newsletter on intellectual freedom

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the Zenger case: 250 years later

At the American Library Association's 1985 Annual Conference in Chicago, the ALA Intellectual Freedom Committee and the Association of American Publishers Freedom to Read Committee co-sponsored a program entitled "Today's Implications of the Trial of John Peter Zenger." The program featured Burton Joseph, prominent First Amendment attorney, chairman of the Playboy Foundation and former trustee of the Freedom to Read Foundation; Heather Florence, general counsel to Bantam Books, Inc., and chair, AAP Freedom to Read Committee; R. Bruce Rich, general counsel to the AAP/FtRC; and Franklyn Haiman, Professor of Communication Studies at Northwestern University. Edited versions of their speeches appear below:

Remarks by Burton Joseph

Burton Joseph, attorney at law, is chairman of the Playboy Foundation and a former trustee of the Freedom to Read Foundation.

To start this off, I wish to put what we're talking about today into an historical perspective. We're celebrating, if that can be the word, the trial and the imprisonment while awaiting trial, of John Peter Zenger 250 years ago in 1735. John Peter Zenger, himself, was practically illiterate. He was a German immigrant to this country, who was caught up in the turbulent days of the colonies in the 1700's. During that period, there was a tyrannical, oppressive rule by the king's governors, and the right of free expression was conditioned upon the concept of seditious libel.

Seditious libel, in certain respects, is the origin of modern libel or defamation law, but it differed in that it was a criminal offense, an offense against the crown. Seditious libel was almost universally recognized as a necessity to maintain stability and order in a society where the governing was done as a result of the divine right of kings, and where anybody who spoke out against the government, truthfully or fallaciously, or made accusations against the government which tended to diminish the authority of the crown, was guilty of a criminal offense. Whether or not what he or she said was true, whether or not what was published in fact created some insurrection or conspiracy, and whether or not it served society's ends, it was an act of seditious libel merely because it undermined authority.

The background of seditious libel, of course, came from the common law of

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in this issue

targets of the censor

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new study charts growth in censorship

A major assault on school curriculum and counseling programs during the 1984-85 school year has produced a dramatic increase in censorship efforts around the country. That is the conclusion of People for the American Way's third annual censorship report, *Attacks on the Freedom to Learn, 1984-85,* released August 15. The report documents 96 censorship incidents in 46 of 50 states and charges that such efforts are better organized than ever before and that the increase over past years is due in part to new federal legislation.

"This year, we are seeing a concerted effort to rid the schools of everything but the three R's," said Barbara Parker, education policy director of the 150,000-member citizens group. She warned that "new censorship data confirm that public education as anything beyond rote memorization of facts has become controversial."

Attacks on the Freedom to Learn asserts that there has been a 66 percent increase in the number of censorship incidents reported in the organization's 1982-83 study, and a 37 percent increase over last year. "Not only were there more censorship incidents reported than in the last two years, but more than forty percent of the incidents resulted in instructional materials being removed or restricted," Parker said.

Although the report mentioned scattered attempts by those on the left wing of the political spectrum to remove books considered "racist," "sexist" or even, in Berkeley, California, "anti-Soviet," the study concluded that almost one-fourth of the incidents were initiated by local organized pressure groups "aligned with the national Far Right censorship network." Less than 12 percent of reported censorship activity was sparked by school personnel and approximately 65 percent was initiated by other sources—legislators, preachers and individual parents. According to the report, "The majority of complaints lodged by this latter group closely parallel objections consistently raised by Far Right censorship groups." Complaints in more than one-fourth of the incidents focused on charges of "secular humanism" or alleged violations of the Hatch Amendment.

Almost half the incidents reported were challenges to public school courses and the curriculum and not to specific textbooks or library materials. "No longer content to remove 'dirty' books from reading lists or 'trash' from library shelves, Far Right censors sought to purge public education of courses, books, instructional materials, and ideas that conflict with their views of the world as well as their brand of religion," the report concluded.

California rejects watered down texts

By a unanimous vote September 13, the California Board of Education rejected every science textbook submitted for use in the state's seventh and eighth grade classrooms next year, charging that publishers "water down" discussions of evolution and other issues to avoid controversy.

The ten-member board rejected about thirty books submitted by a dozen national publishers. It invited publishers of seven books judged best by its science curriculum committee to revise them to include more information on evolution and reproduction. The vote came a day after a board hearing at which some parents and religious fundamentalists contended that the textbooks included too much material on evolution and presented it as fact, not theory. The board action affects an estimated $25 million in annual sales. California accounts for about 11 percent of the U.S. textbook market.

The rejection was praised by state Superintendent of Public Instruction Bill Honig, who called the vote "historic." He predicted other states would follow California's lead. "We are going to establish policy for the rest of this country," Honig said. "We must send a message to the publishing industry that we cannot tiptoe around certain subjects just because they are controversial. The issue here is, are we going to allow publishers to water down texts and draft them politically to avoid controversy? Or are we going to insist on quality standards? This is not just a science issue," he added.

Although treatment of evolution and human reproduction were central issues in the decision, state school officials said the vote was not for evolution and against creation, but a matter of improving how evolution is taught. "We want accurate, up-to-date explanations," said Francie Alexander, director of the state's Office of Curriculum Framework and Textbook Development. "We see no conflict with religion. It is not a hostile position to religion."

Anthony Podesta, president of People for the American Way, called the decision "a major advance for both science education and the separation of church and state. For years, the state of Texas has dragged the publishers in a direction to denigrate science as a result of pressure from fundamentalist religious groups and I think that what is going on here in California is tugging back in the other direction." Reported in: *Los Angeles Times,* September 13, 14; *New York Times,* September 15; *Washington Post,* September 15; *Newsweek,* September 30.

AAParagraphs

Cleanth Brooks: 'government makes a poor censor'

When the Association of American Publishers (AAP) first learned of the efforts of three Republican congressmen from Texas to freeze funding levels over the next four years for the National Endowment for the Arts (NEA) and the National Endowment for the Humanities (NEH), it was predictably interested. But when AAP discovered that these same congressmen also were disturbed about—and wanted to curb—NEA funding for so-called "smut poets," in effect, to control what projects NEA could or could not support, AAP had no choice but to get involved.

AAP therefore invited Cleanth Brooks, the distinguished poet and literary critic, to testify under AAP auspices before the House Subcommittees on Select Education and Post-Secondary Education on September 10. These subcommittees, part of the House Committee on Education and Labor and chaired by Rep. Pat Williams (D-Mont.), that day addressed the problem of whether government should have a say in what kind of poetry and literary expression are produced with NEA funds. Other participants included Frank Hodsoll, the Chairman of NEA, and Representatives Dick Armey, Steve Bartlett, and Tom DeLay, the three Texas Republican critics of the endowment.

Setting the new budgets was the easy part. Authorization levels for 1986 were set at $168 million for NEA and $139.8 million for NEH. Hodsoll, a Reagan appointee, confirmed this effort in his testimony, saying, "*All* federal programs must be constrained in the years ahead until this deficit comes down. This is nothing less than a matter national survival—for the arts and humanities and for all Americans."

On the other hand, deciding the question of whether federal monies should be used to award grants to poets whose works are perceived to be obscene by some members of Congress was not so easy. In his testimony, DeLay also accused NEA of "cronyism" and a lack of follow-up and accountability of grants and grantees. After charging that the NEA seemed fond of "giving out money and not making an effort to see what their money bought," DeLay recommended that the authorizing legislation include a new provision directing the panelists to have a final financial report with a dollar-by-dollar breakdown of precisely what the money was spent for.

Hodsoll denied these charges in his testimony, citing his belief that the legislative authority for the Arts and Humanities Endowments has worked well over the past twenty years, and describing new initiatives by NEA in the areas of dance touring, children's educational television, and a community foundation project which supports community and expansion arts organizations.

He also defended the many and varied activities of the Endowment, citing the fact that arts audiences and agencies are on the rise, as is support from the private sector. Hodsoll pointed out that 40% of the panelists in fiscal year 1985 had never served on an Endowment panel and that 90% had served only three years or less. He also elaborated on the Endowment's ongoing institutional review, in which it conducts over 4,000 site visits a year to assure that the panels are receiving current information on the artistic quality of the projects involved.

Hodsoll underscored the importance of encouraging a free and open atmosphere for thought, inquiry, and expression—one that is suitable for a democratic society such as ours, free from government interference and censorship. He closed by asking which danger is greater: running the risk of someone speaking "offensively" (to some), or running the risk of ultimate censorship of freedom of expression and the tyranny that would inevitably ensue.

On this point, Cleanth Brooks, Gray Professor Emeritus of Rhetoric at Yale, supported the notion that government makes a poor censor, saying rather, "A properly educated public should be able to act as their own censors." Brooks acknowledged that he is no lover of pornography, which he says, distorts the human dimension by manipulating powerful human urges and traits. But, he argued, true art is a purveyor of all that is good and evil in humanity and one should not take particular words or phrases out of context. Rather, what is the entire work trying to say?

"I think censorship on the whole is a very clumsy way of dealing with an important problem," Brooks said. "Who is going to be the censor, and is the cure worse than the disease?"

After the controversial clause regarding offensiveness was dropped, Williams approved the amendment that set the 1986 authorization levels for the Endowments. In the spirit of the First Amendment, Williams said, "The difficulty is deciding what is or is not offensive," adding that any NEA reviewer should not attempt to define pornography and set his own standards for the Endowment when even the U.S. Supreme Court has been unable to do so.

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

ALA defends the arts and humanities

The American Library Association (ALA) also submitted testimony before the House Subcommittees on Select Education and Post-Secondary Education.

According to ALA's written statement, the controversy surrounding the funding levels for NEA and NEH may be focusing on "smut" or obscenity, but the underlying issue really is "censorship and the attempts by some to use subsidy discrimination to suppress competing views and limit First Amendment freedoms."

In citing the library profession's dedication to the concept of "intellectual freedom," the association reminded the subcommittees that the American form of government—a constitutional republic—"requires that citizens be able to take part in the formation of public opinion by engaging in vigorous and wide-ranging debate on all issues and concerns. This includes a minority of people whose message is found offensive by the majority."

The ALA called censorship a "basic rejection of democracy" and cautioned the group that "offensiveness cannot—by its very nature of subjectivity—be the standard by which literature or images should be available. Today it legitimizes the suppression of explicit sexual material—but it wasn't always that in the past and it won't always be that in the future; it will be something else—whatever society at a given time finds 'offensive.' . . . Democracy assumes that individuals are capable of selecting . . . from among the myriad religious, social, political and other ideas. Anything less is a rejection of the most basic assumption in our society—that citizens are capable of making decisions for themselves."

In addition to the statement filed by ALA, Eileen D. Cooke, Director of the ALA Washington Office, sent a letter to each senator and Congressman "expressing our concern over efforts to introduce an amendment to H.R. 3248, the Arts, Humanities, and Museums Amendments of 1985, which would impose a content standard on the types of projects that could be funded by the National Endowment for the Arts. An amendment to prevent this federal agency from supporting projects of a 'patently offensive' nature would surely lead to censorship of the content of federally-encouraged art and literature, and as such, is opposed by ALA."

'porn rock' issue aired in Senate

The growing campaign to label rock records and videos with sexually explicit and violent lyrics came to Capitol Hill September 19 as the Parents' Music Resource Center (PMRC), headed by Tipper Gore, wife of Sen. Albert Gore (Dem.-Tennessee) and Susan Baker, wife of Treasury Secretary James Baker, testified before the Senate Commerce Committee in favor of voluntary regulation by the record industry. The two women and their group have been in the forefront of recent efforts to initiate a rating system for records (see *Newsletter,* July 1985, p. 138; September 1985, p. 183).

The two were joined by avant-garde rocker Frank Zappa; Dee Snyder, outlandish lead singer for Twisted Sister, a popular heavy metal band; and country pop singer John Denver, all of whom opposed labeling as censorship. According to Zappa, the current fervor to regulate rock music is "an ill-conceived piece of nonsense which fails to deliver any benefits to children. Ladies, please be advised," he continued, "the $8.98 purchase price [of a record album] does not entitle you to a kiss on the foot from the composer or performer in exchange for a spin on the family Victrola."

In an interview with the entertainment weekly *Variety,* Zappa called the Senate hearings "a kangaroo court." Noting that Tipper Gore's husband was a member of the committee and that several other wives of committee members had signed letters supporting PMRC, Zappa asked, "How can anybody pretend to have a 'fact-finding' hearing by a committee whose members are married to the women who started PMRC? Did these women put the Constitution in a paper shredder at one of their Tupperware parties?"

"I am opposed to censorship of any kind," said Denver. "A self-appointed watchdog of public morals will not be tolerated by the public in our free society. That which is denied is most desired. Consequently, a great deal of time is spent trying to get what is being kept from you." Snyder, who has a three-year-old son, said, "It is my job as a parent to monitor what my children watch and hear. There is no substitute for parental guidance."

The senators seemed more receptive to Gore's and Baker's pro-labeling message, however. Sen. Ernest F. Hollings (Dem.-South Carolina) called much of the popular music catering to teenagers "outrageous filth." Sen. Slade Gorton (Rep.-Washington) called Zappa's testimony "boorish, incredibly insensitive [and] insulting." Sen. John Danforth (Rep.-Missouri) insisted the hearings were a "forum" to "air" the issue and that there was "zero, no chance of legislation." Then, queried Sen. J. James Exon (Dem.-Nebraska), "what is

the reason for these hearings? Sometimes I wonder why these media events are scheduled."

Two days earlier, Mrs. Gore brought her campaign against sexy and violent lyrics to the National Association of Radio Broadcasters/National Association of Broadcasters convention. "The material is far worse than you realize," she told the broadcasters, "and represents a new trend in explicitness in sexuality and violence in music." According to *Variety*, however, Gore was "visibly shaken as one member after another on the discussion panel rebuked and repudiated her theses on a point-by-point basis."

The rebuttal to the PMRC was led by Stan Gortikov, president of the Recording Industry Association of America, who had been engaged in largely futile discussions with PMRC for several months. "I must now say to the PMRC," he said, "that I am getting a little apprehensive about your motives. Recording companies have met your core concern. Yet, you tell us that's not good enough, without even waiting to see how the program operates. You want more. You said you do not want 'censorship.' I trusted you on that pledge. But I am increasingly uncertain.

"You now seem committed to impose your will on an entire creative community and on broadcasters, on record retailers, and thus on all who buy or hear recorded music. You seek to revamp structural patterns of an industry, to hold our feet to the fire. As you expand your action and your themes, your medium is becoming more vital than your message. I appeal to you by saying 'Enough, already'."

Mrs. Gore told the senators that, as a result of her meetings with record industry officials, her group now proposes "one generic warning label to inform consumers in the marketplace about lyric content" rather than a tiered rating system similar to the one used by the movie industry which they originally advocated.

Shortly before the Senate hearing, Frank Zappa issued an appeal to President Reagan. In a letter to the president, Zappa wrote, "Assuming, for argument's sake, that the basic premise of the PMRC's effort is to shield people in a certain age bracket from exposure to various forms of *undesirable information,* the proposition is grossly inequitable since it singles out Rock music as the villain. Country music contains references to sex, violence, alcohol and the devil, yet the PMRC is not requesting a warning label on *these* records. Could it be that a certain Senatorial husband from Tennessee has concocted this issue as an affirmative action program to benefit the suffering multitudes in Nashville?

"Mr. President, if you are not serious about getting government off our backs, could you at least do something about getting it out of our nostrils? There seems to be a lethal cloud of brimstone and mildewed bunting rising from the Senate floor." Reported in: *Variety,* September 18; *Chicago Sun-Times,* September 20; *Washington Times,* September 20; *Kingsport Times,* September 18.

church group seeks film violence limits

Widespread and increasing violence in movies, videos and broadcast and cable television threatens the quality of American life and requires renewed federal regulation and greater voluntary restraints, a report by the National Council of Churches concluded September 20.

After three years of research and hearings, the council's Communications Commission concluded that competitive economic forces "drive actors, writers, directors and producers to create gratuitous sex and violence" and that violence in the media, especially sexual violence, "leads to aggressive behavior by children, teenagers and adults who watch the programs."

The council has 31 member churches, including most of the nation's mainline Protestant and Orthodox denominations. The Communications Commission includes members from the United Methodist Church, the Presbyterian Church, the Lutheran Council and the United Church of Christ. The council has taken a generally liberal stand on social issues, but several of its member churches have been critics of the broadcasting industry.

Renewed federal regulation of broadcasting "is essential . . . to place all competitors on an equal basis," the report said. The document called on the Federal Communications Commission to require broadcasters to apply to their programs the rating system used for movies. The panel said the FCC should also be required to make annual reports on the amount of violence in programming and study the effects of violence on viewers.

Movie ratings should be expanded, the commission concluded, to include brief descriptions, such as "brief frontal nudity," "strong sexual language," "strong graphic violence," etc. The report adds that cable television should also be required to adopt the movie rating system, to make a channel lockout feature available to all subscribers and to place R and X-rated features on separate channels. The panel said adult-oriented videocassettes should not be displayed in store fronts and should not be sold or rented to those under age 17.

Commission members emphasized that their proposals were meant to deal with problems in the entertainment media without threatening constitutional freedoms. Rev. James M. Wall, panel chair and editor of *Christian Century*, said the commission opposed

such measures as boycotts which have been promoted by some religious groups.

"We think boycotts have very limited value, and we don't think the federal government should pass censorship laws," Rev. Wall said. "But these are serious problems, of such magnitude that unless the media stop hiding behind the issues, they will exploit themselves into a very censorial condition."

George Schweitzer of CBS called the report "disappointing . . . frightening . . . [and] blatantly repressive." He added that "it would turn the FCC into a mechanism for direct governmental review of the editorial process with powers far beyond its existing mandate and with unforseeable consequences to some of our more cherished traditions." Reported in: *Boston Globe,* September 21.

British journalists strike BBC to protest cancellation of documentary

At 1300 Greenwich Mean Time August 7, an announcer on the British Broadcasting Company's domestic and world service informed listeners that the network's widely respected news broadcasts would not be heard for the next 24 hours because of a protest strike by broadcast journalists. "We apologize," said the announcer. "And now, more from the soundtrack of *Indiana Jones and the Temple of Doom.*"

The strike was in protest against a July 30 decision by the board of governors of the BBC to abide by a government request to cancel a documentary presentation on Northern Ireland. The administration of Prime Minister Margaret Thatcher said the program, which included an interview with a man reputed to be chief of staff of the outlawed Irish Republican Army, was "against the national interest." Several weeks earlier, Mrs. Thatcher had told reporters, "We must try to find a way to starve the terrorist and the hijacker of the oxygen of publicity."

In requesting cancellation of the program, Home Secretary Leon Brittan said he had "conveyed to the BBC in the strongest terms that . . . the program appeared to be giving succor to terrorist organizations by the opportunity for public advocacy of terrorist methods by the prominent member of the IRA . . . It is contrary to the national interest that a program of the kind apparently envisaged should be broadcast." Brittan said he did "not wish to exercise powers of censorship" but left open the possibility that he would use authority to do so granted to him in the license of the state-owned broadcast corporation. Brittan acknowledged he had not seen the program but was relying on "press reports" of its contents.

The government-appointed board of governors overrode approval of the program by BBC management, saying it would be "unwise" for it to be "transmitted in its present form." While claiming that the government had not influenced its decision, the board called for "further discussions" with Brittan. BBC head Stuart Young said in a televised interview that the program "is not going to be transmitted because the climate is not right . . . and that is vital, and that's what the decision was all about."

Both the government's request and the board's acquiescence were unprecedented in the more than fifty year history of the BBC. The government's power to stop a BBC broadcast has never been used, and the corporation has prided itself on its independence.

The striking broadcast journalists shut down nearly all radio and television news in Britain and on the BBC External Service for 24 hours. All 2,000 members of the National Union of Journalists took part in the strike, and only five of Britain's twenty independent stations ran a news broadcast. Of the country's 48 independent radio stations, 45 were affected.

At issue, said striking journalists, was the integrity of the BBC. "We wanted to highlight the whole problem of press censorship and the climate in which journalists are being asked to work in this country," said Vincent Hanna, who represents BBC broadcast journalists at the National Union.

Shortly before the strike ended, BBC Director General Alasdair Milne said the documentary would be shown, but with "some amendment so that it can be transmitted." Reported in: *Washington Post,* July 30, 31; *New York Times* August 8; *Newsday,* August 8; *Philadelphia Inquirer,* August 11.

less access to less information by and about the U.S. government: a 1985 chronology

The following article was prepared by, and has been reprinted with the permission of, the American Library Association Washington Office.

What was first seen as an emerging trend in April 1981 when the American Library Association Washington Office first started this chronology, has by June 1985 become a continuing pattern of the federal government to restrict government publications and information dissemination activities. A policy has emerged which is less than sympathetic to the principles of freedom of access to information as librarians advocate them. A combination of specific policy decisions, the current Administration's interpretations and implementations of the 1980 Paperwork Reduction Act (PL 96-511), implementation of the Grace Commission recommendations and agency budget cuts significantly limit access to public documents and statistics.

The accelerating tendency of federal agencies to use computer and telecommunications technologies for data collection, storage, retireval and dissemination has major implications for public access. To identify a few: contractual arrangements with commercial firms to disseminate information collected at taxpayer expense, increased user charges for government information, the trend toward having increasing amounts of government information available in electronic format only and eliminating the printed version. While automation clearly offers promises of savings, will public access to government information be further restricted for people who cannot afford computers or cannot pay for computer time?

ALA reaffirmed its long standing conviction that open government is vital to a democracy in a resolution passed by Council in January 1984 which stated that "there should be equal and ready access to data collected, compiled, produced, and published in any format by the government of the United States." In his inaugural speech, ALA President E. J. Josey asserted: "Again, nobody would deny the utility of many of these services provided by the private sector, but [they] are not available to all of the American people; their purpose is to yield a profit, and they are designed only for those who can pay for them. Nor do they have any obligation to provide access to all or any information; only that information which the suppliers deem profitable or potentially so. Only the preservation of *public* services, publicly supported, can assure that each individual has equal and ready access to information, . . ."

At its Midwinter Meeting in January 1985, ALA Council established an Ad Hoc Committee to Form a Coalition on Government Information. The Committee is in process of organizing a coalition of concerned organizations which could encourage executive and legislative branch policies and activities which assure that information needs of citizens are not restricted.

With access to information a major ALA priority, members should be concerned about the following series of actions which create a climate in which government information activities are suspect. Four previous chronologies on the same topic were compiled in an ALA Washington Office publication "Less Access to Less Information By and About the U.S. Government, A 1981-1984 Chronology: April 1981—December 1984."

January—President Reagan issued Executive Order 12498 which could expand greatly the authority of the Office of Management and Budget (OMB) to control government policy-making. The order will allow it to screen other agencies' regulatory proposals before the rules are drafted formally or announced publicly. The Executive Order does not apply to independent agencies and also exempts regulations that must face tight judicial or statutory deadlines. (*Washington Post,* January 5) (See January 4 *Federal Register,* pp. 1036-1037 for the text of the Executive Order)

January—A 32-page report "Federal Restrictions on the Free Flow of Academic Information and Ideas," prepared by John Shattuck, a vice-president at Harvard University, was reprinted in the January 9 *The Chronicle of Higher Education.* This report has additional examples of restrictions of access to government information.

February—The 1985 edition of *The Car Book* rates cars based on crash test performance, fuel economy, preventative maintenance, repair, and insurance costs. Originally published in 1980 by the Department of Transportation, it quickly became the government's most popular publication with 2 million copies requested. But the Reagan Administration discontinued the book. It is now available from its private publisher for $8.95. (*Washington Post*, February 4)

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censorship dateline

libraries

Douglas, Arizona

Acting on three written complaints from patrons, the Douglas Library Board held a public hearing September 3 on whether to remove from its shelves *The Advocate,* a magazine published for homosexuals. The magazine is donated to the library. A recent issue had been defaced by a patron.

James Pitts, pastor of Bible Baptist Church, told the nine-member board that the magazine "advocates homosexuality and perversion," and expressed concern that it was available to children. Pitts told the board he "believes in censorship, properly," and warned that "in the future I will be aware of what goes on the library shelves."

J. Christopher Robin Reed spoke in favor of retaining *The Advocate.* "The result of censorship is always an unhealthy abridgment of thought and personal freedom," he said. "Censors are trying to decide what you and I can or cannot read at the library."

Homosexuals "are entitled to the use of public facilities just as are other members of our society," added Floyd Nietert, who noted that the magazine is offered in several Arizona libraries. City librarian Kay Gillette said the library exists for "all issues, and all sides of issues." She added that parents are responsible for controlling what their children read, and that "the library staff is not there as censors." Reported in: *Douglas Dispatch,* September 4.

Gwinnett County, Georgia

The Gwinnett County School Board voted 4-1 August 27 to ban the book *Deenie,* by Judy Blume, from district elementary school libraries. The vote came after a two-hour debate between parents on both sides of the issue.

The controversy began after Theresa Wilson, whose nine-year-old daughter is a student at Beaver Ridge Elementary School, complained that the book was obscene. A seven-member media committee voted unanimously in June to remove the book from the Beaver Ridge library as "inappropriate" (see *Newsletter,* September 1985, p. 151). Mrs. Wilson then called on the school system to ban the book from all school libraries at all levels. A special review committee composed of seven parents and six librarians and school officials, however, voted 11-1-1 August 7 against that proposal.

Mrs. Wilson and others then began a petition campaign against the book, winning support from some 800 county residents. The media committee decision was appealed to the school board, which first rejected a proposal to establish a "restricted" shelf where *Deenie* and other controversial material could be placed, before deciding to order the book removed from elementary school libraries only.

Mrs. Wilson expressed satisfaction. "I think we have gone as far as we can go," she said. "To me it's pornography. You don't have to read the whole book. Trash is trash, doesn't matter what else is in the book."

Schools Superintendent Alton Crews said he was "concerned about the possibility of banning a book because one group has an opposition," but believed the board's "compromise decision" was appropriate. "I think our system worked well," he said.

"This is not a book-banning issue, this is a parents' control issue," added school board member Bob Wood. "We have to do what parents want." Gwinnett Board of education member Stan Jones was the sole vote in favor of *Deenie.* Reported in: *Gwinnett Daily News,* August 8, 28; *Atlanta Constitution,* August 8, 28.

Portland, Maine

The May issue of *Our Paper* of Maine, a gay publication, was banned from the free literature section of the Portland Public Library because a patron found a safe sex chart in its pages to be "objectionable material." The library's director concurred, declaring that he thought the chart was "outright pornography" and "an abuse of freedom of expression."

The collective which produces *Our Paper* warned the library it was prepared to file a lawsuit if the temporary ban became permanent. The Board of Trustees of the library unanimously defended the removal of the May issue from the free literature table, but said the paper

would occupy its usual place in the future. Reported in: *Gay Community News* (Boston), August 3.

schools

West Allis, Wisconsin

A psychology textbook recommended by a faculty selection committee and used throughout Wisconsin and in several other states was rejected in a 6-2 vote August 19 by the West Allis-West Milwaukee School Board. Board member Alfred Szews, chair of the Curriculum, Instruction and Program Committee, said *Understanding Psychology* took a point of view and went beyond presentation of scientific fact. As a whole, he said, the book does not support traditional family values. For example, he said, "Whenever intercourse is discussed, it is not with regard to spouses, it is with regard to partners."

During an open discussion period, seven people urged the board to use the textbook, and one was critical of it. Marge Menzel said she was concerned about the board's general attitude toward books and films on sensitive matters. "I am becoming alarmed at something I believe is brewing in the wind," she told the board. "I have the feeling that this School Board is putting [itself] in the role of censor."

Last summer, when the board was reviewing new textbooks, vice president Ernest Terrien and some others objected to a text for middle school students, *Focus on Life Science,* as "too intense in the theory of evolution." That book was approved on a 5-4 vote. Terrien also suggested that students who watch a film on sex education should also see a slide show advocating chastity. Reported in: *Milwaukee Journal,* August 6, 20.

colleges and universities

Minneapolis, Minnesota

A week-long Marxist Summer Institute held at the University of Minnesota attracted a picket line August 24, as protesters demanded its cancellation by the university.

Protest organizer Phil Ratte said it is unseemly for a political group to use tax-supported facilities to meet. He said the country's "archenemies" especially should not have such a privilege. Ratte, a consulting engineer who has sought political office as both Republican and Democrat, wrote a protest letter to University President Kenneth Keller a week before the protest but said he received no response.

V. Rama Murthy, acting vice president for academic affairs, said "absolutely no university funds" were being spent on the event. If a registered student organization is one of the sponsoring groups, he explained, university policy permits such meetings. The university's Marxist Club is a sponsor. "As long as they're not doing illegal things," he said, "we will allow any kind of open intellectual pursuit." Reported in: *Minneapolis Star & Tribune,* August 24.

Hanover, New Hampshire

The refusal of the *Dartmouth Alumni Magazine* to publish a letter sharply critical of a trustee's business dealings has embroiled the magazine in a dispute over its role as a forum for alumni opinion. The episode comes three years after the previous editor was forced out by Dartmouth president David T. McGlaughlin and, in the view of some faculty, reflects continuing campus tension over the president's probusiness views and policies.

Late last year, Howard D. Samuel, president of the Industrial Union Department of the AFL-CIO and a 1946 Dartmouth graduate, submitted to the magazine a letter concerning a strike against the Phelps Dodge Corporation's mines in Arizona. The company is headed by a Dartmouth trustee, George Munroe.

"There is little question," the letter said, "that the company's intention . . . was to force out its union workers, regardless of the human suffering." After noting Munroe's "considerate and caring service" to Dartmouth, Samuel criticized the trustee's "Jekyll and Hyde behavior" and asserted that "the resources Mr. Munroe . . . contributes to Dartmouth come out of the hides of exploited workers." The letter called for Munroe's resignation from the Dartmouth board.

Douglas Greenwood, editor of the magazine, said he didn't run the letter because it was "a polemical sort of piece" and too inflammatory." "I didn't think it had anything to do with Dartmouth," he said.

Samuel called the decision censorship and Greenwood's reasons "absurd" and "idiotic," and accused the editor of breaking a long-standing tradition of publishing all alumni letters. He noted that originally Greenwood claimed the refusal to publish came about because the letter had appeared earlier in another Dartmouth-related publication, although this was not true.

"I think it's being censored because McGlaughlin feels it is an attack on him," Samuel added. He said the president and Munroe are "close friends," and that McGlaughlin fired the previous editor, Dennis Dinan, "because Dinan refused to be under the control of the administration."

Some faculty members agreed. "I certainly don't know whether censorship was involved, but the alumni magazine prints things far more heated than Samuel's

letter," said Fred Berthold, a religion professor for 35 years who has been a critic of McGlaughlin's administration. Last May, the faculty voted 167-2 to investigate governance at Dartmouth. Reported in: *Boston Globe,* August 23.

student press

Detroit, Michigan

The editor of Wayne State University's student newspaper banned military recruitment ads from the paper and after the school's publications board told her to drop the ban, she told the board to forget it. Editor Patricia Maceroni said the controversy began last summer when she and her staff at the *South End* became concerned about U.S. policy in Central America. They knew banning the ads would cost the paper $4,000, so they got a $3,700 grant from the student council and set up a benefit to raise the other $300.

On September 3, Maceroni announced the policy in an editorial. "If, by refusing to publish recruitment schedules, we save one person from being the few, the proud, the dead, the campaign will be worth it," she wrote. Nine days later the Student Newspaper Publications Board, which is officially the paper's publisher, gave Maceroni five days to retract the ban. They said their main objection was procedural, but Maceroni refused. Reported in: *Detroit Free Press,* September 18.

periodicals

Rockford, Illinois

The August 1 arrest of a Stop-n-Go convenience store clerk in Rockford for selling an adult magazine named *Swank* led employees at the Stop-n-Go store in neighboring Freeport to remove all adult magazines from sale and display August 5. Other local store owners said they were contacting officials to find out if obscenity arrests were planned.

Reportedly, the Rockford arrest of clerk Derek Wenger on obscenity charges was initiated by Winnebago County State's Attorney Daniel Doyle, who responded to complaints from Northern Illinois Citizens for Decency Through Law. An attorney for Wenger said the decision to remove the magazines in Freeport was made by store officials in Madison, Wisconsin. All Stop-n-Go stores "in counties adjacent to Winnebago" were affected by the decision, he said. Reported in: *Freeport Journal-Standard,* August 6.

Milton, Massachusetts

The town of Milton wants to stop a mother of two from publishing an erotic magazine for women from her posh home. The woman calls it censorship and vowed to keep on publishing.

Milton officials contend Brenda Lowe Tatelbaum is violating a town bylaw making it illegal to run a business from a home. "Under the constitution she can publish whatever she wants," selectman Walter Timilty said. "But I don't want her doing it in our town. I don't like the content of the magazine and I don't like her operating a business out of her house. It's smut."

For a year-and-a-half, Tatelbaum has published *Eidos,* a quarterly erotic magazine for women, from a basement office in her home. "I'll fight to see it survive," she said. "I'm not going to lose it because some guy thinks it doesn't fit into his profile of what the town should be."

Tatelbaum said her business was being unfairly singled out because of the content of her publication. "I can name six other mothers with children who work out of their homes, who have picture framing businesses, interior decorating businesses, consulting businesses," she said. "You can't pick on me and not on anyone else." Reported in: *Quincy Patriot-Ledger,* August 9.

Racine, Wisconsin

A Racine White Hen Pantry agreed not to sell several sexually explicit magazines July 27 after the store was picketed by an anti-pornography group. Tom Braun, a clerk at the store, said, "We pulled the magazines from the shelves because we did not want the protesters to picket our store, and the magazines will not return."

Robert Golata, a leader of the protesters affiliated with the National Federation for Decency, said his group's goal was to get "these magazines out of all family-oriented stores in the Milwaukee and Racine area. We will now send letters to churches and other groups in the city to try and get their support in this fight. We are hoping they will join us in a boycott of the stores that sell these magazines."

Golata said the magazines targeted by the group and removed from the White Hen Pantry included *Playboy, Penthouse, Hustler, Chic* and *International.* He said such publications encourage violence against women and children.

The group picketed six Milwaukee and Racine area Open Pantry and White Hen Pantry stores July 27. Open Pantry management said they would not pull the magazines because that would amount to censorship. Eugene Rick, an Open Pantry manager, said the magazines are kept behind the checkout counter in

covered racks. He said the pickets did not affect business. Reported in: *Milwaukee Sentinel,* July 29.

television

New York, N.Y.

A media campaign designed to curb unwanted pregnancies among teenagers encountered a setback July 31 when two major television networks, ABC and CBS, rejected the two-minute public service announcements because, they said, the subject of birth control was "too controversial." NBC was still considering whether to air the spots, but Cable News Network and Lifetime, both cable networks, will carry them.

The 30-second spot, sponsored by the American College of Obstetricians and Gynecologists, carries the message that "nothing upsets intentions any faster than an unintended pregnancy." It urges teenagers to call a toll-free number to obtain a free pamphlet on birth control.

"As physicians we feel an obligation to give teenagers accurate information about birth control, especially oral contraceptives, so that they will act responsibly and won't end up with an unwanted pregnancy," said Dr. Luella Klein, past president of the organization. She called the refusal by CBS and ABC a "major setback" because, she noted, television "pervades the lives of teenagers and sets the tone for their sexual attitudes." She said she sent letters to the presidents of the two networks urging reconsideration because, she wrote, "your standards concerning the mentioning of birth control were written in the 1960s when morals were different."

George Schweitzer, vice president for communications of the CBS Broadcast Group, said that "although CBS has accepted public service announcements prepared by other groups concerned about health, we turned down this one because we believe that contraception is an unacceptable subject for public service announcements."

"We do not accept public service announcements or paid advertisements that deal with one side of a controversial issue," he continued. "We feel that those issues are best discussed in the areas of news and public affairs."

Jeff Tolvin, director of business information for ABC, agreed. "There are many different views on birth control and they all could not be aired in a public service announcement like this," he said. Reported in: *New York Times,* August 1; *Chicago Tribune,* August 1.

video cassettes

Syracuse, New York

Bowing to pressure exerted by twice-weekly picket lines and a letter from local government officials in Rochester, Rite Aid Pharmacies announced May 1 that it would no longer rent X-rated videocassettes at any of its New York stores, except those in Troy and New York City. The company decided not to offer the tapes in most of its 212 stores in the state after Buffalo residents voiced opposition in March and the picket lines went up in Syracuse.

"We're really glad, but we would like them to take out the magazines, too. But it's good that they've done that. It shows they listen to people," said Sandra Brown, a Syracuse picketer. "We're not just picking on Rite Aid," she added, "we're starting at Rite Aid." According to Brown and Central New Yorkers for Decency organizer Jim Southerden, the Syracuse protests would continue as long as adult magazines are still available at the stores. Reported in: *Syracuse Herald-Journal,* May 2.

Norfolk, Virginia

The operators of Farm Fresh supermarkets agreed August 6 to remove from their stock of rental videocassettes films which show women being murdered and mutilated. The supermarket chain sent a letter to the Tidewater chapter of the National Organization for Women saying that it would remove those films the group had "identified as objectionable."

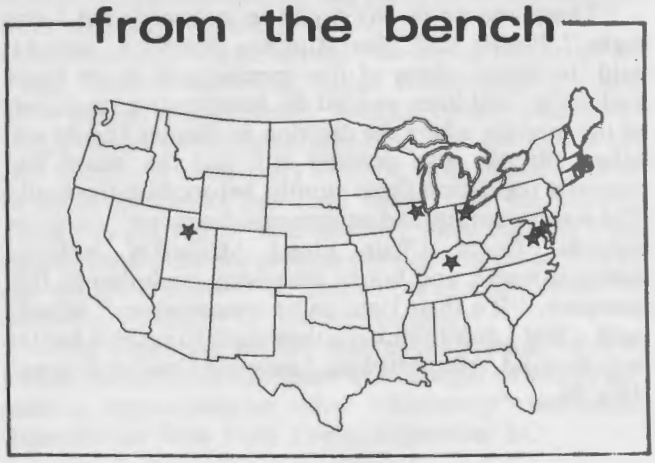
NOW had protested that the films, with titles such as *Color Me Blood Red, Dismember Mama* and *Blood Feast,* have no place in a supermarket. The decision to pull the films came less than two weeks after NOW called for a boycott of the stores and three days after the group sponsored picketing that drew about forty chanting demonstrators. Farm Fresh carried fewer than ten such films in its stock of about eight hundred.

"We weren't going to be pressured into it," Eugene Walters, president of the firm, said of the NOW campaign. "But the films were offensive." Walters said an employee had been assigned to view the films. Based on the employee's opinion, Walters said, he decicided to remove the movies.

The letter sent to NOW said, "Farm Fresh has had an opportunity to reevaluate our video inventory . . . [and] while we feel that freedom of choice is best left to the discretion of the individual . . . we do not wish to offend any segment of

(Continued on page 215)

from the bench



pornography

Chicago, Illinois

A controversial Indianapolis, Indiana, ordinance that defines pornography as a violation of the civil rights of women, which attracted national attention as a model for other cities seeking to limit the spread of allegedly pornographic material, was ruled unconstitutional August 27 by a federal appellate court.

A three judge panel of the U.S. Court of Appeals for the Seventh Circuit agreed that the municipal ordinance constituted a violation of the First Amendment provision protecting free speech. The panel's unanimous decision affirmed a ruling last November 19 by U.S. District Judge Sarah Evans Barker (see *Newsletter,* January 1985, p. 3).

The plaintiffs in the case, including the Freedom to Read Foundation, challenged the measure May 1, 1984, the day it was signed into law by Mayor William Hudnut, 3d (see *Newsletter,* July 1984, p. 119). Although Hudnut had earlier declared his willingness to take the issue to the U.S. Supreme Court, defense attorneys said they would make no decision on whether to appeal until a copy of the decision was received.

The decision was written by Judge George Easterbrook, who described the ordinance in the following terms: "Speech treating women in the disapproved way—as submissive in matters sexual or as enjoying humiliation—is unlawful no matter how significant the literary, artistic, or political qualities of the work taken as a whole. The state may not ordain preferred viewpoints in this way. The Constitution forbids the state to declare one perspective right and silence opponents."

The decision questioned "how Indianapolis would treat works from James Joyce's *Ulysses* to Homer's Illiad; both depict women as submissive objects for conquest and domination."

"History teaches us that when the censor begins, he or she is never satisfied," said Burton Joseph, attorney for the plaintiffs. "No one's right to free expression can be protected unless everyone's is, including expressions of others that we find offensive or even hateful. That's what the First Amendment is designed to protect." Reported in: *New York Times,* August 29; *Publishers Weekly,* September 13.

Alexandria, Virginia

A federal judge in Alexandria struck down as unconstitutional September 10 a new Virginia law banning the display of sexually explicit material, saying the statute was overly broad and would force many classics and best sellers to be placed behind counters or into "adults only" areas.

U.S. District Judge Richard L. Williams permanently enjoined police from enforcing the two-month-old law, designed to require the shielding of materials "harmful to juveniles," even if not obscene. He said the law violated the First Amendment's free press guarantees and would effectively "stifle an adult's access to communications he or she is entitled to receive." The law was supposed to force news stands to hide from view the covers of magazines like *Playboy, Penthouse* and *Hustler.*

Williams held that the state did not have the power to regulate what could be displayed on bookshelves. "The level of discourse reaching commercial bookstores cannot be limited to what might be appropriate for an elementary school library," he wrote. "Due to the wide sweep of the statute, a number of classic literary works, romances and best sellers would have to be placed behind the counter or into monitored 'adults only' areas. The state's purpose . . . however praiseworthy, cannot be pursued by means which effectively stifle an adult's access to communications he or she is entitled to receive."

A coalition of local and national booksellers and publishers had challenged the law as unconstitutional, contending that they had no "commercially viable" means of complying (see *Newsletter,* September 1985, p. 165). Reported in: *Washington Post,* September 11.

religious freedom

Boston, Massachusetts

The Massachusetts Supreme Court August 21 upheld the constitutional right of *The Christian Science*

Monitor to dismiss a lesbian employee who refused to participate in a church-ordered "healing." The court ruled that the newspaper, as part of the Church of Christ, Scientist, was within its rights in dismissing Christine Madsen, a former reporter.

Terming the dismissal a religious matter, the justices said courts do not have a right to interfere in religious affairs because of the First Amendment to the Constitution, which protects freedom of religion. But the justices allowed Madsen to pursue a new hearing on a number of other charges, including defamation and invasion of privacy.

In a majority opinion written by Justice Joseph R. Nolan, the court held that *The Monitor* was a valid activity of the church and that "the decision to fire Madsen because of her sexual preference can only be construed as a religious one, made by a church as employer."

"At the very least," the court added, "the free exercise of religion includes the right of churches to hire employees. It surely also follows that the churches are entitled to insist on undivided loyalty from these employees. *The Monitor,* as Madsen's employer, had the right to terminate Madsen's employment."

But the majority also noted that, "Without retreating for a moment from the foundational rule that 'the First Amendment prohibits civil courts from intervening in disputes concerning religious doctrine, discipline, faith or internal organization,' we restate the equally important rule that the rights of religion are not beyond the reach of civil law." Reported in: *New York Times,* August 22.

schools

Lexington, Kentucky

A teacher fired last year for showing an R-rated film to her students must be returned to the classroom, a federal judge ruled July 25. U.S. District Judge Scott Reed ordered that Lincoln County High School teacher Jacqueline Fowler have her old job back with back pay. Reed said the movie Fowler showed her civics and Latin classes, *Pink Floyd—The Wall,* has "artistic, literary, social and political value." The film "contains a very limited amount of material which is sexually suggestive," he said. "Judged in its entirety, *Pink Floyd—The Wall* is not profane, vulgar or obscene."

Reed ruled that Fowler had a right under the First Amendment to show the movie. The school board had cited insubordination and conduct unbecoming a teacher when it fired her in July 1984. "At this point, I still think we were in the right," said board vice chair Tom Blankenship, "and I was quite disappointed with the decision. I would like to see it appealed."

"There was never any doubt in my mind that I was right," Fowler said. Her attorney, Arthur L. Brooks, said the board, three of five members of which faced reelection, had been swayed by conservative spectators at the meeting where the decision to dismiss Fowler was taken. Brooks also pointed out that the board had passed a regulation three months before banning books "of a sectarian, infidel or immoral character" from the schools. Board Chair Lloyd McGuffey included atheistic books and books discussing evolution in that category. "It's their right to be conservative," Brooks said. "But I don't think it's their right to squelch her the way they did." Reported in: *Louisville Courier-Journal,* July 26.

freedom of information

Washington, D.C.

A District of Columbia appellate court panel ruled September 30, in *In re: Reporters' Committee for Freedom of the Press* (82-1820), that the public and the press have no constitutional right to see documents and depositions during civil trials in which such materials were used as evidence. The decision could be an important precedent for delaying public access to trial records until after the trial has ended and public interest waned.

The 2-1 ruling upheld a decision in the 1982 trial of a libel suit by the president of the Mobil Oil Company against the *Washington Post.* The trial judge had refused to allow immediate public access to documents that Mobil contended were confidential. The panel also said that the public and the press had no legal right of access at any time to other materials that were considered by the judge when he denied pretrial motions for summary judgment but were not used in the trial.

The decision, written by Judge Antonin Scalia and joined by Judge George E. MacKinnon over a dissent by Judge J. Skelly Wright, means that private parties such as Mobil can prevent disclosure of their documents for many months after they are introduced as evidence in civil trials and considered by the judge and jury, based on a broad claim of confidentiality, without having to specify a legal basis for sealing each document individually.

Many journalists, lawyers and others have assumed, and some courts have ruled, that all materials introduced at trials become public records immediately. But Judge Scalia said the law allowed judges to deny "contemporaneous access" without making "a document-by-document determination of the need for confidentiality" until after the end of the trial. He said a trial judge could "categorically refuse the reporters access"

to trial exhibits alleged by one party to be confidential until after the trial had ended.

Denouncing what he termed "the dangerous drift" of Judge Scalia's reasoning, Judge Wright said it would allow parties such as Mobil "to make broad, unsubstantiated claims of confidentiality and prevent public access to critical evidentiary exhibits until public interest in such documents has long faded." In his dissent, Judge Wright said, "The majority finds that the First Amendment does not provide the slightest protection to the public's interest in contemporaneous access to evidentiary exhibits in civil proceedings."

While dissenting on the trial exhibits issue, Wright joined the decision that there was no right of public access to depositions or other "discovery" materials. Reported in: *New York Times,* September 21.

Salt Lake City, Utah

The Mine Safety and Health Administration is constitutionally bound to allow the press and public to attend formal hearings such as those conducted in the wake of the December 19 Wilberg Mine fire that killed 27 people, a federal judge ruled August 21. "We have agreed as a society to pay the price of holding governmental proceedings in the open in order to preserve our freedom," U.S. District Judge David K. Winder wrote in an order denying summary judgment for the Department of Labor and MSHA.

The Society of Professional Journalists and thirteen news organizations filed suit January 23 after MSHA officials closed hearings on the cause of the Wilberg mine fire. Originally, Judge Winder ordered the hearings opened, then closed and finally, in the August ruling, open.

"There is a constitutionally protected right of access to formal administrative proceedings of this type," he decided. That right of access is not absolute, however; it probably does not extend to informal interviews, internal agency discussions or when the government has a counterbalancing interest.

Winder explicitly chose not to base his ruling on the principle of freedom of the press alone. "This court agrees that there is a right of access in this case," he wrote. "This court finds, however, that the right of access is based on the penumbra of the First Amendment guarantees, not solely on the freedom of the press guarantee." Reported in: *Salt Lake City Tribune,* August 22.

political expression

Chicago, Illinois

Leafletters and solicitors may not be banned from O'Hare Airport during holiday seasons as a result of the ACLU's successful negotiations in a lawsuit charging the Chicago Department of Aviation with violating First Amendment rights. U.S. District Court Judge James B. Moran approved the settlement May 23.

The ACLU filed the class action suit December 20, 1984, after Thomas Kapsalis, Commissioner of the City of Chicago's Department of Aviation, issued a notice banning all leafletters and solicitors from the airport on certain dates surrounding the Christmas holiday due to "anticipated congestion." Under the terms of the settlement agreement, the only restriction will be that, during future holiday seasons, such expression will not be allowed in four specific busy areas.

"The ban on holiday activity was not only a prior restraint on protected expression," said ACLU counsel Jane Whicher, "but it was enforced in a manner which discriminated against certain groups and individuals. For example, the ACLU discovered that on days when the city banned leafletting and soliciting, it allowed choirs and press conferences to take place."

The named plaintiff in the suit was Jhan Moskowitz, director of the Chicago branch of Jews for Jesus. Reported in: *The Brief,* July 1985.

etc.

Toledo, Ohio

A charge of pandering obscenity against an exotic stripper at an adult bookstore was dismissed by Judge Allen Andrews August 6 because the performer, Melinda Safian, failed to arouse the arresting officer. Detective Ron Ziolkowski of the Toledo vice squad testified he watched the dancer perform and arrested her after the performance, but said he was not aroused sexually by her act. The defendant's attorney said the arousal factor was essential in proving the performance appealed to the officer's "prurient interest." The judge agreed.

"We are going to keeep arresting these girls, even if I have to find an officer whose 'prurient interest' will be honestly offended, no matter how long that takes," said Capt. Derwish Mohamed, head of the vice squad. Reported in: *Variety,* August 7.

U.S. returns to Moscow Book Fair

Moscow's biennial book fair opened September 10 with American publishers taking part for the first time since the imposition of a boycott after the 1979 Soviet intervention in Afghanistan. In contrast to 1979, however, none of the books brought by the U.S. publishers were barred this year by Soviet authorities. Six years ago, several, including books by Alexander Solzhenitsyn, were confiscated.

The 1985 exhibit, entitled "America Through American Eyes," includes no books by Soviet emigres in the United States. The 313 titles displayed included Jonathan Schell's *The Fate of the Earth* and the Union of Concerned Scientists' *The Fallacy of Star Wars,* as well as the Sears Roebuck catalogue and the 1984 Olympics handbook, with pages on the Soviet boycott of the Los Angeles games.

Jack Macrae, chair of the International Freedom to Publish Committee of the Association of American Publishers, said the American books "were selected to show Soviets what has been going on in the U.S. in the last few years." Macrae and other members of the selection committee, which was headed by writer Kurt Vonnegut, came under fire from the National Endowment for Democracy, which argued that the books chosen failed to reflect the shift in the domestic political climate to the right. The Endowment helped underwrite the cost of the display (see *Newsletter*, July 1985, p. 104).

Macrae also expressed concern with the situation of writers and readers in the Soviet Union. "The situation for writers has not improved," he said. According to Macrae, about forty Soviet writers are currently imprisoned or in exile.

Soviet citizens are avid readers, but foreign books are often difficult to come by, making the book fair an important avenue of international communication. But a Soviet official charged on the eve of the fair that Soviet books are even harder to come by in the United States, because they are simply not translated and published by American presses. The official said that last year, U.S. and Soviet representatives signed 333 book contracts, down from 671 in 1979 and that the United States imports from the Soviet Union only a third the number of books which the Soviets purchase from American publishers.

"Maybe there are attempts to create artificial barriers" between American readers and Soviet writers, the official suggested. But Macrae responded that available books by Soviet writers are not marketable in the United States. "Most of the good writers are in internal exile, in external exile, or in prison," he added. Reported in: *Washington Post,* September 10.

1985 Hefner Award winners announced

Ronnie Dugger, publisher and owner of the *Texas Observer,* Jack C. Landau, executive director of the Reporters Committee for Freedom of the Press and Clifford McKenzie, a "whistleblower" who exposed the misuse of government travel funds at the Bureau of Indian Affairs' Technical Assistance Center, were named winners of the sixth annual Hugh M. Hefner First Amendment Award, Playboy Foundation Executive Director Cleo Wilson announced August 28.

Established by the Playboy Foundation in 1979, the awards are presented annually to individuals in recognition of their significant contributions to the protection and enhancement of First Amendment rights.

Ronnie Dugger was commended for his persistence in challenging vested interests and politicians in his biweekly "journal of free voices." Throughout the *Observer's* history, it has reported on civil rights violations, corruption in the Texas legislature and other political and social issues. Operating with rarely more than two staff members, Dugger has been lauded nationally by journalists and political observers for his investigative reporting.

Founder of the Reporters Committee for Freedom of the Press in 1970, Jack C. Landau is recognized as a champion of First Amendment rights and the free flow of information. As publisher of the quarterly, *The News Media and the Law,* Landau has been instrumental in providing news media with information about First Amendment infringements and other threats to press freedom.

Oklahoma native and Kiowa Indian chief Clifford McKenzie was saluted for his courage in exposing Bureau of Indian Affairs' fraud and corruption, and for his persistence in seeking redress for the injustices committed against him for his whistleblowing activities.

This year's winners were selected by a panel that included Stanley K. Sheinbaum, immediate past chair of the ACLU Foundation of Southern California; Harriet F. Pilpel, ACLU general counsel and counsel for Weil, Gotshal & Manges; Burton Joseph, Playboy Foundation Board Chair and Christie Hefner, President and Chief Operating Officer of Playboy Enterprises, Inc.

The 1985 winners were honored at a reception September 5 in Austin, Texas, where each received a special plaque and a $3,000 honorarium.

is it legal?

broadcasting

Washington, D.C.

As expected for some time, the Federal Communications Commission recommended August 7 that the "fairness doctrine," a longstanding rule requiring broadcasters to offer contrasting views on controversial subjects, should be abolished because it has a "chilling effect" on freedom of speech. But the FCC stopped short of ordering repeal of the rule, which most legal observers believe it is not empowered to do, and instead voted, 4-0, to send a lengthy report to Congress.

"The fariness doctrine no longer serves the public interest," the commission said, adding that the policy may no longer be constitutional. Whether Congress will respond favorably to the call for repeal is questionable, however, since there remains considerable sentiment on Capitol Hill for retaining it.

FCC Chair Mark S. Fowler, a staunch critic of the rule, heralded the decision as "an indictment of misguided government policy. It is a recital of its shortcomings, both legal and practical. The First Amendment dictates: choose between the right of the press to criticize freely and the authority of the government to channel that criticism. Today's order is a statement by this commission that we should reverse course and head toward liberty of the press for radio and television."

Both opponents and supporters of the doctrine expected the issue to be resolved in the courts. The former group noted that the legality of the fairness rule has already been upheld. "The question I have for the FCC," said Rep. Timothy J. Wirth (Dem.-Colorado), "is why did they want to take the principle of fairness away from the American TV and radio viewer? The Supreme Court has repeatedly said that the right of viewers and listeners to receive information is the paramount right under the First Amendment."

But attorney Floyd Abrams, and opponent of the rule, noted that "the Supreme Court has said that absent some signal from the FCC it would not reconsider the doctrine. There's no doubt the commission has sent a lot more than a signal." Reported in: *New York Times,* August 8; *Los Angeles Times,* August 8.

New York, N.Y.

CBS said July 26 that it had reached a compromise with the Justice Department regarding the government's subpoena of videotapes it made in the summer crisis involving the hijacking of a TWA jet and would provide only those materials "relevant to crimes committed during the hijacking." The material could include footage that was never aired, the network said.

The agreement was similar to ones already announced with ABC and NBC. Cable News Network, whose tapes were also subpoenaed, said it would "come to some means of complying with their request."

It is extremely unusual for networks, or any news organizations, to agree to comply with a subpoena for outtakes or unpublished material without a court fight. Citing the First Amendment, journalists have resisted such subpoenas out of concern that their news gathering ability will be damaged if they are perceived as an extension of law enforcement agencies. Nonetheless, "We're on the tightrope between good journalism and good citizenship," said Robert Siegenthaler of ABC.

A day before the CBS announcement, a national press organization called on Attorney General Edwin Meese to withdraw the subpoenas. "By issuing such broad and sweeping subpoenas against the news media, the government has improperly attempted to interfere with the First Amendment right of the network journalists to collect and disseminate news and information to the public," the Reporters Committee for Freedom of the Press declared. Reported in: *Washington Times,* July 30; New York Times July 27.

political expression

Washington, D.C.

Arguing that the proliferation of permanent protest displays is causing "visual blight" in Lafayette Park, the National Park Service announced new regulations in August that would restrict both the size and the number of protest signs there and prohibit the plywood huts and

other structures that have sprung up across the street from the White House.

According to the Park Service, the regulations are intended to control the manner, but not the content, of protests by demonstrators. "We've obviously had a lot of complaints about conditions in the park," said Sandra Alley, a park service official. "We're not trying to curb First Amendment rights, but we are seeking some sort of balance."

Hand-carried signs would be exempt from the new regulations, and protest groups would be allowed to set up temporary speaker's or "soapbox" platforms. But other "structures"—huts, chairs, makeshift toilets, kitchen sinks and other personal items that officials say protesters have brought in or "stored" in the park—would be prohibited. Under the new regulations, scheduled to go into effect in late November, signs must be no larger than four feet in either dimension and no thicker than one quarter inch. They may not be elevated more than six feet from the ground.

No protesters may have more than two such signs in the park at any one time and all signs must be "attended" at all times, meaning that someone must be within three feet of the sign or it will be considered abandoned property.

Park protesters and civil libertarians are concerned that the regulations will violate constitutional protections of free speech and expression. "They want to try to make Lafayette Park look more pretty in the view of some people," said Arthur Spitzer, legal director of the ACLU Washington office. "We just don't think that is a very weighty concern to justify the infringement of First Amendment rights." Reported in: *Washington Post,* August 21.

schools

St. Paul, Minnesota

The Minnesota Civil Liberties Union filed suit July 24 against the St. Paul School District and a high school assistant principal who pulled the plug on a rock band that was singing lyrics he found offensive at a high school dance. The suit charges that Assistant Principal Peter K. Christensen of Highland Park High School violated the band's and the audience's First Amendment right to free speech.

"The words used by the Urban Guerrillas are no different than words used by Mark Twain, James Baldwin or J. D. Salinger," said Janlori Goldman, an MCLU attorney. "To allow a public school official to stop a band from playing in the middle of a performance because the official was offended is tantamount to teaching students across the United States that they have no First Amendment rights simply because they're students," she said. "If you're offended, just leave."

The incident occurred during a school dance last November 30. The Urban Guerrillas sang a song containing profanity and a racial slur. Some students and chaperones complained and Christensen asked the band to stop playing.

Larry Sahagian, the band's leader and plaintiff in the suit, tried to explain the lyrics, but Christensen unplugged the microphone. The band received only two-thirds their contracted fee for the performance. They have not played at a high school dance since the incident.

According to Superintendent of Schools David Bennet, "This isn't a question of First Amendment rights . . . . There is no case here. There are certain expectations for behavior that we and parents and the public in general hold for the event. If those standards are violated it's not the option, but the responsibility, of the administration to step in." Reported in: *Minneapolis Star & Tribune,* July 25.

universities

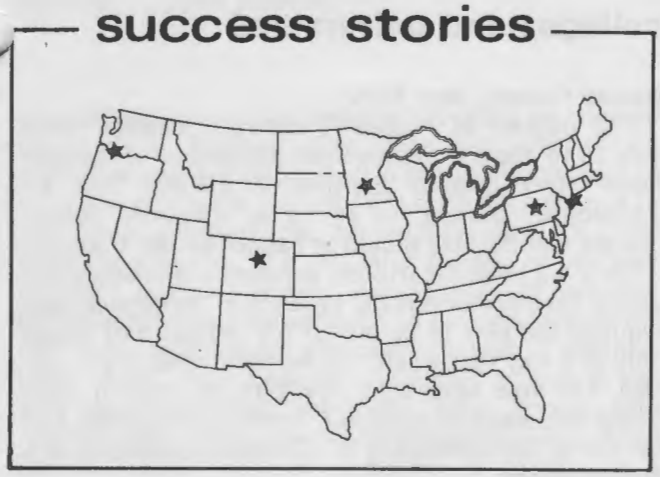
Evanston, Illinois

Northwestern University announced July 31 that it had charged an assistant professor with "grave professional misconduct" and would suspend her for six months for actions stemming from an April campus demonstration. The university charged Barbara C. Foley, an English teacher, with misconduct for her alleged role in an April 13 demonstration which prevented Adolfo Calero Portocarrero, president of the Nicaraguan Democratic Force, a "contra" group, from making a scheduled speech on campus.

Students and other protesters splashed a red liquid on the anti-Sandinista leader and shouted down his attempts to speak. According to observers, Foley shouted that Portocarrero did not have the right to speak on campus.

"University policy allows for peaceful protest," said Charles Loebbaka, a university representative. "However, the complaints allege Foley went beyond a normal protest. She disrupted someone else's speech." The suspension for two academic quarters is appealed automatically to a faculty panel and will not take effect until after an appeal is heard. Reported in: *Chicago Tribune,* August 1.

success stories



libraries

Castle Rock, Colorado

After seven months of banishment, Albert Herbert Hawkins will be allowed to come out of his corner in the Douglas County elementary school libraries. Two books, *Albert Herbert Hawkins, The Naughtiest Boy in the World* and *Albert Herbert Hawkins and the Space Rocket,* by Frank Dickens, were relegated to an adult shelf in the libraries last year after a parent complained that they taught disobedience and disrespect for authority (see *Newsletter,* May 1985, p. 76; September 1985, p. 151).

By a 5-2 vote September 17, the Douglas County school board reversed its earlier ruling and decided the books should go back into general circulation. The board turned down a last-ditch appeal by Kathy Risner, who first lodged her objections to the books after her 7-year-old son brought one home.

"Young readers . . . may take on the role of the main character and, in their minds, allow themselves to feel what it is like to get away with wrongful actions, without a natural consequence," Risner, a devout Mormon and mother of six, wrote in her appeal. Reported in: *Rocky Mountain News,* September 18.

Burnsville, Minnesota

The School District 194 Board of Education in Burnsville decided July 23 not to ban a book that some residents charged is obscene. *The Great Gilly Hopkins,* by Katherine Patterson, which is about an 11-year-old girl's experiences in a foster home, is in the Orchard Lake Elementary School library. The book was reviewed by the Orchard Lake principal, by a committee and later by the school board, said Carl Wahlstrom, district superintendent. All favored keeping it in the library.

Sharon Meyer, initiator of the challenge, said those fighting the book had not decided whether to take further action. Meyer and her husband, Paul, have also asked that two other books be removed from the Orchard Lake library. They are *Beat the Turtle Drum,* by Constance Greene, and *It's Not the End of the World,* by Judy Blume. The school's media committee turned down both requests. Meyer was also in a group involved in a previous unsuccessful attempt to have *The Great Gilly Hopkins* and another book removed from the Dakota County Public Library system.

Carroll Brooks, another leader of the group opposed to the book, said she objected to the profanity in the book. "I can accept two or three instances of mild profanity, but I can't accept a book that is riddled through with it," Brooks said. "The book took the lord's name in vain. There were over forty instances of profanity."

"The board's interest is in promoting in its libraries a view that reflects a broad range of ideas for its students, and not just those that a few determine are the correct views. The purpose of the library is the exchange of ideas," Wahlstrom said. "The board did feel, beyond that, that the story content and the life lessons in the book were such that they warranted the book remaining on the shelf," he added. Reported in: *Burnsville Current,* July 8, August 19; *Minneapolis Star & Tribune,* July 25.

Vancouver, Washington

After a heated public hearing, the Evergreen School Board voted 4-1 to keep a library book at Covington Junior High School that some parents complained was too sexually explicit. More than a hundred people filled a meeting room at the district offices July 8 to hear the appeal of an earlier Instructional Materials Committee decision that found *Don't Tell Me Your Name* appropriate for junior high readers (see *Newsletter,* July 1985, p. 133).

Author Hollis Hodges argued for retention of his novel as a constitutional question important to preserving free speech. "The banning of books is always something that has been associated with a dictatorship," he said.

Hodges' remarks were followed by a response from board member E. David McKenzie, who said he didn't like the book. "She was looking for some guy to get her with child," he said of the novel's heroine, a 32-year-old

mechanic who wants to have a baby but is not interested in marriage. About a dozen audience members joined McKenzie in condemning the book as pornographic and a violation of parental rights to control their children's reading. Urging the board to rule in favor of the "majority," Sharon Long asked, "Has the community lost control of its public schools?"

Long read a passage from the novel involving a bedroom scene with two women and a man. Noting the scene condoned nudity, sex out of wedlock and lesbianism, she told the board, "What we read does effect our behavior. Please keep in mind that access to this material is unrestricted."

About seven people testified in favor of keeping the book. "I must remind this body no book in the library is required reading," said Jone Harding, media specialist at Silver Star Elementary School. Board president Sondra Tackett said she did not believe *Don't Tell Me Your Name* encouraged immoral behavior "any more than we are teaching our kids to become Nazis because we have books on Hitler in our libraries."

The Clark County Friends of Public Education, which opposed the book, said after the hearing that it would run candidates against those who voted to keep the book. Reported in: *Vancouver Columbian,* July 9; *Portland Oregonian,* July 9.

schools

Shippensburg, Pennsylvania

By a vote of 5-3 July 9, the Fannett-Metal Board of School Directors voted to continue using the book *A Separate Peace*, by John Knowles, in the Fannett-Metal High School literature curriculum. In June, a citizens group asked the board to discontinue use of the book because of its allegedly offensive language.

Speaking for the protesting group, Chauncey Depuy of Chambersburg told the board that its duty was to maintain a high standard of moral values for the school. But graduating senior Missy Baker brought a counter petition before the board which declared that the book had unsurpassed literary value. Students and parents signing the petition said they in no way found the book offensive.

The board's vote to keep the book in the curriculum was based on an extensive review by teachers, parents and students. The board members also reaffirmed their belief and commitment that parents should be free to express their desires regarding curriculum. The board also said it would respect the religious freedom of all people and that "no child will be forced to read or study materials that he or she finds objectionable due to religious beliefs." Reported in: *Shippensburg News-Chronicle,* July 11.

colleges and universities

Nassau County, New York

The trustees of Nassau Community College voted July 15 to allow a controversial production of the play *Sister Mary Ignatius Explains It All For You,* by Christopher Durang, to go on as scheduled despite charges that the play should be banned as anti-Catholic.

On a 4-2 vote, the trustees defeated a resolution that would have postponed the production indefinitely and required the play to be moved off campus and staged only in a way that would not be sanctioned by the college. The vote came after nearly three hours of emotional discussion of academic freedom, censorship and the role of the community in influencing expression at a public college.

Representatives of Roman Catholic groups, which mounted a vigorous campaign to halt the play (see *Newsletter*, September 1985, p. 155), argued that it should not be staged at a public institution. "Nassau Community College has disturbed the peace of our community," said Virginia Offer, vice president of the Catholic League for Religious and Civil Rights. "Do not hurt us, do not do this to us."

College faculty members, along with representatives of the New York Civil Liberties Union and the Dramatists' Guild, warned that banning the performance would be censorship, and would set a dangerous precedent. Kathleen McKiernan, a college math teacher who was a nun for 25 years, said, "I certainly understand the pain of Catholics in general and religious women in particular. However, I urge the board to stand for freedom of expression."

The four board members who voted to allow the play to proceed were Richard Kessel, Rosalyn Udow, Mary Dondon and the panel's chair, William Rueger. Voting for postponing the play were Robert Jordan and Robert Olden. Three voting members were absent and the student member, who does not have a vote, read a statement saying that the Student Government Association supports the right of the theater department to stage the play.

After initially supporting the college's right to stage the play, Nassau County Executive Francis T. Purcell reversed his position after reading it. Purcell and most members of the county's Board of Supervisors opposed the production. Reported in: *Newsday*, July 16.

(Zenger . . . from page 185)

England and persisted in this country when we adopted the laws of England. The thing that you should remember about seditious libel in relation to the truth of what was said is that not only was truth not a defense to a charge of seditious libel, but indeed it made the crime much more serious. If it was false, it could be met with the truth, but if it was true it had the effect of more certainly undermining the authority of the governors or the crown. So truth was not a defense to a claim of seditious libel; indeed, truth made the crime more serious. It was with this background that John Peter Zenger, who neither wrote nor edited what he was subsequently jailed for, but merely engaged in the act of creation as a printer, faced the wrath of the then-governor, William Cosby, in New York.

In the colonial days, newspapers were frequently the mouthpieces of political parties or political factions. The debate was vitriolic, the insults legion, the accusations extraordinarily vituperative. There was a great deal of this kind of spirited expression, which existed as an anomaly in the law of seditious libel, because technically the law prevented any accusations that affected the authority of the king's governors.

Why was John Peter Zenger selected as an example? Because there was, up to the time his newspaper, *The New York Weekly,* was published, no real press opposition to the then-existing government. It is interesting, and the observation has been made, that at the same time there was this very active and vituperative press from all factions criticizing government, there also was a law that made this very form of expression a criminal offense. It has been argued that these laws were not enforced with frequency and, indeed, that is probably the case. However, as long as the governors had the *power* to silence any newspaper or form of expression as a result of the seditious libel laws, it did not matter particularly whether there was a frequent prosecution or not; what it meant was that the newspapers were published at the sufferance of the government. That was the evil in the laws relating to seditious libel.

When John Peter Zenger was charged with seditious libel, he spent nine months in jail awaiting trial, during which time his newspapers were publicly burned. The *Zenger* case caught the imagination of people because they knew that in the turbulent state of development of our free society at the time, one thing was taken to be true: free men should have the right to publish truthful and accurate criticism of the government.

John Peter Zenger is, in a way, a case of lawlessness, both on the part of the government and on the part of the defense. Why lawlessness on the part of the defense? Because the most distinguished attorney then practicing in New York, Andrew Hamilton, surprised the court on the day of trial and substituted for Zenger's lawyers. He argued to the jury that the jury should *defy* the law, the jury should *disregard* what it knew was an unjust law, and find that publishing the truth should not be a crime.

The prosecution in the case made a tactical error in which they unnecessarily alleged that Zenger was guilty of publishing *false* and defamatory seditious libel. Because the charge against Zenger contained the accusation it was false, the defense counsel, Andrew Hamilton, claimed the right to argue to the jury that it was indeed true. Although the prosecution could have stopped that argument, the prosecution confidently felt that because Zenger admitted printing the material, the case would quickly be decided by the jury under instructions from the judge, who served at the sufferance of the governor. When the judge instructed the jury to return a verdict of guilty because truth aggravated the crime of seditious libel rather than constituted a defense, a quick verdict was expected.

One of the contemporary newspapers editorialized at the time by saying, "If truth is not the law, it is better than the law, it ought to be the law, and it will always be the law wherever justice prevails." In an act of defiance of the judge, the jury found John Peter Zenger not guilty of seditious libel. That verdict started a trend to make the law conform with the reality of the values of the society where truth was considered to be a defense to seditious libel and where it was the jury, rather than the judge, who would determine truth. So the John Peter Zenger case is a symbol of the right of free expression, the right to speak truthfully, and the right to be judged by one's peers as to whether the libel exists.

We can take a great deal of pleasure in the development of the law since the John Peter Zenger case because, to a great extent, we are beneficiaries of those principles established in his case. It was interesting in the colonial period that Zenger was not the only person prosecuted under seditious libel laws, nor was his prosecution the most aggregious. But it has come down to us 250 years later as a symbol that free expression cannot be at the pleasure of the government and the government is incapable of deciding what is truthful and what expression has merit to be allowed to be exchanged in the marketplace of political controversy.

I think that we today are suffering in a certain degree from that same kind of mentality, in which the press is under attack for speaking opinions and for communicating what seems, in their view, to be the truth. You will hear from the other speakers today how, even if the media is successful in counteracting the accusation of libel in a private civil sense for damages, the threat of libel litigation has a severe inhibitory effect upon what we read and what we see.

There is a great deal of controversy as to what was meant by the First Amendment which was adopted some fifty years after the *Zenger* case. "Congress shall make no law abridging freedom of speech or of the press" meant many things to many people at the time the Constitution was established and the Bill of Rights adopted, but the development of the law of the First Amendment in this country has expanded that meaning. Criticism of government should be encouraged, not discouraged. The threat of damage awards can be as inhibitory in publication as the fear of jail in the case of seditious libel.

In the extremely significant case of *New York Times* v. *Sullivan,* the Supreme Court of the United States proclaimed a new doctrine, designed at that time to encourage the free exchange of ideas and opinions, and that doctrine itself, as you will hear, is under substantial attack today, both in the courts and in the legislatures of this country. The courts, in applying the tradition of the John Peter Zenger case, have established that truth is an absolute defense, but there also is room for error in statements of fact and in statements of opinion, because it is through the free exchange of ideas—the charges, the counter-charges, the refutations, the accusations—that the truth will emerge. The basic premise of our society is that each of us in a democracy should make up his or her own mind and have free choice of what they read or see. The threat of prosecution or damage awards limits that choice.

There are other related efforts that you will hear about to control the free exchange of ideas and images. There are forces in society that reject the basic concept on which our democracy and republic is based: that people, citizens, should have ultimate access to all material and that they will sort out for themselves that which is to be believed, that which is truthful, that which has value. The alternative to an expansive definition of the First Amendment ("There shall be no law abridging freedom of speech or of the press . . . ") is a system of censorship. Whether you call it a civil rights law, or a redress or a private grievance for libel, or government secrecy, all are a repudiation of the idea that a free people should have maximum access to information and images that allow them to make their choice.

Censorship is an invidious force in this society, and it has been in virtually every other society that preceded us. The urge to protect you from what you read and see is endemic in the history of civilization. At first it was to protect your souls from blasphemy or to protect the society from alien political or social or economic doctrines. Today, it is to protect you from explicit sexual imagery or words. The justification, however, has always been the same: it is good for you and good for society. The people who do the censoring never seem to be adversely affected by what they read or see; they are not worried about their own souls, they are worried about yours. They are not worried about their ability to distinguish between that which has value and that which is valueless, they are not worried about their own ability to discriminate in political or economic or sexual subjects. But they have no confidence that you have that ability for yourselves.

Censorship is the ultimate in elitism. It presumes that there are those among us so wise, so learned, so sophisticated that they not only should make judgments for themselves, but they should make judgments for the society generally. You involved in the library world have traditionally stood at the forefront of challenging attempts to limit what you maintain in your collections and what you acquire. There are those in each of your communities who want to make that judgment for the society, and there have been no organizations that have been more steadfast than the American Library Association, its Office for Intellectual Freedom, and the Freedom to Read Foundation in resisting all of those attempts to limit what should be available to people to choose from for themselves.

A librarian who favors censorship is like a physician who favors disease or a lawyer who is in favor of injustice. It is the lifeblood of your profession, in my judgment, to have available in each community, within the restrictions of space and budget, that which the community wishes to read or see; anything else, I think, is a repudiation of the tenets of the profession and of the spirit of the First Amendment. [applause]

Wishing to leave on a high note, I would now like to ask Heather Florence to expand on some of the areas that I have touched upon. Thank you.

Remarks by Heather Florence

Heather Florence is vice-president, secretary and general counsel for Bantam Books, Inc., and chair of the Association of American Publishers Freedom to Read Committee.

As I think about the twenty years of libel litigation since the Supreme Court handed down the case of *New York Times* v. *Sullivan,* which Burt mentioned as the first "Constitutionalization" or application of the First Amendment to libel law in this country, at least the litigation business has been strong. Clearly there has been more money spent on legal fees in the field of libel than ultimately has been paid to plaintiffs in money damages.

I'd like to take just a minute before turning to my

assigned topic of the practical response of publishers to the libel problem to give you a very quick view of what the libel law is, or what we *think* the libel law is, today as a result of twenty-one years of First Amendment litigation.

Although in the John Peter Zenger case, the holding was that if you could prove the matter was true, you no longer could be found guilty of libel (sounded great at the time), today we all realize that there is no way we could function with that system. Who is to prove truth, even in a courtroom? And should one who publishes, who speaks, who broadcasts be obligated to prove the truth of everything that he or she writes, publishes, and broadcasts, or otherwise be found guilty and subject to damages for libel? I think we all realize that that is not a workable standard in today's world; and so, too, has the United States Supreme Court—at least, it used to.

In 1964, in the *Times* v. *Sullivan* case, the Supreme Court held that if one were writing about a public official, even if the matter was not true, indeed was false, there could be no liability against the publisher unless the plaintiff could show that the matter was published with what the Supreme Court called at the time, "actual malice." The phrase "actual malice" was defined by the United States Supreme Court very clearly in that case to mean that the matter was either published with knowledge that it was false or with a reckless disregard as to whether or not the matter was true or false. Therefore, even if you published something false, even if you were careless in publishing something false, as long as the subject of the attack or the person targeted or hit by the defamatory statement was a public official, there would be no damages awarded.

Over the years, the Supreme Court extended that concept to cover public figures as well as public officials: all of those people in the world of sports, entertainment, literature, or even society. And over many years, the definition of public figure and public official reached into local communities to political leaders, business leaders, community leaders, school board leaders, and covered an awful lot of the potential libel plaintiff population.

In 1974, the Supreme Court turned its focus on private individuals and non-public figures, and the Court really hadn't spoken as to what standard should apply to them. At the time, in most of the states, the common law applied: this was the old *Zenger* law; unless you could prove the matter was truthful, there would be liability. In a case entitled *Gertz*, the Supreme Court came up with a structure for libel under the Constitution, under the First Amendment, to deal with private figures. What they held as far as private figures were concerned is that even a private figure would have to show some degree of fault on the part of the defendant—publisher or broadcaster or speaker—in order to recover any kind of libel damages.

They also spoke in that case about the damages that could be recovered, and said that if you can prove some fault, which in most cases would be a negligent standard (that the reporter didn't do what a reasonable, ordinary reporter should do in the circumstances), you could collect your actual damages. But if you wanted to collect more, if you wanted to collect presumed damages or punitive damages, then even the private figure had to meet the test of *New York Times* v. *Sullivan,* actual malice test, and show that the material was published with knowledge that it was false or with a reckless disregard as to whether or not it was true or false. That standard has been almost construed to be deliberate lie standard, so it's very difficult to reach.

What has happened over the years since *Times* v. *Sullivan* and *Gertz* is that many cases brought have ultimately been won by the defendants—the publishers and broadcasters—because of these Constitutional rules. The courts have applied them at the trial level when the defendants have brought motions for summary judgment to dispose of the case even before going through the expense of trial. In those instances where a case has gone to trial and there has been a jury verdict, the courts on appeal have more often than not reversed that jury verdict and have applied these Constitutional standards to protect the media in libel cases. If that were not the case, I think we'd be looking at a very different picture today.

Let me give you a few of the statistics that have been culled by the Libel Defense Resource Coalition, a professional group of lawyers and people in the field who have made an effort to pool information so that they have statistics on even the smaller, non-reported cases around the country. In the two years of 1980-1982, there were 54 trials in libel cases; 89% of them were won by the plaintiffs; the average judgment was more than $2,000,000; 30% of them included punitive damages. During the period 1982-1984, plaintiffs won in 54% of the trials—that's a nice trend downward; again, however, the average damages in the cases the plaintiffs won exceeded $2,000,000 and 41% of those cases had punitive damages assessed against the publisher.

To me, what are some of the most stunning facts, are the comparative statistics on other verdicts. The recent libel awards have substantially outstripped recent medical malpractice awards and product liability awards. For the period 1980-1983, the average judgment in 80 separate damage awards documented by this libel defense group was $2,174,633. This dwarfs the figures for medical malpractice—the average was $785,651.

Those are a lot of numbers to absorb, but I think they're quickly understood. Over $2,000,000 for a libel case and less than $1,000,000—somewhat more than

$500,000—for medical malpractice and products liability. And yet you hear everybody scream and cry about how the juries have gone crazy in medical malpractice and products liability cases.

What has been the damage in the defamation cases? Well, some damage to reputation inevitably, but basically an abstract, psychological damage—upset, mental distress, emotional concern—rather different from physical disability and the expense of living with physical disability. So that's an indication of how the public, in the form of the juries, has seen the press; there really is a punitive feel to what the juries have been doing.

Publishers, the media, have looked to the Supreme Court and have relied on the lower courts to follow the Supreme Court in affording some degree of protection to prevent these kinds of numbers from being the day-in, day-out risks of our business. But there's no getting around it: publishing is a high risk legal business. How in the world can a newspaper put a paper out every day and not have any number of articles that are likely to hit on some sensitive subject, either with someone in the international, national, or local community? If you think about newspaper publishing, even the local shoppers and commercial publications inevitably are going to run into legal problems.

One of the cases in New York that went all the way to trial involved a restaurant review, where Mr. Chow's Chinese restaurant sued a reviewer because it didn't like the way he described the food. They went all the way through a trial with a chef cooking in front of the jury. The jury found that, in fact, there was defamation, that there were factual misstatements, and rendered a reward for the restaurant. Ultimately, on appeal, applying some of the Constitutional principles, that particular verdict was set aside.

How about book publishers? Certainly I'm more familiar with them and, although all of you handle newspapers and magazines, I like to think that the bulk of your collections remains books! Book publishers, of course, could go pretty far, theoretically, to avoid these problems if they wanted to. They simply can avoid publishing certain kinds of books, right? Sounds simple. What wouldn't they publish if they wanted to avoid libel problems? Well, they can't publish restaurant guides—we know that that can get them into trouble! Second, it's certainly hazardous to publish current events, anything that smacks of investigative reporting. Unauthorized biography is certainly an area that should be avoided; indeed, my company, Bantam Books, found itself with an author, Kitty Kelly, who was sued by Frank Sinatra, the subject of an unauthorized biography, before she wrote word one on paper! So biography is certainly hazardous and should be avoided if one wanted to forego these expenses.

How about fiction? Maybe we should just stick with fiction. No, that won't do, either. There are plenty of libel cases involving novels. One that you probably heard discussed at meetings some years ago involved a Doubleday book called *Touching*, where indeed there was a substantial libel judgment against the author and publisher of the novel.

How about history? Maybe that's safe. Maybe because everybody's dead we at least can publish history. Well, unfortunately, that's not so clear these days, either. There have been recent cases in which even the heirs of the deceased have managed to recover under libel laws and although we won't get into it today, there are branches of the law of invasion of privacy where the courts have fashioned a kind of property right and have found that heirs can inherit the value of a name, personality, likeness, and persona. Therefore, we may be publishing about dead people at risk, as well.

Fortunately, most book publishers don't try everything we can to avoid the danger areas; there's no way we could call ourselves publishers if we did. So, what, in fact, do we do to protect ourselves? Well, I guess, like a lot of other smart people, the first thing most of us do is have insurance; knowing someone else's dollar is behind you helps a lot! In fact, until rather recently, libel insurance for book publishers was rather manageable in terms of the expense of obtaining it—that is, the size of the premiums and the amount of the deductible.

I will take you into my confidence (somewhat factitiously, since there are a lot of you) to let you know that that has changed—I'm too close a witness to it. The insurance policy that my company has was recently renewed. We found ourselves with a premium increase of approximately 100%, and our experience in the period prior to this renewal was as clean as could be. I was told by the insurer that I got the best deal in town, that our record was so good that they were only charging us double what they charged us in the past. Now why is that? Well, it's these mega-verdicts you've just heard me talk about—an average judgment of over $2,000,000.

But you say, "They're all reversed on appeal, so what's the big deal?" The big deal is that it can cost $100,000, $500,000, $1,000,000—try $5,000,000—to defend some of these cases by the time they're finally reversed on appeal; rumor has it that that's what was spent by Time, Inc., defending itself in the Sharon case—that's before any appeals; the case was disposed of at trial. And there are probably similar numbers in the CBS/Westmoreland case. Obviously, the insurance companies that are paying out those fees have to collect the money by way of premiums, even from people who don't have a bad history.

So what else do publishers do to protect themselves? Historically and traditionally, the publishers—the book publishers, at least—would turn to the authors and say, "Okay—you wrote it, you stand behind it. You warrant that it's clean, and you indemnify me in the event there's a problem." Needless to say, the book authors had a lot of problems with that over the years. I think they found themselves stymied by what appeared to be a very tight-knit publishing practice of insisting that the author stand behind the book in that way. Only very recently has there been a chink—indeed, a major crevice—in that armor. I'm happy to report that Bantam Books and many other book publishers do now afford their authors the same insurance protection that they have themselves.

Although it sounds kind of strong-armed and unfair for the publisher traditionally to have said to the author, "You wrote it, you stand behind it," if you think about it, there's a perfectly good rationale for that: if a book publisher is doing 100 books or more a season, how in the world is the book publisher going to have at its fingertips the information that went into each author's preparation of his or her manuscript? Some may have done the research in the course of a couple of months, but, as we know, many manuscripts are the work of years and years of research, writing, interviewing, and so forth. So it is perfectly reasonable for the publisher to have taken the position, "Hey, author, you're the one who knows about it, and we have to rely on you." Of course, whether or not the author is covered by insurance, the publisher is still going to heavily count on the author's *bona fides* and care in doing the manuscript.

How do you ascertain that those assumptions about the author's knowledge and care are correct? Before publishing, what does the publisher do? Every publishing house has different procedures to ascertain which, if any, manuscripts should be reviewed by counsel before publication, and how to handle questions or problems as they arise. It is certainly not my place to go into the practices within the various publishing houses, but you may be sure that most of the major publishing houses either have in-house counsel or people who work very closely with lawyers on the outside to "vet" manuscripts (that's the word that's used). The lawyers will flag a problem passage and work with the editor and author to see what substantiation there is for it and/or to suggest some rewording; in some instances maybe to even make some deletions and, I imagine, from time to time, books are actually scuttled. But by and large, the system has worked pretty well; the Constitutional protections have ultimately prevailed, as you've heard. The publishers have basically managed to get summary judgment or to have their cases reversed on appeal, and we've all lived within the system.

As we celebrate today the 250th birthday of the *Zenger* case, as Burt so eloquently discussed, I think to myself, well, this is maybe the 21st anniversary of the *Times/Sullivan* case, and that should be something happy to note. But I'm afraid that the most recent opinion from the United States Supreme Court, which came down about ten days ago, has all bad signs written around it.

If you'll go back to my opening remarks about the libel law for private figures, the Supreme Court has rather changed that in the most recent opinion called *Dun & Bradstreet* v. *Greenmoss.* Everyone assumed that that case was going to give the Supreme Court an opportunity to decide whether or not the laws it had laid down in *Times/Sullivan* and the subsequent cases should apply to private, individual speaker and writer defendants, as opposed to just the media. Many people assumed that these Constitutional protections in *Times/Sullivan* and *Gertz* applied only to the institutional media and therefore if you, a librarian, wrote a letter to somebody and there was defamatory material in it, you would not have this package of Constitutional guarantees. Everyone thought that's why the Supreme Court took this case and, indeed, they had it argued twice; it was put down for two terms. They did decide that that was an improper distinction, and that is the good news today: that every individual writer and speaker has the same protections as the *New York Times* under the Constitutional law of libel. That's the good news.

The bad news is that the Supreme Court decided that a private individual should be able to recover damages—presumed damages and punitive damages; these mega-multi-million dollar figures—even if they could not show that the material was published with reckless disregard or with knowledge of falsity, unless the matter involved a subject of public interest. And let me give you great "comfort" so that you all know what is a matter of public interest. In the Supreme Court plurality opinion, Justice Powell wrote as follows: "Whether speech addresses a matter of public concern must be determined by the expression's content, form and context." That is the definition of what constitutes a matter of public concern; otherwise, you may assume that damages are going to the sky's-the-limit, even on appeal. That was a plurality opinion; three justices joined in that, there were two concurring opinions.

I would like to read from Chief Justice Burger's concurring opinion. This is the sentence with which he closed the opinion: "Consideration of these issues inevitably recalls the aphorism of journalism attributed to the late Roy Howard; that too much checking on the facts has ruined many a good news story." That's what the Chief Justice thinks of the newspaper world today.

Justice White, in his concurring opinion, joined with everyone else in rejecting the concept of making a

distinction between private speakers and media defendants. He noted that that distinction should be rejected again. "Particularly," he said, "in this context, since it makes no sense to give the most protection to those publishers who reach the most readers and therefore pollute the channels of communication with the most misinformation and do the most damage to private reputation." That's what Justice White thinks of the media.

So, where are we? Well, all I can say is that Bantam and, I think, all of the rest of the members of AAP and other publishers, and I suppose you librarians, too, will go on "polluting," and perhaps at some greater risk than we've had in the past. Certainly I don't define unleashing the diverse information that we let out, some of which inevitably is distasteful to many people, as anything that should be put in the same category as toxic waste. No matter how obnoxious what we publish may be to some or to many, we all—here at least—believe that people have the right to choose for themselves. Our job and your job is to have it all there. So together we will go on fighting these battles as we have done in the past. Thank you.

Remarks by Franklyn Haiman

Franklyn Haiman is Professor of Communication Studies at Northwestern University.

Both Burt and Heather have focused their remarks on the cost to freedom of speech and press that inheres in the law of libel. I would like, at least at the outset, to turn to the other side of the coin and ask, "What is the concern that leads to the desire for libel law?" Why is it that the decision by the U.S. Supreme Court in the *New York Times* v. *Sullivan* case, which both speakers have applauded as expanding freedom of speech and giving great protections to defendants against libel suits, still allows for the award of damages, even for public officials and public figures, if they can prove that what was said by the speaker was knowingly false or said with reckless disregard for its truth or falsity? Why did the Court allow for that remnant of libel law? Why, as Heather said, did the Supreme Court also, just ten days ago, declare that *private* figures need only show a certain amount of carelessness by the speaker in order to collect damages?

I think the answer is to be found in both of the sentences that Heather quoted from Chief Justice Burger and Justice White, namely that people have a right to their reputations, and that damages caused to their reputations or to the respect with which they are regarded in the community are serious intrusions on that right. Couple that with the constant theme that runs through all discussions of this subject, that there is no real value to the public in false statements, then why should we be giving the grand protections of the First Amendment to false accusations? Why, as in the Dun & Bradstreet case (which involved a credit report stating that Greenmoss had gone bankrupt when, in fact, he had not gone bankrupt), should that kind of damaging information be protected by the First Amendment?

I think we have to take this concern very seriously. We certainly heard a lot about it in the Westmoreland case, a case started because the General wanted to vindicate his reputation and demonstrate to the public that he had not engaged in the kind of conspiracy to cook figures during the Vietnam War that had been alleged by CBS. We have to take that concern seriously and ask whether the kind of speech which destroys reputations is entitled to any First Amendment protection and, if so, why.

The best enunciation of an underlying philosophy of the First Amendment of which I am aware was expressed in 1927 by Justice Louis Brandeis of the United States Supreme Court. In his opinion in *Whitney* v. *California,* Justice Brandeis said of the philosophy of freedom of speech: "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."

Thus, even as to false statements, even as to things which might be harmful to the reputation of individuals, this philosophy would say that the answer is not lawsuits, the answer is not damage judgments, the answer is not criminal prosecutions for seditious libel as we used to have in pre-Revolutionary days. The answer is more speech. The answer is to respond to the accusation, expose the false statement, and let the public make its decision.

Now that is a philosophy to which we generally have been faithful in the areas of politics and religion. When neo-Nazis wanted to go to Skokie to march and to say things which most of us know to be untrue, we didn't say, "That's false, and therefore it's exempt from First Amendment protection, and these people can be stopped from marching." No. We said, "They've got a right to march, they've got a right to express even racist views. We must have faith that the public will examine those views, reject what is false in them, and we will all be better for that kind of exercise."

When a preacher makes promises of miracle cures to a malady, we don't intervene and say, "That's false, it's impossible for something like that to happen, therefore we will punish the speaker, we will send them to jail for lying, we will award money damages to those who may have believed him and spent all of their life savings on these quack cures." No, we don't say that. We say, "Let him speak, let other people expose him, let the

public beware and then, in the marketplace of ideas, hopefully the truth will prevail."

We have deviated from that philosophy, however, when it comes to accusations or criticisms about individuals which are defamatory, which falsely harm their reputations. We have deviated from the philosophy expressed by Justice Brandeis and, instead, have made an exception to the First Amendment, both for public officials and private figures.

There are two men who sat on the U.S. Supreme Court for over twenty years who never accepted the idea of libel as an exception to the First Amendment. One was Justice Hugo Black, who took the position that libel law is simply inconsistent with the First Amendment. It was his view that, given the understandings about what the purposes of the First Amendment are, and the philosophy that people must be exposed to all sides of a question and make up their own minds, we simply are being untrue to that tradition by allowing any kind of libel law.

Justice William Douglas took a slightly less absolute position and said that with respect to all discussion of *public affairs*, whether the target of criticism is a public official, public figure or even a private person, there should be no prosecution for libel.

It is the position of the American Civil Liberties Union that Justice Douglas was right and that any time public affairs are involved, when there is discussion of matters of concern to the public, there should be no possibility of suits for libel law.

My own preference is for the position of Justice Black. My own view is that we should take a broad position against libel laws, even for private figures involved in non-public affairs, with a couple of exceptions that I will explain in a moment.

Why is this kind of expansive interpretation of the First Amendment important and necessary? Why do we need to allow false statements to be made about public officials, public figures, or private individuals? I think the first and most important point is one that has already been alluded to; that people need breathing room to make mistakes. We can't always be sure of our facts, and if we have to be positive of our facts before we speak, this creates a tremendous chilling effect on our willingness to stick our necks out. For example, there have been instances over the past several years of public interest environmental groups seeking to reduce pollution in their community, who have made charges against industries thought to be polluters, where the facts were not available to them to demonstrate or prove their charges, and where mistakes have been made and libel suits have been brought against them. This obviously has a great deterrent effect on good-faith public interest activity.

Another result of libel law as it presently exists is that, since it is necessary for a public figure to prove that the speaker or writer knew that what was said was false or recklessly disregarded the truth, he or she obviously has to have access to what the state of mind of the defendant was. And so a number of years ago the Supreme Court ruled that plaintiff public figures in libel suits have a right, when bringing suit against the media or against anybody else, to explore the editorial process that went on. They can subpoena the notes of the editorial staff—the case happened to be one involving CBS and "Sixty Minutes"—and they can investigate the editorial conversations that went on, what was left out of a program and what was put in. The same thing happened in the Westmoreland case. The plaintiff's lawyer played tapes to the jury of all the things that CBS had filmed and hadn't included in the program, Westmoreland's lawyers hoping to show that there had been a selectivity by CBS that was deliberately and knowingly designed to create false impressions about General Westmoreland. That kind of exploration (which you have to allow, obviously, if you're going to put on the plaintiff the burden of showing that what the defendant said was untrue and the he knew it was untrue; you've got to give him access to that kind of information so he can prove his case) opens all kinds of doors which I think had better be left closed.

What alternatives are there? If people are entitled to protect their reputations against false charges, if you follow my position that you should not have libel laws, what alternatives are there? I think one of the best alternatives was demonstrated in the Westmoreland case. I don't know how many peole are aware of this, but when Westmoreland first started complaining about the program that CBS did, they offered him time to come on the air and respond and to say whatever he wanted to say about the program. He declined that offer and chose to go the libel lawsuit route. It is my view that a reply offer such as that should be an absolute bar to anybody being able to bring a libel suit. If a newspaper or broadcaster is willing to grant equal time and equal prominence to the individual who has been attacked to present his answer and then let the court of public opinion make the decision, it seems to me that is far preferable to courts of law doing it.

It is interesting that when the Westmoreland case finally ended, lawyers on *both sides* were saying the lawsuit was a bad thing in the first place and that the court of public opinion should be deciding that kind of an issue. And that is precisely the sort of question which can be better be debated in the public forum than in a court of law. I think the same thing can be said of the Sharon case against *Time* magazine. These were really political trials trying to make political points and, just

as with the speech of Nazis who want to march in Skokie or the speech of religious evangelists, I think the speech of those who say that Westmoreland cooked figures, or that Sharon encouraged going into that Palestinian camp in Beirut and murdering people, raise issues that can best be decided in the court of public opinion after both sides have had an opportunity to present their points of view.

This still leaves certain instances for which I think perhaps libel law is needed. What if, on election eve in a political campaign, material containing false statements about the positions of one of the candidates, who was up for reelection the next day, were placed under the doors of every person in the ward. That candidate was defeated.

If you go back to Justice Brandeis's statement, he says, "*If there be time* to expose through discussion the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied is more speech, not enforced silence." At midnight before an election day, there is hardly time for more speech, and it seems to me this is one condition under which we should allow the defamed person to sue for libel. It isn't going to help the candidate recapture the election if he or she was defeated, or course (which gives some indication of a bit of the futility of libel law), but it may be a deterrent to people doing that kind of thing on an election eve if they know that they can be sued for libel.

I would suggest, also, that in order for any libel action to be allowed to be successful, whether the plaintiff be a public figure or a private individual, it should be necessary to prove *calculated* falsehood, that is absolute knowledge of the falsity of the statement on the part of the individual promulgating the message. Let us get rid of all these concepts such as carelessness and negligence, which involve all kinds of ambiguity, and require a showing of calculated, deliberate falsehood on the part of the speaker.

I don't know if my colleagues on the panel would approve of these kinds of allowances for libel law, but it seems to me that if it is narrowly confined to circumstances where no reply offer has been made or allowed, or where there is no time to discuss and expose the falsities before the harm is done (like the defeat of a candidate by election eve defamation), and where you can prove that the individual who said it or wrote it knew absolutely that what he or she was saying was false, only *then* does it seem to me you can justify a deviation from the general philosophy which calls for the public to be the ultimate arbitrator of truth and falsity.

Thank you.

Remarks by R. Bruce Rich

R. Bruce Rich is a partner in the New York law firm of Weil, Gotshal & Manges and is general counsel to the Association of American Publishers Freedom to Read Committee.

Thank goodness, after all these stellar speakers, I get to talk about something other than libel! I don't think there's anything left. Seriously, this is obviously very topical, and I think you've heard some outstanding and thoughtful remarks, and have been given a lot of food for thought. But I wouldn't want you to leave today thinking, as I know you don't anyway, that libel and the tension between speech and what we're talking about—the marketplace of ideas vs. that which the libel laws deal with, individual reputation, dating back to seditious libel/criticism of government—is the single most difficult bastion that you librarians face, that we publishers face, and that the community of First Amendment concerned citizens faces.

There is ongoing, as there has been for some time—although many of us perceive that the climate is heightened and even more difficult than it has been—a series of tensions between the functions to be served by vigorous and free speech and other supposed societal needs. In libel, we have speech vs. reputation, but as I will briefly outline for you in areas you are all too familiar with, we have purported tensions daily demonstrated between the virtues of speech and interests like national security, civil rights of women and others, sensibilities of minors, parental control (where the school stops and parental control begins and vice versa), and the whole notion of speech vs. public and private morality.

We have daily a series of tensions here, sought to be resolved in different ways, and you and we certainly are very active in trying to define what the proper balance in these areas ought to be. In short, I think speech is under attack on a variety of fronts, and I thought it useful to spend a few minutes giving you a bit of a tour of the horizon in terms of some of the other areas that require enormous attention. I think speaking from the examples of the recent past will do better than any descriptions I might otherwise give you.

Let me start with the area of so-called national security. I think the remarks that Burt, particularly, addressed earlier, to the effect that when one talks about protecting the authority of government, we so often are worrying about criticisms of government, really come home to roost here, too, when one looks at the iniatives of the Reagan Administration, particularly certain congressional initiatives and others aiming to protect

the national security. I think it is undoubted, and it is now statistically demonstrable, that since the Reagan Administration set about to redefine classified information, we have seen an expansion of that which is classified, with all kinds of ramifications.

In 1982, the President decided to redo the rules for classifying documents. Various presumptions which the Carter Administration had promulgated in favor of the free flow of information from government to the citizenry were reversed: When in doubt, classify. Do away with balancing tests if there's a doubt. If it is to be secret or top secret, stamp it top secret. I am only exaggerating slightly. If you review the 1982 classification order to which I am referring, you would see this to be the case.

The Government Accounting Office just this past April provided an annual statistical report to President Reagan. It was very laudatory, very complimentary of all of his efforts to get his house in order. But when you read some of the fine print, what you see is that in 1984 there was a nine percent increase in what were termed classification decisions; more than 19,000,000 documents were classified. And conversely, in the process of reviewing old documents or not, one notes that the speed with which the Reagan Administration was undertaking the review was but half that of the prior administration; that is, only half as many documents were going through the process of being reviewed for reclassification, and more than twice as many remained classified at any given time over an annual period as had been the case with the Carter Administration. Even the GAO report indicated that over-classification remains a very serious problem, and that there are just too many people in government with access to sensitive information.

What has this administration done to build on what is already a scheme of too much classification of information? In March of 1983, President Reagan issued a directive, "National Security Directive 1984," omniously and appropriately titled. The concept was that there is a whole bunch of people out there with access to all of these many millions of classified documents, who ought not to be able to stand up on a podium, or write in an *op ed* page, or appear on a program and speak with respect to the knowledge they have presumably gained from all of these highly sensitive materials, unless they have first submitted to a prior censorship regime; that is, submitted all of their purported writings, articles, speeches, etc. to their agency for a precensorship review.

Again the GAO, in a more dispassionate report, indicated that the potential numbers of employees subject to these kinds of regulations were literally in the millions—not thousands or tens of thousands, but literally millions of government employees are potentially subject to these constraints. Because time doesn't permit, I won't go through the various efforts which publishers and librarians have made to try to forestall this directive—with some measured degree of success so far. There is federal legislation pending which would attempt to put the full extent of this on something of a hold, but the fact is, it's there and it's very real, and I think one is mistaken if one assumes there is but an innocent national security rationale here. I think this is again an example of the government over-reaching with respect to that which is truly of national security interest and that which instead, reflects an effort to rein in criticism of government.

We have the perennial efforts to revise the Freedom of Information Act. It seems likely that during the 99th Congress we might finally see some changes to the Act, many not helpful with respect to fees and fee waiver provisions, with respect to the turnaround time an agency has within which to respond, with respect to the expanded definitions of private records and rights of privacy which would prevent a requestor from having access to information, and so on and so forth.

There have been even more interesting efforts, in some respects, to close down, to limit the information available to the citizenry. A lot of these have taken clever forms, namely, rather unique efforts to go beyond normal definitions of that which is classified and therefore presumptively not subject to public release. There have been some unique and innovative theories suggesting that even if material is technically *un*classified, we should find some rationale to limit its public disclosure. A good example is a case in which the American Library Association has been a plaintiff, the Marshall Library case, involving a situation where, during the 1960's, William F. Friedman, who was a leading American cryptologist, made a gift of certain of his papers to the George C. Marshall Library on the VMI campus in Lexington, Virginia. Friedman's biographer, by the name of Ronald Clark, was denied access to the materials that he provided the library until the National Security Agency had had a chance to cull through them and segregate certain of these materials out of the reach of the public; certain ones they said are classified and others they said are unclassified, but still too sensitive for the public to look at. In the process, the book got completed and the library in 1977-1978 made the remaining unclassified materials, which had been stuck away in a closet somewhere, available to the public for the public's review.

A year or so later, an author by the name of James Bamford requested access to the remaining materials that had been hidden in a closet and were unclassified, and the library decided to give him access to them until

about October of 1980, when the NSA came back in and said, "Wait a minute; let's take the stuff that's in the public domain—that's there, that's not classified—and re-review it and stick it back on the shelf under lock and key."

In April of 1983, with Bamford's work (called *The Puzzle Palace)* having been published and containing liberal references to much of the material that NSA had not yet pulled back, who comes along again? The NSA comes along [and now the stuff's already in the book!] and says, "We want another look at what's on the shelves." They looked at it again and said there's still more material to go back. That became, appropriately, the subject of litigation claiming that it is highly inappropriate under basic First Amendment doctrine to take material that doesn't even purport to have the status of being classified, i.e., of truly sensitive dimension in terms of the national security, and to keep it out of the public's reach.

A variant of that has been manifesting itself with respect to certain types of technical information, justified under a variety of bases of authority, ranging from export control acts to various statutory and regulatory authority under which the Department of Energy and the Office of Management and Budget operate. There have been a series of proposed and implemented regulations which again purport to limit not what can be done with *classified* material, but what can be done with *unclassified* material in the nature of research papers; access, for example, to be given to foreign nationals to whom the paper is to be delivered at various scientific and technical fora. Now I am not suggesting that these are situations that necessarily are all clear in terms of whether materials and papers ought to have been prescreened for classified materials, but there is an undoubted tendency—there is an undoubted trend, it is unmistakable—to look to broaden the secrecy; to slam the door shut rather than to open it up. Rather than, in Professor Haiman's words, to assume that the antidote for speech is more speech and to let the marketplace determine that which is valuable, there is an impulse toward secrecy, toward protecting, toward preventing the public from looking and making its own good judgments.

Let me turn away from national security to the area of sexual expression. You all have debated at length, I gather, and are continuing to debate and deliberate, over things like the Indianapolis-type ordinances, which purport to take what we all recognize to be, again, First Amendment-protected expression—that is, expression which is not legally obscene as defined by the Supreme Court—but find ways of further limiting its availability to the reading public. And the clever technique that's been used has been to define certain categories of such speech as constituting a violation of women's rights. The Indianapolis ordinance states: "Pornography shall mean the sexually explicit subordination of women, graphically depicted whether in pictures or in words, that also includes one or more of the following. . ." For example, "Women are presented as sexual objects who enjoy pain or humiliation." That ordinance has already been tested up through the Court of Appeals right here in Chicago, after a favorable-to-the-First Amendment result at the trial court level. But again, it seems to me a classic example of innovative effort, much as in the government national security area, not to create a balance in favor of more speech rather than less, but rather in favor of carving narrowly and restrictively.

In this era of pressing governmental problems, we have Attorney General Meese, as one of his first official acts, creating a pornography commission and, with extraordinary dispassion on the subject, noting as follows in his press release announcing its formation: "It is abundantly clear that with pornography we're not dealing with one passing incident, we're dealing with a general tendency that is pervading our entire culture. The formation of this commission reflects the concern that a healthy society must have regarding the ways in which its people publicly entertain themselves. . . ." And with that he formed the commission and named as its chairman the prosecuting attorney for Arlington County, Virginia, whose claim to fame, insofar as I could tell doing a legal research run on him, was that he had successfully prosecuted several video stores for selling X-rated cassettes.

In fairness to the commission and to the other members of the commission (and, incidentally, AAP recently had the privilege, if that's the word, of testifying before them at their first hearing), I think the jury is very much out on the commission. There are, I think, some very fair-minded and open-minded individuals, and I think it would be a mistake to rush to judgment in terms of what this commission is going to do. But I think it speaks eloquently, again, of a series of priorities emanating from the federal government, when half a million dollars of taxpayer money is spent on a commission to study pornography.

If that weren't enough, you will be happy to know that something like three-quarters of a million dollars of your money is being spent to review the cartoons in three magazines, *Playboy, Penthouse,* and *Hustler.* This is being conducted by a woman by the name of Judith Reisman, whose credits include writing for the Captain Kangaroo show. Her ostensible purpose, though, is to determine the possible causative link between these cartoons and violent pornography, child

molestation, and the like. If you'd like to read her position, there's an interesting *op ed* piece, which I won't read to you, which appeared in the *Washington Post* on June 18, where she defends her project and its objectivity. I will read you but one sentence to show you her objectivity: "I direct the $734,000 Department of Justice study of three widely read magazines I call erotica pornography, part of a growing $7 billion-a-year sex industry. . ." And it goes on from there. So we have that.

And we have Media Coalition, in which ALA is an active participant, as is the Association of American Publishers, challenging a series of legislative initiatives ostensibly aimed at protecting children against the ill effects of sexual expression. The problem with many of these measures, in our estimation, is that in trying to protect children, you at the same time deprive a huge, willing adult reading public of materials, not obscene, to which they are legally entitled. A series of test cases have been proceeding apace.

You are all, I'm sure, very familiar with what's going on in the education field. We have worked with you closely in terms of trying to forestall classroom and school library censorship efforts about which you are certainly as expert as we in terms of the background. Some of you probably are familiar with a nifty little thing called the Hatch Amendment, as to which certain regulations were recently promulgated, again, under the Reagan administration's aegis, in which parents have now been given the prerogative to object to the conduct of any psychiatric or psychological testing and experimentation in the classroom setting. The problem is that the regulations, as written, are so terribly vague that they've allowed the Phyllis Schlaflys of the world to construe them, and to urge local school districts to construe them, as prohibiting a gamut of curricular offerings, ranging from alcohol and drug abuse, to organic evolution, to the writing of autobiographies, to sex education courses, and to the suggestion that the kids keep personal diaries. The final chapter on those regulations has not yet been written, but I think it gives a sense of the present climate.

That is just a very broad overview. Let me end where I began, which is to say that today most of our effort and energy has been focused on the critical area of libel law. But let's keep our eyes on these very many other balls that are in the air, because our speech traditions are under attack on a wide variety of fronts.

Thank you.

(Censorship dateline . . . from page 196)

the public, however small." The letter also said that "in the future, [Farm Fresh] will review each film individually on its particular merits." Reported in: *Virginian Pilot,* August 7.

foreign

Dublin, Ireland

Irish customs officials September 13 released 1,500 confiscated copies of a book by two Americans about lesbianism among nuns. Rosemary Curb and Nancy Manahan, authors of *Lesbian Nuns: Breaking Silence,* were also denied hotel accommodations in Dublin when they arrived in staunchly Catholic Ireland to promote the book.

On September 12, Irish customs seized 1,500 copies of the book despite the fact that 3,000 copies had already been distributed in Ireland. The books were returned to the publisher and officials planned no further action.

The two former nuns and self-professed lesbians said they were turned away from Buswell's Hotel, where they had made reservations. "I feel like I've just been kicked in the ribs," said Manahan. "It's sad really. It is an escalation of the reaction from people who have not even read the book."

Hotel owner Noel Duff had, indeed, not read the book, but said, "I don't want anything to do with them. My children are educated by nuns and I've a very high regard for them. I'm standing on my principles." Reported in: *New York Post*, September 14.

London, England

The British Safety Council, usually concerned more with working conditions and seat belts than public morals, has called on British authorities to ban the American film *Rambo: First Blood, Part II,* starring Sylvester Stallone. "*Rambo* is 96 minutes of mindless violence. A number of scenes are truly sickening," said James Tye, director general of the group. "This film can only foster violence in the minds of the sick of our society."

The group fears that *Rambo* could incite hooligans to beat up innocent people, thereby creating a safety hazard. "The loss to an employer of a key worker beaten up on his way to or from work or leaving the pub in the evening is just as serious as an on-the-job accident," Tye said. The Safety Council sent letters to every member of Parliament seeking a ban on the film. Reported in: *Wall Street Journal,* August 19.

(less access . . . from page 192)

February—For the fourth year in a row, the Administration's budget proposed to eliminate funding for the Library Services and Construction Act and the Higher Education Act title II library grant programs. The National Commission on Libraries and Information Science was once again at zero. The proposed budget would also eliminate all postal revenue forgone appropriations. If enacted, this would mean that as of October 1, 1985, those eligible for free mail for the blind would have to pay the full cost of this mail; and major increases would take effect in all subsidized rate categories including nonprofit bulk mail, classroom publications, and the fourth class book and library rates. A 2-pound book package sent library rate would be 94¢, a 74 percent increase from the current 54¢. This would be on top of a 15 percent increase February 17, when the 2-pound book package went from 47¢ to 54¢ as part of a general rate hike.

Budget documents indicated that at a later date the Administration would propose legislation to permit USPS to increase the rates of full ratepayers so that some subsidy could continue for some but not all current preferred-rate mailers. No details of this proposal were provided. (OMB, Budget of the United States Government, Fiscal Year 1986, Appendix)

February—The Reagan Administration's efforts to stem the flow of unclassified information to the Soviet Union may soon turn to a new area: the government literature made available to the public through the Commerce Department's National Technical Information Service (NTIS). A February memorandum by Commerce Secretary Malcolm Baldrige suggests that "new legislation, new Executive Orders, and coordinated government-wide regulations" may be required to stem what he calls the "hemorrhage" of information through NTIS. Private corporations make extensive use of NTIS materials as do scholarly researchers. Baldrige wants much tighter screening of what goes into NTIS, in essence requiring that documents containing potentially sensitive information be withheld from NTIS even though they are declassified or unclassified. (*Science,* March 8)

March—The Merit System Protection Board announced that it will no longer publish the full text of its decisions in bound volumes, but referred users to private sector sources for MSPB decisions. The March 4 *Federal Register* notice (pp. 8684-8685) listed several private publishers which offer the MSPB decisions in various formats, not all of which include the complete decisions, at prices ranging from $250 to $498 per year. The bound volumes in the past have been provided at no charge to 472 depository libraries, including 37 federal libraries. In addition, 500 to 1000 copies of the volumes have been sold by the Government Printing Office at a cost of approximately $55 per year. Discontinuation of government publication removes the item from the Depository Library Program, the GPO sales program, and inhibits public access to the decisions. The cost to the government itself for one copy of the MSPB decisions for each of the federal libraries which are currently depository recipients could be over $18,000. (Statement of Francis J. Buckley, Jr. before the House Government Operations Subcommittee on Government Information, Justice and Agriculture, April 29)

March—At a speech at the National Press Club, Attorney General Edwin Meese 3rd rejected the suggestion that the Administration had restricted access to information and said it had instead reduced the amount of information that was classified. "We have far too much classified information in the Federal Government." He pledged an "open administration" in his tenure as Attorney General. "Sometimes there is a temptation in Government to close up sources of information," adding that he would seek "to avoid this temptation" and try instead "to work cooperatively." (*New York Times,* March 21) [However, the Information Security Oversight Office says classification has increased. See May item].

March—OMB proposed "a sharp reduction in the Government's efforts to gather and distribute statistics about all aspects of American life." Under the proposal, a draft circular on the management of federal information resources, OMB would have authority over all information-gathering efforts by federal agencies. "The agencies would have to show that the data were essential to their mission, that they were not likely to be gathered by the private sector and that their benefits outweighted the collection costs." (*New York Times,* March 31) [For the text of the proposed circular see the March 15 *Federal Register,* pp. 10734-47, with corrections on March 21, p. 11471.]

March—Some omissions from the OMB proposed circular on management of federal information resources are sure to spark controversy. "For instance, while the proposal warns bureaucrats to be wary of the possibility of price-gouging as the result of a contractor's monopoly over a government data base, it doesn't offer specific safeguards . . . Agencies are not required to grant sole-source contracts to provide data bases to the public, but the SEC (Securities and Exchange Commission) and others have an incentive to do so if in return they get an internal system from the contractor at no cost." (*Business Week,* March 25)

March—Using its authority under the Paperwork Reduction Act, OMB rejected all parts of several forms proposed by the Department of Housing and Urban Development and the Veterans Administration to collect racial and ethnic data on beneficiaries of federal programs. The information is collected in an attempt to detect and prevent discrimination. (*New York Times,* March 25) [In June, OMB reversed its decision to bar HUD and VA from collecting information about the race, sex and ethnic background of applicants for home mortgage insurance. In a May letter, five Republican and seven Democratic senators urged President Reagan to overrule OMB, *Washington Post,* June 27.]

March—The Consumer Information Center (CIC), part of the General Services Administration, has raised fees for some of its publications, and is now charging for other publications it formerly distributed free of charge. A March 30 *Washington Post* story about these changes stated: "about 70 percent of the publications listed in the 1981 catalog were free, compared to 50 percent today," and "in 1981, the most expensive publication in the catalog cost $2; today, the top price is $7." As a result, the CIC's distribution of publications over the last four years has plummeted by about 77 percent.

April—The Defense Department told the Society of Photo-Optical Instrumentation Engineers, sponsors of an April technical symposium in Washington, that it must cancel the presentation of about a dozen unclassified research papers because the information might help the enemies of the U.S. In addition, DOD ordered the Society to restrict the audience that attends the presentation of two dozen other technical papers that are also not classified. The Pentagon contended it has the authority to limit distribution of information under the Export Control Act, which bars export of sensitive technology without a license. When speeches and papers are involved, DOD maintains that the presence of foreign scientists in the audience could lead to unauthorized export of information. Leading universities and professional associations have objected to the restrictions, and have been working with the Pentagon to try to resolve the conflict. (*New York Times,* April 8)

April—According to an April 18 *Washington Post* article, the Reagan Administration is drafting guidelines to classify all national security-related information throughout the federal government—including civilian agencies—as part of an effort to increase computer and telecommunications security. Much of the information now in government computers is not protected and is widely available. A special national security committee will decide how much of that information needs protection and how to protect it. As the federal government relies on computer networks and ordinary telephone conversations to conduct even the most sensitive business, traditional methods of classification for paper files and documents are seen as no longer adequate. The fact that computer and telecommunications technologies can be breached by electronic intercept and entry has prompted the decision to launch a set of security countermeasures in both classification and technology. One result could be that sensitive information now stored in civilian agency computers would fall under a new national security classification.

April—The Department of Energy issued final regulations in the April 22 *Federal Register* (pp. 15818-29) to prohibit the unauthorized dissemination of certain information identified as Unclassified Controlled Nuclear Information. These regulations describe how government information is determined to be UCNI, establish minimum protection standards, specify who may have access to UCNI, and establish procedures for the imposition of penalties for violation of these regulations.

April—"According to a UPI report of April 8, Senator William Proximire has threatened to try to cut funds for a newly-created White House News Service if it shows signs of expansion into the nation's 'first government operated and controlled news service' or of being replicated in other government agencies." (*Library Hotline,* April 29)

April—OMB is imposing administrative budget cuts on agencies which are forcing reductions in publication programs without adequate consideration of the utility of the information in meeting the agency's mission and in serving the public interest. For example, the Bureau of Labor Statistics is being forced, among other cuts, to reduce the *Monthly Labor Review* to a quarterly publication and to eliminate the following items: *How the Government Measures Unemployment, Questions and Answers on Male and Female Earnings, A Profile on Black Workers, Historical Supplement to Employment and Earnings, Family Employment Characteristics Data Book, Handbook of Labor Statistics,* and *Productivity and Manufacturing.* (Statement of Francis J. Buckley, Jr. before the House Government Operations Subcommittee on Government Information, Justice and Agriculture, April 29)

April—The former U.S. Court of Claims published its *Cases Decided* through the Government Printing Office. As a result, copies were distributed to 557 depository libraries and about 300 copies were sold by

the Superintendent of Documents for about $82 in 1982, the last year they were publisheld. The reports of the U.S. Claims Court are being published commercially for $219 for six volumes to bring the set up to date, plus an estimated $102 per year for future issuances. The new Court Judges and Clerk are provided free copies by the commercial publisher, but the Court purchases copies for its own library as must all other government agencies, libraries, and the public. (Statement of Francis J. Buckley, Jr., before the House Government Operations Subcommittee on Government Information, Justice and Agriculture, April 29)

April—"A decision by the Nuclear Regulatory Commission (NRC) to reduce public access to meetings and reduce the availability of transcripts from closed meetings is causing a stir in Congress. In late April the NRC voted 3-2 to immediately implement these rule changes proposed by chairman Nunzio Palladino, without first holding public hearings on the matter." (*Science,* May 10)

May—OMB issued, May 2, Circular No. A-3 (Revised), "Government Publications," which prescribes the policies and procedures for approving funding for government periodicals, and for reporting periodicals and non-recurring publications. This revision institutes an annual review of federal periodicals and establishes guidelines and procedures for a coordinated and uniform method of agency reporting and OMB approval. A new policy section states: "Expenditure of funds shall be approved only for periodicals that provide information, the dissemination of which is necessary in the transaction of the public business required by law of the agencies. The OMB-approved control system shall continue to be implemented and used to monitor periodicals and non-recurring publications. Periodicals and non-recurring publications will be prepared and disseminated in the most cost-effective manner possible." The control system referred to was set up in 1981 through OMB Bulletin 81-16 and supplement No. 1, which "initiated a program to cut waste in Government spending on periodicals, pamphlets, and audiovisual products."

May—On May 2, OMB issued OMB Bulletin No. 85-14 providing instruction and materials to the heads of executive departments for the submission of the Annual Report on Government Publications. "In the Annual Report on Publications, due June 30, 1985, agencies shall request approval for all periodicals, both those proposed and those already being published, from the Director of OMB." This bulletin implements Title 44 of the *U.S. Code,* section 1108, and OMB's revised Circular A-3.

May—The Reagan Administration, under a 1982 executive order (E. O. 12356) that spelled out new rules for defining government secrets, has been classifying more documents and declassifying far fewer. According to the annual report of the information Security Oversight Office, the total number of "classification decisions" in fiscal 1984 was 19,607,736, an increase of 9 percent over the year before. The systematic declassification of old records has flagged under the Reagan order, but proceeded faster in 1984 than in 1983. (*Washington Post,* May 8)

May—Responses were overwhelmingly negative to the OMB proposed circular on Management of Federal Information Resources published in the March 15 *Federal Register.* While there were a few defenders among the 309 comments filed for public review in the OMB library, most were highly critical of the proposal. Of the comments received as of May 30, 1985, 169 were from the library and university community, 88 from other members of the public, and 52 from federal agencies. Many of the comments contended that the proposed policy would make government information less accessible and more costly.

In a May 14 letter to OMB, ALA stated that the proposed circular, if implemented as written, will systematically deprive the American people of information by and about their government. ALA said the proposal still required major amplification and revision and another draft should be issued for public comment. In addition, it should be submitted to Congress for policy review because its provisions reach far beyond mere management considerations. ALA's ten-page response is available by sending a self-addressed mailing label to the ALA Washington Office, 110 Maryland Ave., N.E., Washington, D.C. 20002. (*ALA Washington Newsletter,* May 29 and June 17)

May—In a May 24 editorial, "Statistical Error," the *Washington Post* called the OMB proposed circular on the management of federal information resources "an innocuous-sounding proposal that would destroy important and useful government services." The editorial concluded:

"The government and the public need more and better, not less and more expensive, statistical information. The amounts that can be saved by OMB's proposals are nickels and dimes. The things that could be destroyed are gold. We put to the side a thought that has crossed some people's minds: that the administration is trying to suppress statistics and information that could be politically inconvenient. Let's just say that what they're doing is wrongheaded, and should be stopped."

May—Bechtel North American Power Corp. has been awarded a contract to record SEC filings onto microfilm and disseminate them. Starting Oct. 1, Bechtel is to provide an estimated 250,000 microfiche a year to the SEC's public reference rooms. Bechtel is expected to earn between $4 million and $6 million a year from sales of the information, depending on the number of filings. (*Washington Post*, May 29)

May—The Department of Agriculture announced that time-sensitive information currently available both electronically and in print form from several USDA agencies will be available July 1 from a single electronic source: Martin Marietta Data Systems. Users of the service, which are expected to be organizations that further distribute USDA information, will pay a minimum fee of $150 a month, plus costs of special hardware and software, to access the system. USDA and land-grant universities will pay the usual computer time-share fees, but not a monthly minimum. With the proper equipment, such as high speed modems, farmers and other individuals could also access the new service for a fee. The new service will disseminate daily and weekly market reports from the Agricultural Marketing Service; crop and livestock reports from the Statistical Reporting Service; outlook and situation reports from the Economic Research Service; foreign agricultural situation reports, export sales reports, and foreign trade leads from the Foreign Agricultural Service; news releases from the Office of Information, and other perishable information. (*Agricultural Libraries Information Notes,* May)

USDA elicited a commitment from Martin Marietta to charge no more than the standard timesharing charges to information vendors purchasing the bulk data on the Martin Marietta system. However, USDA does not plan to exercise control over the fees information vendors charge the public to access the data on the vendor's systems. In addition, USDA hopes that disseminating the data on the Martin Marietta system will eliminate the need to disseminate the data in paper copy.

OMB regards the USDA program as a prototype for electronic dissemination of information, and EPA and several other agencies have expressed an interest in participating in the USDA system. (Government Documents Round Table, ALA, *Documents to the People,* June 1985, p. 59).

June—The June 12 edition of the Bureau of National Affairs *Daily Report for Executives* has a 7-page article which gives a good summary of the issues relating to the proposed OMB circular on Management of Federal Information Resources (March 15 *Federal Register*). The article has numerous quotes from the more than 300 comments OMB received about their proposal. (BNA *Daily Report for Executives,* Regulatory and Legal Analysis, pp. C-1 to C-7)

library prepared to sever ties to South Africa

The Cleveland Public Library passed a resolution September 19 that would end business with American companies, including publishers, who maintain ties with South Africa while apartheid remains in force. Major suppliers of goods and services to the library would be urged that all their business ties with South Africa be severed as soon as possible. Non-compliance within reasonable time would result in legal steps to terminate business with those companies.

Board President George W. Trumbo said the resolution would apply to book publishers and other companies doing business with the library. When the policy was first proposed in May, a report indicated that among the major publishers with subsidiaries in South Africa were Macmillan, McGraw-Hill, and Prentice Hall. The report also listed Eastman Kodak Co., which is the film supplier for the library's microfilm collection. Reported in: *Cleveland Plain Dealer,* September 20.

June—The Department of Education's Publication and Audiovisual Advisory Council barred 17 federally supported education laboratories from issuing 98 of 438 publications related to research contracted for by the department. The move marks the first time that the department has applied a 1981 order intended to curb wasteful federal publishing to projects it has sponsored at the regional laboratories through the National Institute of Education. (*Education Week,* June 19)

June—In the wake of alleged spying by former and current military personnel, the House of Representatives approved, 333 to 71, an amendment to the Defense Department authorization bill, which would give the Pentagon broad power to subject to lie detector tests more than 4 million military civilian employees with access to classified information and would require polygraphs before granting the highest level clearances. The Senate has already passed a defense authorization bill that provides for a much more limited polygraph program. The two bills will have to be reconciled in a conference committee. (*Washington Post,* June 27)

intellectual freedom bibliography

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