is compounded by the Ordinance's vagueness and failure to give fair warning of the proscribed offenses. While a finder of fact may claim to know unlawful obscenity when he sees it this surely cannot be said of "pornography" as defined by the Indianapolis Ordinance. What does it mean to say that "women are presented as sexual objects for domination, conquest, violation, exploitation, possession, or use or through postures or positions of servility or submission or display?" To be sure, just as "one man's vulgarity is another's lyric," one individual's concept of "domination" or "subordination" will not square with another's. All of this is compounded by the fact that the Ordinance gives *any* woman "claiming to be aggrieved on behalf of all women" the right to file a complaint to ban a book and for money damages.

For the librarian, this poses a very real and immediate threat and an unconstitutional burden that violates the integrity of the library collection and the public's right to read. By training, librarians do not review books to evaluate the merit of the ideas or points of view expressed in them. Such content-based judgments are as an-

tithetical to librarians as they are to the First Amendment. But the Ordinance will force librarians to make such judgments. There is a strong likelihood that librarians may eschew materials that might fall within the Ordinance's proscriptions rather than risk liability and the threat of prosecution by a citizen who later disagrees with a decision to acquire a certain work.

Such self-censorship is equally repugnant to the First Amendment as a court-ordered prior restraint. This chilling effect alone is sufficient reason to declare the Ordinance unconstitutional.

II
The Ordinance's Purported Exemption For Library Collections Is Vague and Contradictory, and Exposes Librarians To Prosecution and Suit For Damages

The Ordinance's provisions for injunctive relief in themselves pose serious threats to the integrity of a library collection and the Ordinance provides no exemption for such actions. But perhaps the most frightening aspect of the Indianapolis Ordinance for librarians is the prospect of a suit for damages by "any person claiming to be aggrieved." Time and again the Supreme Court has held that the "fear of damage awards . . . may be markedly more inhibiting than fear of prosecution under a criminal statute." While the Indianapolis Ordinance purports to exempt libraries and librarians from such liability for damages, analysis of the law demonstrates that there is, in reality, no exemption whatsoever.

The Ordinance exempts libraries from prosecution for "Trafficking In Pornography" (as overbroadly construed) when "pornographic" material (as impermissibly defined) is "available for study, including on open shelves" whereas "special display presentations of pornography" is considered to be actionable sex discrimination. The Ordinance does not define "special display presentations;" nor can one glean its intended meaning from considering the Ordinance as a whole. Arguably, a library film festival on human sexual behavior or a library display on nudity in art could be subject to attack under the Ordinance. This undoubtedly will have a chilling effect on what a librarian, for fear of prosecution, may choose to display. The net effect is the imposition of a strict liability rule for exhibiting in "special display presentations" non-obscene material protected by the First Amendment. This is totally incomprehensible and blatantly unconstitutional.

Even more troublesome is the lack of *any sort* of an exemption for "Assault or Physical Attack Due to Pornography." According to the language of the Ordinance as finally adopted, libraries are exempt from prosecution (under the "Trafficking" provision) for the general circulation of "pornography" on open shelves, but are subject to prosecution (under the "Assault" provision), *if,* after viewing a "special display presentation" *or even "exempted" material on open shelves,* the viewer assaults a third party "in a way that is directly caused by specific pornography." . . . The failure to reconcile these two sections leaves a gaping void and effectively destroys any intended protection for the librarian.

While librarians are philosophically committed to the concept that a library is an "open port" in the free marketplace of ideas . . . there are practical limits on their capacity or willingness to support such commitment when the choice is between purchasing legal services and purchasing additional works for the library collection. Moreover, as community institutions, many libraries are particularly dependent on the favor of public officials, who, as in this case, may have significant influence over their future operations and funding. Simply stated, if the Ordinance is upheld, only the most courageous librarian will be able to resist a demand for the culling of his collection of "pornography" as defined by this remarkable Ordinance.

Of course, the lack of incentive for librarians and other passive distributors of publications to resist self-censorship where the alternative is exposure to litigation has its greatest impact, not on the librarian or distributor, but on the public. It is the public's right to know and the public's right to read which is affected by the self-censorship decision. Silent suppression by self-censoring selection affords no standing to sue. And yet the closing of the channels of distribution by intimidation can be as effective in suppressing a work as in prohibiting its publication. The sum and substance of the First Amendment is not merely the right to speak but also the right to read. . . . There can be no ". . . uninhibited, robust, and wide open . . . " debate on public issues of the type the Supreme Court has mandated. If distribution channels through which that debate must be communicated are subject to interdiction by *in terrorem* exposure to litigating over whether a work contributes to the "subordination of women."

Finally, even if librarians and libraries were completely exempt from any liability under the Indianapolis Ordinance, the Ordinance will undermine the integrity of library collections and fetter the librarian's mission to provide library patrons with the fullest range of constitutionally protected materials. If publishers and booksellers refuse to publish and distribute works for fear of prosecution under the Ordinance, there will be that many fewer titles for librarians to purchase and circulate to their patrons. The ultimate losers will be the citizens of this State, who will be deprived of their right to receive information.

(Soviet . . . from page 175)

Another is supposedly amoral—twice the hero shouts out "the devil take it!" [*This is a common Russian expletive, perhaps used by the author in place of an equivalent, but untranslatable American one—transl.*]

No mask could manage to cover the monster of political censorship here. Fred Hechinger, one of those who has researched the literary inquisition in America of the 1980s, explains the present rage for censorship like this: "This occurs because good books often compel the reader to ponder unresolved problems."

In a separate display case—*The Adventures of Robin Hood.* The caption: "Dangerous dissident from Nottingham. Advocates a Marxist redistribution of income."

And next to this—a recent report by the American Civil Liberties Union, which charges the Reagan administration with "unprecedented hostility toward freedom of speech" and with creating "a powerful system of censorship within the federal government."

Where is this hall?

The guard has returned my case and said that he hasn't heard of such a hall.

Perhaps this is where all the charm of the exhibit at the New York Public Library lies. The theme of censorship itself has been censored. [*In conjunction with the central exhibition, the New York Public Library also mounted a companion exhibit on "Censorship in Libraries Today," prepared in cooperation with the ALA Office for Intellectual Freedom, and another one on "Censorship in the Slavic World," both in the Central Research Library. Whether Mr. Simonov was unaware of these exhibits or chose to ignore them, we cannot say—eds.*]

pentagon panel examines reporters' role in war

Secretary of Defense Caspar W. Weinberger made public August 23 a panel's recommendations to provide access to military operations for news organizations, and he gave orders to put the recommendations into effect. But Weinberger made clear that military security would remain the paramount consideration in guidelines for news coverage.

The panel, composed of officers and journalists, was headed by Maj. Gen. Winant Sidle, a retired chief of information for the Army. It was convened after reporters were initially excluded from covering the U.S. invasion of Grenada in October, 1983. The restrictions produced a flood of protests from media organizations (see *Newsletter,* January 1984, p. 1).

The panel urged the Defense Department to begin planning for news coverage of military operations while the operations themselves were being planned, including communications and transportation for reporters. At the same time, the panel urged news organizations to agree to voluntary guidelines to maintain the security of operations. The panel said there should be as few rules as possible.

The panel also proposed that military training schools teach officers how to deal with reporters during operations. Weinberger said he would appoint an advisory council of journalists to suggest ways to meet the objectives of the report.

In his report, General Sidle said that "the matter of so-called First Amendment rights" was "an extremely gray area. The panel felt that it was a matter for the legal profession and the courts and that we were not qualified to provide a judgement." In addition, Sidle said, "We feel we should state emphatically that reporters and editors alike must exercise responsibility in covering military operations."

In a statement of principle, the panel declared that "it is essential that the U.S. news media cover U.S. military operations to the maximum degree possible consistent with mission security and the safety of U.S. forces. . . . Application of the panel's principle should be adopted both in substance and in spirit. This will make it possible better to meet the needs of both the military and the media during future military operations." Reported in: *New York Times,* August 24.

conferees decry threats to freedom

The First Amendment is in danger, and Americans' accustomed freedoms of expression, association and travel are eroding with the encroachment of government. That was the consensus September 18 at a Washington, D.C. conference on "Free Trade in Ideas," organized by the American Civil Liberties Union and the Fund for Free Expression.

The gathering of 300 writers, scholars, attorneys and activists focused on threats to rights in three areas:

- The exchange of scientific information at meetings at home or abroad, which speakers charged are stifled by federal regulations governing dissemination of technical data.
- The "right to receive foreign visitors," who are denied open entry to the United States under provisions of the McCarthy-era McCarran-Walter Act, as well as access to foreign films deemed politically unsuitable.
- The right to travel to countries such as Cuba, now effectively prevented by currency regulations and

provisions against "trading with the enemy."

Opening the proceedings, ACLU president Norman Dorsen told the audience that "trade in ideas exists, but it is not free," particularly under the Reagan administration, which in a second term, he warned, might "drop its veil and *really* get to work on our freedoms."

First Amendment attorney Floyd Abrams complained that "national security always trumps the First Amendment." He discussed the McCarran-Walter provision whereby aliens may be prevented entry to the U. S. on the basis of their political beliefs. Stressing that use of the act to restrict access to information and ideas was "not a partisan problem," Abrams asked "what else besides fear of ideas could have led the government to prevent Hortensia Allende from speaking to a 1983 women's conference in California."

PBS correspondent Hodding Carter, assistant secretary of state for public affairs in the Carter administration, indicted the Reagan administration for its exclusion of aliens, "stupidity compounded as foreign policy," and for excessive classification of documents "about as important as the directions to my home." He accused the Reagan administration of a preoccupation with secrecy and intolerance of dissent, "the most virulent in my lifetime," though "not uniquely evil."

Physicist and attorney Edward Gerjuoy called the prohibitions on export or dissemination of "sensitive" scientific data "the broadest and most pervasive means" of regulating unclassified information. Because the laws administered by the Commerce and State departments govern even oral exchanges at professional gatherings, and because their interpretation is "rather vague" and their penalties severe, the "chilling effect is obvious," Gerjuoy said. Researchers must continually worry about whether their work is subject to export controls and licensing. Moreover, Gerjuoy noted, because the American library system does not exclude foreign readers, current regulations "pose the threat of prepublication review" of articles and books that would otherwise be open to Americans.

Mexican novelist and scholar Carlos Fuentes recounted his problems over the years in obtaining a U. S. visa. He accused the United States of violating the 1975 Helsinki accord pledging "freer movement and contacts" among persons. The exclusionary clause of the McCarran-Walter Act, he said, "belongs to the realm of sado-masochism, not to the legal ledgers of a self-respecting, powerful democracy." Why, he asked, "are my books, and those of other excludables, published here, our voices heard on TV and radio, whereas only our physical persons, surely the least dangerous part of our intellectual or political or moral totality, are judged dangerous? The answer seems clear: We are being punished for our political opinions."

Those sentiments were echoed by the voices of several still-excluded figures. Former NATO Gen. Nino Pasti, Italian playwright Dario Fo and his wife, actress Franca Rame, addressed the meeting by satellite from Toronto. Nobel laureate Gabriel Garcia Marquez and Hortensia Allende, widow of the murdered Chilean president, appeared on video tape. Garcia Marquez, who previously rejected temporary entry on principle, announced that he had been offered an unrestricted visa and will accept. "It is a good precedent, not only for myself, but for all those who find themselves in the same situation." Reported in: *Washington Post,* September 19.

biology texts draw Texas protests

Just when everybody thought the Texas textbook war had cooled, a series of controversies indicated that passions were as heated as ever. In April, the Texas Board of Education repealed a decade-old rule requiring textbooks used in the state's public schools to describe evolution as "only one of several explanations" of the origin of human beings and to present it as "theory rather than fact" (see *Newsletter,* July 1984, p. 99). Earlier, critics of the textbook selection process had succeeded in opening hearings to citizen defenders of textbooks as well as textbook critics like Mel and Norma Gabler of Longview, who have allegedly exerted considerable influence on school texts nationwide as a byproduct of their influence in Texas. This summer, Governor Mark White accepted the recommendation of a commission headed by Dallas billionaire H. Ross Perot that the elected board be replaced by a panel appointed by the governor.

But when the latest round of hearings began in July the underlying issues were still there. Mike Hudson, Texas coordinator of People for the American Way, who had played a key role in overturning the evolution rule and opening hearings, charged State Education Commissioner Raymon Bynum with "abuse of power" for using a technicality to deny him and about fifteen other witnesses the right to testify at a July 11 textbook hearing. Bynum sent letters to Hudson and others just four days before the hearing telling them they could not testify because they had failed to specify in writing the books on which they would speak.

Hudson said the requirement was absurd, since he had already filed written comments on the books and the oral testimony would simply expand on this. "The abuses and pettiness of this agency have been well documented by the SCOPE Committee [Perot commission] and the Legislature and have resulted in abolishing the elected State Board of Education," Hudson said. "But this attempt to censor the views of fifteen Texas citizens at the 11th hour without any prior warning is

the ultimate abuse of government power."

When the hearings opened, controversy centered—not surprisingly—on biology textbooks, up for reconsideration for the first time since repeal of the evolution rule. Hudson; Dr. Robert Fine, a Dallas physician representing the American Jewish Committee; Michele Davis of the Texas Science Supervisors Association; Dr. Marjorie Behringer of the American Association of University Women; and Laura Lempert, a Houston teacher, all urged the board to reject the proposed texts and adopt books with a stronger treatment of evolution.

"I want my child to learn about God and his plan for this world, but not in the science classroom," Lempert said. Like several others, she strongly endorsed *Biological Science, an Ecological Approach,* published by Houghton Mifflin. That book and Holt, Rinehart and Winston's *Biology* were attacked by the Daughters of the American Revolution and several Dallas women as "pornographic" and for mentioning abortion.

To the surprise of some, both Hudson and the Gablers rejected Prentice-Hall's text, *Biology*, although for very different reasons. The Gablers, who devoted most of their attention to elementary school science texts, urging the textbook committee to require more material challenging the theory of evolution, charged that the Prentice-Hall text "suppressed" evidence against this theory. The book failed to pass muster with People for the American Way because, its report charged, the book showed "an irritating bias toward creationism" in its use of the terms "microevolution" and "macroevolution," which are also used by creationists. Reported in: *Fort Worth Star-Telegram,* July 7, 10, 11; *Odessa American,* July 22.

stores without porn rewarded

Store owners who refuse to sell "pornographic" materials have begun receiving awards of support from Morality in America. Dr. Neil Gallagher, consultant for Morality in America, said the organization has begun presenting "Family Store Award" plaques and door stickers to stores "maintaining high community standards" by discontinuing sales of pornographic materials.

"Ninety-five percent of store owners nationwide don't know what's in the magazines they sell," Gallagher explained. "They know they sell *Playboy* and *Penthouse*, and they may have an idea of what's in them. Then when we show them what's actually in the magazines, most of them respond positively, and they voluntarily remove the magazine."

Eddie Riggs, who owns two convenience stores in Tupelo, Mississippi, was the first recipient of the award. Riggs said he removed the magazines shortly before Morality in America began conducting demonstrations and picket lines against them. Reported in: *Tupelo Daily Journal*, September 7.

in review

Pornography and Censorship. David Copp and Susan Wendell, eds. Prometheus Books. 1983. 414 pp.

Pornography and Censorship is an unusual book. It is an interdisciplinary collection of essays edited by two philosophers from Simon Fraser University, British Columbia. According to the editors, "the purpose of the anthology is to facilitate rational and informed debate on the topic of pornography and censorship." The book brings together empirical studies by social scientists, judicial essays and conceptual studies written by philosophers. The editors believe such a combination can facilitate wise decision-making on these public issues.

The book is divided into three sections. Part One contains secular essays which address the moral and social policy issues of pornography and attempts to censor. Part Two contains essays by social scientists which address a key question: does the availability of pornography have harmful consequences. The editors point out that interpreting empirical results is difficult and thus methodological issues must also be addressed. Essays in Part Three represent judicial decisions from three countries. The editors selected the inclusions for their argumentative qualities and the theoretical issues they raised. Each section is followed by a lengthy bibliography.

A strong point of the book is that the essays are recent, primarily published during the past decade. Classical works were omitted, but the reader is reminded not to overlook them. Another strong point is the compilation of many varied but related studies from law, the social sciences, and philosophy. The essays attempt to present political, legal and ethical issues relevant to the problem of censorship and pornography. They then assess the meaning of empirical research on the issues.

Copp's introductory essay sets the tone for the book and warns readers of their responsibility to sort the various authors' conceptions of pornography. The book is a fine resource of essays and bibliographic references. It is rather difficult reading, but will add a good dimension to a library collection on the subject. Professionals, students and laypeople will find it useful.—*Reviewed by Janis H. Bruwelheide, Associate Professor, Montana State University.*

AAParagraphs

elusive connection

Testimony ranging from the scholarly to the unbelievably (and unprintably) explicit was offered when Sen. Arlen Specter (Rep.-Pennsylvania) conducted another of his series of recent hearings on the effects of pornography on women and children. A former prosecutor, now Chair of the Senate Judiciary Subcommittee on Juvenile Justice, Specter evidenced a concern for First Amendment protections welcomed by those who fear that inquiries like his can turn into witch hunts going well beyond the proper bounds of combatting child molestation and abuse and encroaching on First Amendment rights. Specter opened this particular hearing with a comment on "The very sensitive nature [of this subject] as it affects First Amendment rights." When most witnesses declined to state flatly that child pornography leads to child molestation—or at least said they didn't know—Specter observed, "If the record shows that you don't know, then we have nothing to act on."

The subcommittee appears to be casting about for a constitutional means of creating a remedy or right for children misused in pornography to sue those who persuaded or forced them into it. (Linda Marchiano, whose porno film pseudonym was Linda Lovelace, testified graphically that she had been forced into acting in *Deep Throat*.) While there was general agreement on the horrors of the offense, there was little consensus on what might constitutionally be done about it.

Judith Goldsmith, President of the National Organization for Women (NOW), expressed general support for the type of ordinance under discussion in Minneapolis and enacted (with an immediate court challenge—see page 176 and *Newsletter*, July 1984, p. 119; September 1984, p. 134) in Indianapolis. These laws, and similar ones proposed in several other communities, treat pornography as an assault on women's civil rights and grant women who feel harmed by it a right to sue for civil remedies. But Ms. Goldsmith made it clear that NOW stops short of endorsing even the civil remedies provided in the Minneapolis/Indianapolis proposals and certainly "would not endorse censorship or banning of published materials. This came despite Goldsmith's observation that NOW believes there is "direct correlation between pornography and violence . . . already supported by a grim abundance of empirical data."

Ms. Goldsmith sought to equate the sexism of pornography with the racism that produced officially sanctioned segregation until eventually rejected by the Supreme Court. "No right is absolute," Goldsmith told Sen. Specter, "and in pornography the rights of the pornographer have superseded the rights of women and children."

If sexism could truly be equated or compared with racism, Specter responded, perhaps laws regulating sexism could be upheld as constitutional just as were those combatting racism. (Another First Amendment scholar, Yale Professor Thomas I. Emerson, has answered this line of thinking in a soon-to-be-published article: "The nearest analogy to what is proposed in the Minneapolis ordinance would be an official enactment prohibiting all expression that promoted or encouraged racism in our society. The laws, constitutional and statutory, that attempted to eradicate racism in our national life have never been carried to such a point. They deal with discriminatory acts, not the expression of discriminatory beliefs, opinions, ideas or attitudes. And it is hard to believe that the Supreme Court would permit their extension into such areas.")

Another witness before the Specter subcommittee offered an equivocal answer to his own question: "What effect does pornography have on the sexual exploitation of children?" Answering himself, Daniel Campagna, assistant professor of criminal justice at Appalachian State University, Boone, North Carolina, put it in these tantalizing words:

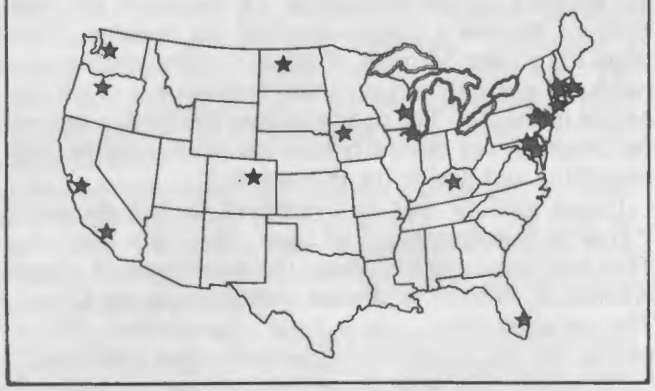
> Without exception, every pedophile we interviewed admitted to owning an extensive collection of adult and child pornography. The material was used as "instructional aids" in the seduction of their victims. This was especially true in situations involving pubescent boys. Did it incite the adult to commit sexual acts with children? It may have instilled the idea in their minds, acting as a catalyst for a subdued fantasy, but we can not be certain. To argue that this is true is to assume that pornography is purely detrimental and conducive to action. We have not found any solid proof to support this position. At what point does a piece of literature or photograph involving children become obscene? For that matter, at what stage does obscenity begin and artistic or "good taste" end?

Campagna's associate and fellow witness, Donald Poffenberger, director of West Virginia's Criminal Justice Institute, came as close as anyone to a direct answer to Specter's question: "Does pornography cause sexual molestation of children?"

Said Poffenberger: "I think so."

This column is provided by the Freedom to Read Committee of the Association of American Publishers and was written for this issue by Richard P. Kleeman, AAP Director of Freedom to Read.

censorship dateline



libraries

San Jose, California

A two year battle by a former San Jose library clerk and born-again Christian, Tom Oback, to have the controversial sex education manual, *Show Me!* removed from the San Jose City Library prompted the San Jose City Council August 7 to order a review of city library policy. The council ordered the study after a sometimes strident debate over censorship. The vote was 7-3.

"I did take a look at the book and I was appalled at what I saw," said Council member Lu Ryden. "If it were on different paper, on pulp paper, it would be considered pornography."

"Often pornography is in the eye of the beholder," City Librarian Homer Fletcher told the Council, warning that "if you start on one thing with restrictions you open up the whole thing." Fletcher defended the library's right to choose which materials are included in the collection. "The library's position regarding *Show Me!* is that this book or any item in the library collection has First Amendment protection until such time as ruled otherwise by a court of competent jurisdiction," Fletcher wrote in a memo to Mayor Tom McEnery.

The book was added to the library collection in 1975 and there were no complaints against it until the former library employee began his campaign. Oback walked off his job at a branch library three years ago after refusing to let a pre-teenager check out books he deemed unfit. Then, according to Fletcher, "He started after *Show Me!* In 1982, I wrote him a registered letter saying he was harassing the staff. He photocopied pages of the book and stuck them on poles around the library. He would take the book off the shelves and put it on the children's table, hoping to stir up something. He would flash pages at mothers in the library, hoping to get them to complain."

"I'm in the protest to protect my own children," said Oback. His first goal, he said, is to get *Show Me!* and other "pornographic" books out of libraries. "I'd like it taken entirely out. It's most important not to have adults think the city condones child molestation or child pornography. The step is to bring [library] policy into accordance with community standards."

Although the proposed review won easy approval, changes in library policy will likely face a tougher fight. Council member Jim Beall and McEnery, who voted for the review, said they did so only in an effort to see the matter settled. "I don't want someone bringing in *Ulysses* next week and some other book later," McEnery said. Reported in: San Jose Mercury, August 8, 14.

Fort Lauderdale, Florida

A plumber who said he was acting on a "God-given right" was arrested August 28 after removing three issues of *Playboy* magazine from the Broward County Main Library. Holding a Bible in his right hand, Billy Davison of Fort Lauderdale walked into the library, picked up the magazines and told a librarian he was "taking these out of the library in the name of Jesus Christ of Nazareth."

Police kept one magazine as evidence and returned the others to a library security guard, giving Davison a notice to appear in court on petty larceny charges. But instead of accepting his release, Davison walked back into the library and removed the two returned issues again. He tried unsuccessfully to drop one issue down an elevator shaft before his arrest. He was released on $100 bond.

The arrest was only the latest in a growing controversy over the unrestricted circulation of *Playboy* at the library. In July, a local conservative group, the Alliance for Responsible Growth, mounted a petition drive to force officials to remove the magazine. "Of all the places that a pornographic publication does *not* belong, a public library is certainly one of them," said Frank Wright, executive director of the alliance. By late August the group claimed 3,500 signatures on its removal petition.

On August 2, the pastor of Fort Lauderdale's largest church joined the demand for removal. "Every society believes in censorship," declared Rev. James Kennedy of the Coral Ridge Presbyterian Church. Kennedy said he would ask his 6,600 parishioners to pressure public officials into removing *Playboy* from the library.

"It seems ironic that at the same time I read that Eckerd drug stores has decided to remove *Playboy* and *Penthouse* from its more than 1,000 stores, I read our new public library has purchased a subscription to *Playboy,"* Kennedy said. Warning that the United States is "threatened with a tidal wave of obscenity and

pornography," the minister charged that "the First Amendment has been turned around into a total distortion of the First Amendment and I think it portends evil. The public library disgraces itself."

Kennedy said his church would not itself become involved in the crusade to ban the magazine, but he added that the controversy would probably be mentioned on his Sunday morning television ministry, which he claimed is broadcast over a cable network in 3,300 communities in the U.S. and 22 foreign countries.

Library officials refused to accede to the demands for removal. "We're four-square against censorship," said library director Cecil Beach. "The [Broward County] Commission has adopted the material selection policy, including the Library Bill of Rights, which says it's the responsibility of the library to present works for all segments of the society."

The libary's stand was further tested, however, when a "compromise," by which the magazine would be kept separate from other periodicals and denied circulation to minors, was proposed by Commission Chair Nicki Grossman. "Rather than continue to display the magazine on library shelves, I am suggesting that it be kept in the custody of the librarian," Ms. Grossman wrote in a letter to Rev. Kennedy.

The library declined to accept this proposal. "The library board wrote back to Nicki, thanked her for her suggestions, and said that if you take it off the shelf, that's censorship," Beach told reporters. "It is in fact against the policy of the library to sequester material."

The library won support, however, from Mimi Gewanter, who came to Fort Lauderdale from Rumania, who began a petition drive of her own in support of the magazine. "I am against any kind of censorship disguised under any form," she said. "I come from a Communist country and I know what it is like to be refrained from speaking, reading and thinking. And I think we shouldn't lose those liberties. That's why I came to the United States. You start with *Playboy* and after that 10, 20 percent of the library is gone." Reported in: *Fort Lauderdale News,* July 24, August 3, 22, 25, 29; *Miami News,* July 25.

New Bedford, Massachusetts

The board of trustees of the New Bedford Free Public Library voted unanimously August 28 to turn down an offer by a local resident to donate a year's subscription of *Gay Community News* to the library. Library director Laurence Solomon said only that he believed the library's 36 books on homosexuality were adequate, but two trustees raised vociferous objections to the newspaper because it carried a small advertisement for the North American Man/Boy Love Association (NAMBLA).

Local resident James Lynott, who offered to donate the subscription, the *Gay Community News* and local gay activists charged censorship. Liz Bennet of the New Bedford Women's Center criticized the decision. "We think it's an abridgement of the civil rights, the human rights, of not only gay men and lesbians but of all the people in the city. The people in New Bedford as well as the people in any other city have the intelligence to read something and decide for themselves."

Lynott said he was not surprised by the decision. "They're homophobic," he said. "Basically that's it. That was just a pretext about the advertisement about NAMBLA. Merely to discuss something is not illegal. The organization . . . is a legal organization. We're paving the way to the loss of our individual freedoms."

"If we do this, what do we put next on our shelves? Child pornography? This is what this is advertising, child pornography," said trustee Mary Maciel. "It wasn't the newspaper we objected to, believe me," she continued. "I think we have to draw the line between censorship, which I don't approve of, and good taste in what we put on the shelves of the Free Public Library. I wouldn't put *Penthouse* or *Hustler* on these shelves either." Reported in: *Gay Community News,* September 8.

Walpole, Massachusetts

Declaring that the book should be "put in the archives with pre-1863 books on selling slaves" or "shred[ed]," a Walpole man filed a challenge with the Walpole Public Library against *A Woman's Guide to a Safe Abortion,* by Maria Corsaro and Carole Korzeniowsky. Michael O'Neil told librarian Linda Heller that he was making the issue a "personal crusade." O'Neil charged the book with being "tasteless and disgusting, because it attempts to promote undesirable and antisocial behavior and because its underlying purpose is to keep uninformed women in ignorance."

O'Neil said he objected to the material "because it is inaccurate factually, because it is deliberately misleading and deceitful, and because it's avowed purpose is to promote a behavior—killing unborn babies—which is completely repugnant and in the worst of taste. Constitutional guarantees allowed this book to be published. As long as abortion clinics remain legal they may elect to display this book. By maintaining and displaying this material at public expense, to the public, and in particular to pregnant women who are vulnerable and may be in need of real guidance, the Walpole Public Library is promoting and abetting abortion." Reported by ALA Office for Intellectual Freedom.

Lindenwold, New Jersey

On May 14, the Lindenwold Board of Education voted to restrict the availability of three children's books in the district's elementary school libraries because of "a problem with language," prompting a protest by the New Jersey Library Association. The books are *Blubber* and *It's Not the End of the World,* by Judy Blume, and *(Al)Exandra the Great,* by Constance Greene.

Blubber was removed from the shelves and is available to sixth graders by request. *It's Not the End of the World* is available only to students in grades four through six and *(Al)Exandra the Great* is limited to fifth and sixth graders.

On July 19, the New Jersey Library Association filed a protest with the board, labeling the restrictions violations of the Library Bill of Rights. "Our feeling was they meant well, in a way," said NJLA president Eleanor Brome. "They didn't do it maliciously. But we disapprove of the way it was handled. We wanted to stand up for the children who use the library."

Lindenwold Superintendent of Schools Edward Zirpoli called the protest "a Mickey Mouse action," noting that parents who wanted younger children to read the restricted titles could obtain them by sending a note with the child. "We thought the books had a moral message," he said. "They did have integrity. But there was a problem with the language. The consensus was some of the language might be more suitable for older grade levels. We're not a public library. We as a board of education must be responsive to community input when setting the curriculum."

Zirpoli said the board's action was "not uncommon" in South Jersey school districts. "If you were to go to any of the public schools—and they told you the truth—you'd find this a common practice. It may be they place the books in different locations or put them behind the desk. They don't have to tell anyone they're doing it, they just do it," he said.

"You could call this whole controversy a self-inflicted consequence," Zirpoli added. "No one complained. We did this in an effort to avoid a problem. It sure backfired." Reported in: *Philadelphia Inquirer,* August 19.

Pompton Plains, New Jersey

Mary Conway, school librarian at Pequannock Valley Middle School, thought the controversy over *The Last Mission,* by Harry Mazer, was over. The book had been challenged at the school last spring because of its "language," and the matter went through all the proper channels, up to the Board of Education, before the challenge was denied. But the new school year brought a revival of the dispute when a fundamentalist family brought the issue to the attention of the state Department of Education.

A hearing was set before an administrative law judge for September 26. According to Robin DelGuidice, chair of the New Jersey Library Association Intellectual Freedom Committee, if a decision by the Board of Education does not satisfy a complainant, under New Jersey procedures, the complaint may go before the Department of Education, which then refers it to the section on administrative law under the state commissioner. The administrative law judge makes a recommendation to the commissioner who issues a final opinion or judgment. The hearing is similar to those where an employee claims to have been unjustly fired or reprimanded.

As Yogi Berra once said, "It's never over 'til it's over." Reported by ALA Office for Intellectual Freedom.

Minot, North Dakota

Minot Public School Board member Zoanne Flickinger announced at a board meeting August 30 that she would form a committee to review the books in school libraries. "I am forming a committee," she said. "We will review the libraries and what's in them." Flickinger said she was not accusing individuals, but objected to the humanistic curriculum of some classes. She charged that the curriculum is "godless" and brings no mention of religion into the classroom, thus undermining student morality.

Flickinger's announcement triggered criticism from other board members and school administrators. "I want her to tell me who are the humanists," said Assistant Superintendent Lowell Latimer. "We never have a specific in these discussions. I never get the name of a book on request," Latimer continued. "We've told you people for years that those books are carefully reviewed. Zoanne seems to think it's a new thing."

Flickinger's announcement came as the board closed a discussion on the school's Marriage and Family Living course. In July, the board tabled a motion to approve the textbook *Marriage and Single Life* because of questions about how the book dealt with abortion, sexually transmitted diseases, premarital sex, and contraception. Some board members, including Flickinger, questioned whether the school system should even teach such topics. Eventually, the board voted 4-1 to keep the text and the course.

"What they do is they take a morally neutral position and when you do that you also are teaching a religion," Flickinger said. "You are teaching the religion of humanism, as you've all heard, and what is happening is that the kids then make up their own minds whether it's all right to engage in sexual activities or not."

Flickinger also called for a review of a film, *Family Planning Presentation,* used in the course, against which board member Mike Kelly had previously filed a complaint. The film discusses birth control. "My position is that we have no business teaching birth control in the school system. I had no problems with the film, though," Kelly said. The board voted 3-2 to review the film at its next meeting. The Minot board gained attention in 1982 after it briefly banned *Newsweek* magazine from a social studies class because it was "too liberal" (see *Newsletter,* November 1982, p. 216). Reported in: *Grand Falls Herald,* July 6; *Fargo Forum,* July 6; *Minot Daily News,* August 31.

Sandy, Oregon

The Sandy Union High School Board voted 4-1 July 16 to permanently remove the sex education book, *Changing Bodies, Changing Lives,* from school library shelves. In ruling on the educational suitability of the book, the board decided it should not be available to the general student body, but that it had merit for school counselors to use as a resource. The controversial book had been held in the school curriculum office for two months after a written challenge was filed against it by the Rev. R. Dale Edwards of Sandy Assembly of God Church (see *Newsletter,* July 1984, p. 104; September 1984, p. 138).

School Superintendent Robert K. Hutton said she would meet with the school's librarian, Jan Luelling, to review other books that could take the place of *Changing Bodies, Changing Lives.* "I am going to recommend that we replace it with a more appropriate book in terms of the items expressed in the challenge," Hutton said. Many of the complaints against the censored book stemmed from quoted obscenities and the "graphic nature" of the material, rather than its educational content. Reported in: *Portland Oregonian,* July 17.

Seattle, Washington

An anti-pornography group that had already persuaded several grocery and department store chains to remove adult magazines from sale found a new target in mid-September: the public library. Together Against Pornography, an ad hoc group affiliated with Citizens for Decency Through Law, asked the Seattle and King County public libraries to remove *Playboy* magazine.

"This type of literature, we told them, is linked to crimes and abuse against women," said Andrea Vangor of her group's meeting with the head librarians of the two systems. "The pornographic stereotypes in *Playboy* are the same as in other adult magazines. It's porno that says women like to be raped."

Ron Dubberly, Seattle's head librarian, and Herb Mutschler, director of the King County Public Library system, both said they had no intention of removing *Playboy* from the shelves. "If we took everything off that someone didn't like, we wouldn't have anything left," Mutschler said. "Taken as a whole, the magazine is more than just nude photographs," added Dubberly.

Vangor insisted that the anti-pornography movement in Seattle was not a censorship crusade. But, as of September, her group had persuaded Albertson's groceries, Fred Meyer, Pay 'n' Save and Bartell Drug to stop selling adult magazines. The stores agreed to remove the publications after they were threatened with a boycott and picketing. As for the libraries, Vangor said, "We're not suppressing publication of Hefner's magazine. We just feel it's not necessary to use taxpayer money to propagate his ideas."

At an August 14 press conference organized by the Seattle ACLU, the Washington Library Association issued a statement against the anti-pornography drive. WLA President Anne Haley said: "The basic issue is not whether I like or dislike these magazines, or whether the Washington Library Association as a whole approves or disapproves of them. That is NOT the issue. The issue is whether any individual or group has the right to deny other individuals' access to these magazines by whatever means, including restricting their distribution. In this action, where a minority seeks to impose its standards on the majority, there is an element of coercion which is inherent in the idea of censorship. In debates about values—which is what censorship involves—we insist that the verdict is never in, and that no one has the right to close off debate." Reported in: *Seattle Times,* July 26, August 15; *Seattle Post-Intelligencer,* September 14.

West Milwaukee, Wisconsin

A school board member has requested that the novel *Vision Quest,* by Terry Davis, be removed from the West Milawaukee High School library. Ernest Terrien, vice president of the West Allis-West Milwaukee School Board, made the request after learning of controversy surrounding the book in nearby New Berlin (see page 196).

"It was what I would call imprudent reading for that age group. I have not read the book. I went by what the woman said in New Berlin," Terrien said. He was referring to Susan Della, whose request to remove the book from the New Berlin High School library was denied within days of Terrien's complaint.

West Milwaukee High School librarian Jeanne Procell said she would be part of a review committee including the school principal, three teachers and a media specialist. If the committee recommends retaining the book and Terrien still wants it removed, the matter will be reviewed by a district committee and then, if

necessary, it will go to the school board. If the question reaches the board, Terrien said, "I will read the book on the floor to let people decide if that is the kind of book they want in the school library." Reported in: *Milwaukee Journal,* September 17.

schools

Waukegan, Illinois

Mark Twain's classic, *The Adventures of Huckleberry Finn,* will be removed from the required reading list for Waukegan public school students under an agreement with an alderman who said language in it was offensive to blacks. School officials said they agreed to place *Huck Finn* on the supplemental reading list after an August meeting with Ald. Robert Evans and his supporters. Evans had threatened a lawsuit or a student boycott if the novel was not taken off the required reading list (see *Newsletter,* July 1984, p. 105). Reported in: *Chicago Tribune, August 26.*

Stanford, Kentucky

A three-time "teacher of the year" at Lincoln County High School was threatened with dismissal in July for showing a controversial film on the last day of school. Jackie Fowler, a civics and Latin teacher, was charged with insubordination, immoral character and conduct unbecoming a teacher for showing the movie *Pink Floyd—The Wall* to students May 31 without prior approval from her superiors.

The film, branded "pornographic" by school administrators who recommended that the county school board dismiss Mrs. Fowler, contains nudity and simulated sex. Students claim those scenes were edited out by the teacher and a classmate who had already seen the picture. "I saw no nudity whatsoever," one student testified.

The controversy began when Assistant Principal Mike Candler went to Mrs. Fowler's classroom and "saw nudity—a man and woman who appeared to be performing sex acts—a lot of bloody people being blown apart, a scene where a guy was floating in a pool of blood." Head Principal Jack Portwood seized the videotape of the film after Candler returned to the office and the two administrators arranged to view the film with two district administrators after which the four decided to bring charges before the board.

"I was shocked. It was a rather revolting experience to think that one of our teachers would show something like that," said Superintendent of Schools Joseph Blair. Board members saw part of the film June 14 before agreeing to hold hearings on the case and all said they found little educational value in the rock movie. Most, however, said they could still give the teacher a fair hearing.

Al Brooks, an attorney retained by the Kentucky Education Association to represent Mrs. Fowler, said the movie is defensible for its anti-war, anti-drug message and he stressed that the version seen by the board was not what was shown in the classroom. "There is no indication that she is anything but a good teacher," said Brooks. "This is a one shot thing. They don't have a series of complaints, just this one thing." Mrs. Fowler has taught in Lincoln County for fourteen years. Reported in: *Danville Advocate-Messenger,* July 11.

Baltimore, Maryland

A complaint from a Baptist minister brought a controversy over the popular fantasy game "Dungeons and Dragons" to the Baltimore county school system. On August 9, the county school board approved a memorandum to principals directing them to permit students to play the game only under the supervision of a teacher and only with written permission of the parents of all participants.

The memo summarized the "very mixed reactions" to the game, played by an estimated three million Americans. Enthusiasts claim it "teaches problem-solving," "stimulates outside reading in history and mythology" and "contributes to an active mind for bright, imaginative young people," according to the memo. But some ministers, parents and therapists believe the game "can cause psychological harm," encourage violence or become an obsession. "Some clergymen believe that it teaches an occult form of religion, and because there are no penalties for game characters who display evil conduct, traditional value systems come under attack."

One such clergyman, the Rev. William J. Viel of the First Baptist Church of Essex, prompted the school system study of the game with a letter protesting school sponsorship of Dungeons and Dragons clubs. He was supported by other fundamentalist ministers, including the Rev. Robert T. Woodworth of Christ and Country Church in Satyr Hill, who asked, "Why get involved in pseudo-religion? There's nothing comforting about it. It's all killing, destroying and fighting."

Dr. Cornelius J. Feehley, a psychologist who researched and prepared the district memorandum, found only three county schools with active Dungeons and Dragons groups. Feehley concluded that the problem is not in the game, but in its combination with a "vulnerable personality." "You don't want someone with hemophilia playing football," he said. Reported in: *Baltimore Sun,* Baltimore Sun, August 10.

Halton County, Ontario

The Halton County School Board voted in January to remove a well-known short story anthology from its list of approved books. The anthology, *The Story Makers,* edited by Alberta novelist Rudy Wiebe, a practicing Christian of the Mennonite faith, had been in print and used in schools for fourteen years without complaint.

The controversy began when the Rev. Ken Campbell, the fundamentalist founder of Renaissance International and a county resident, complained about a story in the book used in an English class at Milton District High School. The story was "The Sin of Jesus," by Isaac Babel, Russian Jewish writer of the 1920s.

According to Wiebe, "Babel's story stands in the great tradition of Russian legend where God converses with people all the time, and where angels physically do his bidding. It seems, however, that some Christians consider "The Sin of Jesus" blasphemous because the Lord Jesus appears as a slightly confused comic character who in the end seems to accept that he has made a mistake . . . The ultimate irony is that an ethnic Jew writing in a legally atheistic and oppressive country can understand such an endlessly merciful God, while parents here in 'free' Canada make it a matter of 'Christian' principle that their children not be allowed to read it, or to think such thoughts. Beyond a doubt, this turn of events is enough to make God himself wash us with his tears." Reported in: *Toronto Globe & Mail,* September 11.

student press

Lakewood, Colorado

When Kevin Kemp, a senior at Alameda High School in Lakewood, submitted a letter to the editor of the school newspaper critical of the coaching style of the school's baseball coach, he hardly expected it to result in a censorship dispute. Principal Ron Mitchell threatened to stop distribution of the March issue of the *Paragon* if the letter were published, explaining that he did not want the paper to become an open forum for students to criticize teachers and their policies.

Following Mitchell's decision, reporter Richard Ransome learned that the paper had a legal right to publish the letter. Two staff members then took the letter to the *Rocky Mountain News* and the *Denver Post,* both of which printed it. Mitchell defended his action, however. "The fact that we have the right to say something doesn't mean that it ought to be said," he stated. Reported in: *SPLC Report,* Fall 1984.

Montgomery County, Maryland

The Montgomery county school board has taken steps to censor student publications following the appearance of what some called "poor taste" material in a student yearbook last year. In a 5-1 vote August 7, the board approved new guidelines permitting school officials to stop distribution of student newspapers, yearbooks and magazines if the material "encourages actions that endanger the health and safety of students."

Under the new rules school officials could also halt student publications if material meets "three standards of obscenity" or is libelous. The censorship vote stemmed from publication last spring of mock advertisements about cocaine and beer in the yearbook at Walter Johnson High School in Bethesda (see *Newsletter,* May 1984, p. 88.).

School board member Blair Ewing voted for the new guidelines, but admitted they would be "extraordinarily difficult" to apply. "It's such a morass," he said. "It's not a happy kind of thing when freedom of expression is limited in public schools." Reported in: *Baltimore Sun,* August 9.

rock music

Westport, Connecticut

The new wave band Dangerous Club performed as scheduled at Westport's Levitt Pavilion August 6, but only after a Youth Adult Council official censored two images from the group's slide show. One slide depicted a female band member posed in front of a stone crucifix in a Westport cemetery. The other is the group's calling card, which states, "Is there something that you want to give up? Something big or small; or maybe something like your soul."

After hearing complaints from evangelical Christians that the band was offensive due to satanic inclinations, YAC official Suzanne Lieberstein carefully listened to two tapes and viewed each slide that was to be viewed above the stage. Band leader Keith Amo charged Lieberstein was trying to control the group's artistic expression.

Amo originally denied the satanism charges, but bassist Chip Anderson later claimed to be a member of the California-based Church of Satan. Still, Anderson added, the band emphasized entertainment, not its members' personal beliefs. "We don't believe in devils, we don't believe in gods," he said. "We create our music to satirize the overlap of church and politics. We like to kick a few sacred cows. People have a right to believe anything, but not to dictate others' beliefs."

"Lieberstein's under political pressure to pull the

plug on us," said Amo. "It seems things are getting out of hand. We are very surprised to be censored. This is like the witch trials of Bridgeport, 1984." Reported in: *Bridgeport Post,* August 6, 12; *Bridgeport Telegram,* August 7.

Teaneck, New Jersey

A church concert by a teenage rock band was canceled at the last minute in August when parishoners threatened to picket the performance to protest "satanic" songs with lyrics reflecting "hopelessness, doom and negativism."

Tony Aglione, a member of the band Chainsaw and of the St. Anastasia Roman Catholic Church, said the band had just arrived at the church with the last of their equipment when they were told the show had been canceled. The group offered to replace the objectionable songs with others, he said. "We went home and got all the albums and showed them the lyric sheets," Aglione recounted. "They walked out of the room, like a jury, and then came back and said we couldn't play."

The Rev. Thomas Jordan, who canceled the show, said he enjoyed the band during its first appearance in May but that about 25 parents called to complain about the songs. Reported in: *Philadelphia Inquirer,* August 13.

theatre

Detroit, Michigan

The Catholic Archdiocese of Detroit and a national Catholic civil rights league announced in August that they would try to prevent a scheduled run of the play *Sister Mary Ignatius Explains It All for You* at a suburban Detroit theater. The play, by Christopher Durang, satirically portrays a schoolteaching nun in religious instruction and discussion with her students. It has been branded anti-Catholic by the Catholic League for Religious and Civil Rights and was forced to close in St. Louis after protests (see *Newsletter,* January 1983, p. 12; May 1983, p. 86; March 1984, p. 42).

The play was scheduled by the Birmingham Theatre for its 1984-85 season, although no dates had been chosen when the protest was made. Catholic League officials said they were trying to arrange a meeting with officials of Nederlander Worldwide, which owns the theater, to ask that the production be canceled. Theater manager Charlotte Lally said the objections would be considered. "We never have canceled plays before, but we have never had a request by any organization to do so," she said. Reported in: *Chicago Tribune,* August 22.

art

Orange City, Iowa

An art exhibit scheduled to premier August 31 at Northwestern College was disrupted just days before the opening when college president Friedhelm Radandt ruled that one of the paintings was unfit and ordered it removed. The show, entitled "East Meets West," featured artist Bob Plageman's acrylic renderings of American Indian mythology, alongside Takeshi Hayakawa's view of Japanese culture. The censored painting, called Plageman's finest by many, was a self-portrait. Filled with the images of Indian mythology, the painting included a nude woman wearing a bird-like mask.

Plageman, an Orange City resident, decided that if the painting was unacceptable he would remove all of his work. Hayakawa, a Northwestern graduate, was also outraged. "He doesn't have the right to do this to us but he does have the power," he said. "There is no written policy for the gallery. He was told there had been nude paintings before and he said he didn't know about those. When he called me to order this down he gave no reason at all. He was very rude about it."

A gallery official who requested anonymity said, "Both artists are upset. The instructors are upset. Some of the students are upset. There was nothing diplomatic about this. The only reason he gave us is that the painting is unacceptable." Reported in: *Sioux City Journal,* August 30.

public speaker

Santa Monica, California

Angered by remarks critical of Reagan administration policies by speaker Ralph Nader, the minister of a small church in Santa Monica turned off the microphone and the lights during an early September speech by the consumer advocate. Dr. Philip Nicola, minister of the Unity by the Sea Church, said he cut off the power because Nader had violated an agreement that he would "not bring partisan politics" into the church.

Nader called the brouhaha absurd. "I did say critical things, in all directions," he said. "But critical remarks are not the same as partisan remarks. Partisan is saying 'Vote for Reagan' or 'Vote for Mondale.' I did not say that." Nader said he did attack the administration's record on tax issues, the environment, unemployment and auto safety, but also directed barbs at the Democrats and big corporations. The consumer advocate—never before cut off during a speech—blamed the disruption on "closet Reaganites not wanting to

hear anything critical."

But Nicola said he had "no other choice," since Nader had broken an agreement to limit his remarks to "issues of American life and the American scene" and to avoid partisanry. "Everything was geared to Ronald Reagan being responsible for every ill of the human race," the minister said. "My reaction would have been the same if his remarks were aimed at Walter Mondale. I did not do what I did because of my personal political opinion. I don't see the point in dragging one party or another through the mud." Reported in: *Los Angeles Times,* September 11.

foreign

London, England

The British Broadcasting Corporation will not televise four episodes of the TV series *Star Trek* because they are unsuitable for children. BBC publicity officer Ann Rosenberg said the network received complaints after "Miri," one of the four shows was broadcast on early-evening television. In the show, the crew of the starship Enterprise saves children from a planet where everyone dies on reaching puberty.

The other banned episodes are: "The Empath," in which Capt. Kirk and his officers are tortured by aliens to test the psychic healing powers of a young mute woman; "Whom the Gods Destroy," in which inmates escape from an intergalactic asylum and try to destroy the universe; and "Plato's Stepchildren," in which the Enterprise crew is captured by aliens who have psychic powers.

Gene Roddenberry, the show's creator, said he was not upset by the decision. "The British are sensitive in certain areas and we are, too," he said. "I can't speak for British sensibilities and vice versa. They like the show pretty well. I don't think *Star Trek* left a bad taste in people's mouths. I love diversity. That's what *Star Trek* was about, too—we shouldn't all be the same." Reported in: *Minneapolis Star & Tribune,* July 18.

Oberammergau, Germany

The village that for 350 years has produced the Oberammergau passion play, about the last days of Jesus Christ, decided in early September against revising the script despite charges that some passages are anti-Semitic. Speaking for the Passion Play Committee, Victoria Neumueller told reporters the committee "agreed there is no need to discuss change, especially since the Second Vatican Council and the German Bishops Conference approved the text." The vote came after a delegation sent by the American Jewish Committee visited Oberammergau to propose changes in the script. The group included a representative of the AJC, a Presbyterian minister and a Catholic theologian.

The current play is based on a text written by Father Othmar Weis in 1810 and revised in 1950 by Father Joseph Alois Daisenberger, both of the nearby Benedictine Monastery of Ettal. The script has been criticized for blaming the Jews for the death of Jesus. In 1978, an attempt to introduce a less objectionable script, based on an old text, was rejected after a trial performance. Reported in: *Chicago Tribune,* September 8.

Kuala Lumpur, Malaysia

The New York Philharmonic announced August 10 that it had canceled two concerts in Kuala Lumpur after the orchestra's earlier agreement to a Malaysian government request to replace a work by a Jewish composer on the concert program was denounced by Jewish organizations and government officials.

Malaysia is a predominantly Moslem country. According to Minister of Information Rais Yatim, the Malaysian government has a policy against "screening, portrayal or musical presentation of works of Jewish origin."

The work to which objection was raised was Ernest Bloch's "Schelomo," subtitled "A Hebrew Rhapsody for Cello and Orchestra," originally scheduled for performance September 3. The Philharmonic's original decision to replace the work came after a request was forwarded from the Malaysian Prime Minister's office to officials of Citibank, which was underwriting the tour.

"We deferred to the wishes of the Malaysian government," said Albert K. Webster, managing director of the Philharmonic, "after discussing the request to change the program with representatives of the American Embassy in Kuala Lumpur."

An embassy official said, "They seem to have taken particular offense to the word 'Hebrew' " in the subtitle, since the orchestra's opening program, which included music by George Gershwin, Aaron Copeland and Leonard Bernstein, all American composers of Jewish descent, raised no objection.

Critics of the original decision reacted positively to the cancellation. "It is to the credit of the philharmonic that having erred, it had the courage to reverse itself," said Haskell L. Lazerre of the American Jewish Committee.

But Kenneth Bialkin, national chair of the Anti-Defamation League of B'nai B'rith, expressed concern that orchestra officials had apparently been advised to accede to the request by embassy officials. 'If any

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from the bench

U. S. Supreme Court

On July 3, the Supreme Court struck down one section while maintaining the bulk of a 120-year-old statute which makes it a crime to print or photograph any likeness of U.S. paper currency, regardless of whether there is an intent to defraud or a probability that the reproduction might be passed off as "legal tender." Writing for the court majority, Justice Byron White ruled that a statute which permits the printing or publishing of illustrations of federal currency for "philatelic, numismatic, educational, historical, or newsworthy purposes" was unconstitutional insofar as it discriminated on the basis of content in violation of the First Amendment. However, the court ruled, the requirement that such illustrations be in black and white and less than 3/4 or more than 1-1/2 the size of the original is a reasonable regulation imposed on those wishing to publish photographic reproductions of currency.

The case of *Reagan* v. *Time, Inc.* involved a *Time* magazine graphic where a reproduction of part of a $1 bill that was substantially obscured by a life preserver led to visits from a Treasury Department representative, and a *Sports Illustrated* cover photo of $100 notes pouring into a basketball net prompted threats from federal agents.

Justice William J. Brennan filed an opinion concurring in part and dissenting in part, in which Justice Thurgood Marshall joined; Justice Lewis Powell filed an opinion concurring in part and dissenting in part, in which Justice Harry Blackmun joined; Justice John Paul Stevens filed an opinion concurring in the judgment in part and dissenting in part. Reported in: *West's Federal Case News,* July 20; *SPLC Report,* Fall 1984.

cameras in court

Washington, D.C.

The policy-making arm of the federal judiciary refused September 20 to lift its longstanding ban on photographic and television coverage of federal court proceedings. The decision of the Judicial Council of the United States was a blow to news media organizations, which had hoped that improvements in television technology and widespread experience with such coverage in state courts would persuade the conference to change its policy.

The action came as Cable News Network appealed a District Court decision barring coverage of the libel case involving Gen. William C. Westmoreland and the CBS News program *60 Minutes.*

A committee of the conference, after reviewing coverage of state courts and surveying federal judges and trial lawyers, concluded that federal court coverage would threaten fairness of trials and proceedings and could "produce a distorted impression of the judicial process." A conference report said 78 percent of the 600 active and senior federal judges and 84 percent of the American College of Trial Lawyers surveyed opposed camera coverage. The American Bar Association favors such coverage.

The Judicial Conference—26 judges from the federal circuits—cited other reasons for refusing to lift the ban. "Jurors may be more reluctant to acquit or convict defendants in cases receiving camera notoriety," the study said. "Some witnesses are timid, uneducated and unsophisticated" and "may be inhibited from coming forward and, if called to testify, may be uncomfortable."

It added that in the states, "some lawyers have been motivated to theatrics and posturing, the cameras being viewed as an effective means of advertising . . . Some judges may be susceptible to similar influences."

The report also said that "introduction of cameras into the courtroom risks the transformation of judicial proceedings into media events and jeopardizes the required sense of solemnity, dignity and the search for truth. The dignity of the courtroom is a key part of the chemistry that produces good judicial results." Reported in: *Washington Post,* September 21.

flag burning

Atlanta, Georgia

Application of Georgia's flag desecration statute to a protester who burned the U.S. flag at a demonstration

protesting the policy of the United States towards Iran was unconstitutional, U.S. Circuit Judge Elbert P. Tuttle ruled August 20 in the case of *Monroe* v. *State Court of Fulton County.* The act of burning the flag, Tuttle said, was symbolic speech and did not produce a clear and present danger of a serious substantive evil inasmuch as there was no evidence demonstrating the likelihood and imminence of public unrest. The fact that a single spectator struggled with the protester for control of the flag was not cause to restrict the protester's First Amendment rights. Reported in: *West's Federal Case News,* August 31.

advertising

Chicago, Illinois

A federal judge ruled August 10 that the Chicago Transit Authority acted unconstitutionally when it refused to accept advertisements from Planned Parenthood for its family planning services. Judge Milton I. Shadur of the U.S. District Court ordered the CTA and an advertising agency, Winston Network Inc., to accept advertising for city buses and rapid transit from Planned Parenthood.

Shadur said the CTA's "purported policy of rejecting controversial public issue messages has been selectively applied in an arbitrary, capricious and invidiously discriminatory manner" against ads that relate only to the abortion issue. The CTA "has accepted messages from persons and groups as 'controversial' as Planned Parenthood," the judge concluded, listing categories of ads that he described as "sexually suggestive," and ads for cigarettes and alcohol, fortune tellers, and various political candidates. The CTA provided a public forum when it accepted advertising on its buses and property, Shadur ruled. Its rejection of the Planned Parenthood ads violated the First Amendment since the Authority had not established policy against accepting such advertising.

Planned Parenthood had been trying since early 1983 to advertise on CTA buses and trains and was told at first that it could seek the advertising at a reduced rate as a non-profit organization (see *Newsletter,* September 1984, p. 154). Reported in: *Chicago Tribune,* August 11; *West's Federal Case News,* September 7.

prisoner rights

San Francisco, California

The California Court of Appeals has upheld state regulations allowing limited censorship of the *San Quentin News* and other prison newspapers. Ruling on a lawsuit filed by a former inmate editor of the San Quentin inmate newspaper, the panel said in a 2-1 decision that the rules are in accord with a 1982 state Supreme Court decision because they are aimed at the valid goals of maintaining prison security and giving inmates job training.

The regulations were issued by the State Department of Corrections in the wake of a 1982 decision establishing that inmate newspapers have free speech rights. They allow prison officials to censor articles that are offensive to any race, gender or national group; pornographic; below the "highest journalistic standards"; or irrelevant to prison operations.

"We conclude that the Department of Corrections may exercise control over the newspaper as set forth in the regulations . . . on the grounds that the censorship provides for reasonable security of the institution as well as reasonable protection of the public and serves valid penological objectives," wrote Judge Richard Haugner, an Alameda County Superior Court judge temporarily assigned to the appeals court. Justice Edward Panelli concurred in the opinion. Justice Marc Poche dissented.

Donald Spector, attorney for former *San Quentin News* editor Charles E. Z. Williams, said he will appeal to the state Supreme Court. "We don't think the regulations meet First Amendment standards," he said. "We want to ask the Supreme Court to clarify its previous decision." Reported in: *Oakland Post,* August 15.

privacy

New York, N.Y.

A federal appeals court in September overturned a $10 million verdict against a magazine distributor accused of invading the privacy of a popular author. The strongly worded decision was issued in Manhattan by the U.S. Court of Appeal for the Second Circuit. It dismissed a lawsuit by the author, Jackie Collins, against the distributor, Flynt Distributing Company.

Judge Richard J. Cardamone said the compensatory damages awared by the jury in June 1983 were "grossly excessive" and a result of "appeals to the passion and prejudice of the jury." "No doubt such an enormous verdict chills media First Amendment rights," he wrote. "But a verdict of this size does more than chill an individual defendant's rights, it deep-freezes that particular media defendant permanently."

"Putting aside First Amendment implications of

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is it legal?

broadcasting

Washington, D.C.

The Federal Communications Commission yielded to pressure from Congress August 9 and put off until April its plan to increase the number of television stations that one owner may hold. In July, the commission said it would revise the ownership rule to allow broadcasters to own twelve television stations, twelve AM radio stations and twelve FM radio stations instead of seven of each. It also said it planned to eliminate the ceilings by 1990.

The initial announcement brought a wave of criticism and on August 8, the Senate approved an amendment to a supplemental appropriation bill to block the change. Senate sponsors Warren Rudman (Rep.-N.H.) and Daniel K. Inouye (Dem.-Hawaii) said the amendment was needed because of the dominance of the three major television networks and the danger of media concentration if they were allowed to own more stations directly.

FCC officials had explained that the new policy was justified by an explosive growth both in the number of television stations and in new media outlets like cable TV. "No longer will we single out this particular industry foir straitjacket treatment," said FCC chair Mark Fowler. "I think we'll probably see more high quality programming . . . and more competition with the networks." But critics of the proposal charged that the action could have resulted in a broadcast buying spree among large media conglomerates that would diminish the number of independent voices with access to the airwaves.

Agreement to postpone the decision and reconsider its basis came after a meeting between Fowler and House telecommunications subcommittee chair Timothy E. Wirth (Dem.-Colo.), a commission critic. "The stay means they are going to reconsider a decision that did not take into account rational long-term public policy that balances the need to increase competition in the programming industry while both avoiding excessive concentrations of media control and encouraging minority ownership of broadcasting stations," Wirth said.

Wirth also introduced legislation August 9 to modify the FCC rule to include a measurement of audience reach. His proposal would prohibit broadcastes from owning VHF stations that reach more than 25 percent of the national audience and would not allow combined holdings of UHF and VHF stations to exceed 30 percent. Currently, the stations owned by the major networks reach about 20 percent of the 90 million households in the United States. Reported in: *Washington Post,* July 27, August 10.

freedom of information

Washington, D.C.

The House of Representatives voted September 19 to exempt specific operational files of the Central Intelligence Agency from the Freedom of Information Act, but a broader overhaul of that law was avoided. The House approved the CIA exemption by a 369-36 vote. The Senate previously passed a similar version, and differences remained between the two versions.

The demise of the broader measure was a setback for business seeking additional protection from government disclosure of information they submit to various agencies. The Freedom of Informtion Act requires the government to disclose, on request, information in its files unless the information is specifically exempted from release, as are business trade secrets and classified data.

The change in the act was supported by an unusual coalition including the CIA, the Reagan administration and the ACLU, a frequent CIA critic. Sponsors said the bill wouldn't reduce disclosure, but would cut administrative burdens on the CIA to review requested documents that it routinely withholds. In return, the CIA is committed to maintain its current level of resources devoted to processing FOIA requests. The measure's supporters hoped that would reduce the agency's current backlog of more than two years. Reported in: *Wall Street Journal,* September 20.

cable TV

Salt Lake City, Utah

A virtual crusade to ban "any obscene or indecent material" on cable television was set to go before Utah voters in November. Placement of "Initiative A" on the ballot came after persistent efforts by citizen groups to explicitly define and outlaw such programming. Legislated restrictions at the state and local levels in Utah have been overturned by the courts and yet another version, born as an alternative to the initiative's language, was before a federal judge.

In its definition of "indecent material," the Utah initiative said that it "means a depiction, representation, or verbal description of:

"1) a human sexual or excretory organ or function; or 2) a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing for prurient appeal purposes of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or 3) an ultimate sexual act, normal or perverted, actual or simulated; or 4) masturbation; or 5) flagellation, torture, or other violence indicating a sadomasochistic sexual relationship, which the average person applying contemporary community standards for the television medium finds is presented in a patently offensive way." Reported in: *Variety*, August 29.

film ratings

Hollywood, California

A new language rule sharply limiting permissible profanity in films for unrestricted attendance by minors has been adopted by the Classification and Rating Administration of the Motion Picture Association of America, which administers the film industry's voluntary rating system.

Although specific offending words are not listed, the new rule mandates a PG-13 rating for any feature which includes a "single use of *one* of the harsher sexually derived words." The one offending word will be allowed in a PG-13 film only when used merely as an expletive.

Use of more than one such term will require an automatic R rating. When an offending word is used even once in a sexual context, as opposed to as an expletive, that also will produce an automatic R. Reported in: *Variety*, August 29.

church and state

Memphis, Tennessee

Memphis State University football coach Rey Dempsey made a number of the university's "good friends" unhappy about the fervor with which he mixes religion and coaching, MSU President Thomas Carpenter said September 19. Carpenter's remarks came after the ACLU of West Tennessee decided to pursue a complaint against Dempsey concerning the way he involves his team in religion.

"There are a number of good friends of the university in town who are sensitive to it and not happy with it, and that is a matter of concern to me," Carpenter said. He defined "good friends" as some top financial supporters and community leaders, including both Christians and non-Christians. Carpenter said he had talked to the National Conference of Christians and Jews, the ACLU "and many individuals from the outside who have called to express concern. We have talked with Coach Dempsey about it, and we have his assurance there will be no proselytizing."

Bruce Kramer, legal counsel for the ACLU, said he would try to settle the issue out of court. According to Kramer and Dr. Rodney Grunes, West Tennessee ACLU president, a complaint against Dempsey had come from a person who chose to remain anonymous. They indicated they were still seeking witnesses to events the ACLU considered improper for a coach at a public university.

The coach describes himself as "born again" and makes no secret that he talks about his faith to his team. At Southern Illinois University, where Dempsey coached before coming to Memphis State this year, the coach kept a count of how many players had been born again, but noted, "We aren't that far with our kids here yet."

Dempsey's beliefs, which include "gifts of the spirit" such as speaking in tongues and physical healing, provoked controversy in July at the national conference of the Fellowship of Christian Athletes. Officials of that fundamentalist but nondenominational group were disturbed when Dempsey advocated Pentecostal beliefs, spoke of his power to heal and invited athletes to come forward for healing.

Kramer said Dempsey's remarks and information given to the ACLU indicated a "concerted attempt to have these students saved, and by saved he means accepting Jesus Christ as Lord. . . . That should not be part and parcel of an athletic program at a state school." Reported in: *Memphis Commercial Appeal,* September 20.

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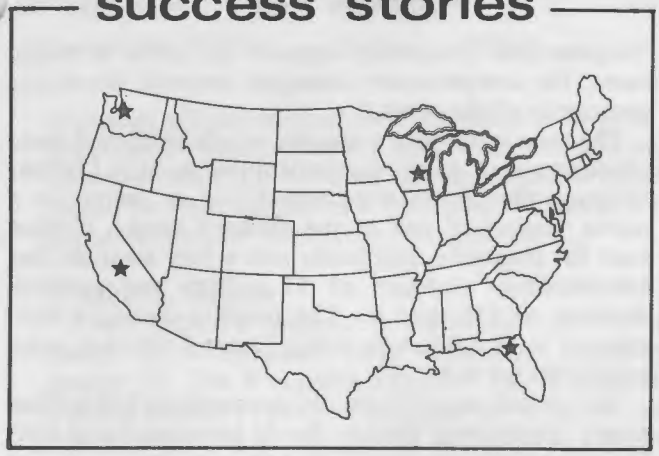
success stories



libraries

Turlock, California

Show Me!, the controversial sex education manual labeled child pornography by a group of Turlock citizens, will remain on Stanislaus County library shelves until lack of demand dictates that it be discarded. That was the decision reached by county supervisors September 18 after an hour of testimony from opponents and defenders of the book.

The supervisors, all of whom said they found the book objectionable, expressed support for county librarian Judy West's right to select materials. Moreover, County Counsel Michael Krausnick told the board that the book does not meet the legal test of obscenity, having withstood court challenges in Oklahoma, Massachusetts, New Hampshire, New York and Canada. The attorney also told the supervisors that state law gives the county librarian sole power to control a public library's collection. Supervisors are not permitted to ask that a specific title be included or excluded.

In the weeks preceding the decision, two organizations, the Turlock Action Committee, which called for the book's removal, and the Defenders of the First Amendment, which opposed the ban, had polarized Turlock opinion. At the meeting those who sought to have the book removed defined the issue as child exploitation and pedophilia, while the First Amendment group stressed the free flow of information.

"We are not here to censor books. We are concerned with one book, *Show Me!*, which contains two pictures which are illegal in the United States. We are speaking for the children," said TAC founder Debbi Avila. "Because we take issue with the county library, we are being labeled book banners and zealots. The library exercises censorship everyday. You can't get *Little Black Sambo* in the library and rightly so," added Eastside Church of Christ pastor Ron Tate.

"I don't want to respond to the horror stories. The issue is the First Amendment," Marilyn Borges countered. Turlock City Council member Tom Howard said, "If the Turlock Action Committee is asking the board of supervisors to remove the book in question from the library it is asking the board to do something it cannot legally do. I wish to make it clear that if the TAC is serious in its stated goal, to keep pornography out of the hands of children, and is willing to work within the law to achieve legal goals, and will stop trying to beat up our librarian, I for one will give them whatever help I can."

The five supervisors all expressed support for librarian West. "First of all, I support Judy West. She's the best librarian we've ever had," said Supervisor Ray Simon. "I trust Judy to do what she feels is appropriate."

"I would suggest this is a lousy book and I wouldn't want my kids to use it as a sex education tool. But I think I control that. I decide what they read," Supervisor Dan Terry commented. "The question is, where do we stop this. I took an oath to defend the Constitution. If I failed to do that, then I'd be devoid of principle and destitute of honor."

Board Chair Rolland Starn made a similar point: "I think the book is trash, but I raised my hand when I became a supervisor to obey the law, and this is not the Starn library, this is the public library." Supervisor Sal Cannella added, "The price we pay in seeking to force our beliefs on others is that someday they may force their beliefs on us." Reported in: *Turlock Journal,* September 19.

Tacoma, Washington

A minister lost his bid July 24 to change a Tacoma Public Library board policy permitting youths with a parent consent card to check out all videocassetes, including R-rated films. The Rev. Steve Jamison of the South Tacoma Assembly of God Church asked the board to modify the consent card to include specific categories that could be checked off by parents. The categories proposed by the minister were based on the MPAA rating system. Under the current library system parents who do not sign the card for all videocassettes must go to the library to check out tapes for their children.

"Your suggestion transfers the enforcement from the parents to the library," library director Kevin Hegarty told Jamison in a heated debate at the board meeting.

"Our card, in the board's view, places the responsibility on the parents. I don't think it's the right place for the library to say what's obscene." He added that a change in the system could bring censorship groups to the library seeking similar consent cards for sensitive books.

Hegarty said that although the library's computer system is designed to check whether a parent has signed a consent card for all movies, extensive staff time and computer software reprogramming would be needed to break down the consent check into specific rating categories. "I wish all things were as simple as the young reverend would have us believe," he said.

"You may give out the materials, but I, as a minister, have to deal with the effects of it," Jamison retorted. Jamison told the board that he would oppose the library's $15.8 million bond issue if the board failed to modify the videocassette checkout system. "I have a number of other ministers in the area behind my position. We will educate the public on the library board's attitude and let them decide."

The board declined to vote on Jamison's proposal. Reported in: *Tacoma News-Tribune,* July 25.

New Berlin, Wisconsin

The controversial novel *Vision Quest,* by Terry Davis, described by a parent as obscene, will remain on the shelf at the New Berlin High School library. Principal Robert Wiese decided that parents who object to the book would be able to prevent their children from checking it out of the library by notifying the school.

Wiese announced his decision September 18 in response to a challenge filed by parent Susan Della. Della filed a request for reconsideration after refusing to return the book to the library for several months (see *Newsletter,* September 1984, p. 139). Della said she objected to references to sex, drugs and homosexuality in the novel.

Wiese said he made his decision after considering the advice of two teachers whom he had asked to review the book. He said he also examined reviews and got input from school librarian Thomas Van Beek. Van Beek previously issued a statement that defended the book and criticized district review policy for allowing no room for appeal by other parents or students. He said the board should permit public input from both sides in book challenges. Van Beek praised Wiese's decision, however, saying it should set a standard for other schools in a similar position. Deputy Superintendent Gordon Hennum said he expected the school board to look into the review policy. Reported in: *Milwaukee Journal,* September 19.

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'megaverdicts' frequently imposed by juries in media cases, the compensatory damages awarded shock the conscience of the court."

The case involved a magazine which published nude photographs of someone misidentified as Miss Collins, although the photos were actually of an actress in a movie version of one of the author's books. Collins sued the magazine distributor and a jury awarded her compensatory damages of $7 million and punitive damages of $33 million. The punitive damages were reduced to $3 million by Judge Henry J. Werker, who conducted the trial.

The appeals court threw out the resulting $10 million award. It also said Werker should have ruled that Collins was a public figure and that the distributor was not liable for damages unless guilty of actual malice. Cardamone wrote the decision with the concurrence of Judge Ellsworth A. Van Graafeiland. Judge Dudley B. Bonsal dissented in part, saying he would have granted Collins a new trial.

According to Judge Cardamone, "Freedom of the press and a free society either prosper together or perish together. Yet, because of its enormous power, the contemporary press is under heavy attack because of a widely held perception that it uses its special First Amendment status as a license to invade individual privacy." He noted that "even vulgar publications" are entitled to First Amendment protection. Reported in: *New York Times,* September 16.

open records

Tallahassee, Florida

In a decision reaffirming the state's open records law, the Florida Supreme Court ruled September 6 that government officials cannot arbitrarily delay the release of public records. The case involved the mayor of Tampa's policy of withholding city personnel files until the employees had been notified that someone had asked for them. He said he was attempting to protect the privacy of police officers and other employees.

Neither Tampa nor any other city can do that, the court ruled. Florida law opens most state, county, and municipal records to the public "at all times," the court said. "This fundamental policy in essence places all government records on the table for open inspection by all. . . . The only delay permitted by the [law] is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt." Reported in: *Miami Herald,* September 7.

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American official advised the Philharmonic to yield to this request—which is not just anti-Israel but really anti-Semitic—then I think it is an outrage, and that official should be reprimanded and dismissed," Bialkin said. Reported in: *New York Times,* August 10, 11.

Windhoek, Namibia

South Africa's censorship authorities ordered the closure of Windhoek's most outspoken newspaper August 15. *The Windhoek Observer* had long been a thorn in the side of the South African government, continually attacking its occupation of Namibia, exposing corruption and defying its puritanical laws by publishing nude pinups (see *Newsletter,* July 1984, p. 126). After months of harassment, the publisher was ordered to deposit a $13,000 non-refundable fee under the Internal Security Act with the Publications Control Board. The newspaper refused, and shortly thereafter, the board declared any future issues of the paper "undesirable."

Up until August 4, eight successive issues of the paper had been banned, which, according to South African law, was ground for permanent prohibition. The paper requested permission to publish until a full appeal could be heard, but that request was denied August 21.

This was the first time South African authorities had closed a Namibian newspaper, and they have done so only rarely in South Africa, most recently in 1976. But the South African press has long been harassed and threatened and many laws restrict what may be published. In recent years, these pressures appeared to be easing, a fact which the Reagan administration cited in support of its policy of "constructive engagement," which Washington says is persuading South Africa to reform. Reported in: *Washington Post,* August 16; *New York Times,* August 22.

Cape Town, South Africa

A book by an American journalist that offers opinions of South African women on apartheid was banned August 31 by the Directorate of Publications in Cape Town. The book is *Cry Amandla!: South African Women and the Question of Power,* by June Goodwin, a former reporter for the *Christian Science Monitor,* National Public Radio and Reuters.

Goodwin said that both she and the book's publisher, Holmes & Meier, learned of the ban through an article in the *Rand Daily Mail.* Without giving a reason, the Directorate declared "it will be an offense to import or distribute" the work. *Cry Amandla!* reports the views of black and white women across the political and social spectrum. In a postscript, Goodwin concluded that "conflict in South Africa is moving inexorably toward revolution." Reported in: *New York Times,* September 19.

(is it legal . . . from page 194)

academic freedom

Concord, New Hampshire

Arguments began in federal court in August in the lawsuit filed by a former economics professor at Keene State College who charged that he had been dismissed because of his political beliefs. Craig V. McDonough, a self-described Marxist, said the college's decision not to renew his contract after three years as an associate professor violated his rights as guaranteed by the First and Fourth Amendments. College officials countered that McDonough was untenured and so they were free to dismiss him. School officials described the professor as an excellent teacher, but one whose derogatory remarks about other faculty members undermined his effectiveness. McDonough sought resinstatement and $1.2 million damages. Reported in: *Keene Sentinel,* August 22.

student rights

Cobb County, Georgia

Deep pink hair may have helped bring stardom to singer Cyndi Lauper, but it doesn't do much to help students in the Cobb County schools. That's what Lory Marques of East Cobb found out August 21 when she reported to Wheeler High School with a colored coiffure, moving the principal to send her back home.

Marques, who wears her hair dyed fuchsia and black and teased into a Mohawk, said "none of the teachers minded and none of the students minded. In the dress code it didn't say anything about hair. In all my classes nobody even paid any attention to me."

But at lunch administrators saw her and called her into the office of principal Roger Russell. "We try to be pretty liberal and not get involved with short hair or long hair, but when they dye it purple or pink and it's sticking straight up in the air, it creates a real problem," he said. Russell did not explain exactly what the problem was, however.

Refusing to accept the request, Marques requested her transcript and went to register at Kenwood High School in Smyrna, a county school for problem students over 16 years old. But she said she would prefer to return to Wheeler.

Other Wheeler students—including one girl who was allowed to attend school with light green hair—thought the ruling was unfair. "It seems kind of fascist to me that they are denying her individualistic right," said Jeff Holbrook. "That's kind of knocking our constitutional rights as people," added Carson Davenport. "It isn't my idea of a fair dress code. Hair isn't indecent—it's a part of your body." Reported in: *Atlanta Constitution,* August 24.

sidewalks

Stamford, Connecticut

If they'd chalked a hopscotch board on the street, they claimed, no one would have cared. But when four members of Greenpeace wrote antinuclear slogans and outlines of human bodies on the sidewalks outside the Ferguson Library and Landmark Square in Stamford, they were arrested.

"As a general matter, the First Amendment protects speech and not action," said Floyd Abrams a New York First Amendment attorney. "As a general matter, writing on a public sidewalk would not be protected. But the state cannot pick out this group for the purpose of prosecution."

That's exactly what George Von York, Sandra Stokey, Kimberly Borden and James Kelly contend happened. "It strikes me that children that chalk hopscotch boards on sidewalks are not arrested, so that's not why we were arrested," Stokey said. "The police said it was the quantity [of the drawings]; I think also political content. That's a personal opinion; I'll find out when I get to court. I guess it's still not socially acceptable in this country to write political slogans on the sidewalk." Reported in: *Stamford Advocate,* August 10, 18; *Greenwich Time,* August 17.

(fairness . . . from page 173)

tionally abridged either by Congress or by the FCC." The First Amendment rights of viewers and listeners clearly supersede the right of radio and television station owners to full editorial control over their assigned frequencies.

In response to those who argue that broadcasters should have absolute editorial control, the U.S. Supreme Court has stated: "There is no sanctuary in the First Amendment for unlimited private censorship operating in a medium not open to all."

Fairness Doctrine Corollaries

Several corollaries related to the Fairness Doctrine have added to open debate and increased access:

- *The Personal Attack Rule* requires broadcasters to provide notice and response time to individuals who are personally attacked on the air.
- *The Equal Opportunity/Equal Time Rules* require broadcasters to give candidates equal opportunity to use their facilities during election seasons.
- *The Political Editorialization Rule* requires broadcasters to provide response time to station editorials endorsing specific candidates.
- *The Zapple Rule* states that if supporters of one candidate are given or sold air-time by a station, supporters of all other qualified candidates for the same office are entitled to claim reply time.
- *The Cullman Doctrine* requires access to the airwaves cannot be contingent upon ability to purchase airtime.

History of the Fairness Doctrine

In 1927, the federal government entered the business of communications regulation in order to prevent frequency interference and to fairly allocate use of a limited, valuable public resource—the airwaves. The Radio Act of 1927 established the Federal Radio Commission (later, the Federal Communications Commission) and articulated the compromise between traditional First Amendment principles (no prior restraint on speech) and the reality of scarcity (a limited—though, today, greater—number of broadcast frequencies exist, in the spectrum). To balance the inherent danger that, through licensing, the government would censor the amount of information available to the public, the "public trustee" concept of regulation—in large part the Fairness Doctrine—was developed. The government would not determine the content of broadcasts, but it would require licensees to air competing views in their communities.

The FCC has, in the past, held the Fairness Doctrine to be of utmost importance, calling it "the single most important requirement of operation in the public interest" and the *"sine qua non* for the grant of a renewal of license."

The broadcast industry challenged the constitutionality of the Fairness Doctrine in 1969, alleging that the rules abridged their First Amendment rights of free speech and press in that the electronic media was subject to restrictions that were not placed on the print media.

The U. S. Supreme Court denied those claims in *Red Lion.*

Broadcasters have been given wide editorial discretion under the Fairness Doctrine to determine which controversial issues in their communities should be covered and how opposing views should be presented. The FCC investigates Fairness Doctrine violations solely in response to citizen complaints; the overwhelming majority of complaints are dismissed outright. Of the 40,000 complaints filed with the Commission between 1979 and 1981, only 86 were referred to the licensee for further information; of those, a mere 18 resulted in findings of Fairness Doctrine violations.

Nevertheless, the broadcast industry has chafed under the "restraints" of the Fairness Doctrine and sought its repeal as inhibitory of their First Amendment editorial freedoms. The proponents of the Fairness Doctrine find encouragement in the symbolic—if not actual—value of the doctrine.

The Freedom of Expression Act

Deregulation of businesses became increasingly popular in the 1970's and has greatly accelerated during the current Administration. In 1981, the FCC ordered a limited deregulation of commercial radio stations. With the appointment of Mark Fowler as chairman of the FCC, deregulation moved ahead at an unprecedented pace. On May 8, 1984, the Commission issued a Notice of Inquiry asking for public comment on whether or not it has legal authority to repeal the Fairness Doctrine on its own motion. The inquiry is designed to "reassess the wisdom of applying general fairness doctrine obligations to broadcast licensees."

Senator Packwood, who failed to gain support for a consititutional amendment guaranteeing—as he characterized it—full First Amendment rights to the electronic media, led a campaign in Congress to remove the legislative basis of the Fairness Doctrine from the Communications Act of 1934. The "Freedom of Expression Act" (S. 1917), introduced by Senator Packwood in 1983, would do away with the Fairness Doctrine the Equal Time rule and the corollary rules governing political editorializing, personal attack and reasonable access for political candidates to the airwaves.

The Freedom of Expresion Foundation, created by Packwood and financed primarily by broadcast and publishing interests, has conducted a massive national campaign to undercut public support for the Fairness Doctrine, the Equal Time rule and the corollary rules constitutionally limits the rights of broadcasters, that the electronic media should receive the same First Amendment protection given to newspapers and the print media, i.e., total control over content.

Many organizations, including the American Library Association, are studying the competing claims and issues surrounding the Fairness Doctrine controversy, but have not yet taken a position. A consortium led by the Telecommunications Research and Action Center (TRAC), a not-for-profit media reform group, has organized The Campaign for Free Speech. The coalition will promote high-level national support for the Fairness Doctrine and its underlying access values.

The American Civil Liberties Union has reached a consensus and has adopted a revised policy which reaffirms the Fairness Doctrine and its corollaries. In part, the policy states:

> The general Fairness Doctrine deserves support because the doctrine seeks to promote two basic First Amendment interests which are rooted in the concept of diversity: (1) increased access for a variety of views in the discussion of controversial issues of public concern, and (2) assurance of the right of the public to receive a maximum of information, opinion and ideas. This goal remains laudable in light of the scarcity which continues in broadcasting, and the lack of access for diverse views.

The ACLU acknowledges that there are an increasing number of broadcast outlets, including cable TV, low-power TV, multi-point distribution service, direct broadcast satellite, and other home viewing options. "The promised rewards of the communications revolution are not yet at hand," however, and the Union believes that, until citizens have access as they do to common carriers, e.g., telephones, the Fairness Doctrine should be applied to all government-licensed communications media.

Conclusion

Despite the proliferation of cable television and the decreasing number of daily newspapers, the total number of print sources (including weekly journals and newspapers, professional newsletters and periodicals, direct mail communications, posters, and handbills) available to citizens far surpasses the number of broadcast outlets. The major difference between print and electronic media is that to communicate your message via a small journal, newsletter or flyer, you need only a typewriter and a printing press or copying machine; to broadcast your message over the public airwaves you need a license—and a potential listener or viewer.

It bears repeating that the U.S. Supreme Court, in considering these issues, delineated two sets of rights in broadcasting which deserve First Amendment protection—those of licensees and those of the public. "It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than countenance monopolization of that market, whether it be by the government itself or a private licensee. It is the right of the viewers and listeners, not the right of broadcasters, which is paramount."

intellectual freedom bibliography

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