

newsletter
on
intellectual
freedom



Editor: Judith F. Krug, Director
Office for Intellectual Freedom, American Library Association
Associate Editor: Henry F. Reichman

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On Saturday, August 9, the American Library Association Intellectual Freedom Committee held an extraordinary session in order to review the report of the Attorney General's Commission on Pornography and to identify its implications, if any, for libraries and librarians. As a result of its study, the committee issued the following statement.

Article 2 of the Library Bill of Rights states: "Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval."

Librarians have cause for concern over the potential chilling effect of the Commission on Pornography's report on the free flow of information and ideas. On July 24, 1985, Beverly P. Lynch, then President of the American Library Association, testified before the Commission. Her statement declared that

The First Amendment to the U.S. Constitution states in part that "Congress shall make no law . . . abridging the freedom of speech or of the press."

This dictate exemplifies the philosophical framework underlying our form of government—a constitutional republic—a government by the people—and 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. In order to do this, the people must have unrestricted access to information and ideas and images, and at the same time, the right to hold beliefs and to express opinions and ideas on all subjects. Offensiveness cannot—by its very nature of subjectivity—be the standard by which literature or images should be available.

President Lynch concluded with a statement urging the Commission not to recommend new restrictions on access to materials of any kind and she urged that some existing restrictions be eliminated. The Commission's dismissal of ALA's concerns, in favor of a report which called for limitations on what people of all ages may read, is cavalier and specious. In view of the frequent individual and group attacks on libraries for making available materials, with and without illustrations and in many formats, no comfort can be taken from the Commission's characterizations of libraries' concerns as a "phantom danger" nor can any assurance be found in the Commission's protection of the "printed word." Most libraries are publicly supported and are especially vulnerable to pressures

(continued on page 239)

IFC reviews Meese report

Published by the ALA Intellectual Freedom Committee,
Judith Drescher, Chairperson

in this issue

IFC reviews porn report	p. 199
ethics in an electronic age	p. 201
surveys on censorship	p. 202
report finds rising censorship	p. 203
less access to less information (update).....	p. 204
obscenity law update	p. 206
AAParagraphs	p. 206
pictures linked to child abuse	p. 214
IFC wins award	p. 237
IFRT presents awards	p. 237
resolution on government scientific information...	p. 238
Coalition on Government Information	p. 238

targets of the censor

books

<i>About David</i>	p. 209
<i>The Accommodation: The Politics of Race in an American City</i>	p. 213
<i>All About Eggs</i>	p. 207
<i>As I Lay Dying</i>	p. 208
<i>Chocolate to Morphine</i>	p. 207
<i>The Chocolate War</i>	p. 209
<i>The Color Purple</i>	p. 209
<i>The Encyclopedia of Psychoactive Drugs</i>	p. 207
<i>Go Ask Alice</i>	p. 207
<i>The Grapes of Wrath</i>	p. 210
<i>The Hobbit</i>	p. 221
<i>I Am the Cheese</i>	p. 209
<i>In a Dark, Dark Room</i>	p. 224
<i>A Light in the Attic</i>	p. 224
<i>Literature of the Supernatural</i>	p. 224
<i>Lysistrata</i>	p. 207
<i>Man, Myth, and Magic</i>	p. 224
<i>The Miller's Tale</i>	p. 207
<i>Monsters</i>	p. 224

<i>One Flew Over the Cuckoo's Nest</i>	p. 225
<i>Our Bodies, Ourselves</i>	p. 212
<i>The Popular History of Witchcraft</i>	p. 224
<i>The Satanists</i>	p. 224
<i>Talking With Your Child About Sex</i>	p. 207
<i>Topics for the Restless</i>	p. 224
<i>Where the Sidewalk Ends</i>	p. 224

periodicals

<i>Among Friends</i>	p. 220
<i>Common Lives/Lesbian Lives</i>	p. 212
<i>Daily Nebraskan</i> [U. of Nebraska].....	p. 216
<i>Hustler</i>	p. 214
<i>Penthouse</i>	p. 202, 206, 212, 214, 225
<i>Playboy</i>	p. 202, 206, 210, 212, 214, 215, 222, 225
<i>Spectrum</i> [Hazelwood East H.S.].....	p. 216
<i>Tampa Tribune</i>	p. 217
<i>The Weekly News</i>	p. 225

films

<i>Cobra</i> [Brazil]	p. 222
<i>Hail Mary</i>	p. 211, 221

comic strip

<i>Doonesbury</i>	p. 212
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ALA conference ethical issues in an electronic age

At the American Library Association's 1986 Annual Conference in New York, the Intellectual Freedom Committee and the Committee on Professional Ethics sponsored a program entitled "Ethical Issues in an Electronic Age." The program featured Bernard Hurley, Director of Library Systems, University of California, Berkeley; Robert Peck, Staff Director of the Commission on Public Understanding About the Law, American Bar Association; and Robert Walton, an automation consultant at the Texas State Library. Edited versions of their remarks are given below.

remarks by Bernard Hurley

Bernard Hurley is Director of Library Systems at the University of California, Berkeley.

Good afternoon. My name is Bernie Hurley and I am the Director of Library Systems for the University of California, Berkeley. Now that you know who I am, I would like to tell you what I am not, and that is an expert on the law or ethical issues. I am a system developer, and I would like to use my experiences to point out some problems with ethical consequences that arise in developing systems. After I point out these problems, I am sure the next two speakers, who are the experts, will give you all the answers.

To start with, I would like to put my experience into perspective by giving you a very brief idea of what we are doing at U.C., Berkeley. We are now developing a system called Gladis (General Library Automated Database and Information System), which has catalog maintenance and circulation components, an on-line catalog under development, and the beginnings of an authority control system. We are also experimenting with some of the new optical disc base products, such as Infotrac and ERIC, end-user searching products. A third project that we are working on, which is very exciting, is the development of the library's portion of a scholar's work station based on a Sun III computer, which is a desk-top computer that is very powerful, has a very large monitor, a graphics monitor, a lot of windowing facilities, and is a local area network-based station. In addition to my work at Berkeley, I engage in freelance consulting.

When I was asked to come and speak to this group, the first thing that went through my head is, "I work with this subject every day and I've never really stopped to think about ethical considerations." I think there are probably two reasons for that. The first is, I am not quite sure what ethical means. If you look it up in the dictionary, you will be told it's the right thing to do or what you ought to do. But we all know that may or may not have anything to do with what is legal. That doesn't really cause me a problem because I'm never sure what's legal anyway! But the place where I really get stuck is the difference between ethical and socially acceptable. There is a big gray area there where we have room

to do things for which no one will really call us onto the carpet, but which are probably not right. An example in everyday life is being creative on your income taxes. I think another example would be, in terms of software, people who would buy a word processing package or LOTUS, and feel that making one copy of it, pirating one copy, was not really very bad. But the same people would consider it unethical and probably illegal to pirate 500 copies and sell them. So the definition of ethical, or that gray area that exists in systems development, causes, at least for me, some problems in what I should or should not be doing.

I think the second reason that I really never thought too much before of the ethical considerations in systems development is that I have, and I think we all tend to have, an automatic decision-making process. I've never considered myself an unethical person, but when I make decisions I tend to do so based on my past experiences—psychological and sociological considerations, such as how I was raised, how I interact with my peers, a lot of reasons. When it comes time to make the decision, the decision almost happens instinctively or automatically. I'm going to suggest that this process I go through, and which I think many of us go through, is not really a healthy process. Because it is instinctive and not really reviewed, there's a danger that we could be making decisions that have ethical consequences of which we are not aware.

So I would like to use my portion of today's program to do two things. First, to take a few minutes to put a boundary around my talk and try to define what I'm going to talk about. And secondly, to propose a framework that we can use to help us make ethical decisions when developing systems.

To start with, the title of my talk is "Developing Information Systems with Public Money for Personal or Institutional Gain." There are a few key phrases in there. The first is "developing information systems." I'm going to be a little bit liberal with that definition. Developing systems at U.C., Berkeley, means developing them from scratch—hiring programmers, writing codes, installing systems. But I think that developing systems goes way beyond that. Writing the programs is only about half of what you need to do. Installing the systems and gaining some kind of acceptance for the systems is the other half of the job. So I would say that whether you develop your systems by writing the programs yourself, or whether you work with a vendor and purchase a system, we all have a development job to do in our environment.

The second key phrase in the title of my talk is "public money." Since U. C., Berkeley, is a publicly supported institution and almost everything we do is with public money, that's my perspective. But I'd like to try to lead my comments beyond that because I think the issue of ethics and

(continued on page 226)

new survey finds people oppose censorship

More than 80 percent of the American people oppose restrictions on access to lawful books and magazines, according to a new national survey released September 25. The poll, conducted by Penn & Schoen Associates of New York, was commissioned by Americans for Constitutional Freedom (ACF), a coalition of groups and individuals concerned about threats to First Amendment rights (see *Newsletter*, September 1986, p. 197). Another survey, however, commissioned by the Freespeech Committee in Minnesota, was less sanguine. Apparently, a large minority, and, depending upon the issue, a majority of Minnesotans, support restrictions on free expression.

According to the ACF survey, 84 percent of those polled believe the American people have an absolute right to buy all magazines and books judged to be legal. Among those who identified themselves as "born again Christians," 74 percent agreed with this position. Even among those who explicitly identified themselves as having a favorable impression of the so-called Moral Majority, 75 percent supported this right and 53 percent said government should not discourage the sale of particular periodicals.

According to Sanford J. Ungar, Dean of the School of Communications at The American University and a member of ACF's advisory steering committee, "The poll's findings are timely and important, given the current wave of attacks on a wide range of publications and those who sell them. These attacks threaten to undermine one of our most cherished freedoms: the freedom to choose for ourselves what we want to read."

John M. Harrington, executive vice president of the Council for Periodical Distributors Associations (CPDA), one of the founding organizations of ACF, said he was "particularly heartened" by the survey's finding that "born-again" Christians overwhelmingly oppose restrictions on the freedom to read. "Some television evangelists and religious fundamentalist organizations claim the unanimous support of their followers in restricting the availability of books and magazines they deem objectionable. But the survey clearly shows that conservative Christians are strongly committed to individual freedoms."

Among the findings of the ACF survey:

- Two-thirds of those polled—67 percent—believe the government should not discourage stores from selling particular books and magazines. More than 90 percent of those polled said it should be up to the individual to decide what he or she wants to read—not the government.

- By a margin of 52 to 40 percent, survey respondents opposed efforts by citizen groups to pressure stores into removing books and magazines those groups find objectionable. There was even less support for picketing by citizen action groups as a means of pressuring stores into removing

certain books and magazines. Thirty-five percent found picketing acceptable; 58 percent did not.

- According to the survey, most Americans believe such pressure tactics by government or by citizens action groups amount to a form of censorship. Sixty-one percent of those polled said restricting access to one form of publication, such as men's magazines, will lead to restrictions on other types of publications, such as rock and roll and teenage magazines.

- The ACF survey asked whether it is more important to protect Americans' right to purchase books and magazines they want to, or to make sure "objectionable" books and magazines are kept off the shelves. By a wide margin of 73 to 22 percent respondents favored the protection of the right to purchase over making sure "objectionable" materials are not available.

- The survey found that more than three-fourths of all Americans—77 percent—believe society already has enough laws to restrict the sale of potentially objectionable magazines; only 15 percent believe additional measures, such as banning the sale of these publications, are necessary.

- According to the survey, there is a strong feeling that all types of magazines should be freely available to the general public: 98 percent believe sports magazines should be freely available; 94 percent feel the same way about news magazines; 86 percent about photography magazines; 83 percent about women's magazines; 80 percent about rock and roll magazines; and 74 percent about men's magazines. When asked about specific publications, 65 percent of the respondents said *Playboy* should be freely available and 61 percent said the same about *Penthouse*.

The ACF survey was conducted by telephone with a sample selected through the use of random-digit dialing. A total of 1,002 interviews were conducted between August 23 and August 29, 1986. The survey is subject to a level of sampling error of plus-or-minus 3 percent at the 95 percent confidence level. Copies of the survey, *Attitudes toward Free Access to Books and Magazines*, are available from Americans for Constitutional Freedom, 1000 Potomac Street, N.W., Suite 303, Washington, D.C. 20007.

In Minnesota, a telephone survey of 612 people was conducted in mid-June by the *Minneapolis Star & Tribune* research department on behalf of the Freespeech Committee, a project of the Minnesota Newspaper Foundation. The survey revealed extreme differences in support for the abstract notion that government should not impose itself on the expression of ideas by its citizens and, on the other hand, its application in specific circumstances.

U.S. District Judge Edward Devitt, a member of the Freespeech Committee, said that many people think, "The First Amendment is OK if no one gets hurt. Minnesotans support First Amendment rights when there's no opposition to those rights," but they "give lukewarm support when there's a risk, when they're taking a chance, when possible harm might result."

According to Devitt, the survey's "most shocking" find-

ing was that while 56 percent of Minnesotans believe it is better for society to risk undesirable behavior than to limit free expression, 40 percent of the respondents thought the better choice was to have the government suppress some materials and speech.

According to the Minnesota survey, 84 percent of the sample said people should express their views more often; 86 percent believed that most people don't value their freedom of expression enough; and 93 percent thought it important to understand ideas that differ from their own. There was virtual unanimity—98 percent of the sample—that freedom of expression is one of the best things about living in the United States.

However, 68 percent of Minnesotans said freedom of expression does not include the right to write a book advocating the overthrow of the U.S. government, by violent means if necessary. A third of those surveyed supported limits on the depiction of human nudity and sexuality. The same percentage favored government restriction of ethnic or racial ridicule. Forty-three percent said government should prohibit books or movies that portray Communists as heroes and 57 percent said government should prohibit books, plays and movies that depict human torture.

Fifty-one percent agreed with the general statement that government should suppress bad or harmful ideas so that innocent people won't get hurt. In specific cases, 79 percent said government should prohibit groups such as Nazis or the Ku Klux Klan from advocating harm to minorities, while 68 percent said free expression did not include the right of Nazis to march through a Jewish neighborhood.

Other highlights of the Minnesota survey were:

- About half of the sample believed that freedom of expression applies equally to minors.
- Twenty-eight percent of the respondents would follow the advice of religious leaders to avoid reading a book, attending a play, or seeing a movie.
- Nineteen percent of the sample said freedom of expression is leading to a breakdown of the social order.
- Thirty-one percent of the Minnesota respondents said people are more likely to be converted to Communist ideas if they learn about them in a classroom setting.
- While 76 percent of the sample said the news media have a right to report any story they think is in the public interest, 58 percent said the press goes too far and abuses its freedom.
- Fifty-eight percent of the respondents said reading about or seeing violent behavior makes people more likely to commit violent acts.

"If we want the First Amendment, we have to take the good with the bad, the bitter with the sweet," Judge Devitt warned. "The First Amendment is good, and it's good for all times. It seems to me it's a question of education. We have to tell people around the country what the First Amendment is all about." Reported in: *Minneapolis Star & Tribune*, July 3; *Hendricks Pioneer*, July 16.

report finds censorship on rise

"Censors today don't just ban books, they want to ban ideas that differ from their own." Anthony T. Podesta, president of People for the American Way, was summarizing one of the main conclusions of his group's fourth annual study of censorship, *Attacks on the Freedom to Learn, 1985-86*, released in September. The study found that censorship of books and public school curriculums has been increasing dramatically. In the last year, the number of incidents rose by 35 percent; in the past four years they have more than doubled.

Most important, the report documented a significant shift in the nature of the attacks. Where in the past critics tended to target "dirty books," the current trend is to target *ideas* with which the would-be censors disagree. More than in the past, the driving force is the censors' religious views. "The survey is evidence of the activities of the religious right to promote their point of view in the public schools," Podesta said. "Almost 60 percent of the incidents were attempts to censor ideas, information, and teaching methods in the classroom."

According to the study, censorship is increasing in all parts of the country and in both rural and urban school districts. In the 1985-86 school year, 39 percent of the attacks on library books and curriculums reported by the survey actually led to removal or restriction of the materials. Four years earlier, only 23 percent of all censorship efforts were successful. Targets of censorship included materials in basic courses ranging from English literature and reading to science and health.

Although the report emphasized that censorship efforts do not originate solely with the political and religious right, the survey noted that at least 43 percent of efforts reported were organized by such groups as Phyllis Schlafly's Eagle Forum, Beverly LaHaye's Concerned Women for America, the Rev. Pat Robertson's National Legal Foundation, and the relatively new National Association of Christian Educators. The report points out that Citizens for Excellence in Education, a component group of the National Association of Christian Educators, has pledged to bring "public education back under the control of Christians" and to do so by taking "complete control of all local school boards."

The report charged that such efforts are increasingly accompanied by more sophisticated tactics of litigation, regulation, and legislation. Robertson's National Legal Foundation, for instance, is financing a challenge to the entire public school curriculum in Mobile, Alabama (see *Newsletter*, March 1986, p. 39). The report also noted the continued reliance on the so-called Hatch Amendment as a rationale for censorship (see *Newsletter*, May 1985, p. 65).

Attacks on the Freedom to Learn warns that censorship pressures can do serious damage to the quality of education far beyond specific incidents. Reported in: *New York Times*, September 16.

less access to less information by and about the U.S. government: a 1986 chronology (January-June)

The following article, part of an ongoing series, was prepared by and is reprinted with the permission of the American Library Association Washington Office.

During the past five years, this ongoing chronology has documented Administration efforts to restrict and privatize government information. A combination of specific policy decisions, the Administration's interpretations and implementations of the 1980 Paperwork Reduction Act (PL 96-511), implementation of the Grace Commission recommendations, and agency budget cuts have significantly limited access to public documents and statistics.

Since 1982, one of every four of the government's 16,000 publications has been eliminated. Through two 1985 directives, the Office of Management and Budget has clearly consolidated its government information control powers. Circular A-3, Government Publications, requires annual reviews of agency publications and detailed justifications for proposed periodicals. Circular A-130, Management of Federal Information Resources, requires cost-benefit analysis of government information activities, maximum reliance on the private sector for the dissemination of government information, and cost recovery through user charges. The likely result is an acceleration of the current trend to commercialize and privatize government information. Recent proposals to discontinue or contract out National Technical Information Service exemplify this trend.

Another development, with major implications for public access, is the growing tendency of federal agencies to utilize computer and telecommunications technologies for data collection, storage, retrieval and dissemination. This trend has resulted in the increased emergence of contractual arrangements with commercial firms to disseminate information collected at taxpayer expense, higher user charges for government information, the proliferation of government information available in electronic format only. While automation clearly offers promises of savings, will public access to government information be further restricted for people who cannot afford computers or 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 January 1985, Council established an Ad Hoc Committee to Form a Coalition on Government Information. The Coalition's objectives are to focus national attention on all efforts which limit access to government information and to develop support for improvements in access to government information.

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 1981-84 Chronology: April 1981-December 1984." Two updates in 1985 continued the chronology; the following covers January-June 1986:

January 1986—In a January 7 letter to the editor, Wendy L. Gramm, Administrator for Information and Regulatory Affairs, Office of Management and Budget, challenged *The Washington Post's* assertion that statistical programs have been "hacked away at" by the Administration. Replying to a December 23 editorial, "Privatizing the Numbers," Gramm said: "No one is proposing to stop furnishing necessary information. No one is proposing to dismantle our federal statistical structure." She went on to say: "OMB's new policy does not provide . . . that the public be cut off from government information." Gary D. Bass, Executive Director of OMB Watch, in a January 21 letter to *The Post* charged that Gramm's letter "greatly misled the public."

January—Due to budget cutbacks, the U.S. Department of Agriculture can no longer report to the nation the total poundage of food consumed per capita in the United States. The information has been lost primarily due to the discontinuance of crop reports from USDA. The Food Institute says that the information as now published prevents food industry researchers from making any meaningful comparisons in the fruit and vegetable areas, such as comparing changes in the national diet (like the changeover from animal to crop products), and a host of other analyses. (Dear Friend letter from Frank J. Panyko, Vice President of The Food Institute, January 13, 1986)

January—The Administration is considering a change in federal reporting requirements that would eliminate a major source of data about how much federal grant and contract money goes to minority firms. Administration officials said that the OMB and the Commerce Department may adopt a reporting form similar to one now used by Commerce to track how federal grants are spent. Although the Commerce questionnaire asks about funds spent with minority contractors, it requires no data on how money is spent with subcontractors. Subcontracting is a major source of federal funds for minority businesses which often are too small to bid for the overall contract. Rejection of data-collection plans and the move toward a standardized, abbreviated information-

gathering form have led critics to charge that the Administration wants to do away with most racial data gathering. (*The Washington Post*, January 14)

January—The Federal Election Commission announced that “drastically curtailed public disclosure of federal campaign finance information will result from a series of budget cuts forced upon the FEC.” Effective March 1, the computerization of itemized information filed by political committees on the '86 election will be reduced severely, although candidate and political committee reports will continue to be available on microfilm for public review and copying. Among the effects of the reduction in computerization will be a reduction in timeliness, since data entry time probably will double; accuracy of detailed information may be reduced because less expensive methods of data entry will be used; and availability of detailed information will be reduced. (FEC, news release, January 30).

Stepping into the breach is Washington Online's Campaign Contribution Tracking System which includes all FEC reports filed since 1983 and costs \$3,500 in annual subscriptions for unlimited usage. (“Databases,” no date)

January—At its Midwinter Meeting, ALA Council passed a resolution urging ALA members to monitor the effects on government information and publications of the implementation of OMB Circular A-130, Management of Federal Information Resources, and to report problems to the ALA Washington Office, Members of Congress, and OMB.

February—As was proposed last year, the President's budget would again eliminate all postal revenue forgone appropriations. If enacted, this would mean that as of October 1, 1986, 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. Since rates as of January 1, 1986, are at full attributable cost levels, enactment of the budget would eliminate all indirect subsidy and result in regular commercial rates. A two-pound library rate book package would be \$.94 (OMB, *Budget of the United States Fiscal Year 1987, Appendix*)

February—For the fifth year in a row, the President's budget submitted to Congress proposed to eliminate the Library Services and Construction Act and Higher Education Act Title II library grant programs. In addition, the budget included proposals for FY '86 to rescind or “unappropriate” all library grant program funding except LSCA I and III where about half the states had already received funds. (Ed. note: These funds were released in mid-April after Congress did not agree to the rescissions.) (OMB, *Budget of the United States Fiscal Year 1987, Appendix*)

February—In the FY 1987 budget documents, one of the “accomplishments in 1985” announced that departments and agencies eliminated or consolidated 3,848 publications, approximately 25 percent of the federal inventory, to achieve cost avoidances of \$35 million, a 20 percent reduction since 1981. (OMB, *Management of the United States Government*, Fiscal Year 1987)

February—The Federal Communications Commission will publish summaries rather than the full texts of Notices of Proposed Rulemaking, rulemaking decisions and policy statements in the *Federal Register*. The FCC decided that “publication of detailed summaries would be a reasonable and cost-efficient way of apprising the general public of its actions.” *Federal Register* publication of the actual texts of final rules will be continued. Budgetary constraints and the rising cost of *Federal Register* publication were given as the rationale for the cuts. To cut publication costs further, the FCC also amended its rules to enable it to reduce the amount of material published in *FCC Reports*. Hereafter, only those rulemaking decisions and policy statements summarized in the *Federal Register* and not published in *Pike and Fischer* (a private sector service which costs \$1,875 to initiate and \$1,375 for an annual subscription) will be published in *FCC Reports*. (FCC News, Report No. GN-9, February 24, 1986)

March—Birth expectation data is missing from the current (June 1984) Fertility of American Women report from the Bureau of the Census. The supplemental question required to obtain the information was dropped from the Current Population Survey in 1984 because of cost considerations. Martin O'Connell, Chief of the Fertility Statistics Branch at the Bureau, said that the birth expectation data will be provided through external funding sources in the 1985 and 1986 surveys. Collection of the birth expectation data will continue to depend on external funding sources unless the importance and use of these data are made known to the Bureau. (National State Data Center Steering Committee *Newsletter*, March)

March—The House Appropriations Committee has directed the Department of Transportation's Research and Special Programs Administration to study charging user fees or contracting with private firms for its aviation information management activities, according to the March 3, 1986, issue of *Aviation Daily*. RSPA is turning data collection functions over to the Transportation Systems Center, which the Department wants to “privatize” in April 1986, according to RSPA Administrator Cythia Douglass. On April 1, RSPA announced that it will resume production and distribution of Air Carrier Traffic Statistics, Air Carrier Financial Statistics, and

(continued on page 234)

1986 obscenity law update

By Christopher Finan, Director, Media Coalition.

The First Amendment right of a bookseller to sell material that contains an element of sexual explicitness came under fire in 1986 from the very government that is charged with upholding the Constitution. Nevertheless, important First Amendment victories have been won this year by the American Booksellers Association and the other members of Media Coalition. Two of the most important occurred in the Southeast.

The government attack on the First Amendment was spearheaded by the Attorney General's Commission on Pornography, which issued a report in July calling for stricter enforcement of the laws against obscenity. While the Commission members claimed to be concerned only with "hard-core" pornography, the Commission threatened to issue a list of "distributors of pornography" that would include retailers who sold *Playboy* and *Penthouse* magazines. It was prevented from doing this by an injunction issued by a federal judge. However, the threat was enough to convince the corporation that owns the 7-Eleven convenience stores to pull all men's magazines from its thousands of stores. The Commission's insensitivity to First Amendment rights was perhaps most clearly revealed in a selection of its final report recommending that citizens picket stores that sell books with sexual content that are not obscene and are, therefore, protected by the Constitution. ". . . Citizens have every right to condemn a wide variety of material that is protected, and properly so, by the First Amendment," according to the report. The Commission showed absolutely no concern that by encouraging citizens to use their First Amendment right of protest it might undermine the First Amendment rights of others.

While the Federal government was putting its imprimatur on the activities of anti-pornography fanatics, however, the American Booksellers Association and the other members of Media Coalition were actively defending constitutional materials. In June, a federal appeals court upheld Media Coalition's challenge to the 1985 Virginia law banning the display of books that are "harmful to minors" in stores that minors may enter. Media Coalition's suit against a similar law in Georgia remains unsettled. However, an injunction won by Media Coalition in the Georgia case protects the rights of booksellers and the public until a decision is reached.

Another important victory for the First Amendment was won this year in Montgomery, Alabama. Local lawyers for the American Civil Liberties Union cooperated with lawyers for Media Coalition in bringing suit against Jimmy Evans, the District Attorney of Montgomery County. The suit was brought after Evans attempted to force retailers to agree not to carry magazines that he believed to be obscene. The U.S. District Court in Montgomery ruled that such an action was an attempt to impose an illegal prior restraint on a retailer's

right to sell material that has not been judged to be illegal by a jury. The district attorney is appealing this decision.

Many bad bills were introduced in the legislatures of the Southeast in 1986. Luckily, few became law. One of the worst was approved in Tennessee: it increases the penalty for selling obscene material to a fine of \$1,000 and six months in jail. Media Coalition wrote letters opposing a similar measure in South Carolina as well as another South Carolina bill that was similar to the display law challenged in Virginia. Media Coalition also wrote to protest any further tightening of the Florida display law.

One of the more unfortunate legislative developments in the Southeast this year was the decision by a federal judge in Mississippi to uphold the constitutionality of the 1983 obscenity statute passed by the Mississippi legislature. The enforcement of the law had been blocked by a suit filed by an adult bookstore owner.

AAParagraphs

two rare events

"Unique," the would-be writer ruefully learns, is a word best used seldom—if at all. Yet one might almost be forgiven its use—or at least a "mighty unusual"—to describe two First Amendment-oriented public programs recently conducted at opposite ends of the country and under quite different auspices.

One, sponsored by the Washington Professional Chapter of the Society of Professional Journalists, Sigma Delta Chi, brought to a Washington podium the chief of the nation's highly secretive intelligence (CIA Director William J. Casey) and the Chairman of the U.S. Senate Select Committee on Intelligence, (Minnesota's highly independent Republican Sen. Dave Durenberger). Add to those lofty figures a couple of prize-winning, probing newsmen—Bob Woodward of the *Washington Post* and him Polk of NBC—and you have the makings of an outstanding program, and one that could probably not have taken place in the capital of any other nation.

"I find myself accused of trying to demolish the First Amendment," Casey started out, perhaps having in mind the criticism he attracted for making telephone calls to book publishers warning them of the possible communications security law violations in two forthcoming books. "That I do not want to do," he went on. "I cherish the First Amendment . . . but sensitive, classified information continually appears in the press and could cause great damage and result in aiding those who work against our interests. . . . We have developed methods of collecting information about our adversaries, information critical to national security and to arms control and to the liberty of all of us. . . ."

(continued on page 213)

censorship dateline



libraries

Lake City, Florida

Faced with the threat of a lawsuit by the American Civil Liberties Union, the Columbia County School Board voted 4-1 September 9 to put a controversial humanities textbook in the Columbia High School library, but to continue a ban on classroom use. In April, the board banned two sections of the text that contained modern adaptations of *Lysistrata*, by Aristophanes, and Chaucer's *The Miller's Tale* after a Baptist minister objected when the works were read aloud in his daughter's class (see *Newsletter*, September 1986, p. 153). Three other parents opposed the banning and asked the ACLU to challenge it.

The school board's move did not satisfy the ACLU, which said the suit would proceed. "It simply would not solve the issue of a school board arbitrarily banning a state-approved textbook from the classroom," Florida ACLU legal director Steven Forester said. Reported in: *Florida Times-Union*, September 11.

Tampa, Florida

The head of an organization that teaches drug education to 50,000 Hillsborough County students annually said August 7 that she would ask for the removal of two controversial books from school libraries. Elizabeth McConnell, executive director of the C. E. Mendez Foundation, Inc., made the remark after a hearing called by U.S. Sen Paula Hawkins (Rep.-Florida) labeled the books—*Chocolate to Morphine* and *The Encyclopedia of Psychoactive Drugs*—"garbage."

Sen. Hawkins—who is in a close battle for reelection—said her hearing was held to determine "whether some drug education may be useless or may in some cases backfire and end up teaching children how to use drugs." She called for a reexamination of all drug education materials to make sure

they are "truthful, accurate, and current. No more teaching about 'responsible use,'" she added. "We've got to tell and show the parents what's really being taught to their children."

At the hearing, Hawkins read several passages from the two books. One passage from *Chocolate to Morphine*, published in 1983, appeared to endorse occasional use of cocaine in social situations as "probably not harmful." An excerpt from *The Encyclopedia of Psychoactive Drugs* informed readers that "drugs are sometimes used as an aid to achieving a mystical experience." "With drug abuse running rampant, we may well ask ourselves why it is that our children are being exposed to such garbage," Hawkins told the Senate hearing.

McConnell said the criticized books contain factual and "attitudinal" mistakes, and vowed to take the issue to Superintendent of Schools Raymond Shelton. "It's his school system. I'm only one of their programs," she said, "but I respect him greatly and I think he'd certainly be willing to listen to me." McConnell said she didn't know how the books were used or where they were shelved in the libraries, but said she would nevertheless "prefer their resources were accurate and up to date and not biased."

Shelton said the school board follows a strict procedure when a complaint is made about a book. Most important is a review by library staff and, in this case, health education specialists, to see if the questioned work meets "objective, well-defined criteria." Shelton attributed Hawkins' remarks to the political season: "Everybody's jumping on that bandwagon. Sen. Hawkins has been supportive of our drug program in the past. It's only because it's a political year." Reported in: *Tampa Tribune*, August 7, 8; *Miami Herald*, August 8.

Gainesville, Georgia

The Chestatee Regional Library's board of directors voted July 22 to review a policy that has prohibited young readers from checking out books on human sex and reproduction from the Gainesville public library, which serves Hall and Lumpkin counties. The vote came after the northeast Georgia chapter of the National Organization for Women asked the board to abolish a locked room where books on subjects ranging from hypnosis to drug abuse to breast-feeding and sexual dysfunction are kept. The books—marked in red ink with the word "restricted"—are listed in the card catalog. The board also formed a committee to examine whether forty books now restricted should be returned to the regular shelves.

Among the titles currently restricted are such books as *All About Eggs*, *Talking With Your Child About Sex* and *Go Ask Alice*, the anonymous diary of a teenage drug user which has sparked controversy in numerous libraries and schools. The NOW chapter complained in early July that the restrictions amounted to censorship and stood in violation of the *ALA Library Bill of Rights*.

The original complaint was made to the local board in Gainesville which referred the issue to the regional board. Several local trustees said they had not known books were being restricted.

Library Director Dorothy Dickinson said that no matter what the regional board decided, there would be people who disagreed. "I'm not going to say I like this arrangement or I don't like it," she said. "One thing is sure, you'll be in hot water either way." Reported in: *Gainesville Sun*, July 10; *Atlanta Journal*, July 23.

Mayfield, Kentucky

On September 18, the Graves County Board of Education reversed a two-week old decision to ban William Faulkner's 1929 classic novel of the American South, *As I Lay Dying*, from high school classrooms and libraries, saying that it failed to observe proper procedures in placing the issue on its agenda. "We have contacted constitutional lawyers throughout the state who tell us that our actions in excluding the book from our school were ill-advised," the board said in a statement read at a ten minute emergency meeting by board chair Jeff Howard.

"Certainly we want our children exposed to the opinions and ideas of great writers," Howard continued. "Neither are we so naive as to believe that our children aren't exposed to profanity, both in our community and among their peers." The vote to rescind the ban was 4-1, with board member Johnny Shelton, who first proposed the ban, casting the lone "no" vote.

The final outcome of the controversy sparked by the Faulkner novel remained unclear, however. At its September 11 meeting, the board ordered a review of all books used in the county's high school literature courses to determine whether each is "in the best interest of students." The board also set up a seven-member review committee to hear future complaints about the appropriateness of books or other educational materials. The committee will have the authority to recommend to the school board that a book be banned.

The new review committee was to be chosen by a special committee of five, including the school's parent-teacher organization president, the booster club president, the language arts department chair, a school librarian and the high school curriculum director. The review committee itself was established to consist of one counselor, two parent-teacher organization presidents, one librarian, one high school English teacher, one elementary English teacher, and one minister.

The review committee's first assignment is to review the controversy surrounding the Faulkner book, and after the September 18 withdrawal of the ban it was not clear whether that review would proceed. The book had been required reading in a sophomore English class until LaDone Fields Hill of Wingo complained that it contained offensive and

obscene passages referring to abortion and used God's name in vain. School policy allows students to be excused from reading books parents find objectionable, and Hill's son was assigned to read *Moby Dick* instead.

But Hill said she was concerned about other students reading the book so she contacted Johnny Shelton who raised the issue at a board meeting September 4 where he asked principal Jerald Ellington to read passages from the book. Hill said she wanted the book banned "because of my concern for other students and to make other parents aware of the contents of the material in this book and perhaps other books." Ellington said a parent—apparently Hill—also telephoned him saying she and her son found the book offensive.

Board member Bob Spalding said only one parent contacted him about the book, but added that he heard "strictly by rumor" that a petition had been drawn up by parents opposed to the book. Jeff Howard said he did not think the book should be required reading. "God's name is used in vain in several portions of the book. In there, a young girl goes to a so-called doctor to get an abortion."

The book was banned from both classroom use and the high school library, where it had been since the library opened two years earlier. "As educators, we recognize that a high school library is for the use of high school students during their formative years and that it should not contain materials that are not in the best interest of students," schools superintendent Billy Watkins said.

In a letter published in the *Mayfield Messenger*, Hill applauded the ban. She said the board's action represented "the hand of God working in a few people." She added, "Can we not stand without compromise not only regarding this, but also against other things which lower morals, weaken character and usher in secular humanism?"

Graves County church officials generally applauded the banning of the Faulkner book, which was significant since the new review committee is supposed to include a minister. In a letter to the board, the Graves County Baptist Association, comprised of about forty Southern Baptist-affiliated churches, stated: "We urge you to continue to take measures which will safeguard our children from being forced to read and study filthy literature in the classroom."

Terry Sims, pastor of Baltimore Baptist Church, said he skimmed through the book and labeled it "pornography" "As a parent, I wouldn't want my daughter reading this book," he said. Ronnie Stinson, a Graves County pastor and father, said he reviewed the book and found it inappropriate for his tenth grade son. "It's something that if I caught my kid reading out of literature class, I would have to discipline him for it," he said, adding that the review policy is "a beginning place."

In announcing the new review policy, the board said it had received twelve letters of support for the Faulkner ban from church organizations as well as a citizens petition against the book. There were no letters in opposition to the ban. Upon

first learning of the incident, however, the ACLU of Kentucky offered free legal counsel to any parent wishing to challenge the ban in court. Calling the board policy "illegitimate, mindless, anti-intellectual, authoritarian, and extremely dangerous," ACLU executive director Suzanne Post of Louisville said the board's initial action was evidence of "a pre-fascist mind set—the kind of mind set that led to what the Nazis did in Germany." Reported in: *Mayfield Messenger*, September 5, 6, 10, 12, 13; *Paducah Sun-Democrat*, September 5, 11, 12; *Louisville Courier-Journal*, September 19.

Durham, North Carolina

The Durham Public Library's effort to commemorate Gay Pride Month stirred an angry reaction among some residents. Books on homosexuality and books written by homosexual writers were on display at the library in June. The displays at the main branch were placed by local gay organizations.

Dale W. Gaddis, director of the Durham County library system, said library patrons objected to the displays because children use the library. She said people "don't feel we should have them in the library because they feel the library is the last oasis in the world." Religious groups, which Gaddis did not identify, also objected to the displays.

Richard D. Smith, a Republican candidate for the state legislature, said he objected to the displays "as a person with a strong Judeo-Christian background." Gays "are trying to inject their sense of morals into society, and I don't think it's right," he said.

Gaddis, however, said the displays were informational and did not promote homosexuality. Display cases "are available to public groups to present issues that are of community concern," she said. "We do not proscribe based on the beliefs of people who are putting the displays in. It's a freedom of speech issue." She said the county manager and the county library board viewed the displays after receiving complaints from patrons and said they could remain as scheduled. Reported in: *Raleigh News & Observer*, June 19.

Newport News, Virginia

Alice Walker wrote *The Color Purple* well enough to win a Pulitzer Prize, but she used enough "bad language" to make one Newport News high school principal consider the book a candidate for expulsion from the school library. Ferguson High School Principal John W. Kilpatrick said he received no calls or complaints from anyone about the book, but when he flipped through it he found himself struck by its profanity and sexual references.

After reading the book, Kilpatrick decided that it did not live up to school system guidelines which say sexual references must be justified by their context. He submitted a complaint to the Ferguson media committee which promptly decided that *The Color Purple* should be removed

from the open shelves of the school library and placed in a special section accessible only to students over the age of 18 or who have written permission from a parent.

"I abhor censorship," Kilpatrick said. "At the same time, the materials in a public school library are there for a purpose." Reported in: *Norfolk Ledger-Star*, July 15, August 4.

schools

Panama City, Florida

It began with concern about two novels used in English classes at Mowat Junior High School that some parents thought were inappropriate because they contain profanity and sexually explicit passages. A formal complaint was registered and a controversy was born. Four months and three school board meetings later, the issue had expanded to include a proposal for parental review of *all* instructional materials (including those that have never been challenged) used in Bay County's four middle schools and three high schools.

This is how the controversy developed. In April, Claudia Shumaker filed a formal complaint against *I Am the Cheese*, by Robert Cormier, and *About David*, by Susan Pfeiffer. In May, Charles E. Collins, a Panama City Beach developer and Shumaker's father, asked the school board to remove the protested books and appoint committees of parents to review all instructional materials. Collins published excerpts from the two books, and from Cormier's *The Chocolate War*, in a large advertisement in the *Panama City News Herald*, which included a space for signing a petition of protest. He ultimately claimed to have collected 9,000 signatures. Collins also played a prominent role in organizing a group called Concerned Citizens for Quality Education, which called for the removal of "objectionable books" from the schools.

In June, School Superintendent Leonard Hall banned the use of *I Am the Cheese*, saying it had not been approved by the school board. Citing a state law that says all instructional materials must be approved by the board, he instructed teachers not to use any unapproved materials, which limited teachers to using textbooks until the issue was resolved.

Shortly after the June board meeting, Hall announced a proposal to create review committees. As fully developed in a presentation to the school board in July, review committees composed of four teachers and five parents would be established at each junior and senior high school. The committees would review educational and library materials according to criteria established by the board. An ad hoc district review committee, including two students, would handle complaints about challenged materials.

Although Hall's plan purported to be a compromise between the ideas of the Concerned Citizens group and proposals by teachers for new selection criteria, his proposal generally won a favorable response from the textbook critics.

Collins simply suggested that Hall amend his plan to allow for seven parents and just two teachers on the review groups. The Hall proposal met with strong opposition, however, from teachers and some other parents. Citizens Having Options In Our Children's Education (CHOICE) organized in June to fight Hall's proposal. According to Ed Deluzain, head of Mosley High School's English Department, CHOICE exists to inform the public of the dangers of the review committees proposed by Hall; support parents who don't want to lose their right to control their children's education; and financially support efforts to protect the constitutional rights of parents, students and teachers.

The Association of Bay County Educators (ABCE) also opposed the proposal. It offered an alternate plan defining textbooks, instructional aids and supplementary materials and basing selection procedures on the curriculum needs of the teachers. ABCE President Randy Tillman said his group thinks "the School Board, parents and students should very definitely be a part of the selection process, but cannot hold with a position where the professional educator is not the moving force."

As the controversy developed in June, the executive director of the ACLU of Florida wrote a letter supporting the teachers' position. "We believe that selection of classroom materials is primarily the responsibility of professional educators, though students, school boards, parents and the community may have some participation in the process," the letter said. "We are prepared to defend the constitutional rights of the people of Bay County against efforts to limit freedom of speech or impose censorship in the schools."

The charge of censorship irked Collins. "There is no such thing as censorship if a book has already been published," he said. "Censorship can only happen when a person is kept from publishing his thoughts or writings. After the book is published it's a matter of choice."

As the Bay County School Board prepared to address the issue in August, there was little hope the issue could be easily resolved. Reported in: *Panama City News-Herald*, July 27.

Carthage, North Carolina

The Moore County school system appointed a study committee in August to evaluate whether John Steinbeck's Pulitzer Prize-winning novel, *The Grapes of Wrath*, should be banned from the county's public schools following a written complaint from an angry mother.

"She objected to the book because it takes the Lord's name in vain," said Mary Ann Weathers, an assistant school superintendent. Weathers would not release information about the parent who filed the complaint. She said the parent objected specifically to the phrase "God damn," which is used in the novel.

The protest arose when an eleventh grade student read the book in an English class at Pinecrest High School in Southern Pines. Because the student's mother asked the county school system to remove the book from all its schools—and not just

from her child's reading list—a county-wide team of school officials was appointed to review the book. Head librarian Peggy Olney was selected to head the committee. She said the group would meet in a closed meeting with parents opposed to the book and hold an open session two weeks later. The names of other committee members were not disclosed. Reported in: *Greensboro News Record*, August 30; *Fayetteville Observer*, August 27; *Sanford Herald*, September 2, 11.

Prince William County, Virginia

Five women professing a concern about public education decided to study a few textbooks over the summer. What they found "would horrify you," according to Cynthia Huntington, one of the women. The five Mannasas-area residents formed a new organization called PASTIME, which stands for Parents And Students Together Incorporating Meaningful Education. It is, Huntington said, an organization that is "very strongly footholded in the Lord." Its goal is to improve public schools in Prince William County.

According to PASTIME member Nina Scoggan, the group decided at its first meeting August 18 to approach the school board asking for the elimination of offensive textbooks. "I don't believe anybody's prepared to name [an objectionable] book or a series tonight," she admitted. But Scoggan noted that group members were documenting offensive materials.

One major concern of the group is the schools' role in family planning. PASTIME founder Dorie Houk said that a health textbook listed abortion as a birth control option. "Homosexuality is in the textbooks as just an alternate lifestyle," she continued. At the group's first meeting, anti-abortion activist Judie Brown told about thirty people that if left alone, public schools would ruin their children.

Brown charged that school health clinics in Virginia were dispensing birth control devices. Instead of supplying contraceptives, schools should teach restraint, she said. "What is wrong with chastity? What is wrong with teaching what waiting until marriage is all about?" Brown continued. "[Students] won't hear that in the schools. They say they can't teach moral values, but they're teaching immoral values, not our values." Reported in: *Potomac News*, August 19.

universities

Fayetteville, Arkansas

The Intellectual Freedom Committee of the Arkansas Library Association has protested the University of Arkansas at Fayetteville's decision not to provide sports information to *Playboy* magazine for use in the magazine's annual college football preview edition. The August statement, signed by IFC chair Evelyn McCoy, said in part: "We are concerned that the [University of Arkansas Sports Information]

Department might be following a capricious policy regarding access to sports information, or that the Department's acting as a censor in deciding which publications have access to sports information."

The committee also sent letters to Sam Walton, head of Wal-Mart Stores, Inc. and to officials of Southland Corporation, owners of 7-Eleven stores, questioning their recent removals of adult magazines and, in the case of Wal-Mart, allegedly "offensive" record albums.

Playboy was originally denied information about the Arkansas football team in 1985, and was again denied it in 1986. The denial was agreed upon by Athletic Director Frank Broyles, Sports Information Director Rick Schaeffer, football coach Ken Hatfeld, and basketball coach Nolan Richardson. Nonetheless, Arkansas was selected 18th in *Playboy's* preseason "top 20," compiled annually by writer Anson Mount.

Schaeffer wrote a letter to Mount when the request was denied. The letter said in part that providing the information to *Playboy* "is to turn my back on the will of God." Schaeffer informed Mount that *Playboy* "cannot in any way be identified with the ideals of God or college athletics."

"I think the key to this is you have a person at a state university using his religious convictions to carry out his job, and that's unconstitutional," said Bill Paige of *Playboy*.

Mount said the response was "obviously a violation of the American Constitution for a person in authority at a government institution such as a state university to use his office to force his religious convictions on others." Moreover, he boasted, the policy backfired, since "a 'deep throat' informant within the school's athletic department became so upset at the hypocrisy of the situation that he provided me with better information on Arkansas than I have gathered on almost any other team."

Responding to the IFC letter, University of Arkansas Chancellor Daniel Ferritor said that the university "has long been sensitive to the letter and the spirit of the Freedom of Information Act and to the broader free exchange of ideas inherent in a university. Anyone is welcome to copies of schedule information," he added. "However, the extent to which the university goes beyond the requests of the Freedom of Information Act in arranging interviews, furnishing photographs and actively cooperating with any given publication is properly a matter within the discretion of the coaches and administrators of the Department of Athletics." Reported in: *Arkansas Democrat*, August 20.

Baton Rouge, Louisiana

The Louisiana State University Union Governing Board rejected plans to show the controversial French film, *Hail Mary*, during its fall film series, and a student group charged that the action amounted to censorship. The Governing

Board's refusal to show the movie was condemned by the LSU Student Government Association and by Educational Freedom, a new campus group seeking to reduce the Governing Board's ability to reject recommendations of its committees.

Hail Mary, directed by Jean-Luc Godard, is a modern-day retelling of the nativity. Mary, who has a child out of wedlock, is depicted as a gas station attendant and Joseph as a taxi driver. The film contains frontal nudity. It has been condemned by Pope John Paul II and Catholic groups have picketed its showing across the country (see *Newsletter*, May 1986, p. 106; September 1986, p. 156, 174). After the film was banned at the University of Nebraska, a federal judge ordered that it be rescheduled and shown (see *Newsletter*, September 1986, p. 163).

At LSU the issue arose early in the summer when Union committees were preparing their programs for the coming academic year. After clearing the film and program committees, the list of films went to the Governing Board, which decided that showing it would "not be worth the trouble" it would cause.

While the board acted within its legal authority, its rejection of the film was in fact censorship, according to Educational Freedom representative David Saia. "They have taken a film series and removed a film because of subjective fears about its controversial nature—which, in our opinion, is counter to the university's role to provide divergent opinions," Saia said. "It is certainly within the mission of the university to provide viewing of the current works of renowned artists."

Saia said his group was seeking a new policy whereby after approval by the program council, the Governing Board could remove a program only if it can prove it to "violate a law of the United States, of Louisiana, or of East Baton Rouge Parish." The Governing Board currently has a dozen members—eight students, two faculty, and two alumni.

Peter Soderbergh, a faculty representative on the board, defended its action, "The board did not go off and say no out of hand. We did not wait until the last minute and then pull the film. We did not make a moral statement. We did not say nobody should see the film. What we said was that as long as the Union is involved we had a responsibility to deal with the question head-on. We were well aware there would be more controversy no matter which way we went." Reported in: *Baton Rouge Advocate*, September 11.

Milwaukee, Wisconsin

A group of Marquette University students protested September 17 after the dean of students told them they could not distribute literature on birth control at a table in Brooks Memorial Union. Dean of Students James Moore said he imposed the ban because the information on birth control was

contrary to the teachings of the Catholic Church. Marquette is a church-affiliated institution.

"Marquette subscribes to that teaching so the information was not approved for distribution," Moore said. The protest included three students sitting behind an empty table at the Union entrance. A sign across the front of the table said, "WE'VE BEEN CENSORED." One student held his hands over his ears, a second her hands over her eyes, and the third held her hands over her mouth.

A student from the group, Mary Beth Maxwell, said one item being distributed was an excerpt from the book *Our Bodies, Ourselves*, telling why women should educate themselves about birth control. The other was a brochure by Planned Parenthood describing different methods of birth control, including abstinence and natural family planning.

"The issue is not birth control," said Maxwell, speaking on behalf of the Progressive Students Organization, which sponsored the protest. "The idea of censorship is antithetical to the whole idea of the university's being a forum for ideas and being challenged by ideas. The ideas should be allowed to duke it out themselves. Another group can put up a sign saying birth control is wrong. We are trying to argue the issue of free speech, academic freedom, and the right to communicate with other students."

The student group distributes pamphlets and brochures on a number of topics every Wednesday at a table near the Union. Topics have included divestment of holdings in South Africa, U.S. involvement in Central America, the Palestine question, and nuclear weapons. Reported in: *Milwaukee Journal*, September 17, 18.

periodicals

Iowa City, Iowa

Common Lives/Lesbian Lives, a quarterly periodical published by a collective in Iowa City but printed by the University of Iowa, has charged the university with censorship and breach of contract. According to the collective, when issue #20 was submitted to the university printers, the editors were assured there would be no problem with explicit photographs on the cover and inside the magazine.

But just days before the printed copies were due to arrive, the journal was informed that the university had "a problem" with the issue. Apparently, during production, "a worker" questioned the decision to print and after extensive meetings, university officials decided not to print the issue. *Common Lives/Lesbian Lives* hired an attorney to file suit against the university for breach of contract. Reported in: *Common Lives/Lesbian Lives*, Summer 1986.

Cedar Rapids, Iowa; Richmond, Virginia

At least two newspapers dropped a week of the *Doonesbury* comic strip in mid-September, arguing that they might offend readers because they satirize the Rev. Pat Robertson and the possibility he might run for president in 1988. The week's comic strips were pulled by the *Richmond Times-Dispatch* and the *Cedar Rapids Gazette*. The comic by Garry Trudeau showed Robertson curing hiccups, hernias, and hangnails at a news conference and announcing that "The Lord God has personally asked me to consider running for president."

Al Goodykoontz, executive editor of the *Richmond Times-Dispatch*, said the strip was pulled because it would be "extremely offensive to thousands of our readers. It contains language we would not permit in articles published in the paper; it is sacrilegious and, in my judgment, goes far beyond the bounds of acceptable satirical comment."

In Cedar Rapids, associate managing editor Dale Larson said that in the past the newspaper published *Doonesbury* strips that other papers declined to print. "We do, however, retain the right to decide what will appear in our newspaper and it's our perception that a great many of our readers would regard these particular comic strips as highly offensive."

A representative of Robertson's Christian Broadcasting network said the evangelist had seen advance copies of the strip and "laughed at a couple of them. His only comment was that Garry Trudeau is an amusing, albeit sometimes irreverent, fellow." Reported in: *Capital Times*, September 15.

Springfield, Massachusetts

The CVS drug store chain, with 601 stores nationwide, is the latest to join the list of convenience and drug store chains that won't sell adult magazines, such as *Playboy* and *Penthouse*. CVS decided to stop selling the magazines after the company learned it was the only remaining major drug store chain to carry them, a company representative said July 2. But both the National Federation for Decency (NFD) and Playboy Enterprises said the company bowed to outside pressures to remove the magazines.

Leslie Pasquini, who with her husband Ronald staffs the NFD's Springfield chapter, said CVS' decision came in response to continuous lobbying, picketing and a boycott by NFD volunteers. "If you ask them, they're going to say we didn't have anything to do with it. But we've been writing them since 1984, picketing, and we have letters from them," she said. Pasquini said the Dairy Mart chain, based in Enfield, Connecticut, which operates nearly 1,000 stores nationwide, would be the next "target" of her group. "We go wherever we're called," she said. Reported in: *Greenfield Recorder*, July 3.

publishing

Dallas, Texas

When Jim Schutze, a columnist for the *Dallas Times Herald*, started working on a book about race relations in Dallas, some people were skeptical about the book's prospects. "I told Jim he would never get that book published in Dallas," said Peter Johnson, a longtime civil rights worker. "Down here in Poland, we've never believed in a free flow of information."

Johnson's prediction came true. Although there is disagreement about why, the prospective publisher, the Taylor Publishing Company of Dallas, said it was dropping Schutze's completed book, *The Accommodation: The Politics of Race in an American City*, from its fall list. The company's president cited poor advance sales, but the book's editor said its critical view of the desegregation era in Dallas and fears of adverse reaction killed the project. "Jim is saying things about Dallas that aren't all nicey-nicey," said editor Robert Frese. "And it's so image-conscious here, you can't say anything negative."

The book looks at race relations, particularly in the period of the civil rights movement, in a city that made the transition to integration with less visible trauma than elsewhere in the south. The period has usually been depicted locally as one of the triumphs of the Dallas business establishment, which in 1961 quietly coordinated voluntary desegregation. Schutze's book argues, however, that peace came at a stiff price. He says a result was a stunted black leadership, a lack of dialogue between the races, and an inability of blacks to establish power bases independent of white leadership. While complimentary to some business leaders, his book is critical of many of the best known personalities in the city's establishment.

Black leaders said they were not surprised by the book's fate. "It's the Dallas way," said John Wiley Price, a county commissioner. "You can't put Dallas in any bad light. You just sweep things under the carpet instead." Frese said he had sent the book to a major New York publisher for consideration. Reported in: *New York Times*, September 26.

record albums

Tulsa, Oklahoma

Twenty one record albums that could be considered offensive were pulled from the shelves of a Tulsa record store this summer. In July, managers at Buttons received a memo from the store's parent company, Dallas-based Sound Warehouse, Inc., listing albums that would no longer be sold at the firm's 83 Sound Warehouse and Buttons outlets in ten states. Tracy Furr, assistant manager for Buttons in Tulsa, said company officials "want to keep a family atmosphere" in their stores and the albums deemed offensive were pulled

shortly after the memo was received. Some of the albums had "satanic overtones," she said, "with devil-looking things on their covers."

Two of the albums pulled, *Blizzard of Oz* and *Diary of a Madman*, were by heavy metal musician Ozzy Osbourne. Other artists targeted were Cramps, Metal Church, Megadeth, Black Flag, Mercyful Fate, Slayer, Venom, Celtic Frost, Exodus, Helstar, Onslaught, Various, Voivod, Lords of the New Church, Stormtroopers of Death, Possessed and Exorcist.

"We haven't had any response that I know of from customers," Furr said. "But we never sold that much heavy metal at this store anyway. It won't hurt our business." At company headquarters in Dallas, Brenda Orr said, "It's a personal thing with our company president. He finds the albums offensive and it is not the kind of image we want to project." Reported in: *Tulsa World*, August 13.

Morgantown, West Virginia

Record albums, tapes, and paperback books allegedly linked to satanic worship or described as "threatening to personal consecration" were burned during a ceremony September 14 by members of the Riverside Apostolic Church in Westover. Church leaders said the book burning was the first of its kind in the Morgantown area.

In a short ceremony in the church parking lot, about forty members of the congregation gathered, throwing books and rock music albums into a fire ignited by Pastor D.M. Hudson. According to Hudson, the ceremony was a "symbolistic demonstration against the occult and hard line rock and roll. We see these as a threat to personal consecration trying to

(continued on page 221)

(AAParagraphs . . . from page 206)

"We ask you to help us . . . We need both a free and vigorous press and a free and vigorous intelligence community. We can have both."

Sen. Durenberger also tried to be even-handed, stating that leaks of security information "are sapping the strength of our national leaders and hurting us with our allies." He blamed both media and government: "The problem," he said, "is to determine which side you're on."

The frank exchange of the two officials with the newsmen also was in the tradition of "wide-open, robust debate" of which the Supreme Court has often spoken as an essential to democracy. If the audience did not leave fully satisfied on a topic of infinite complexity that engenders all shades of opinion, it must at least have recognized that it had seen

pictures linked to child abuse

A Justice Department study has found that *Playboy*, *Penthouse* and *Hustler* magazines have frequently depicted sexual images of children, and the chief researcher said that the depictions might be linked to child abuse. Judith A. Reisman said her study should cause lawmakers and the public to rethink their attitudes toward the magazines.

Publishers of the magazines, civil libertarians and social scientists, however, immediately attacked the study, which was widely criticized for its bias and as a government boondoggle when the department first issued a \$734,000 grant to American University and Dr. Reisman in 1984 (see *Newsletter*, July 1985, p. 129).

Reisman said her research team conducted a page-by-page review of 683 issues of the three magazines—virtually every issue published since 1953—and found 6,004 images of children in photographs, cartoons, advertisements and other pictorial material. More than a third of the images, she said, associated children with nudity and sex. Reisman's count, however, apparently included photographs of adult women scantily clad in what might be considered children's clothing and/or holding teddy bears or other toys.

"We have to conclude that some people can see this as supporting their tendency to be interested in children as sex objects," Reisman said of her findings. *Playboy* and *Penthouse* have reduced their use of images of children in recent years, Reisman acknowledged. But she warned that the treatment of children in what she termed "mainstream" pornography could "for vulnerable readers" lead to sex fantasies about

children and possible abuse. "We know that the material has been used to coerce children into sexual activities," she said.

Critics have charged that Reisman—who once compared *Playboy* publisher Hugh Hefner to Hitler—was not an unbiased researcher and that she lacked the necessary research background. She has a doctorate in communications from Case Western Reserve University in Cleveland, but has participated in no social science research. Her experience in the study of child abuse was limited to a stint as a songwriter for the "Captain Kangaroo" television show. The Reisman study was also attacked by legislators who said it was too expensive—a congressional study determined that similar research could be accomplished for about \$60,000—and improper.

Reisman turned in her findings last year, and American University prepared the final draft of the report, which was submitted to the Justice Department September 2. She said she had not seen the final version and would not comment on reports of disputes with the university. She said she had not used the bulk of the Justice Department grant.

Bob Guccione, publisher of *Penthouse*, described Reisman's effort as "a joke." He added: "She is not a social scientist. She has no credibility whatsoever." He said the report was typical of the "Reagan administration's ham-fisted attitude with regards to pornography—they are trying to prove something which has no scientific basis." A representative of *Playboy* said that Reisman "has absolutely no credible evidence that in any way links *Playboy* to the vile imagery of child pornography." Reported in: *New York Times*, September 3.

titans jousting.

The other candidate for "unique" occurred in a 31-year-old, well-stocked bookstore (Kepler's) in the suburban community of Menlo Park, south of San Francisco. There a creative young staff member, Jan Wiesenfeld, not content with the established theme for this year's observance of "Banned Books Week—Celebrating the Freedom to Read" (The Worlds of Science and Technology—How Free?) set her own: "Focus on Pornography."

"The recent release of the report of U.S. Attorney General Edwin Meese's Commission on Pornography has sparked renewed attention to the long-simmering debate on sexually-explicit materials, free speech and censorship," she said. "The report will probably be the standard of reference in this country for years to come, yet instead of clarifying the issues, it seems to have created even more confusion."

So she organized—and produced in front of sizable audiences of 100 or more—three programs with unusual panelists. The best attended was "No Easy Answers: A Panel Discussion on Pornography," but not far behind were "How to Read Dirty Pictures: From Art to Pornography" and "Pornography and Men."

The panelists at the discussions included a U.S. district attorney; an anthropologist; an "expert on pornography and pimping laws"; feminists; a representative of COYOTE (the prostitutes rights advocacy group) as well as of CLEAN (Citizens League for Effective Action Now, an anti-pornography group); an attorney; and a sex educator/sex equipment shop owner. According to Clark Kepler, member of the store-owning family and store manager, the three forums successfully accomplished their purpose of getting people to discuss a free-speech issue—in a free-speech environment, a bookstore.

"We clearly stated that we were not trying to present a position on this issue but rather to make it available for public discussion," Kepler said, adding that the best and "most exciting" give-and-take occurred in the "No Easy Answers" session—and this does indeed reflect the store's retail policy.

Two events—entirely different, widely separated but with a single unifying theme: our free speech tradition.

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

from the bench



libraries

Washington, D.C.

On August 28, U.S. District Court Judge Thomas F. Hogan ruled that the Library of Congress violated the First Amendment rights of blind people by eliminating Braille editions of *Playboy* magazine. In an oral decision announced from the bench, Hogan stated that Librarian of Congress Daniel Boorstin's decision to halt publication of the Braille *Playboy* after fifteen years was unconstitutional because "it was viewpoint-oriented."

Hogan said his opinion did not personally fault Boorstin. "Despite his own views that he felt that it was wrong, he still went ahead with what he thought the sense of Congress was . . . He was in a bad position," the judge continued. "He was in a classical position of a bureaucrat who faced. . . was in a classical position of a bureaucrat who faced. . . sanctions . . . if he did not restrict *Playboy*." Nonetheless, Hogan called Boorstin's action "a form of censorship," noting that "he could have spread the cuts across the board. He did not attempt to justify his actions."

The Library of Congress ceased production of Braille editions of *Playboy* last December, after Congress—at the initiative of Rep. Chalmers Wylie (Rep.-Ohio)—withheld \$103,000 in library funds, the exact amount it costs to print 1,000 copies of the magazine for the blind. In discussions on the House floor, Rep. Wylie explicitly connected the reduction in funds to his previously unsuccessful effort to get the library to drop production of the Braille *Playboy*. The Braille edition of the magazine contains no pictures or advertisements.

The American Library Association joined the American Council of the Blind, the Blinded Veterans Association, Playboy Enterprises, Inc., and individual plaintiffs in filing

a lawsuit against Boorstin in December (see *Newsletter*, January 1986, p. 1).

The plaintiffs asked that the Library of Congress not only resume publication of Braille *Playboy*, but that it be required to prepare in Braille the back issues of the magazine that were not sent out as a result of the cutback.

Hogan did not address the question of how the "relief for plaintiffs" would be provided. Instead, he asked that attorneys submit recommendations to the court. He said he would issue a full written opinion on the case, including rulings regarding relief. Reported in: *Washington Times*, August 29; *New York Times*, August 29.

schools

Batesville, Arkansas

U.S. District Court Judge Henry Woods ordered the Southside School District near Batesville July 21 to pay four teachers and a former principal \$205,000 because their First Amendment rights were violated. Three of the teachers were ordered reinstated. Woods directed the district to remove and destroy all derogatory information concerning the five from their personnel files.

The employees accused the district and some of its officials of violating their First Amendment rights by not renewing their contracts in retaliation for their complaining to the state Department of Education about the district's special education program. A jury determined July 7 that the letter was constitutionally protected expression, that the five could attend meetings in support of the principal, and that they had the right to file complaints and consult with an attorney and representatives of professional organizations. Reported in: *Arkansas Democrat* July 22.

Minneapolis, Minnesota

A five-year court battle over the Minneapolis School District's 1981 decision to ban a gay and lesbian life style presentation in elementary schools ended in August with a ruling that the case is moot because the ban has been rescinded. Although the court decision seemed to clear the way for teachers to invite the group into their classrooms, school officials said the presentation would have to be approved by principals and meet a number of other standards.

The lawsuit was filed against the school district by the Minneapolis Federation of Teachers and the Minnesota Civil Liberties Union after a 1981 district memo banned a panel and slide show presentation on gays and lesbians from elementary schools. The memo also said the teachers could allow the presentation in junior and senior high schools, after written permission had been obtained from the principal and students' parents.

That memo was superseded, however, by a district memo of May 1, 1986, which, according to the teachers' union,

“preserves academic freedom” and permits teachers to bring in the panel without district approval. On August 18, District Judge Robert Schiefelbein, who has presided over the case, said in a memorandum attached to a ruling in a separate issue that the new memo eliminated “those provisions challenged by plaintiffs in their original complaint.” Therefore, he concluded, “the original complaint is moot.”

But the precise meaning of the new memo remained unclear. It referred to the district’s longstanding policies on allowing materials into the schools, then concluded by saying, “In the light of the foregoing, the [gay and lesbian] panel and slide presentation is withdrawn.”

Matthew Stark, executive director of the MCLU, said the sentence is “fraudulent” and an attempt to confuse the issue. He said he believed the judge’s ruling means teachers have the right to invite the gay and lesbian representatives into their classes. But Superintendent Richard Green said the sentence referred to the actual gay and lesbian presentation, which he said had been withdrawn by the group that originally sponsored it.

Green also indicated that a teacher could not simply invite the group to give the presentation. “We don’t allow panels of any sort to walk into the schools,” he said. “You have to go through a process.” That process, he said, includes the teacher getting approval from the principal.

Stark said he might seek a clarification from Judge Schiefelbein as to whether the memo does indeed grant the academic freedom the teachers were seeking. Reported in: *Minneapolis Star & Tribune*, August 29.

student press

San Diego, California

A federal appellate court ordered San Diego’s Grossmont Union High School District to accept anti-draft advertisements initially rejected for its high school student newspapers in October, 1982. In a 2-1 decision issued June 6, the U.S. Court of Appeals for the Ninth Circuit enjoined the school district from refusing the advertisements submitted by the San Diego Committee Against Registration and the Draft. In its ruling, which binds nine western states, the court held that the district’s five high school newspapers are limited public forums, “public property which the state has opened for use by the public as a place for expressive activity.”

The district had rejected the anti-draft advertisements saying its policies prohibited political advertisements. The court ruled, however, that the district already had permitted political advertising when it allowed the papers to publish advertisements about possible military careers, despite its no-political-ads policy.

“The board provided a forum to those who advocate

military service. The board then refused, without a valid reason, to allow those who oppose military service to use the same forum,” the court said. “The only reasonable inference is that the board was engaging in viewpoint discrimination.”

The district’s board of trustees voted July 8 to petition for a rehearing of the case before the entire appellate court. Reported in: *Student Press Law Center Report*, Fall 1986.

Hazelwood, Missouri

Censorship of articles in the Hazelwood East High School student newspaper on pregnancy and the effects of divorce violated the First Amendment rights of the student staff, a three-judge panel of the U.S. Court of Appeals for the Eighth Circuit ruled July 7. The decision reversed a May, 1985, ruling by Chief U.S. District Judge John F. Nangle, upholding the right of Hazelwood school officials to ban material they felt was inappropriate for the newspaper (see *Newsletter*, July 1985, p. 131). The appeals decision was 2-1 to reverse and send the case back to Nangle to determine whether nominal damages should be awarded.

Three Hazelwood East students, all on the staff of the student newspaper *Spectrum* in 1983, filed suit after the school’s principal, Robert E. Reynolds, banned two pages of articles from the May 13, 1983, edition.

The primary issue in the case was whether *Spectrum* was and is a public forum for expression or an “integral part of the school curriculum” under the control of school administrators, according to the majority opinion written by Judge Gerald W. Heaney. Judge Richard S. Arnold concurred. “We disagree with the district court and hold that *Spectrum* is a public forum because it was intended to be operated as a conduit for student viewpoint,” the opinion said.

In a dissenting opinion, Judge Roger L. Wollman said that the newspaper’s “primary purpose” was “giving students a hands-on opportunity” to produce a newspaper. To define the paper as a public forum “pits students against school officials in a battle for control over what is rightfully within the province of school officials,” Wollman wrote.

Robert Baine, attorney for the school district, filed a motion for a rehearing by all the justices on the Eighth Circuit. “In light of the Supreme Court’s decision in the *Fraser* case” (see *Newsletter*, September 1986, p. 161), Baine said, “I think there is a good chance to affirm the lower court’s ruling.” Reported in: *St. Louis Globe-Democrat*, July 8; *Student Press Law Center Report*, Fall 1986.

Lincoln, Nebraska

The University of Nebraska student newspaper is not compelled by the Constitution to accept advertisements from people wishing to express their sexual orientation when selecting roommates. The U.S. District Court decision in *Sinn v. The Daily Nebraskan* ended a two-year legal battle pit-

ting the newspaper and the university's publications board against students Pam Pearn and Michael Sinn. In 1984, the *Daily Nebraskan* refused to accept their ads seeking homosexual roommates.

The publications board had already established a "non-discriminatory" ad policy stating that the newspaper would not accept ads for roommates specifying race, religion, or marital status. After reviewing the homosexual ads, the board added sexual orientation to its policy.

Pearn and Sinn then filed suit against the paper and publications board, alleging that the refusal to print their ads was a violation of the First and Fourteenth Amendments. In the opinion of the court, however, it was the *Daily Nebraskan* which enjoyed First Amendment protection:

"The campus newspaper of a state supported university is entitled to the constitutional protections afforded the 'press,' including freedom of expression for the editors," the court said. "The degree of discretion which editors utilize in rejecting advertisements is not distinguishable, under any First Amendment analysis, from that exercised over any other submitted material." Therefore, the court concluded, "Rejection of an advertisement is a constitutionally protected editorial decision. . . . The plaintiffs' freedom to express their respective sexual orientations does not prevail against editorial freedom of expression." Reported in: *Student Press Law Center Report*, Fall 1986.

confidential sources

Tampa, Florida

The Florida Supreme Court ruled in early June that reporters have a qualified First Amendment privilege against being compelled to disclose the identities of confidential sources. It said *Tampa Tribune* reporter James Tunstall could not be compelled to disclose a source's name to a county prosecutor investigating the leak of secret information about an ethics complaint filed against two county officials. The court voided a contempt citation and a jail term of up to six months handed down in late 1983 after Tunstall refused to disclose the name.

In a 4-2 decision the court ruled that Tunstall's First Amendment rights outweighed the duty to give testimony. "We cannot accept the view that a generalized interest in secrecy of governmental operations should take precedent over the interest in assuring public access to information that comes to the press from confidential informants," the court reasoned. Reported in: *News Media and the Law*, Summer 1986.

Lansing, Michigan

Neither print nor broadcast journalists have a First Amendment right under the Constitution to withhold confidential information from a grand jury, the Michigan Court of Ap-

peals ruled August 19. In addition, the court said broadcast journalists are not covered by the state's "shield law," under which print journalists may protect their confidential sources of information.

The unanimous decision meant that reporter Bradley M. Stone of WJBK-TV in Detroit faced a potential jail term for contempt of court if he continued to refuse to surrender confidential videotapes to a Wayne County Grand Jury investigating a 1985 murder. Stone, who had reported on Detroit youth gangs, provided the grand jury only tapes that had been aired, refusing to release so-called "out-takes." He also would not disclose the identities of young people he had interviewed and who were shown on the air only in silhouette.

In an opinion by Judge Roman S. Gribbs, the Appeals Court said: "A reporter must divulge confidential information to a grand jury unless the grand jury is not being conducted in good faith, the relationship between the material sought and the object of the . . . investigation is remote and tenuous, or the investigation does not implicate a legitimate need of law enforcement."

Moreover, interpreting the state's 1949 shield law, which refers simply to "publications," to include broadcast journalists "would be an inappropriate exercise of the judicial function and arguments concerning the fairness of the statute must be addressed to the Legislature," Gribbs wrote.

On June 3, the state House of Representatives passed a bill by Rep. Debbie Stabenow (Dem.-Lansing) to extend the shield law to broadcast media. That bill, and a similar proposal by Sen. Nick Smith (Rep.-Addison) were pending in the Senate Judiciary Committee at the time of the decision. Reported in: *Detroit News*, August 20.

broadcasting

Washington, D.C.

A three-judge federal appeals panel ruled September 19 that a key fairness policy governing the broadcasting industry is not required by law. Opponents and supporters of the Fairness Doctrine said that the decision by the U.S. Court of Appeals for the District of Columbia would bolster efforts by the Federal Communications Commission to repeal its regulations without the approval of Congress.

The Fairness Doctrine, which requires broadcasters to cover important community issues and to present different views on issues of controversy, has been under repeated attack by the conservative majority of the commission (see *Newsletter*, May 1985, p. 68-72; November 1985, p. 201; May 1986, p. 93).

The September 19 ruling came in a case challenging the FCC's decision not to regulate teletext, a new service in which video information is transmitted for decoding and reading on a television. The three judges ruled unanimously

that because these signals are broadcast over the air, teletext must be regulated just as radio and television stations are. In that respect, the ruling was a defeat for the commission, which has been moving to deregulate the broadcast industry.

The court ruled that as a broadcast service, teletext was subject to the Fairness Doctrine. But in discussing the doctrine in general, a majority said it did not believe a 1959 amendment to the Communications Act "made the Fairness Doctrine a binding statutory obligation; rather it ratified the commission's longstanding position that the public interest standard authorizes the Fairness Doctrine."

"The words employed by Congress also demonstrate that the obligation recognized and preserved was an administrative construction, not a binding statutory directive," the court said.

Judge Antonin Scalia, now a member of the U.S. Supreme Court, and Judge Robert H. Bork were in the majority. Judge George MacKinnon agreed that broadcast regulations applied to teletext, but dissented from the general findings about the Fairness Doctrine.

"It's a breakthrough for the other side," said Andrew Schwartzman, the executive director of the Media Access Project, which brought the court suit and supports the Fairness Doctrine. "It's a bad reading of law and goes contrary to 25 years of rulings by the FCC and the Supreme Court." Schwartzman said his group would probably ask for a rehearing of the case by the full court.

Jack Smith, FCC general counsel, said that the court opinion appeared to give the commission the legal clearance it needed to do away with the Fairness Doctrine. But, Smith noted, Congress has attached a rider to the agency's appropriations budget barring it from doing anything to lessen enforcement of the doctrine. "Congress is binding our hands and we are not free to do away with the doctrine," he said. Reported in: *New York Times*, September 20.

immigration

Albuquerque, New Mexico

A federal immigration judge in El Paso, Texas, ruled in late August that feminist poet and writer Margaret Randall should be deported on grounds that her writings advocate the doctrines of world communism. Martin Spiegel, a judge in the Executive Office for Immigration Review, said he based his decision on 2,744 pages of Randall's writings. He cited no evidence of Communist Party membership or of any political action outside written expression on her part.

Randall said she would appeal the judgment. "I am disappointed, of course," she said, "but this is just a battle. It's not the war."

Nineteen years ago, while living in Mexico City, New York-born Randall relinquished her U.S. citizenship in what she says now was an effort to secure employment in Mex-

ico. She later lived in Cuba and Nicaragua and made several visits to North Vietnam.

In January, 1984, Randall returned to the United States to assume a teaching position at the University of New Mexico in Albuquerque. Now married to American poet Floyce Alexander, Randall sought permanent resident status.

The government contended that Randall's forty books and extensive writings expressed political beliefs that made her excludable under the terms of the McCarran-Walter Act of 1952. That law allows the United States to deny entry to any person who has been associated with communist or anarchist organizations or has espoused those doctrines.

Randall's case has attracted national attention. A group organized in her behalf included in its ranks such prominent literary names as Edward Albee, E. L. Doctorow, Arthur Miller, Grace Paley, Studs Terkel, Kurt Vonnegut and Alice Walker. Along with that committee, the PEN American Center and the Center for Constitutional Rights have filed suit challenging the constitutionality of the McCarran-Walter provisions (see *Newsletter*, March 1986, p. 54).

While Spiegel's decision technically required Randall to leave the country by December 1, her attorney said she would be allowed to remain with her husband and family for the duration of what could be a lengthy appeals process. Reported in: *Los Angeles Times*, September 3.

political canvassing

Newark, New Jersey

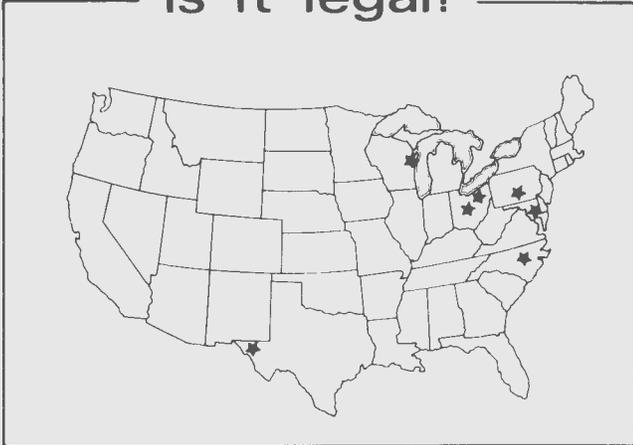
In a 2-1 decision, the U.S. Court of Appeals for the Third Circuit ruled August 7 that efforts by New Jersey communities to ban door-to-door political canvassing during the evening hours "trespassed upon one of the most cherished of constitutional rights." Deciding in favor of a coalition of grassroots political action organizations, the court held that it is vital that such groups be able to spread their messages during evening hours when most people are at home, and that bans by New Jersey communities "unconstitutionally restrict" their rights to free speech.

At the same time, the court also struck down a number of related local ordinances requiring political canvassers to be fingerprinted before they could be permitted to visit door-to-door. "Just as a government could not require a street corner orator or a political pamphleteer to be fingerprinted," the court stated, "it may not, under these circumstances, require solicitors and canvassers to be fingerprinted."

The appeals panel—which stressed that the ruling did not apply to commercial solicitation—held that there is no evidence that nighttime canvassing bans or fingerprinting requirements "deter or prevent crime" and indicated that they appear to serve no meaningful purpose other than to infringe

(continued on page 223)

is it legal?



libraries

Durham, North Carolina

Last year's legislation enacting a new set of obscenity laws in North Carolina has affected the owners of adult bookstores and videocassette outlets, but the impact of the nation's strongest anti-obscenity statute has not gone unnoticed by librarians. "There is some feeling that once they finish with the adult bookstores they'll start on the libraries," said Dr. Gene Lanier, chair of the North Carolina Library Association Intellectual Freedom Committee. Lanier noted that since 1980, more than two hundred books have been challenged in libraries across the state.

"Libraries could get caught in the sway of this law," according to Betty S. Clark, assistant director of the Durham County Public Library. "I would go for a low profile and hope that one day the North Carolina law is relaxed a bit."

"What we have been doing is to look over our collection to see if there is any problem," said Rose Alston, media coordinator at Durham High School. Asked if the new obscenity law affected the school's library, Alston said, "Oh, sure it does. We do a lot of previewing now. We do not rely on summaries of books as much as we used to." She added, however, that the school had not removed any books from its shelves and had no plans to do so.

North Carolina's obscenity law has caused concern among librarians especially because of several specific features. These include elimination of an adversary hearing, and reliance on "contemporary community standards" to determine whether material is obscene. Librarians fought elimina-

tion of the adversary hearing procedure, in which a judge had to rule that material was obscene before prosecution could begin. They feared that without such judicial intervention, libraries might be exposed to harassment from overzealous law officers or citizen groups.

Although librarians are guaranteed an affirmative defense in carrying out their duties as book lenders, there have been concerns about the stigma and expense involved in possible arrests and criminal charges, especially since the new law also raised the status of dissemination of obscenity from a misdemeanor to a felony.

"We were concerned when amendments were made in '85 that it might expose libraries to possible charges," said state Rep. George Miller of Durham. He added that the new laws "put an extra burden on the librarians," and that it would be a matter of time before anybody could calculate their full effect.

The issue of "contemporary community standards" has also presented North Carolina librarians with a new set of problems. The old obscenity law relied on statewide standards, but the new law allows each community to define what is obscene within the general guidelines of the law. Therefore, until test cases are tried, libraries and other disseminators of expression must employ a certain amount of guesswork in determining what will be tolerated in their communities.

Dr. Benjamin Speller, dean of the School of Library and Information Science at North Carolina Central University, suggested that librarians "get to know the district attorney in their area and find out what their position will be in interpreting this law." Speller noted that "no one is exempt" from the law. "You don't have to be selling anything, just presenting it as information to a person." Reported in: *Durham Sun*, June 21.

political expression

Aberdeen, Maryland

The town of Aberdeen is involved in a First Amendment dispute with a local businessman over a sign displayed in the window of his furniture store. The town's commissioners filed suit in Harford County Circuit Court in July asking that an injunction be issued forcing Michael L. Kryszkowski to remove a sign from his store that, according to the town, violates zoning ordinances. The sign reads: "Save Freedom Now, Destroy Communism, Aid to the Contras and Angola and Afghan Freedom Fighters." The town ordered Kryszkowski to remove the sign by July 3, but he said the ordinance violated his First Amendment rights. Reported in: *Baltimore Sun*, July 30.

Girard, Ohio

The Ohio Public Interest Campaign filed a lawsuit in August against the city of Girard and its mayor, Joseph Melfi, in U.S. District Court in Cleveland, claiming city officials violated the group's civil rights in April by prohibiting door-to-door canvassing after 5 p.m. At that time, Mayor Melfi cited a 1962 city ordinance requiring solicitation to be done only between 10 a.m. and 5 p.m. The suit claims the city ordinance interferes with rights of free speech, press, association and petition.

Melfi claimed he did not deny the organization permits, "and when they were soliciting without permits, I didn't have them arrested. No, I don't think I violated their civil rights," he said. Melfi acknowledged, however, that statements he had made to the press, to OPIC representatives and at public meetings indicated he would enforce the city's solicitation ordinance, and the permits he was prepared to issue to the organization would have allowed only daytime canvassing.

Ira Arlook, OPIC executive director, said the organization had encountered limits on canvassing hours in other communities but had been able to resolve controversies without legal action because it is a non-profit group. "We do this only as a last resort," he said of the suit. Reported in: *Youngstown Vindicator*, August 14.

El Paso, Texas

The Comite 29 de Agosto, a group planning a demonstration to honor the memory of Ruben Salazar, a journalist killed by Los Angeles police during the August 29, 1970, Chicano Moratorium demonstration against the Vietnam War, filed suit August 21 in U.S. District Court against the city of El Paso and four city council members. The suit charged that by denying the demonstrators the use of bullhorns and other sound equipment the city was acting to censor the group's political message by limiting the number of people who could hear it.

The committee said the city ordinance regulating the use of sound equipment is unconstitutional and asked for \$110,000 in damages from the city. Committee representatives said they were expecting five hundred people to participate in the demonstration and would need amplification for safety reasons and so that speakers could be heard. But the four council members contended that the committee did not have the right to bother non-participants. Three other council members—all Mexican-American—supported the group's request and were not named in the suit. Reported in: *El Paso Times*, August 22.

church and state

Athens, Ohio

Copies of an advertisement saying, "Keep Christ in Christmas" cannot be distributed in Athens public schools,

City Law Director Garry Hunter ruled in June. The Athens Committee for Religious Education runs the ad annually in the *Athens Messenger* and has distributed copies in the schools for more than thirty years.

Hunter's opinion, requested by school superintendent June Slobodian, said distributing the ad in the schools violates the separation of church and state. Committee chair Edith Van Dyke said she was "disappointed but not surprised" by the decision. "Our purpose was to remind people to keep Christ in Christmas and not to have it be so commercial," she said.

Sandra Scott and John Spoffort, coordinators of the Citizens for Accountability in Our Schools, had challenged the distribution. "It's not my idea," Scott said. "The Constitution set up the wall of separation between the church and states. I'm concerned about all the cracks in that wall." Scott helped form Citizens for Accountability after she objected to a time for silent prayer held during a school outing at Woodland Altars camp in Peebles, Ohio.

Last fall, Scott became embroiled in another controversy when her 13-year-old daughter was denied membership in the Girl Scouts. Scott said her daughter was barred because she refused to pledge allegiance to God as part of the Scout oath. Scott has said the Girl Scouts and Boy Scouts are "religious organizations" and should not be allowed to use the city schools without charge. Scott acknowledged her opinions do not make her popular but said, "I believe these issues are important." Reported in: *Columbus Dispatch*, June 25.

periodicals

Green Bay, Wisconsin

A Green Bay newspaper's refusal to sell advertising to a gay group based in Madison could have wide ramifications on freedom of the press as well as Wisconsin's pioneering anti-discrimination law protecting gays. *Among Friends*, a monthly newsletter for rural gays, was denied space for two paid ads in the *Green Bay Press-Gazette*.

In a letter from the paper's lawyers, the *Gazette* explained it didn't want one advertisement because it was seen as "a direct or disguised solicitation for dating, which the *Gazette* has continually refused to print." The letter also said the ads were refused because they were "aimed at a specific sexual preference audience directly by name."

Among Friends filed a complaint with the state, which found probable cause to believe discrimination occurred. In addition, *Among Friends* filed a civil suit alleging the group was discriminated against on the basis of sexual orientation. The suit also charges that *Among Friends* was denied its right to free speech under the Wisconsin constitution, which restricts private individuals as well as government from denying free speech of others.

Mike Gage, publisher of the *Gazette*, a Gannett paper,

said he feared an adverse ruling could result in newspapers being forced to run any kind of ad that comes along. Like most newspaper publishers, Gage believes the First Amendment gives newspapers the absolute right to decide what goes in their pages, including what kinds of advertising they will accept. Reported in: *Capital Times*, June 17.

cable TV

Washington, D.C.

For the next five years, big cable TV systems must carry most local television stations, including at least one public broadcasting channel, and must make room for new stations, the Federal Communications Commission ruled August 7. The new rules replaced stricter provisions which had required a system to carry any station whose signal was received in that area. The old standards were ruled unconstitutional last year on the grounds they violated the cable systems' freedom of speech and of the press (see *Newsletter*, September 1985, p. 163).

During the next five years, the FCC decided, cable companies must conduct education campaigns to prepare consumers for the day in 1991 when cable systems will be free to drop local stations in favor of programming produced specifically for cable. If the FCC had not adopted the new rules, the court decision would have allowed cable systems to drop any broadcast channel they chose.

In urging the commission to adopt the new rules, the National Association of Broadcasters said TV stations would lose audiences if their signals were not carried into homes on cable, because cable customers let their antenna systems deteriorate. Cable companies also will be compelled to install in all forty million cable homes an "input selector switch" so customers can control whether their set is receiving its signal from the cable company's wire or over the air. The commission regards the new rules as less intrusive than the ones ruled unconstitutional in 1985. Reported in: *Washington Post*, August 8.

obscenity

Chambersburg, Pennsylvania

In a move denounced by the ACLU of Pennsylvania as "Meese Commission mania," District Attorney John Nelson asked the Franklin County Court August 28 to prohibit seven video stores from selling and renting certain X-rated movies. Nelson requested civil injunctions against the movies, alleging that seven specific films, one from each store, are obscene.

Nelson said he requested injunctions after receiving "numerous" complaints from Citizens for Decency Thru Law, as well as local clergymen, church congregations and other individuals. Nelson said the movies were a "representative sample" of the videos available and would serve as a test case. "The purpose for this action is to get a feel for how these films are going to be viewed by Franklin County juries, and if they are determined to be obscene, we plan to proceed further against other establishments and other films," he said. While admitting that an injunction granted against a single film would not prevent stores from renting or selling others, Nelson said merchants would then be "on notice" to remove all adult films or face further court action.

Barry Steinhardt, executive director of the ACLU of Pennsylvania, said the ACLU might file a brief or offer to represent the stores in court. "This does sound like the kind of case we'd be interested in because it sounds like a full-scale attack, and we want to head that off before it becomes a trend," he said.

Named as defendants were the Adult Gift Shop, Action Video, Broadway Video, The Cinema Center, Lincoln Electronics, Video Center, and Video Den of Chambersburg. Only the Adult Gift Shop specializes in renting adult movies. The other stores rent all types of films. Reported in: *Hagerstown Herald-Mail*, August 29.

(censorship dateline . . . from page 213)

draw a closing away from the Lord and to carnal things." Hudson denied the media close access to the fire to examine the materials being destroyed.

After the burning, traveling evangelist Steve Timmons, who lectures on alleged hidden messages in recordings, identified some of the material as Harlequin romance novels, books on astrological projections, Eastern religions and record albums by the Eagles, Elton John, Lynyrd Skynyrd, and Hank Williams, Jr. Another book burned was *The Hobbit*, by J. R. R. Tolkien.

"We realize that the people who sing about these things have the right to do so," Timmons said, "But we also want people to know we have the right to express that we don't approve." Reported in: *Morgantown Dominion-Post*, September 15.

foreign

Sydney, Australia

Faced by what she perceived as a rising tide of conservatism pervading Australian censorship laws, chief film censor Janet Strickland decided to call it quits. After fifteen years with the film Censorship Board—the last seven at its head—Strickland announced in June that she would resign effective September 1.

Strickland was quick to point out, however, that her departure was planned well before a controversy erupted over Jean-Luc Godard's controversial film, *Hail Mary*, which triggered angry demonstrations when screened at the Sydney Film

Festival. Strickland rejected calls for the censor board to overturn its decision to clear the film for commercial release.

Under Strickland's leadership, the Film Censorship Board was a consistently liberal body, and theatrical and home video distributors rarely challenged its verdicts. "The board has moved a long way in terms of liberalization," Strickland said of her fifteen-year tenure. "We have one of the most liberal censorship systems in the world."

Strickland believes, however, that conservative forces are on the rise in the U.S., Britain, and in Australia, citing the draft report of the Meese Commission and the censorship debate in England over both television programs and videocassettes. She predicted that over the next five years the Australian government will take a more interventionist role in the censorship area by appointing conservatives to the Film Censorship Board. She also predicted new legislation limiting levels of violence and sexual violence in films.

"I don't want to be associated with that trend," she said. "In fifteen years I have seen the tides of change wash in and out, and at the moment they're going out." Reported in: *Variety*, July 9.

Rio de Janeiro, Brazil

After a wave of violence at theaters showing the Sylvester Stallone movie *Cobra*, Brazilian Justice Minister Paolo Brossard gave distributors until August 28 to cut scenes of violence from the film. Brossard also ordered theaters to raise the minimum age for seeing the picture from fourteen to eighteen.

Brossard, who initially spoke in favor of banning the film altogether, defended the cuts, arguing that they did not constitute censorship but rather were measures to ensure "the elimination of a harmful industrial product." He criticized importation of the film as "a waste of foreign exchange." Reported in: *Washington Post*, August 28.

Vancouver, Canada

Thousands of western Canadian *Playboy* readers turned to page 75 of the October issue expecting to see a semi-nude photo of rock star Wendy O. Williams tangled in a parachute cord. All they found was the torn remnant of a page deemed obscene by Canadian customs officials.

Playboy Enterprises Ltd. agreed to rip the offending page from some 23,900 copies of the magazine because Canadian officials said it depicted bondage. But in eastern Canada, where 120,000 copies had already crossed the border before customs agents saw the magazine, readers could get uncensored copies.

Playboy officials said they would appeal the order in court. "This situation dramatizes the frightening climate of government repression growing in both the United States and Canada," publisher Hugh Hefner said. Reported in: *Chicago Tribune*, August 29.

London, England

In an apparent extension of the British government's already far-reaching powers to restrict what is published in newspapers on grounds of national security, the Appeals Court has upheld a ban on publication of any allegations made by a retired member of the British Secret Service who is seeking to have his memoirs published in Australia. The ban was the first judicial injunction won by the government to achieve what amounts to a blanket prior restraint on publication of information it deems sensitive. In the past, authorities have relied on the threat of prosecution under the Official Secrets Act or official requests to editors for the suppression of information.

The ban on the publication of the former agent's allegations initially applied to only two newspapers, *The Guardian* and *The Observer*. In appealing against the ban, the two papers noted that it effectively barred them from repeating what was already in the public domain or from reporting on matters that all other newspapers were free to discuss. These arguments were dismissed in a decision by the Appeals Court upholding the ban.

According to Sir John Donaldson, if the allegations already published were not authorized by the government, then any republication was also unauthorized. It followed that the ban applied not only to the two appealing papers but to all newspapers. "Other publishers are not free to republish," the judgment declared.

Peter Preston, editor of *The Guardian*, charged that basic freedoms for the press were being eroded "by a pathetic obsession with secrecy." Reported in: *New York Times*, July 30.

etc.

Cinnaminson, New Jersey

Mayor M. Madeline Koszyk said she was "appalled" when she learned that a store in Cinnaminson Township was selling Christmas cards depicting Santa Claus in various sex acts. "I immediately decided I wanted this smut off the shelves," she said. "These cards were just totally offensive and they were out on the shelf in plain view of children." The mayor sent a zoning officer to the Beauty Barn Plus store to threaten action under a 1983 anti-obscenity ordinance and the store agreed to withdraw the cards.

Koszyk said she was not concerned about charges that the law might be unconstitutional. "You tell me you want your rights, then don't come to Cinnaminson, because people here don't care about your rights," the mayor said. "They care about our rights. And the majority here says don't put that stuff in Cinnaminson." Reported in: *Florida Flambeau*, December 13.

(from the bench . . . from page 218)

on the constitutional rights of the political action groups.

The ruling overturned a decision by U.S. District Court Judge Harold A. Ackerman of Newark, who had stated he was "bound" to uphold the ordinances, but warned that "door-to-door canvassing for ideological purposes has long been held to be protected by the First Amendment."

The municipalities specifically named in the ruling were Edison, Glen Ridge, Harrington Park, North Arlington, Nutley, Paramus, Piscataway, Roseland, Woodbridge, and Woodcliff Lake. Attorneys involved in the case, however, said the decision would apply throughout New Jersey. In addition, lawyers said the ruling marked the first time in the country that a court has ruled such fingerprinting requirements unconstitutional.

Attorney Michael Gordon, who represented one of the groups challenging the bans, said the decision should "send a clear message throughout the entire state" to any towns that might seek to impose similar restrictions, and hailed the ruling as a "major victory."

The ruling drew a heated response, however, from Newark attorney Phillip Lewis Paley, who represented several of the communities. The court, he charged, had held "in effect that local government has no interest in protecting the people who are at home and are terrified that strangers are going to knock on their door" for what could be "nefarious purposes." Paley said he would recommend "in the strongest terms that an appeal be taken immediately." Reported in: *Newark Star-Ledger*, August 8.

prisoner rights

Richmond, Virginia

Virginia's prohibition against correspondence between inmates in different prisons does not violate the prisoners' First Amendment rights, a divided three-judge panel of the U.S. Court of Appeals for the Fourth Circuit ruled July 21. In a 2-1 decision, the panel said the state ban on communications between inmates is "a reasonable response to valid concerns relating to institutional security."

That was the view of Judges Donald Stuart Russell of South Carolina and Kenneth K. Hall of West Virginia. Dissenting, however, was Judge Francis D. Murnaghan, Jr., of Baltimore. Murnaghan said his colleagues had "placed an insuperable burden on prisoners and taken from them the rights which they retain even in the restrictive constitutional setting of a prison." Russell and Hall paid "lip service" to the principle that "a prisoner does not shed his First Amendment rights at the prison portals," Murnaghan wrote.

The regulation against communications by inmates without prior permission of the wardens involved was challenged by inmate John B. Vester, who alleged the ban was an overly

broad intrusion into inmates' rights. U.S. District Judge Robert G. Doumar of Norfolk ruled in favor of the state, noting that the regulation "intended to protect a legitimate state interest in prison security." Vester appealed.

Russell and Hall said the rule "imposes certain limitations on one manner in which an inmate may exercise his First Amendment rights. It does not, however, operate as an absolute denial of free speech. Nor does it affect the rights of nonprisoners. . . . the availability of alternatives is not relevant if a penal regulation only limits rather than denies a constitutional right." Reported in: *Richmond News-Leader*, July 21.

Richmond, Virginia

A federal appeals panel conceded that witchcraft is a religion deserving of constitutional protection, but said a prison inmate cannot use banned materials for the rites he wanted to hold in his cell. Herbert Dettmer contended that meditating without the items would pose "a dangerous threat to my well-being because we are dealing with . . . the spirit world." He won the case, but the state's appeal was successful.

Dettmer, a follower of the Church of Wicca, wanted permission to have a white hooded robe, sea salt, or sulphur to draw a protective circle around him, candles and incense to focus his thoughts, a kitchen timer to awaken him from his trances and a small hollow statue of "one of the gods or goddesses of the deity." The security chief at the Powhatan Correctional Center testified that hooded robes could conceal an inmate's face during a violent act and that candles could be used as timers or to make impressions of keys.

"The government argues essentially that because it finds witchcraft to be illogical and internally inconsistent, witchcraft cannot be a religion," the three-judge panel wrote. "The Supreme Court has held to the contrary that 'religious beliefs need not be acceptable, logical, inconsistent or comprehensible to others to merit First Amendment protection.'" Reported in: *Alexandria Journal*, September 8.

gay rights

New York, New York

An organization of gay Roman Catholics and its members were entitled to a permanent injunction against police restriction of their use of the sidewalk in front of St. Patrick's Cathedral during the 1986 Gay Pride Parade, U.S. Chief District Judge Constance Baker Motley ruled June 13. The restriction to the use of the sidewalk was not content-neutral, even though the police "freeze" applied to all groups. In fact, Motley found, the organization's request to demonstrate in front of the Cathedral was denied directly in response to complaints by citizens opposed to its message. Reported in: *West's Federal Case News*, July 18.

success stories



libraries

Oceanside, California

A divided school board in mid-September rejected an appeal from a group of Christian students that books dealing with witchcraft and satanism be pulled from a high school library. By a 3-2 vote, Oceanside Unified School District trustees upheld a July decision by a committee of teachers and administrators to keep the two dozen books on the library shelves at El Camino High School. Three students and their parents, dubbed the "God Squad" by friends, had sought the book ban because they feared the texts could lead other students astray (see *Newsletter*, September 1986, p. 151).

The dispute surfaced in February when Robert Thomas, Adene Murray, and Robb Wood approached school officials, expressing concern that the books might be dangerous. Ordered by the library in connection with a literature course on mythology, the volumes included graphic descriptions of initiation ceremonies for witches, as well as depictions of pentagrams and other occult symbols. The protesting students charged that the books amounted to nothing less than a "how-to" course in satanism. Among the works cited were *The Satanists*, *The Popular History of Witchcraft* and a multivolume series published by Time-Life Books entitled *Man, Myth and Magic*.

Trustees Richard Lynch and Rodney Imming dissented from the school board's decision. While Lynch supported an outright ban on the books, Imming suggested that the volumes be put on a restricted list requiring parental permission for use. "If we deny that satanism, witchcraft, that whole realm of things, do not put students at risk, then we

are burying our heads in the sand," Lynch said, adding that the volumes "could be very dangerous to a young, immature mind."

The students had promised to take the case to court if necessary, but school officials doubted they could find legal grounds for a challenge. Reported in: *Los Angeles Times*, June 29, September 13.

Mukwonago, Wisconsin

The Mukwonago School Board voted 5-3 July 21 to keep two controversial poetry books by Shel Silverstein on the shelves at the Big Bend Elementary School library. Two separate complaints filed during the school year had sought to ban the children's books *Where the Sidewalk Ends* and *A Light in the Attic*.

Elaine Schultz, a former board member, and Pamela and David Wosniak, whose two sons attend the school, each filed complaints seeking to have the books removed on the ground that some of Silverstein's poems glorified Satan, suicide and cannibalism, and also encouraged children to be disobedient. The Wosniaks obtained 200 signatures on a petition seeking to get the books banned. Another petition, supporting their retention, was presented to the board with 38 signatures.

On June 2, a school committee voted 3-1 to retain the books and on June 18 a seven-member instructional materials review committee unanimously supported that verdict. The school board decision came after about an hour of discussion. "The issue isn't whether the books are good or bad," said board president Sandra Frieling, who voted against their removal. "It's whether they violate the policies of the board. We are providing access to the books. We are not forcing the children to read them." Reported in: *Milwaukee Journal*, July 22.

schools

Lakewood, Colorado

Jefferson County school board members refused June 19 to ban three textbooks and a library book that parents wanted removed from schools. The board upheld an earlier decision by superintendent John Peper that the textbooks *Literature of the Supernatural*, *Topics for the Restless*, and *Monsters*, and the elementary school library book *In a Dark, Dark Room and Other Scary Stories* should remain in use. Parents had objected to the books on the grounds that they promoted the occult, sexual promiscuity and anti-Americanism, and that they attacked other traditional American values (see *Newsletter*, May 1986, p. 82; September 1986, p. 173).

"If a child can't be exposed to other points of view and rely on his parents to correct them if they're wrong, then he's in trouble," board member Glen Keller said. "I would

be offended by a library that I could walk through and not find some book that offended me," added Kirk Brady, who moved to confirm all the books, provided school officials devised a plan to inform parents of what textbooks their children would use.

The protesting parents expressed dissatisfaction with the board's action and promised to return in the fall with new challenges. "It's one thing to oppose a group of radicals and another thing to oppose concerned parents," said Lynn Miller, an Arvada father who challenged the books. "They've awakened a sleeping giant." Reported in: *Rocky Mountain News*, June 20.

Aberdeen, Washington

Ken Kesey's award-winning but often controversial novel, *One Flew Over the Cuckoo's Nest*, will remain part of the curriculum in an Aberdeen High School honors English class, the Aberdeen school board decided August 28. The decision closed a debate about the book that had raged since last May, when some 95 parents and citizens signed a petition against teaching the book.

Sonia Bean, an Aberdeen resident whose children graduated from Weatherwax High School, was a leader of the protest against the book, which she called immoral, profane and without literary value. She said the book promotes "secular humanism," and charged that parents were unaware of what is being taught in public schools. "What they're doing is turning their kids over to a very humanistic environment," she said. "They're being desensitized to any moral values."

According to board members, the novel was submitted to an "exhaustive" review. Both the school district's instructional materials committee and Superintendent Dick Voegel recommended its retention. When the issue finally came before the board, only one person was present to testify against it. After she spoke, board member Peter Czerniski, a police sergeant, argued in favor of the book.

While noting that concerns over the book "haven't fallen on deaf ears," he noted that the students who read the book should be considered young adults and not children. The real world, he noted, is not a controlled environment, and schools have the responsibility to prepare students for that. "If bad things and foul language causes moral despair," he added, "I'm sure I'd be rotten to the core."

Board member Don Jonson agreed, making the vote 2-0. Two other board members were absent, but according to board president Jane Goldberg, who did not vote, they also supported the decision. Reported in: *Aberdeen Daily World*, August 29.

advertising

Miami, Florida

The publisher of Southern Bell's Yellow Pages announced August 11 that ads containing the words "gay" and "lesbian" will no longer be refused. The policy change was in part a response to public outcry over the rejection of an ad from a Miami gay newspaper. A Wilmington, North Carolina, gay organization also filed a complaint against the company with the state's utilities commission after it was listed as a human relations counseling agency (see *Newsletter*, May 1986, p. 96).

In a statement BellSouth Advertising & Publishing Corp. (BAPCO) said that while the company was "committed to assuring that our directories are free from material . . . objectionable to the majority of our users," that commitment could be accommodated "without specifically restricting a particular segment of our advertisers". According to a BAPCO manager, letters and phone calls received about the company's refusal to publish an advertisement for *The Weekly News*, a Miami gay newspaper, "definitely influenced" the decision. The policy change applied to all nine states served by Southern Bell and South Central Bell. Reported in: *Miami News*, August 12.

jail

Waterloo, Iowa

Playboy and *Penthouse* will remain in Waterloo's Black Hawk County Jail. Sheriff Wendell Christensen said July 30 that canceling the jail's subscriptions to the two magazines would constitute censorship, "and I'm not about to get into that."

The controversy began when County Supervisor Rachael Fulton announced that she believed the county shouldn't spend taxpayers' money on *Playboy* and *Penthouse*, magazines that she contends exploit women. "I have no objection to someone who goes into a store and buys one of these magazines," she said. "I just don't feel that *Playboy* and *Penthouse* should be made available to the jail inmates at the county's expense."

Fulton said she learned the county was buying the magazines when she examined bills for payment and found one for *Penthouse*. She said she tried to do something about it without "making an issue of it," but failed.

Christenson said subscriptions to a half-dozen magazines are procured through the Waterloo public library which surveyed the inmates to determine their magazine preferences

several years ago. *Playboy* and *Penthouse* were high on the list, he said. "I expressed some concern at that time to [former library director] Mike Phipps, but he told me that to reject any of the inmates' choices on the basis of content would be censorship," Christenson said. The jail also subscribes to *Time*, *Newsweek*, *Ebony*, and *People*. Reported in: *Des Moines Register*, July 31.

foreign

London, England

In a major victory for free expression and England's gay community, all charges against Gay's the Word (GTW) bookshop were dropped June 27 and all but 19 of 142 books seized by British Customs were returned to the London store. Customs maintains that the titles which were not returned are still indecent. The 19 books will not be burned, however, as is Customs' usual practice; instead they will be returned to the exporter from which they were obtained, and GTW will be free to apply to reimport them.

Customs had brought 103 separate charges against the non-profit bookstore and its unpaid directors after an April, 1984, raid in which GTW's entire stock of books published in America—nearly half the store's total inventory—were removed as obscene by virtue of being imported titles describing homosexuality. The American owner of the Philadelphia bookstore Giovanni's Room was named as a co-conspirator in the case. Among the books confiscated were works by Jean Genet, Oscar Wilde, Tennessee Williams and Jean-Paul Sartre, as well as a textbook on AIDS and a history of Nazi Germany (see *Newsletter*, January 1985, p. 16). At the 1985 ALA Annual Conference, at the request of the Social Responsibilities Round Table (SRRT) Gay Task Force, the Intellectual Freedom Committee proposed, and the ALA Council endorsed, a resolution expressing the concern of the American library community about the case (see *Newsletter*, September 1985, p. 144).

"I'm overjoyed," said GTW director Jonathan Cutbill, of the decision to drop the charges. "I think that the power of homophobes in Customs has been removed by this. After two-and-a-half years of having our lives totally taken over by this, we can now get on with the real job of running the shop." GTW suffered serious financial damage as a result of the raid. A move to larger and more sumptuous premises in central London planned before the customs controversy had to be abandoned.

Treasury Secretary Peter Brooke, who supervises Customs, gave the go-ahead to drop the suit. Political observers speculated that he may have based his decision on a recent European Supreme Court of Justice ruling, which held that Britain had no right to ban the import of foreign sex dolls when similar items were being manufactured legally

within the United Kingdom. Analysts also noted that Brooke's decision was probably designed to win favor with middle class gay voters. Prime Minister Margaret Thatcher's Conservative government has fallen drastically in public opinion polls, and there was an unexpected backlash against displays of antigay rhetoric by Conservative Party leaders.

Gay activists said that book raids and seizures were now more than likely a thing of the past. Customs agreed to state in advance whether books are indecent, rather than deciding to burn them at British ports. A gay member of Parliament also introduced a bill July 2 to end the antigay provisions of the 1876 Customs Law, which made the raids possible in the first place. The National Council for Civil Liberties, which was defending GTW, said they expected the law to be changed by the end of the year. Reported in: *The Advocate*, August 5.

(ethics . . . from page 201)

systems development goes beyond a publicly funded project, and it really hasn't been examined at all. I'd like to try to touch on some aspects of systems development ethics that would be applicable to both publicly and privately funded projects.

And, of course, the catch phrase in the title of my talk—"for personal or institutional gain." Again, I'd like to take a liberal definition. Immediately we would all think "gain" means making some money, or possibly career advancement, but I'd like to extend it beyond that, too, and put in, for example, career protection. I think it's possible to make decisions when developing systems that you may know are not the right decisions for your users, but which will keep you safe in terms of your career—not taking a chance or putting yourself on the line. That's a very difficult line to deal with.

Given that boundary or that definition for my discussion, I'd like to propose a framework in which we can make decisions that have ethical consequences. What I hope to argue is that it is necessary to have this framework, and maybe even to formalize this framework, because if we don't have it, our automatic decision-making processes will come into play and we'll end up making decisions that have consequences we hadn't planned on.

To start with, I would like to suggest that we have ethical obligations to our users, our colleagues, the institutions for which we work, the vendors with whom we deal and, last but not least, ourselves. When making decisions, we need to keep in mind the ethical consequences our decisions will have on these different groups. I would like to go through each one of these categories and give you some examples of how ethical decisions can be made—and many times, almost without thought.

I'll start with our users or our patrons. When developing

systems, I think that we all immediately look at a goal of providing the best service to our patrons in as short a time as possible. I think one issue that many of us deal with all the time is the issue of limited resources. In public institutions (actually in many institutions) it seems we never really get enough money to do the kind of automation development we'd like to do.

We have a choice then: if we are going to continue with the automation, we either can take some money out of the operations budget, or we can take some money out of the collections budget, and use that money to continue our automation. We are dealing with a decision that requires some short-term pain or reduction in service for a long-term gain which later, when the systems are in place, will be serving our patrons better. I think that has many debatable issues. First of all, think of the example in an academic situation where you might plan a three- or four-year short-term reduction in service by taking money out of the operations budget. Well, that three or four years would be a student's entire educational experience—the person for whom you were trying to provide a better system will be gone by the time the system is in place. Another possibility could be, for example, taking money from the collections budget where there is a very real possibility of damaging the collection. For research libraries, that is an immensely difficult decision to make.

A second example of how decisions can affect our users with ethical consequences is still to come. We are only beginning to see it now as we are starting to develop smart or expert systems. In these systems, the computer does more and more to lead the patron to the data. You may have multiple databases out there, and the system might try to figure out which database is the most appropriate and lead the person to that data. The people designing and developing the systems now have an opportunity to lead people to or away from certain kinds of data. I think that although this may not be done consciously all the time, a danger exists in moving the patrons farther away from the data with which they want to work. For example, if multiple databases were available and you as a designer thought one database was better than the rest, you could try to route all the requests to that particular database. If you are paying by transaction per database, you might try to route them to the cheapest database to keep your costs down. So I think there are ethical considerations that need to be dealt with in developing these smart and expert systems. Otherwise, system developers like myself will just go on and do what they think is right, and that is not appropriate.

An issue we are dealing with right now at Berkeley is that of re-charge. I think we all agree that we should provide library services for free, but we are beginning to consider providing base-line services—including the catalog and a certain amount of reference work—in an automated mode. We all want to make these new products available like the optical disc base products that are actually marketed by ven-

dors, such as Infotrac. But we do not know how we are going to pay for them since they are not traditional base-line services. Again, one possibility would be to take money out of the operations or collections budgets—but we can only do so much of that. And the second possibility would be to re-charge the patron for using a particular product. In the case of a system which is PC- and CD-ROM based, a little meter could be installed which charges the patron for the amount of time used and the amount of paper used. I think that is a big decision because it constitutes a kind of economic discrimination: we are giving information to the people who can afford to pay for it. Then again, if we decide not to make those systems available, we are not providing *anyone* with information.

In addition to working with our users, we have ethical considerations in terms of our colleagues. I think the one that is most obvious is that if we are developing systems, particularly with public money, we have some obligation to let people know what we are doing—to publish and let them know what we have learned. Beyond that, how far does our obligation go into actually making those systems available for other people? In the case at U. C., Berkeley, we probably are committed to making anything we do available to other U.C. libraries. Within the State? Well, there is a strong argument for it. Nationally? Among members of a consortium like ARL or RLG, we have some commitment. But how far does that commitment go? How far should Berkeley, or any institution in this situation, provide?

Another issue in terms of our colleagues and ethical considerations is inter-library loan. U. C., Berkeley, is a big net lender; we lend much, much more than we borrow. In fact, we have written many of our automated systems to encourage this. Unfortunately, ILL transactions are very expensive and we are subsidizing them now out of our budget. So we now find ourselves in a position where we are encouraging ILL and we are helping our colleagues at other libraries, but because we are subsidizing it out of our operations budget, we may be providing a reduced service to our primary clientele, the faculty and students at U. C., Berkeley. One solution would be to limit the amount of ILL that we would be willing to extend but, again, *that* has ethical considerations.

We also have ethical considerations with respect to the institutions for which we work. I think this is the area that is discussed most frequently, and that involves issues such as piracy, intellectual property, and conflict of interest. I'll take up each of these issues.

Let's start with piracy, an issue which can be viewed as having several degrees of seriousness. For example, it can be very overt—you could take what you developed at that particular institution, walk out the door, and start marketing it. That is probably unethical, and I am sure it is illegal. Then, again, if it was developed with public money, that is hard to say. On the other hand, it could be much less conscious, and here I think we fall again into the area of what is social-

ly acceptable. For example, what if you used the computing resource at your institution to develop a system that you later decide to market for profit? Even if the development were done on your own time, that computing resource was used to develop a product which you had no intention of using on behalf of the institution, and which you then take out into the market and make a profit. Is that ethical? I think in many cases it has been considered socially acceptable, but I am not quite sure whether it is ethical or not.

The second issue, that of intellectual property, is being dealt with now at U. C. Berkeley. Our faculty is writing a lot of software and claiming authorship, even though it was done while working for the University. The Berkeley campus is trying to figure out how it can negotiate allowing the faculty to have some royalties from this property. I think that in terms of systems development, there certainly is an ethical impact if you were to work for an institution, leave it, take all the ideas with you, and put the system in a for-profit mode. Again, it's unclear where the boundaries of intellectual property leave off: if you use ideas you accrued at one institution, what obligation do you have to that institution? Another serious problem in that gray area.

I think we also have to keep in mind ethical considerations in dealing with vendors and consultants. One of the other speakers is going to be dealing with this subject, so I won't go into any great detail. But I would like to say that we do have an obligation to our vendors to provide them with the proper information so they can make the proper decision. I think too often we expect vendors to come in and give us solutions based on inadequate information. I think more often than not, whether systems succeed or fail when they are purchased though a vendor has a lot to do with how the two groups worked together and the quality of the information flow between them.

Last but not least, I think we have responsibilities to ourselves, to better our lives. Certainly, we can include trying to make money in this, or trying to have career advancement. But the question then is how far can you go before it becomes an ethical consideration that impacts on one of the other groups?

In summary, I would like to hope that I have demonstrated the need for an ethical framework that we can use to look at the wider picture when making decisions, to go beyond using that instinctive or that gut-level approach to making decisions. Because only by avoiding this automatic decision-making process can we be assured that we are attempting to make the best decision in terms of the ethical consequences for our users, our colleagues, our institutions, the vendors we deal with, and ourselves.

remarks by Robert Walton

Robert Walton is an automation consultant who works at the Texas State Library.

I was asked to speak on the issue of vendors, consultants, and ethics. My initial gut reaction was that this is a contradiction in terms. I had never really grouped vendors and consultants together and thought about an ethical relationship, and it caused me to give some serious consideration as to how best to address this topic.

The word about this speech spread, prior to my getting to ALA, to most of the vendors and other consultants with whom I regularly deal. There was a great deal of interest in what the focus of my comments would be—I think they were just as concerned as I was! The vendors approached me, I think jokingly, to find out if I was going to talk about how consultants have been successful in placing a very high financial value on the concept of common sense. The consultants wanted to know if I was really going to tell the truth about what they called “the scum of the earth,” the vendor community. Both sides frequently take cheap shots at each other—it is truly a love-hate relationship because, as I will propose, the consultant-vendor relationship is a high dependence one. It is a very incestuous relationship and there is a lot of movement of information back and forth between vendors and consultants. We have had some recent events, that I will talk about in a moment, which can illustrate some of the ethical issues which I think we need to deal with.

From the vantage point of a consumer who will ultimately deal with either a consultant and/or a vendor, I am also going to deal with the very straightforward question of “should you let a vendor buy you lunch?” That seems to be uppermost in many people's minds when they start looking seriously at purchasing an automated library system.

Vendors and consultants, in my opinion, do perceive that most librarians place them into one of two camps. You can reside on only one side of a very clear line. The consultants typically are viewed by many librarians as the “good guys” and the vendors are viewed as the “guys you should be suspicious of.” You will find that when there is some movement—a consultant takes a vendor position—you can see a striking difference in the relationship they have with many librarians they had previously come into contact with.

We recently had a very well known, nationally recognized library automation consultant move from a private consulting practice into an executive position in a vendor firm. In speaking with this individual, he made the comment that two or three librarians walked up to him and basically called him a traitor. He was finding himself being somewhat defensive about the position that he had taken in leaving what he considered to be an advocacy role for librarians to what he considered to be an alternative advocacy role in providing good services from the vendor point of view. In another case, about two years ago, an automation consultant was under contract with a major system vendor to do some product investiga-

tion and development work, and was shunned by the other consultants.

I surface these examples to illustrate that we have no consensus, among the consultants or the vendors, of what the ethical issues are. In fact, when I talked to many of the consultants, it was difficult to come up with an agreement on what the possible issues are that we should address. But there was also general acceptance of the fact that we have a potential "ethics" problem that we have not dealt with in a very straightforward manner.

Let's talk a little about some scenarios. I didn't find any solutions to the ethics problem, but, instead, a better definition of several scenarios which illustrate where we perhaps move into an unethical situation. First of all, when I refer to the consultants in the following scenarios I am not talking about people who are called consultants from the vendor camp (for example, vendors have consultant positions—there will be a position called data base consultant or consultant liaison). I am also not talking about consultants who work for large bibliographic utilities or state library agencies, as are very typical now. I am talking about consultants who are relying primarily on private contracts for their income. When we move into this kind of a consultant/vendor/client relationship, we begin to see a variety of things.

First, I would say that the dependency of consultants on vendors is very significant. When I look at my own patterns of communication at most ALA and other professional meetings, 70-80 percent of my time is spent in some kind of communication with vendors. Vendors provide me much of the information I need to do my job.

From the library's vantage point, consultants have a lot of information, but are also hired for two other factors: first, experience, depth of knowledge and history to the particular area of expertise they are working in. Second, libraries hire consultants to give them specific technical guidance, technical skills that they do not have on their local staff.

With that background, let's take a close look at some scenarios where we might run into some ethical conflicts. There are two kinds of unethical behaviors that I could identify generally. One of them, I am going to call "passive" unethical behavior. This is one that we could say is intellectual or philosophical—you can define a situation and say, "I would avoid that because it is unethical." The second type is more difficult to describe. I am beginning to find that there are certain situations in which the consultant, or perhaps vendor, without any intention, finds they are a *de facto* unethical person because of circumstances that tend to stack up. The collective reality or pattern of certain decisions over time can put the consultant in a compromising position. Let's try to take a look at some examples.

Scenario #1: The unofficial consultant/vendor relationship. The consultant is going to be in a very unethical situation where you have a personal involvement with a vendor. By this I mean that you are married to a vendor, you have a family member who is a vendor, or you have what I call a

"significant other" who is a vendor (a person to whom you are not married, but with whom you have a significant relationship). An example of this occurred four years ago when a library hired a consultant who did a feasibility study of expanding an automated system. The study went up in flames when, after the study was completed and the consultant had been paid, a board member found out that the "significant other" of this consultant worked for the firm from which he was recommending that they purchase and expand the product. In actual fact, I doubt that that relationship had anything to do with the conclusion; however, it was irrelevant at that point—the credibility of the situation had been removed from that consultant's control, and the money invested was wasted.

Another kind of unofficial unethical behavior would be to have some kind of financial gain or financial incentive in any of the vendors with which the consultant would do regular business. This becomes difficult to define. In talking to consultants about this (trying to clarify whether I was the only one who had identified that I did not have a problem in this area), we did agree that owning thirteen or fourteen shares of IBM stock is probably not going to put you into a conflict situation if you wanted to recommend the NOTIS system to a particular library. However, one can go through all kinds of scenarios, and one of the issues becomes how much ownership of stock, or how much personal involvement in any kind of an investment which might have some financial relationship to a vendor software or hardware package, would put you in a conflict situation. That is a pretty easy scenario to quantify and avoid. Let's move into some more difficult ones.

Scenario #2: The official consultant/vendor relationship. Here's where we begin to see some division in consultant opinion in terms of their practice and philosophy on where ethical behavior begins and ends. First, some consultants do, in fact, perform market analysis studies and forecasting for vendors—vendors hire them, they go out into the library community, they review the situation, they turn in a report, and they are paid by that vendor. That does not mean that they are representing the vendor's interests or products, nor does it mean that they have any affiliation beyond the specific charge of that consultant contract. Some consultants feel this is unethical behavior—it establishes a link between the consultant and the executives of that company. Other consultants find this to be a very appropriate activity for a consultant.

What about product review? What happens when a vendor is interested in introducing a new product? Is it appropriate to have consultants come in, professional technicians who typically represent large portions of the library purchasing market, and do an analysis of those products with recommended changes and pricing levels? There are obviously some potential conflicts of interest in that situation, again depending on the autonomy of the consultant in the performance of these duties.

What about when vendors want the consultant to come in and do a management audit? Where are we having problems?

Do we have enough sales people, do we have enough service, do we need to reorganize the image of our company? Again, that kind of an involvement can or can't be viewed as unethical, depending on whom you talk to.

I think the one official relationship I identified which is clearly agreed upon as unethical is what we will call a joint venture. I think that in the situation where the consultant goes in with a vendor and develops a product which will then be placed on the market for sale, that consultant will then have to very severely limit the kinds of representation that he or she does in the market where that product is offered. Let us assume that there is some controversy over what is ethical and unethical in this particular scenario. One of the things I would recommend that you do is ask questions about the historical practices of your consultant. If you have concerns in some of these areas, you simply need to ask, before you hire someone, if they have worked for any vendors in certain kinds of capacities. You will have to make up your own mind as to what your acceptance level is.

Scenario #3: The inappropriate vs. appropriate use of information. As I mentioned earlier, one of the things that consultants do—one of their primary assets in terms of a marketable skill in the marketplace, particularly in the library automation marketplace—is provide information. What libraries are buying from consultants is not only process, skill and a good sense of humor, but also information, pure and simple. This puts the consultant in some potentially difficult situations on certain occasions. Many of the consultants do compile very confidential profiles of vendors, including pricing contractual acceptability based on clients they have represented or have knowledge of, or even unrevealed unannounced product developments within certain vendors that they are privy to. These are typical information communications between consultant and vendor. So one of the issues that the consultant constantly faces is what is the appropriate use of this information?

Let me give you a specific example. Let's say that you were in the process of evaluating proposals for a client library to buy an automated library system. As the consultant, you observe the library making a decision to purchase system X based upon certain negative criteria associated with system Y. The reason they are picking system X is that system Y really does not appear to have that capability, given the documentation they have been provided. As the consultant, however, you feel that system X has not supplied an accurate document. Because you have had a different experience with system X in the past and have worked with that vendor on other accounts, you may have knowledge that the proposal submitted is really not a fair representation of the product.

Where do the ethics begin to break down as you begin to give additional "help," shoves, or nudges to certain vendors and not to others? Is it appropriate in a competitive bid environment, for example, to introduce unofficial information into the decision-making process? Having been involved in many of these situations, I can assure you that when

you get a committee of librarians together, with the very best intentions in mind, a skilled consultant can very clearly redefine, refocus and reinterpret information presented in very simple documents, and change the collective decision 180 degrees. It is a reasonably easy thing to do, and it has nothing to do with the inabilities of the librarians—it has to do with the trust placed in that consultant, that he or she is making the correct interpretations. They hired the consultant to do that kind of work. Obviously, the use of the information the consultant has can be very critical.

The last type of appropriate or inappropriate information use also concerns use of information provided for one purpose and using it for a second purpose. For example, if I were to collect information used to determine whether to buy system A or system B, and then turn around after having acquired confidential information and write articles to enhance my own credibility or to enhance my own visibility in the library community, vendors, I think, have a legitimate concern about the appropriate use of confidential information supplied to me. The difficulty for vendors in this particular situation is that in many cases it is very difficult to nail down or document where the information came from. Audit trails are very informal, the way that information flows between consultants and vendors is very informal, and therefore, it is very difficult to really pin someone down and hold him up to blame. Typically, by the time one consultant hears something, it is not long before everyone knows it (meaning the consultant/vendor clique), and it is very easy to get confused as to where the rumor got started, where it got confirmed, and where it got spread.

Now let's move into real hardball automation.

Scenario #4: The blackballed consultant. Stories of open hostility between vendors and consultants have begun to surface as there has been a heightened competition between vendors in the marketplace and, I might add, a heightened competition between consultants. There have been several occurrences in recent years where vendors have privately threatened a specific consultant to "no-bid" all of their accounts because the vendor feels as though they were not getting fair treatment by that consultant in the marketplace. As I have already tried to indicate, information and access to all vendors is a very important part of what a consultant has to sell, so obviously, when a major vendor contacts you and says, "Bob, I am sorry to tell you this, but we don't like you very much, and we're just not going to bid on any of your projects if you don't begin to take a different tone," that has a very severe weight on the consultant's business and marketability. It is something which the consultant cannot ignore, and results in concern, frustration, and anxiety. Obviously, this is important to the consultant since it has a lot to do with whether that consultant can be considered credible in the marketplace.

An expanded version of this scenario would be where the vendors notify, in addition to the consultant, potential consulting clients. At the first level, vendors contact the con-

sultant in sort of a private, consultative role. The second level is where they begin to write or talk informally to clients and say, "We are disappointed with Bob Walton. We don't like Bob Walton very much and if you use him as your consultant, then we're just not going to bid on your account." If you receive one of those letters as a library director, it may infect your relationship with the consultant, or it may introduce artificial issues into your procurement procedure and really begin to infect what we would call a normal competitive and open-bid environment.

Lastly, a passive form of consultant blackballing can occur when vendors simply refuse to provide any information to the consultant. This might mean ostracizing this person from the ALA consultant breakfasts, typically held on alternating mornings by different vendors to brief consultants on new products, developments, and problems. It might mean not responding to letters of inquiry for price and new product information used to help libraries develop long-range plans, cost analyses and budgets. Obviously, this is a very difficult situation for a consultant, but it ultimately also affects libraries since as we look at the proportion of systems installed, there are probably less than ten consultants that control a great number of those installations.

Scenario #5: The blackballed vendor. Let's not put all the blame on the vendor. Another thing we have to recognize is that information and control of the market is a two-way road, not a one-way road. While scenario four was "the blackballed consultant," the blackballed vendor scenario has also sprung up several times in the past couple of years. This is where the consultant threatens the vendor to change their behavior toward that consultant or toward a particular client, knowing that he or she controls a significant number of future contract awards amounting to large dollar amounts. In this scenario, the consultant threatens the vendor with not allowing them to participate fairly in the procurement process of subsequent accounts. As the consultant in scenario four would suffer, the vendor obviously begins to feel anxiety and frustration from this kind of situation. Consultants can take this action without actually making any kind of overt announcement. Again, I don't want to over-emphasize the ability of consultants to manipulate people, because I don't think that is their intent. But it is true that a consultant can, through the automation education process, steer libraries away from conclusions they might have normally reached by exercising control and selective dissemination of important information.

I think we do have to be concerned about the ethical issue of blackballing in reverse, where the consultant blackballs a vendor. Typically, this will happen when the consultant feels his ego has been bruised (that may surprise some of you, but consultants do have some egos to get involved in certain cases). Or, if they find that one of their clients who has already been awarded to a vendor gets "pimped around" that vendor might be held hostage for a certain duration of time until evidence proves a correction has been made in that

vendor's attitude.

Scenario #6: Consultant retirement. Scenario six moves us into a very difficult area. How do you retire as a consultant? Let's say you have been in consulting for a while, and you have a lot of proprietary information about a variety of vendors. For instance, one of our prominent consultants has retired. In this case, he elected to move into working with one of the vendors. Although I don't have any concerns about that relationship myself, knowing both the vendor and the consultant, some of the other vendors do not share my comfort with this particular situation. What it calls into question, I think, for all consultants, is how one gets out of the business, without dying. I have decided that when I get out, the easiest way will simply be to pass on! Assuming that you don't want to do that—you want to remain in libraries and you want to remain in automation—how does one begin to move back, away from the consultative role? Again, one of the things you need to remember is that libraries and vendors do, as a result of their procurement process, expose the consultant to a lot of proprietary information about a variety of products. You can imagine how you would feel as a vendor if a consultant you had done considerable business with were to then go to work for a competitor, having a lot of internal knowledge about what happens in your company.

This is not restricted to consultants, however. We have a problem with "vendor trading"—sales representatives who move from vendor to vendor. This is even more frightening because not only do these individuals have knowledge of proprietary information about what the employer has to offer in terms of a product, but they may also have information that the consultant typically deemphasizes—sales techniques, marketing techniques, pricing concepts, market timing. These are some of the factors which a vendor representative could carry to the new company, and even realize financial incentives in the form of commissions should they be able to use that information effectively.

I don't think we really have an accurate idea about the best way(s) to retire from being a good consultant, because historically it has not confronted us in large numbers. It is something, however, we are now very much aware of. We understand there are some potential conflicts and even though they may not be realities, they certainly have the appearance of threatening behavior and we are very conscious of them.

Scenario #7: Problems in consultant marketability. This is a scenario that is very subtle and very complicated. It is something, I think, that every consultant who does any measurable amount of business faces. There comes a point—when you are working with a lot of libraries (ten, twelve, or fifteen a year)—that you begin to see a pattern evolve in the kinds of accounts that you award to certain vendors. One of the problems that can emerge for a consultant is a potential lack of credibility because of simply awarding too many contracts to one vendor. What is complicated about this one is that the consultant, the library, and the vendor involved

may be very ethical, very above-board, and very appropriate in every decision that is made. But you can potentially begin to see some behavior patterns change as the consultant becomes more and more worried about being "vendor typed." The library community is a very tight and gossipy community—there is a lot of free flow of information. The first thing library directors do when they get a hunk of money is call all their library director friends and ask them about automated library systems. They find out how to begin the project, get information on consultants, and investigate what the probable automated library systems might be.

I think that the consultants sometimes are concerned by the concept of being "typed" to a particular vendor. While the concerns are valid, where this becomes an ethical issue is in those future accounts where you have two equal vendors. Let's say you have two vendors who are fairly close in terms of their overall ranking after a very detailed procurement process. Maybe you ought to just give it to vendor B because you gave a whole lot of awards to vendor A already. It sure would help your reputation—the appearance of fairness and objectivity. Is that the kind of issue that should get involved? Perhaps you want to make sure that you give every vendor an account every so often, so that you keep all your information channels open. These sound like comical situations, but, again, I think it's important to realize that when we are talking about hundreds of thousands of dollars per account, these become very significant issues. They also can become very emotional issues for both the vendor and the library community.

In conclusion, I think that I am left with more frustration and more questions than I am with answers. As we begin to deal with the issue of ethics more and more, I think that it is going to require vendors and consultants to review these issues in a more open dialogue. One of the things that makes it complicated is that large amounts of money are involved—and that always complicates and heightens the anxiety of any situation. In closing, the only thing I am really confident of is that if you want to have lunch at a vendor's expense, I really do not think that is an ethical problem. Go to lunch!

remarks by Robert S. Peck

Robert S. Peck is Staff Director of the Commission on Public Understanding About the Law of the American Bar Association.

The technological developments described in the earlier remarks are part of a quiet revolution that is profoundly changing the American way of life. It is creating previously

unforeseen social, ethical and legal issues. Most important among today's issues is the way the incredible array of new technologies is contributing to a rapid and increasing metamorphosis of society into an information-based system. Nowhere will the implications of this revolution be more important than in the area of privacy.

The new technology permits the collection and dissemination of information with incredible ease. What was once collected in dozens of dusty storerooms in all kinds of locations far away from each other can now be assembled with ease by anyone who is computer literate, and they do not need to be in any special location. As librarians, you should celebrate this development, for the collection and dissemination of information is what your profession is all about. The technology has paved the way to an even greater freedom of information than we have ever experienced before. Still, the computerization of society has important and possibly unsettling implications for personal privacy, and that is what I would like to focus upon. While there are a wealth of statutes designed to protect personal privacy, they often fall short of affording true guarantees because they cannot anticipate the changes that technology makes almost on a monthly basis. Instead, I would like to focus on privacy's place in the constitutional pantheon of rights, because constitutional law is organic law just as ethics is—it deals with that which is most important and most personal to us all.

To begin an exploration of privacy, it is critical we realize what it is we are talking about. Privacy makes possible individuality, and thus, freedom. It allows us to cope with the larger world, knowing that there is a place where we can be by ourselves and contemplate our more public actions without recrimination. It has been said that "our secrets concern weaknesses that we dare not reveal to a competitive world, dreams that others may ridicule, past deeds that bear no relevance to present conduct, or desires that a judgmental and hypocritical public may condemn."

Naturally, as you would imagine, there are those who disparage the right to privacy. Their most common refrain is: "People have nothing to fear unless they have something to hide." But that misses the point entirely. Protection against unwarranted intrusions into personal matters means much more than safety from minor embarrassments, or even possible incrimination. Invasion of privacy has the potential to reveal one's associations—such as perfectly innocent or legitimate friendships or memberships that other associates or an employer might not understand. It also can reveal things about private enjoyments—not just the kinds of things that society has a moral objection to, but favorite television shows, books, sports or foods—any of which can evoke an undesirable reaction from friends or colleagues. And it also can reveal personal views that others could look upon with a disdain that leads to social ostracism.

The chilling effect of a loss of privacy is the undesirable incentive to conform to perceived societal norms rather than

assert one's individuality in ways that may threaten a loss in other personal or professional associations. Ultimately, what will be lost by this process are the private emotional releases that we all need, the range of human relationships that help us function, and, perhaps most importantly, the creativity that serves human achievement. American culture has been characterized at various times as a rugged individualism, a willingness to accept challenges that test American know-how, and a sense of adventure that seeks new frontiers to explore. These traits cannot exist where conformity, rather than privacy, is the most important value.

In 1983, pollster Louis Harris surveyed the public's awareness of privacy issues. He found 48 percent of those questioned were "very concerned about threats to personal privacy," an increase of 17 percent over a 1978 survey. Seventy percent thought it *likely* that "a government in Washington will use confidential information to intimidate individuals or groups it feels are its enemies." In addition, 58 percent thought it likely that the information "will be used to take away the privacy, the freedom and the liberty" of Americans. Most strikingly, 84 percent of those polled agreed "it would be easy, no problem at all, to put together a file on them that contains all their credit information, employment records, phone calls, where they have lived over the past ten years, their buying habits, their payment records on debts, the trips they have taken."

These fears are not unfounded. The federal government maintains an average of fifteen files on every American, and state and local authorities often have collected more information than is necessary for legitimate purposes. Here in New York there was an incident involving a drunk drivers program which required enrollees seeking reinstatement of their licenses to fill out a form that, for no apparent reason, asked questions about their sex lives. Other requirements in other states have been equally intrusive.

No statute can provide the comprehensive protection to privacy that is evidently needed to secure individual liberty. Privacy must be understood to have a constitutional origin. Some have questioned the constitutional basis of privacy rights. Their position was succinctly stated by Justice Hugo Black, dissenting in *Griswold v. Connecticut*, the Supreme Court case that recognized "Liberty in the constitutional sense must mean more than freedom from unlawful governmental restraint; it must include privacy as well, if it is to be a repository of freedom. The right to be let alone is indeed the beginning of all freedom." In Justice Black's dissent, he rejoined: "I like my privacy as well as the next one but I am nevertheless compelled to admit that government has a right to invade it unless prohibited by some specific constitutional provision."

Black was on the losing side of that argument, as are the so-called constitutional literalists of today. James Madison, who most scholars recognize as the father of both the Constitution and the Bill of Rights, observed about the first ten

amendments, that "although some of them are rather unimportant, yet, upon the whole, they will have a salutary tendency." What Madison was saying was that the Bill of Rights was designed to create an environment where liberty can thrive and one that was not restricted to the specific provisions of the Bill of Rights.

Justice John Harlan restated the Madisonian view in 1961, when he wrote:

liberty . . . is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions on and purposeless restraints

The constitutional basis of privacy has an impressive pedigree. It was first articulated in a 1928 dissent by Justice Louis Brandeis—a dissent that in 1967 was recognized as correct by the Supreme Court when they adopted the Brandeis position. In 1928, Brandeis wrote:

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings, and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a [constitutional] violation. . . .

Why have I emphasized the constitutional basis of the right of privacy? Why is it important to you as citizens, as librarians? Because legal concepts are values, often measured with an unavoidable arbitrariness against other competing values, and values must be guided by experience. When you talk of the ethical dilemmas that were discussed today, you are applying values and you are applying them on the basis of experience. If we are aware of the constitutional stature—and thus the high value—that privacy holds, we are enabling ourselves to apply it appropriately and vigorously as a shield against threats to personal freedom.

In libraries, the technological threat to privacy comes in the form of computerized circulation records and who might look at them. The books taken out by a particular individual or all individuals who have checked out a particular book can now be easily ascertained. Moreover, the information is often available at any library branch in the system and sometimes now between systems. The confidentiality of these records must be kept secure from both members of the public and the unwarranted requests of governmental authorities. It is no one's business which books we read. We should be free to read without fear of recrimination. Even if a book is suspected of inspiring a criminal act, a search of circulation records seems intrusive while having a high likelihood

of proving fruitless. The book could just as easily have been purchased or read in the library without being checked out. It could have been borrowed from another library system. Despite these and other possibilities, if circulation records are used, many innocent individuals become enmeshed in a wide net of suspicion. The investigation can cause anything from minor nuisances to major traumas to library users who happened to borrow what someone somewhere has decided is the wrong book. Hence, permitting unwarranted use of circulation records contributes to a form of censorship, harassment for reading the wrong book. When word gets out that readers of that book will fall under suspicion, who will dare read it?

Similarly, citizens groups with censorship tendencies have recently taken to demanding lists of readers of books they deem improper in some respect. Librarians can be applauded for resisting these efforts as a threat to the privacy and free expression of their patrons.

In 1971, the American Library Association instituted a policy recommending all libraries keep their circulation records confidential, except when release is required pursuant to a properly issued subpoena. The policy went further and recommended that libraries use legal counsel to assure that these subpoenas are properly limited in scope and founded on a need for information that is otherwise unavailable.

At least 32 states have now acted to exempt circulation records from Open Records Acts, recognizing the importance of confidentiality.

For you to uphold privacy rights against the potential intrusiveness of technology, I recommend the following policies:

1. Only keep records of information necessary and germane to library purposes;
2. Destroy the data after a reasonable period when it no longer serves that purpose—if it is useful to know how often a book is borrowed, then destroy the data that links it with particular patrons;
3. Adopt a well-publicized policy of confidentiality for library users that only a properly issued court order can be overcome; and
4. Establish a security system to guard against disclosure by use of the automated equipment.

I leave you with the thought that privacy is a fundamental freedom closely entwined with the freedom of expression to which we are all dedicated. If we can resolve to protect privacy, then the new information technologies will continue to serve, rather than erode, the cause of liberty.

(access to information . . . from page 205)

Air Carrier Industry Scheduled Service Traffic Statistics. Subscriptions to these publications will be sold by TSC for \$150, \$50, and \$50, respectively. When sold by the Government Printing Office, Air Traffic Statistics cost \$74 and Air Carrier Financial Statistics cost \$16.

March—Budget cuts mandated by the Gramm-Rudman-Hollings balanced budget measure brought on a fiscal emergency at the Library of Congress requiring the elimination of 300 positions, the reading rooms closed on Sundays and most evenings, and significantly fewer items purchased, cataloged, preserved, and made available to the blind. (March 4, *Congressional Record*, pp. E588-9)

March—The federal government's spending on the collection of data about higher education declined by 63 percent between fiscal 1974 and 1984, and spending on education research dropped by 64 percent, according to a study by the General Accounting Office. In the same period, spending on the entire Department of Education rose by 22 percent. At the request of the House Subcommittee on Select Education, GAO is conducting a comprehensive study, expected to be completed by December, of the condition of federally sponsored education research and data collection. Early findings show that reductions in spending on the gathering of education statistics have been disproportionately higher than cutbacks in other statistical agencies. Between fiscal 1980 and 1984, the budgets of most federal agencies devoted to the collection of statistics suffered an eight percent reduction. The budget of the National Center for Education Statistics, however, shrank by 28 percent during that period. The GAO also found that in some instances NCES had decreased the sizes of its samples and the frequency of some types of data collection activities. That, it said, raised some concerns about the validity and quality of the work done by the agency. (*The Chronicle of Higher Education*, March 5)

March—A federal health official phoned the Department of Health and Human Service's main library to ask for the March 13 issue of the *New England Journal of Medicine*. He reported, "They said that because of Gramm-Rudman we no longer have that journal. Can you imagine? The top federal health agency!" The HHS librarian, John Boyle, said: "I don't know whether it can be ascribed to Gramm-Rudman, but the department is holding orders. The subscription has expired and is awaiting renewal. We are waiting for money to be approved." (*The Washington Post*, March 28)

March—The Joint Committee on Printing in a March 14 letter to every Representative and Senator, outlined the effects of the Gramm-Rudman-Hollings 4.3 percent cut as of March 1 on the printing and distribution of congressional

publications. They announced that the public will be referred to GPO bookstores to purchase congressional documents such as bills, public laws, reports, committee prints, hearing records, etc. (Ed. note: See May entry on this issue.) (Dear Colleague letter from Sen. Charles McC. Mathias, Jr., and Rep. Frank Annunzio)

March—At a March 17 hearing, the Joint Economic Committee heard from private economists who said that the quality of the nation's economic statistics is in danger of being destroyed through a combination of budget cuts and bureaucratic neglect. One of the witnesses, Courtenay Slater, was the author of a study commissioned by the committee on problems with government statistics. For information about the report, "Opportunities for Improving Economic Statistics," contact the JEC, G-01 Dirksen Senate Office Building, Washington, D.C. 20510, 202/224-5771. (*The Washington Post*, March 16)

March—The Defense Department and the Central Intelligence Agency have initiated a disinformation program which covers 15-20 programs, six or seven of which are Defense Department projects. Deliberately false, incomplete and misleading information, including altered technical information, will be released in order to impede the transfer of accurate technological information to the Soviet Union. A six-inch-thick document outlining the program to the armed services asks for comments "on the use of false requests for proposals, false or misleading information to be given at press interviews, inaccurate performance figures for aircraft and weapon systems, and other altered technical information." A Defense Department official said: "If some of the results of the disinformation activity on a particular program get passed on to Congress through hearings or other means, there are channels on the Hill that can be used to get the correct information to the people who need to know." (*Aviation Week & Space Technology*, March 17)

March—In a March 26 letter to Sen. Mathias and Rep. Annunzio, ALA Washington Office Director Eileen Cooke protested that the JCP plans to sell all Congressional documents ". . . means that participation in an active, meaningful and timely way in the federal legislative process will now depend on the ability to pay." She asked the JCP to reconsider the recently announced restrictions on public access to basic congressional documents. Cooke sent a letter May 6 to every Senator and Representative urging them to ask JCP to reconsider. Other groups have also protested, and there has been increasing publicity about the proposal in the Washington, D.C., area newspapers. (Ed. note: See May entry on this issue.) (See "Endless Reams of Legislative Paper May Be Yours . . . for a Price," *The Washington Post*, May 13)

March—In a March 29 column in *The Washington Post*, Jack Anderson and Joseph Spear described the National War-time Information Security Program (WISP), "the blueprint for press censorship." The broad sweep envisioned for WISP was described in an internal Pentagon memo prepared for a meeting of government planners on September 21, 1983: "The National WISP provides for the control and examination of communications entering, leaving, transiting or touching the borders of the United States, and voluntary withholding from publication, by the domestic public media industries, of military and other information which should not be released in the interest of the safety and defense of the United States and its allies." The memo included a bow to the First Amendment: WISP was not to be used indiscriminately—for example, "as a guardian of public morals." Anderson and Spear concluded: "The alarming thing about the Pentagon directive is that it allows the defense secretary to set up a censorship program 'if the United States is believed about to be attacked.' Attacked by whom? The Soviet Union? Libyan hit squads? Killer bees? The directive does not specify. All the defense secretary needs is the president's permission and the news-media is silenced—at gunpoint if necessary."

April—At the request of Rep. Major Owens (D-NY), the House Postsecondary Education Subcommittee chaired by Rep. William Ford (D-MI) held a library oversight hearing on April 8 on OMB Circular A-130 and its implications for access to government information; H.J. Res. 244, calling for a White House Conference on Library and Information Services in 1989; and the impact of Administration budget proposals for federal library programs (including LSCA, HEA, the ECIA Chapter 2 school block grant, and postal revenue foregone).

April—The Council on Environmental Quality decided to abolish a rule that requires federal agencies to consider the worst environmental consequences of their actions, contending that the regulation is "unproductive and ineffective." The decision caps a three-year Reagan Administration effort to limit the reach of the national Environmental Policy Act. Since 1970, NEPA has required federal agencies to prepare detailed analyses of the environmental effect of dams, nuclear waste disposal sites, pesticide-spraying programs and other federally financed projects. Final regulations were published in the April 25, *Federal Register*, p. 15618, with corrections on May 7, p. 16846. National Wildlife Federation official Norman Dean said the change significantly weakens existing rules, which require agencies to disclose the absence of information in all instances. "The fact that information is missing in the first place makes it almost impossible to determine if a significant impact is reasonably foreseeable," he said. "Under the new rule, an agency wouldn't even have to identify the fact that information is missing," Dean observed. (*The Washington Post*, May 25)

April—The Commerce Department announced a study of alternatives for privatizing the National Technical Information Service in the April 28 *Federal Register*, pp. 15868-70. The notice asked for public comment on privatization alternatives (discontinuing NTIS completely, selling or contracting out all or portions, establishing a public or private special-purpose organization) and on ten key issues including whether government reports placed in NTIS should be copyrighted. In a June 6 letter to the Department of Commerce, ALA Washington Office Director Eileen Cooke urged that NTIS continue to operate either as, or within, a not-for-profit public service agency with continued Congressional oversight.

April—Rep. Glenn English (D-OK) chaired an April 29 hearing of the House Government Operations Subcommittee on Government Information, Justice and Agriculture, to review a controversy about public access to the papers and recordings of the Nixon White House. The National Archives and Records Administration published regulations implementing the Presidential Recordings and Materials Preservation Act of 1974 in the February 28 *Federal Register*, p. 7228. Officials from NARA, OMB, and the Department of Justice were questioned about a February 18 Justice memorandum (requested by OMB) which basically allows former President Nixon to control public access to documents of his administration. (*OMB Watch*, May 9)

May—The Reagan Administration is considering the criminal prosecution of five news organizations for publishing information about American intelligence-gathering operations, particularly intercepted communication reflecting U.S. code-breaking capabilities. "The president himself first revealed the nature of these intercepted messages," said Leonard Downie, Jr., managing editor of *The Washington Post*. "What we reported subsequent to that—details of the intercepts—did not do anything more to reveal our intelligence capabilities than the president himself did." (*The Washington Post*, May 7)

May—Speaking to a group of students on May 21, President Reagan said that the problem of hunger in the United States is caused by "a lack of knowledge" about where to obtain help. Critics responded by blaming administration policies. J. Larry Brown of the Harvard School of Public Health, chairman of the Physicians Task Force on Hunger in America, said the Administration had eliminated a program to inform people about food stamps benefits. (*The Washington Post*, May 22)

May—A public notice in the May 22 *Congressional Record*, p.H3161, announced that effective June 2 new procedures for public distribution of congressional documents would be instituted at the House and Senate Document Rooms. Public distribution of both House and Senate materials will

be handled only through the Senate Document Room located in Room B-04, Hart Senate Office Building. The public will be entitled to receive one free copy of any bill, report, resolution, public law, or other document typically distributed in the Document Room. Additional copies may be purchased. The public still may obtain copies of committee prints and hearings from individual committees. Once the committee supply of each document has been exhausted, the public may purchase additional copies from GPO's Congressional Sales Office, North Capitol and G Streets, N.W., Washington, D.C. 20401.

May—"The Pentagon, concerned with the flow of high technology to the Soviet bloc, is trying to limit foreign access to government and commercial computer data bases that contain sensitive technical information. A range of legal and technological options are now under exploration, from licensing access to high-tech data bases to planting special computer programs within the data bases to monitor who is seeking what information. Government officials concede, however, that they face formidable obstacles in devising a workable system, including such questions as whether data bases enjoy the same constitutional protections as other media and how to implement restrictions in ways that won't deny database benefits to American users." (*The Washington Post*, May 27)

June—OMB has agreed to fuller disclosure of its role in reviewing proposed federal regulations. All original versions of draft and final rules sent to OMB will now be made public upon request, along with OMB's written suggested changes and reasons for them. At present, only the published version of a rule—in which OMB's revisions cannot be tracked—is available. Sen. Carl Levin (D-MI) said: "No longer will OMB operate within the shade-drawn, doors-closed, no-fingerprints environment in which it has operated for the past five years." Sen. David F. Durenberger (R-MN), and Reps. John D. Dingell (D-MI) and Jack Brooks (D-TX) are other leaders of a bipartisan group of congressmen who are threatening to cut OMB funding by the \$5.4 million required to run the Office of Information and Regulatory Affairs, currently headed by Wendy Lee Gramm. (*The Washington Post*, June 17)

June—At a joint hearing on June 18 of the House Post Office and Civil Service Committee and the Senate Committee on Governmental Affairs, members of the Postal Rate Commission presented results of a congressionally mandated preferred rate mail study. Among their recommendations are: 1) recalculating the revenue forgone in a way which would reduce the appropriation by some \$265 million a year; 2) eliminating the revenue forgone appropriation entirely (except for the small amount needed for free mail for the blind and free voting-rights mail) by amending the rate-making

statute to provide separate subclasses for the eligible non-profit mailers; and 3) restricting eligibility for advertising or commercialized uses of the nonprofit rates. The report recommends ending eligibility for publishers and distributors for books and other qualifying material they mail to libraries and other eligible institutions.

ALA conference

IFRT awards presented

At the American Library Association's 1986 Annual Conference in New York, the ALA Intellectual Freedom Round Table (IFRT) presented its annual awards. Thomas J. Mills, Superintendent of the Palm Beach County Schools in West Palm Beach, Florida, received the 1986 John Philip Immroth Memorial Award. The Immroth award is presented by the IFRT to those who have made notable contributions to and demonstrated remarkable personal courage in the ongoing struggle for intellectual freedom. Mills was honored for his long time support of challenged textbooks, the textbook review process and his advocacy of academic freedom for teachers. He announced that he would donate the \$500 award to a local Palm Beach school media center.

The Indiana Library Association/Indiana Library Trustee Association Intellectual Freedom Committee received the IFRT's 1986 State Program Award for the most creative and successful intellectual freedom project produced by a state committee. Funded by Social Issues Resources Series, Inc., the \$1,000 prize was presented to John Swan, immediate past chair, and Danny Gunnells, chair, at the New York conference. The Indiana committee was chosen for its involvement in the lawsuit challenging the Indianapolis "anti-pornography" ordinance and its many other activities in support of intellectual freedom.

Lawrence W. Levy's *Emergence of a Free Press* was the recipient of the Eli M. Oboler Memorial Award for the best published work during the years 1984 and 1985 in the area of intellectual freedom. The award, funded by HBW Associates, Inc., was presented for the first time. Edward Barry, President, Oxford University Press, accepted the \$500 award on behalf of Professor Levy who was unable to attend. Also present at the award ceremony was Marcia Oboler, widow of Eli M. Oboler, and his daughter, Carol.

Emergence of a Free Press is a revised and enlarged edition of Levy's 1960 work, *Legacy of Suppression: Freedom of Speech and Press in Early American History*, which argued that the framers of the First Amendment had a much narrower idea of free speech and free press than twentieth century interpreters have recognized.

ALA Conference

IFC wins World Book-ALA Goal Award

At the American Library Association's 1986 Annual Conference in New York, the ALA Intellectual Freedom Committee was named the winner of one of the 1986 World Book-ALA Goal Awards. The \$5,000 grant was awarded to organize and conduct a one-and-a-half-day workshop to develop an effective, consistent and unified set of guidelines for reporting censorship incidents in the United States. Nine national organizations that deal with attacks on free expression will participate in the workshop.

The need for such a workshop became manifest after the National Commission on Libraries and Information Science (NCLIS) was directed by Congress "to determine the extent of censorship in American libraries and how our society is responding to it" (see *Newsletter*, July 1986, p. 113). A researcher hired by NCLIS reviewed data from several sources, including material compiled by seven of the organizations included in the proposed workshop. It became clear that each group had its own standards and methods for collecting and reporting challenges to books and other materials.

The IFC decided that it would be beneficial to bring together representatives of those organizations to devise a strategy to coordinate the collection of censorship data and provide uniform and meaningful statistics to the public. Chicago is the proposed site of the meeting and invitations will be sent to representatives of the Association of American Publishers, the Authors League of America, the National Council of Teachers of English, the American Association of University Professors, the National Coalition Against Censorship, the American Civil Liberties Union, People for the American Way, and the National Commission on Libraries and Information Science. Reported in: *OIF Memorandum*, September 1986.

**SUPPORT THE
FREEDOM
TO
READ**

ALA conference

Resolution Concerning the Collection and Dissemination of Governmental Scientific and Technical Information

In April, 1986, the Department of Commerce announced a "study of alternatives for privatizing the National Technical Information Service." The mission of NTIS is to centralize the collection, announcement, and dissemination of U.S. government sponsored research and development reports and translations of foreign technical literature. At ALA's 1986 Annual Conference, the Committee on Legislation raised the issue and presented the following resolution to the ALA Council. The Resolution Concerning the Collection and Dissemination of Governmental Scientific, and Technical Information was passed unanimously.

Whereas, Equal and ready access to unclassified government information and publications is a primary tenet of a free society; and

Whereas, Ready access to scientific and technical information in a timely and systematic manner is of vital importance to the economic well-being and security of the nation; and

Whereas, The National Technical Information Service, a self-supporting agency within the Department of Commerce, currently serves as the primary Federal government depository and source for unclassified scientific and technical information; and

*Whereas, The Department of Commerce announced a "Study of Alternatives for Privatizing the National Technical Information Service" in the April 28, 1986, *Federal Register*; and*

Whereas, The American Library Association has endorsed the principle that publications produced with public money remain free of copyright constraints; and

Whereas, Many Federal agencies currently depend on NTIS to act as a repository and source for scientific and technical information; and

Whereas, The possible privatization of the government's repository for scientific and technical information will have negative implications for the ready access of such information for users in business, academia, and government; Now, therefore, be it

Resolved, That the American Library Association urge the Federal government to maintain as government services the following functions currently performed by NTIS:

- a) provision of a centralized source and permanent repository for a broad range of federal, international, state, local, and other unclassified scientific and technical reports;
- b) provision of bibliographic access to this material through

tools such as NTIS' Government Reports Announcements and Index;

c) dissemination of bibliographic information products of such a repository, i.e., catalogs, indexes, abstracts, and newsletters, through the Government Printing Office's Depository Library Program;

d) operation of a timely, "on-demand" sales program for this scientific and technical information at prices affordable for not-for-profit libraries, education institutions, students, small business entrepreneurs, and other similar groups; and, *be it further*

Resolved, That the American Library Association forward a copy of this resolution to the Secretary of Commerce, the Director of NTIS, the Director of the Office of Management and Budget, and appropriate committees of Congress.

Coalition on Government Information

Restricted access to government information, a decline in the quality and quantity of government statistics, and barriers to scholarly communication were just a few of the many issues identified by thirty participants from across the country who gathered in Washington, D.C., on July 29, to form a Coalition on Government Information. Those who met represented twenty organizations with a wide range of interests—consumer rights, science and research, law, statistics, library and information services, the housing industry, journalism, and public advocacy—but all were united in their concern about citizens' rights to know about the activities of the federal government.

The meeting was convened by the American Library Association, which has taken the lead in establishing the coalition. The meeting agreed on a common goal—"to ensure equal and readily available access to government information to meet the needs of all citizens"—and a common objective—"to build a coalition on government information to focus national attention on all efforts that limit access to government information and develop support for improvements in access to government information."

The coalition identified six specific tasks involving, among other things, the establishment of a clearing house of information about barriers and limits to access, a public awareness program and outreach to other groups. Several areas of immediate concern were identified, including amendments to the Freedom of Information Act, the inaccessibility of local housing statistics collected by the federal government, and the privatization of the National Technical Information Service.

Rep. Major Owens (Dem.-New York) spoke to the meeting and encouraged the coalition to challenge current government information policies and to develop its own blueprint for a government information policy structure that will demand the attention of Congress and the executive agencies. Reported in: *OIF Memorandum*, September 1986.

(Meese report . . . from page 199)

from officials and governing bodies reacting to public feelings about "controversial" works.

The conduct of the Commission's hearings and its use of research findings and methodology supporting the Report were flawed. The Commission authorized no original scientific research and appears to have misrepresented some of the social science data considered in the preparation of the report. In their separate statement, Commissioners Becker and Levine observe:

The idea that eleven individuals studying in their spare time could complete a comprehensive report on so complex a matter in so constricted a time frame is simply unrealistic. No self-respecting investigator would accept conclusions based on such a study, and unfortunately the document produced reflects these inadequacies (Final Report, pp. 197-198).

In the Commission's hearings there was a clear absence of significant debate as evidenced by capricious acceptance of some testimony, rejection of countervailing testimony, biased cross-examination of witnesses, and the admitted lack of thorough discussion of final recommendations, except those on child pornography.

An inordinate number of anti-pornography witnesses was heard. The Commission accepted anecdotal testimony of individual witnesses as fact and generalized from it with little probing. Most of the visual materials selected and reviewed by the Commission were skewed to the "very violent and extremely degrading." The assertion that the Commission considered a "wide range of vantage points" is simply inaccurate. The most pervasive flaw in the report is the undemonstrated causal link of sexually explicit materials with sexual crime. Because two phenomena may be correlated, one cannot infer that one causes the other.

The most pernicious aspect of the report, in the opinion of the ALA Intellectual Freedom Committee, is its potential for heightening an already threatening pro-censorship climate in the United States.

The Commission itself recognizes that "the fears that many arguably valuable but sexually frank works of fiction and non-fiction will be stifled not by governmental action but by social pressure is real" and that, "at times, this protest activity will go too far, to the detriment of all of us." This outcome is in fact encouraged by the recommendations associated with Chapter 8 of the report on "The Role of Private Action."

The general tenor of the report is that associated with a "call to arms." For example, in its suggestions for citizen and community action, the Commission states "citizens groups may wish to focus on materials which are not legally obscene and which are constitutionally protected from government regulation." This report advises citizens that "to remain quiet" is to approve such materials; it fails to

recognize that lack of protest may just as easily indicate tolerance for different points of view, as protected by the First Amendment.

In its commentary on the report, the American Civil Liberties Union states: "There is no question that picketing, marching, demonstrating and even boycotting are all solidly 'within the free speech traditions of this country,' . . . It is one thing to urge that persons not read a particular magazine or see a particular movie; it is another when the goal is solely to make it difficult or impossible for those who do not accept the message of the protestor to obtain that material."

The American Library Association has long advocated the need to rally community support in defense of intellectual freedom before censorship attacks occur. This report, itself an attack and a provocation to further attacks, makes it urgent to bring together all of those forces and individuals in the community who support the First Amendment to the Constitution, since much that the Commission advocates is not consistent with that Amendment or even with current obscenity laws.

In general, while the Commission encourages people "to object to the objectionable" and "to tolerate the tolerable," the inherent message of the First Amendment is tolerance for the objectionable. Since library collections can be expected to include materials which some persons will find objectionable, an understanding of the meaning and purpose of the First Amendment is crucial to the defense of those collections.

We recommend renewed acquaintance with the Intellectual Freedom Committee document, *Dealing With Concerns About Library Resources*. We urge librarians to take appropriate action to ensure that:

- written, approved policies and procedures are in place to handle challenges to materials and services;
- governing bodies, library staff, trustees, Friends, other community groups and the media are informed and knowledgeable about the issues.

We also recommend that state library associations and state library agencies take similar action to ensure that:

- policies and procedures are in place and updated
- state Intellectual Freedom and Legislation Committees are informed and prepared for a possible onslaught of regressive legislation
- coalitions are built within the library community and with other support groups
- a vigorous public information program is pursued.

We urge librarians, indeed all people, to read the report, to recognize its deficiencies, and to consult other commentaries cited below.

The Attorney General's Commission on Pornography:

accuracy in censorship

According to the report of the Attorney General's Commission on Pornography, two dead men operate a major pornography ring out of Allentown, Pennsylvania. John Krasner, who operated a distribution center for X-rated movies and magazines, was identified in an appendix to the report as a man who "controls the majority of the pornographic business in the Middle District of Pennsylvania, southern New York State and New Jersey," which, to be sure, is no small market. According to the report, Krasner is "presently awaiting trial in Arlington County, Virginia, for possession of obscene items with intent to distribute in connection with his bookstore there."

Unfortunately for the commission, however, Krasner was murdered seven years ago outside a Fort Lauderdale, Florida, hotel in a robbery attempt. It seems the information available to the commissioners was not exactly current—the report cites a 1977 Justice Department investigation as its source. Alan Sears, executive director of the commission, said staff members had discussed whether dated material should be included in the report, particularly when the commission had no time to double-check the status of the investigations cited. "The unanimous conclusion was it is good historical information," Sears said. After all, "Krasner obviously has a successor."

Sears said updated information on Krasner and his successor was available from the New York State Select

Committee on Crime. "Kim Stanley Krasner, the son, is the heir apparent," Jerry McKenna, an attorney for that committee confidently told a reporter. According to McKenna, Kim Krasner controls a warehouse in Allentown from which pornographic materials are distributed to bookstores and movie theaters.

Well, perhaps he once did, but it seems the son followed a bit more closely in his father's footsteps than the select committee realized. Kim Krasner died in a boating accident in the Pocono Mountains in August, 1985. When told of the accident, McKenna said: "That's all I have in my files. Intelligence comes in and we put it together. That's all we have." Indeed. Reported in: *New York Times*, September 14.

life after Meese

Alan Sears, until recently executive director of the Attorney General's Commission on Pornography, was named in July to be the Interior Department's new associate solicitor for surface mining. When the appointment was announced, Washington was swept by a round of predictable jokes about taking the strip out of strip mining. But some department insiders were wondering about a bigger question. What would Sears have to say about Interior's recreation association bookstore? Among the items available for purchase—*Penthouse* and *Hustler* magazines. Reported in: *Washington Post*, July 18.

Final Report can be purchased from the U.S. Government Printing Office and its bookstores for \$35.00 or consulted at libraries which are designated depositories for U.S. government documents. An excellent summary and critique of the report is available for \$5.00 from the American Civil Liberties Union, 122 Maryland Avenue, N.E., Washington, D.C. 20002. For background, see also issues of the *Newsletter on Intellectual Freedom* (May, July, September, 1985 and March, September, 1986).

flack from the Meese report

While the report of the so-called Meese Commission won the immediate and widespread disdain of most supporters of intellectual freedom and, it would seem, was met with considerable skepticism—even ridicule—in Washington, the warning issued by the ALA Intellectual Freedom Committee in August about the report's potential for "heightening an already threatening procensorship climate" (see cover page)

already appears to have been well founded. Just two examples:

- The July, 1986, issue of the *Phyllis Schlafly Report* was devoted entirely to discussing—and supporting, of course—the conclusions of the commission. Included was a discussion of "pornography in libraries," which stated that "librarians want a unique right to evade anti-pornography laws." Schlafly reminded her readers that "public libraries are maintained with taxpayer's money and they should be subject to the ultimate supervision of the taxpaying public." She called on readers to "check your local public library and find out whether it is obeying the laws against child pornography."

- Shortly after publication of the Meese Commission report, Rep. Robert K. Dornan (Rep.-California) introduced the Omnibus Family Protection Act of 1986 in Congress. The proposed law is designed to carry out the recommendations made by the commission. Among its provisions were penalties of up to five years in prison for anyone who distributes obscene material across state lines; a ban on obscene cable television programming; a ban on using a computer to get information on purchasing sexually explicit material depicting minors; and a \$12 million appropriation to encourage the states to initiate task forces on child pornography.

CAUTION!

SOME PEOPLE CONSIDER THESE BOOKS DANGEROUS

Catcher in the Rye, Slaughter House Five, Our Bodies Ourselves, Of Mice and Men... are only a few of hundreds of books that have been challenged in libraries across the country.

intellectual freedom bibliography

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50 East Huron Street • Chicago, Illinois 60611