

# newsletter on intellectual freedom



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Fundamentalist Christians won a major skirmish in their longtime conflict with secular education October 24 when a federal judge ruled that a group of parents in a mountainous East Tennessee school district have the right to demand school books that don't offend their sincerely held religious beliefs (see *Newsletter*, January 1984, p. 11; March 1984, p. 40; May 1984, p. 79; July 1984, p. 112; March 1985, p. 45; September 1985, p. 162). U. S. District Court Judge Thomas G. Hull ordered the Hawkins County public schools to excuse fundamentalist children from reading class to avoid books their parents say promote feminism, pacifism and other themes they regard as "anti-Christian."

Although Hull did not accede to the families' demand that the school district be required to provide an alternative curriculum with religiously acceptable texts, he ordered the district to allow parents to teach reading to their children at home. Among the works to which the parents lodged more than four hundred objections were *Rumpelstiltskin*; *The Wizard of Oz*, by L. Frank Baum; Shakespeare's *Macbeth*; *The Diary of Anne Frank*; and readings from anthropologist Margaret Mead, science fiction writer Isaac Asimov, and fairy tale creator Hans Christian Andersen (see page 37).

In a major victory for the campaign to "put God back in the public schools," Hull also ruled that the parent plaintiffs are entitled to sue the Hawkins County School Board for damages because the district's insistence on using a series of reading books published by Holt, Rinehart and Winston violated their constitutional rights to free exercise of their religion. The judge set a tentative December 15 date to convene a jury to decide how much the families are entitled to receive. Attorneys for the school board announced immediately that they would request a postponement of the damages hearing while the decision is appealed to the U.S. Court of Appeals for the Sixth Circuit in Cincinnati and, if necessary, to the U.S. Supreme Court.

Nat Coleman, one of the attorneys representing the board, called the decision in *Mozert v. Public Schools* "seriously flawed" and said the community was generally "shocked" by it. "The decision is so superficial. Hull doesn't recognize that it imposes values and censors," he said. "If this ruling stands, this gives any off-the-wall group the opportunity to say they hold sincere beliefs and blackmail a school system with the threat of a lawsuit."

Coleman said the ruling entitling parents to damages could bankrupt the Hawkins County schools. He said if the ruling stands, the school board would be required to pay the parents' legal fees, which he estimated at between \$300,000 and \$500,000. Although the original suit sought damages of \$44,000, after the decision was made public much larger figures

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## Meese moves against porn

Under increasing fire by anti-pornography activists seeking implementation of recommendations made last July by the Attorney General's Commission on Pornography, U.S. Attorney General Edwin Meese III at a press conference October 22 announced a seven-point plan "designed to curb the growth of child pornography and obscenity." But Meese's program fell short of endorsing the veritable war on pornography called for by the commission.

Noting that much of his new program "builds on what the federal government already has been doing in this area," Meese announced the creation of a center for obscenity prosecution within the Criminal Division, which will work closely with the obscenity prosecution center.

In addition to creation of the center and task force, Meese's seven point plan includes "(3) an enhanced effort by each U. S. Attorney's office, with concentration on international trafficking in child pornography and interstate trafficking in obscenity;

"(4) an enhanced effort by the Organized Crime and Racketeering Strike Forces, in coordination with the new task force, with emphasis on organized criminal enterprises involved in obscenity production and distribution;

"(5) a legislative package to be introduced in the next Congress;

"(6) coordination with the National Center on Missing and Exploited Children in order to eliminate the use and exploitation of children in the production of child pornography; and

"(7) assistance, in the forms of training and sharing of information, to state and local law enforcement agencies engaged in obscenity prosecutions."

Meese described the new obscenity prosecution center as a "multidisciplinary resource center" that will be headed by an attorney experienced in obscenity prosecutions. The center will:

- gather and maintain information from across the country on child pornography and obscenity;
- analyze obscenity litigation in both federal and state courts;
- establish a training center and develop training materials for U.S. Attorneys and state and local prosecutors;
- provide expertise, including expert witnesses, to U.S. Attorneys and state and local prosecutors in obscenity cases; and
- draft model anti-obscenity statutes for use by state and local legislative bodies.

Meese said the task force of attorneys will assist on an as-needed basis the Organized Crime Strike Forces and other federal prosecutors in obscenity prosecutions. The task force will coordinate the activities of all federal law enforcement agencies engaged in obscenity investigations and prosecutions, including the FBI, the Postal Service, the Customs Service, and U.S. Attorneys.

Meese directed each U.S. Attorney to ensure that at least

one attorney in his or her office is trained and develops expertise in obscenity prosecutions. In addition, each U.S. Attorney will be asked to include as part of his annual management plan an evaluation from the federal perspective of the obscenity problem in his or her district and an estimate of the resources needed to combat it.

The legislative proposals announced by Meese were not in final form, but generally focused on technicalities in the federal law that now hinder pornography prosecution, although proposals involving cable television and the communication of obscenity by telephone may in final form move the government into new areas. According to Meese, the legislative package to be submitted to Congress would include:

- forfeiture legislation designed to reach the proceeds of obscenity crimes;
- amendment of 18 U.S.C. § 2255 to include undeveloped film in the definition of 'visual depiction;'
- legislation to make a felony any acts of child-selling or purchasing for the production of child pornography;
- legislation to proscribe obscene cable television programming;
- legislation to prohibit the transmission of obscene material through the telephone or similar means of transmission;
- legislation to require producers, retailers, and distributors of sexually explicit visual depictions to maintain records of consent and proof of age by performers and to prohibit the use of performers under age 21; and
- legislation to prohibit the exchange of information concerning child pornography through computer networks.

The attorney general emphasized that the department's response to the commission report laid stress upon the major role of state and local law enforcement. "To combat this evil most effectively," he said, "to launch the most aggressive assault on this enemy of society, it is critically important that those at the state and local levels, those interested in removing this vulgar stain from their own neighborhoods and communities, take up the battle and join full force in a coordinated effort against the traffickers of these sordid materials."

The commission's report criticized federal prosecutors for bringing so few obscenity cases in recent years. From 1978 to 1986, the report found, only 100 people were indicted for violating federal obscenity laws. Of those, 71 were convicted.

Commenting on the work of the commission, Meese noted that it had "identified a widespread and increasing national problem involving the production and distribution of highly offensive, obscene materials." Meese said the commission was not referring to materials "that are offensive to some but nonetheless have been recognized by the courts as within the bounds of protected speech," but to "child pornography, sadomasochistic scenes, rape scenes, depictions of bestiality or excretory functions, and violent and degrading images of



explicit sexual conduct and other similar hard core materials.”

“None of these materials,” he said, “is entitled to First Amendment protection. They are unlawful under any reasoned and reasonable interpretation of the Constitution and our federal and state laws. Victims of these crimes are plentiful—from the children exploited and molested to the families destroyed by the sexual abuse of children and women, to the people intimidated by gangsters who line their pockets with profits from the manufacture and distribution of illegal obscenity.”

Meese stated that the federal government “must respond aggressively to crimes of such dimension and consequence. Current laws are being violated, and I am committed to redoubling the federal effort to ensure that those criminal elements trafficking in obscenity are pursued with a vengeance and prosecuted to the hilt.”

Questioned by reporters, Meese said his definition of obscenity was that provided by the U.S. Supreme Court in its 1973 *Miller* decision. Asked whether this meant that *Playboy* and *Penthouse* magazines were no longer targets of the department, Meese said, “At no time has the Department of Justice taken any action against retailers nor targeted the magazines you mentioned. . . . I don’t believe the business of government is to tell someone what they can and can’t sell if the materials are lawful.”

Asked about the commission’s suggestions with regard to consumer action against non-obscene pornography, Meese replied, “Boycotts are a traditional form of expression in our society. . . . They [retailers] must make their own choice. It is not our role to tell them anything.” Playing even an advisory role to citizen groups would, he said, be “an improper role of government.”

Anti-pornography groups had criticized the Justice Department for delaying its response to the pornography commission’s report. In accepting the report in July, Meese said he hoped the department would respond to its recommendations within a month. At the same time, senior law enforcement officials said privately that they would not be able to justify a major effort against pornography. The resources, they said, were better aimed against other crimes.

In late September, Meese and Assistant Attorney General William Bradford Reynolds, who headed the Justice Department’s review of the commission’s report, met with religious leaders. That meeting did not prevent several anti-pornography figures from publicly criticizing the department. “The attorney general appears to be dragging his feet,” said commission member James Dobson.

“Mr. Meese is buying time—in essence he is going to follow the wishes of the pro-pornography people . . . who don’t want him to do anything,” said the Rev. Donald Wildmon, founder of the National Federation for Decency, which has successfully pressured thousands of chain stores to drop *Playboy* and other adult magazines. “We are of the opinion . . . that Ed Meese and the Justice Department are not going to do anything.”

It was Wildmon’s testimony which led the commission to send a letter to numerous businesses warning that they would be listed in the commission’s report as a “distributor” of pornography. A federal judge later ordered the commission staff to issue a followup letter of retraction.

Barry Lynn of the ACLU, a harsh critic of the commission and its report, said it appeared that the department did not have “the heart or the finances to divert resources into the campaign against pornography. I think they have a public relations problem of how to make the porn problem look like a serious problem in this country,” he said.

Lynn suggested that Justice Department attention has focused instead on the campaign against drugs. “I guess that shows they can only deal with one vice per season.” Reported in: *Washington Post*, October 13; *New York Times*, October 18; *OIF Memorandum*, October 27.

## Meese report rated X?

The report of the Attorney General’s Commission on Pornography, feared by many as a clarion call to censorship, has become, some charge, itself a target of the censor. According to anti-pornography activists, the nation’s major publishers, in their fear of book banning, engaged in their own form of censorship by refusing to publish an inexpensive paperback edition of the report. Moreover, while the book has sold more than 30,000 copies to anti-pornography organizations, it has run into unexpected resistance from religious bookstores. Many are refusing to stock or display the report for fear that the vulgar language in it and its graphic descriptions of sexual acts will offend customers.

“We will special-order it, but we did not buy any copies and we do not carry it on the shelf,” said Brent Clark, corporate counsel of the Zondervan Corporation, which owns a leading religious publishing house and some 80 religious bookstores. “We reviewed the content of the report and felt that it would be better not to carry the book.” Zondervan’s publishing arm also refused to publish a paperback edition of the report.

Michael McManus, a syndicated columnist who arranged to publish the report in a popularly priced paperback format, said New York publishers “censored” the report by unanimously rejecting it for publication. He said they did this despite his having obtained commitments from booksellers and morality groups to buy 100,000 copies. McManus eventually found a small publisher, Rutledge Hill Press in Nashville, Tennessee, which specializes in books on Tennessee and the Southeast and whose previous bestseller had been a cookbook.

“It’s interesting, isn’t it,” Mr. McManus said, “that the publishers who are most loudly opposed to censorship won’t publish a document they don’t agree with.”

Several major publishers acknowledged that they chose not to reprint the report, but denied that their decision amounts to censorship. “It has so much smut in it, I think publishers

were reluctant to take it on," said George Cornell, an Associated Press religion writer. Grace Bechtold of Bantam Books said the report was "impossible economically" and Howard Kaminsky of Random House said the report was too long and "had already found its audience" among those who had bought copies of the government document.

As of late October, the government version had sold but 5,037 copies. The 673 page Rutledge Hill edition, priced at \$9.95 (with a hard-cover edition at \$18.95 for libraries), distributed by a Waco, Texas, religious publisher, had sold some 7,000 copies in bookstores (in addition to the 30,000 copies sold to anti-pornography groups). By contrast, a book published by Minotaur Press, a division of Penthouse, *United States of America vs. Sex: How the Meese Commission Lied About Pornography*, by Philip Nobile and Eric Nadler, appeared in a first printing of 106,000 copies.

The Rutledge Hill edition comes wrapped, with a warned on the back cover that the book contains "extremely explicit content" that "will be offensive to most individuals." Reported in: *New York Times*, October 21; *New York Tribune*, October 17.

## AAParagraphs

### freedoms in the schools?

What do press coverage of education news, student press rights (and responsibilities) and censorship challenges to schoolbooks have in common?

Go to the head of the class if you responded "the First Amendment to the U. S. Constitution." Even though the First Amendment's direct bearing on some facets of each issue is neither unclouded nor absolute, it was more than enough—and happily so—to induce the First Amendment Congress, an organization rooted in journalism and free press concerns but obviously willing to stretch those roots a bit, to put on at Colonial Williamsburg, Va., a 2½ day program entitled: "First Amendment Issues: Schools in a Free Society."

Who does one invite to take part in such a three-way discussion? Clearly, if you're the First Amendment Congress, people on both (and sometimes several) sides of all three issues. The roster reflected this diversity of viewpoints, including among some 115 participants: a resolute student editor and a nationally-known TV anchorman (Steve Bell of ABC), plus a nationally-recognized civil libertarian columnist (Nat Hentoff); a spokesman for black journalists; several heads of academic departments of journalism or communications; school principals, teachers, counselors and student press advisors; representatives of librarians and of publishers of books, newspapers and magazines; PTA and labor leaders, and, of course, lawyers aplenty.

The colonial atmosphere was ever-present, what with the Williamsburg restoration nearby, with its colonial-style restaurants and shops, its historic displays, films and the many exhibits which conference-goers toured in their scarce leisure-time. But the colonial ethos was never more in evidence than in the role-play, with a cast of conference participants, of frustrated student journalists' attempt to tell the story of a classmate long absent from school and suspected of suffering from AIDS. In the candlelit restored Colonial Virginia House of Burgesses, Washington Attorney Richard M. Schmidt, Jr., used courtroom intensity coupled with an entertainer's humor to interrogate a varied cast of characters.

"Barbara Woodstein, editor of the (student newspaper) *Sand Piper*, and reporter Billy Pulitzer, decide they should go to Larry Smith's home to interview Larry and his parents to try to learn the truth about his illness," went the script of the artfully-written hypothetical case—which nowhere mentioned AIDS, although it was frequently heard in the actual dramatization. The First Amendment lesson learned from Counselor Schmidt's deft interrogation was that there are few absolutes—in the student press world any more than in the adult—and that privacy rights and the public's right to be informed often collide.

As to the rest of the conference, there were standard features—and some not so standard. It opened with a "point-counterpoint" on the three major topics, with predictably extreme arguments put forth on all subjects to set the scene. Opening the second day's debate was a "community forum" on "Controlling what goes on school library shelves—censorship or selectivity," a topic hardly new to regular readers of the *Newsletter*. That subject and the two others recurred in afternoon "breakout sessions."

On the final day, the conference took on its most serious mien: for more than three hours, with all the intensity of a Continental Congress (or perhaps a Colonial Virginia House of Burgesses), participants debated resolutions and positions on the three issues and engaged in parliamentary maneuvers to modify proposals that had emanated from the previous day's breakout sessions. Because "delegates" took their work so seriously and worked so many modifications into the proposed resolutions on the three conference topics, the staff had not yet circulated final versions by a couple of weeks after the conference closed.

Each conference action was addressed to specific action bodies. Thus, if the conference did not reach consensus on solutions to all problems of the three topical questions, it did at least signify to "outside" decision-makers some approaches that had the advantage of serious consideration by a diverse, thoughtful—and highly-motivated—body of amateur "legislators."

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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.

## 'humanism' on trial

On October 23, just one day before fundamentalist parents in Church Hill, Tennessee, won an important victory in their battle to protect their children from "anti-Christian" reading texts (see page 1), testimony concluded in a similar—but perhaps more significant—case in Mobile, Alabama. During thirteen days of testimony representatives of the religious right received a full-dress hearing, before a sympathetic judge, on an issue never before tested in federal court—the philosophy of so-called "secular humanism" and its alleged propagation in the public schools.

"Secular humanism" has long raised the ire of many Christian fundamentalists, who argue that it is, in fact, a religion—one that encourages immorality as they define it, while, among other things, undermining parental authority and advocating democratic families and independent decision-making. In Mobile, some 624 parents and teachers charged that this religion is being promoted in public school classrooms, while the role of Christianity is purposely being suppressed in violation of the Constitution. The plaintiffs asked the court to order the removal of 47 history, social studies, and home economics texts which, they charge, unconstitutionally favor the "humanist" faith.

"It's one of the most important trials of the last several decades." So maintained Robert Skolrood, executive director of television evangelist Pat Robertson's conservative National Legal Foundation and chief counsel for the plaintiffs. Anthony Podesta, president of People for the American Way, which, along with the ACLU, helped provide and fund the legal team for the defense, said the case is "a hoax perpetrated by people who don't want the 42 million schoolchildren in this country to learn about ideas these people disagree with—everything from divorce to evolution. A victory in Alabama will give the far right the ammunition it needs to escalate its holy war on public education."

The case has a strange and convoluted history (see *Newsletter*, March 1986, p. 39; July 1986, p. 131). It began in 1981 when Ishmael Jaffree, a Mobile parent, filed suit against an Alabama law permitting silent prayer in schools. U.S. District Court Judge W. Brevard Hand upheld the law and went against the U.S. Supreme Court in ruling that the Constitution does not prohibit the state from establishing a religion.

In a footnote to his January, 1983, prayer ruling, Hand remarked that "by and large, the Christian ethic is the predominant ethic in the nation today unless it has been supplanted by secular humanism." He said that if his ruling were overturned, he would look at whether secular humanism was being unconstitutionally privileged in the schools.

Predictably, the decision was reversed by the Supreme Court and Hand reopened the case in 1985. In the original case, a group of more than 600 fundamentalists had filed an *amicus* brief in defense of the silent prayer law. Hand now gave this group the status of plaintiff, charging that 39 history

and social science texts fail to reflect the role of theistic religions in American history and society, and that seven home economics texts promote humanism. A science text was charged with promoting evolution.

"It bothers us a lot that the religion of humansim is so prevalent in the textbooks," said Mobile parent Judy Whorton, whose convictions prompted her to pull her two sons out of the public schools. "The information they got from the textbooks was so contrary to what they were getting at home."

She objected to an eighth grade science text that treated evolution as fact and said her eleven-year-old son, Andy, was asked to write a creative essay on what would be served at a wedding dinner if the groom were a cannibal. "The students came up with a menu for cannibals, blood soup, eyeball stew," said Whorton. "It puts man on the same level as an animal. The kids thought it was a lot of fun. I thought there could have been a more positive way of handling that."

The plaintiffs cited the failure of one textbook to mention the role of the late Rev. Martin Luther King, Jr., as a pastor and the involvement of black churches in the civil rights battles of the 1960s. "It's as if it was a secular movement he was leading," said Tom Kotouc, a lawyer for the parents.

Kotouc also pointed to a high school home economics text, *Today's Teen*, which defines morals as rules made by people, he said. "That agrees with the humanistic world view. There is no recognition in that text that, for many people in our society, morals have a divine or scriptural basis."

The suit does not request a specific remedy, but leaves a solution to the discretion of Judge Hand, whose sympathies with the plaintiffs are apparent.

Outgoing Alabama Gov. George C. Wallace, a defendant by virtue of his state office, signed a consent decree in 1985 agreeing to abide by court-approved guidelines. The Mobile County Board of School Commissioners signed a similar decree in early 1986. That left the state Board of Education, which rejected a settlement that would have left the textbook issue to Judge Hand, to defend against the suit. The board was joined, however, by a group of twelve Mobile parents.

A couple of weeks before the trial began, Judge Hand approved a motion by the plaintiffs to add all Alabama taxpayers, parents and teachers who believe in God as parties to the suit. His action included most of the defense attorneys, all the state school board members, and most of the defendant intervenors. "I'm in the plaintiff class," laughed Charles Coody, general counsel for the state school board.

Jaffree, whose successful fight against school prayer resulted in the humanism suit, said his wife had also been made a plaintiff. "She's a Mobile school teacher and she believes in God," he said. Jaffree himself is an agnostic. "I think it's a travesty that my case has been converted by

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## university professors warn against school censorship

The American Association of University Professors warned October 9 that the increasing incidence of textbook censorship is producing some students who are unprepared for college and teaching youngsters that suppression of controversial ideas is acceptable.

In an 18-page report, *Liberty and Learning in the Schools: Higher Education's Concerns*, AAUP's Commission on Academic Freedom and Pre-College Education found that school censorship is "at war with the freedom to teach and to learn." The report concluded that such efforts jeopardize the ability of schools not only to teach science or history, but also prevent schools from teaching the nation's youth how to take an independent and responsible part in the experiences of a pluralistic democracy.

"We can think of no reason that is consistent with any proper concept of education in a free society for expurgating a novel, play or poem," the report stated. When such efforts succeed, the report concluded, academic freedom is threatened and students can be denied information that will help them advance in college.

"In any instance of censorship, the most corrosive effect is not that you don't learn about a specific subject," said Jonathan Knight, associate secretary of the AAUP. "It undermines your belief that the way to deal with controversial ideas is not to suppress them, but to discuss them."

The commission identified three areas of particular concern to the higher education community:

- Censorship may hinder a student's ability to advance in higher education.
- Censorship may prevent the student from gaining the full benefit of an undergraduate education.
- Restraints in public schools threaten academic freedom in colleges and universities, as shown in the controversies in the 1920s and today over the teaching of evolution.

Robert M. O'Neil, president of the University of Virginia and chair of the AAUP commission that produced the report, said universities are also concerned because they are responsible for preparing those who will eventually teach in settings in which academic freedom is restrained. He urged faculty and staff at colleges and universities to speak out against censorship, join community boards, provide meeting sites and prepare curriculums to help local communities resist textbook challenges.

The following remarks are excerpted from the report: ". . . the constraints upon the freedom to teach and to learn in the public schools, whether the schools are struggling or thriving, are more extensive than those found in colleges and universities. . . . The legitimate constraints in the schools are not always easily distinguished from those which are improper, but the complex issue presented by challenges to books and teaching materials used in the school classroom and library do not excuse the higher education com-

munity from avoiding these issues or remaining neutral about them.

"At the heart of this commission's concern is the recognition that freedom in the public schools is central to the quality of what and how students learn. . . . In the judgment of this commission, it is imperative to preserve the freedom to teach and to learn at the precollege level. The proper functioning of our free society requires that the public schools bring together youth of all classes and origins and provide them with instruction that will enable them to participate fully in the democratic life. To accomplish this purpose requires more freedom, not less, in the classroom and the school library. . . .

"The widespread establishment of mandatory public education in this century has resulted in fundamental changes in the school curriculum, and, concurrently, broadening conceptions of freedom in the schools. . . .

"Expanded and diversified curricula and changing views as to how students should be educated have deeply influenced the freedom of teachers. . . . as the distinction has been drawn increasingly between the required text and the set curriculum, on the one hand, and collateral materials and the flexible curriculum, on the other, the teacher has come to share responsibility for the curriculum, and this imperative of good teaching is now seen as essential to the success of the school's educational program. The implication for the teacher's freedom is as one would expect: responsible teachers must be free to use the tools of their profession as they deem appropriate for the level of instruction and maturity of their students.

"The evolution of the professional responsibilities, and hence freedom, of school librarians has been, in broad outline, similar to that of teachers. With the declining emphasis upon the textbook and learning by rote and the expansion and reorganization of the curriculum at all levels, the librarian has assumed a central role in the education of the pupil. . . . The school librarian today is widely recognized as carrying out indispensable functions in the educational process: reviewing, selecting, and disseminating the words of others. These professional activities call for judgment comparable to that required of teachers in the classroom. . . .

". . . Uncertainty as to whether any particular instructional material may be suppressed can only inhibit teachers and librarians in the exercise of their professional judgment. The latitude needed by teachers and librarians to determine whether material is relevant to the curriculum necessarily embraces the freedom to teach without fear of restraint or subsequent punishment. And if teachers and librarians cannot exercise their professional judgment as to what is educationally sound, within the legitimate constraints imposed by the schools, then the way is open for outside pressure groups

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## religious intolerance—1986

*In October, 1986, People for the American Way released a report on religious intolerance in American politics, with specific reference to the 1986 election campaign. Edited excerpts from that report follow.*

In contrast to previous years, more instances of religious intolerance are found at the grassroots level. In particular, many fundamentalists with little previous political experience have entered the system. Most instances fall into the category of a candidate claiming to be chosen by God for political office, and/or identifying an opponent with Satan.

Despite the trend toward grassroots activity, some national figures still play an important role. For example, Tim LaHaye, chairman of the American Coalition for Traditional Values, whose board members include Jimmy Swaggart and Jerry Falwell, said, "Secular humanists should not hold political office in America. And the reason I say that is because our Constitution is not compatible with secular humanism without twisting it and changing it."

The most visible national figure, however, continues to be Pat Robertson, president of Christian Broadcasting Network and a possible candidate for the 1988 Republican presidential nomination. People For has treated Robertson at length in a separate report, but some of his recent comments are relevant here:

- According to the Jackson, Miss., *News*, Robertson said this at a June 2, 1986, rally in Jackson: "On April 25, 1980, 500,000 Christians gathered on the mall in Washington and prayed that God would please heal our land. It was no coincidence that Ronald Reagan was elected president; it was the direct act of God, and that Strom Thurmond became head of the [U.S. Senate] Judiciary Committee rather than Teddy Kennedy.

- After some early success in the Michigan presidential caucuses, Robertson sent out a fund-raising letter for the Freedom Council proclaiming, "The Christians have won!" . . .

- Robertson told a crowd in Michigan that Christians . . . "maybe feel more strongly than others do" about "love of God, love of country, and support for the traditional family." . . .

One important figure this year is a local candidate with important national connections, the Rev. Everett Sileven, an unsuccessful candidate for governor in the Nebraska Republican primary. Sileven attracted national attention when he was jailed for refusing to close a Christian school which rejected state efforts at regulation. . . .

During his campaign, Sileven sent out a fund-raising letter saying ". . . I have God. I know I can count on God. Can I count on you? . . . I thank you and God thanks you."

When both parties nominated women to run for governor, Sileven said, "Biblically and constitutionally it is a great step backward. Jeremiah plainly tells us that when the people of

a nation are willing to accept the leadership of a woman, it is a sure sign of God's curse."

Sileven has offered the most detailed description yet of the "Court of Divine Justice," in which he, the Rev. Greg Dixon of Indiana, and Rev. Robert McCurry of Atlanta have prayed for God to "judge" public officials they consider "wicked rulers" . . . .

The "Court of Divine Justice" is part of a new "Pray for Death" movement in which political fundamentalists pray for God to act against public officials. For the first time, a major party political candidate has joined this movement. The Rev. Joe Morecraft, a John Birch Society member and Republican congressional candidate in Georgia's 7th District, said on a local radio program that he prays for God to remove Supreme Court justices "in any way he sees fit." . . . .

Morecraft is being backed by two fund-raisers who helped to elect Rep. Pat Swindall, Republican Congressman from Georgia's 4th District, in 1984. James Zauderer and Nancy Schaefer referred to Swindall in a fund-raising letter for Morecraft which said, "God has provided another man who is willing to serve our Lord in the halls of Congress." In another fund-raising letter, David and Marlene Goodrum said, "Imagine what kind of nation the United States would be if the Senate, the House of Representatives and the Supreme Court had the commitment to Christ and the knowledge and dedication to God's word that Joe Morecraft has."

. . . . In the 4th District [of North Carolina], Rep. William Cobey, who won with Religious Right backing in 1984, has distributed a fund-raising letter addressed "Dear Christian Friend" which says, ". . . . Will you help me so our voice will not be silenced and then replaced by someone who is not willing to take a strong stand for the principles outlined in the Word of God?" Cobey's opponent, David Price, is a Southern Baptist and a graduate of Yale Divinity School who teaches political science and ethics at Duke University. . . .

Other candidates have claimed God's endorsement:

- In California, Republican Rob Scribner sent out a letter saying, "A year ago, God did a rather unique thing—he called on me to run for Congress in California's 27th District. . . . Mr. Levine (Rep. Mel Levine) . . . is diametrically opposed to nearly everything the Lord's Church stands for in this nation. . . . I hope you will agree to link arms with me as we literally 'take territory' for Our Lord Jesus Christ." . . . .

- In Alaska, Republican State Sen. Edna DeVries ran for lieutenant governor because "I want to look back on 1986 and be able to say, 'God, I have done what you asked me to do, gone where you told me to go, and said what you wanted me to say.'" During her unsuccessful campaign, she said, if people "don't honor the United States as a Christian

*(continued on page 22)*



## — censorship dateline —



### libraries

#### Long Beach, California

In September, a short filmstrip dramatizing a novel for fifth and sixth graders was temporarily removed from Long Beach elementary school libraries because a mother complained it depicts witchcraft. But after meeting with parents and representatives of Christian groups, schools superintendent Tom Giugni said October 16 that he would wait at least another month before deciding whether to make the ban permanent.

The filmstrip, which details the plot of the Newberry Award-winning book, *The Headless Cupid*, by Zilpha Keatley Snyder, was removed after Donna Voetee complained that her child was shown the film in her fifth-grade class at Jane Addams Elementary School. She said the day the strip was shown, her daughter "came home and was scared by what she had seen. We are Christians," Voetee explained, "and my daughter is more spiritually enlightened than other children."

Voetee called the filmstrip and the book "totally occultic centered." She said she did not object to the book remaining in the schools "because there is a matter of choice there," but said she wanted the film removed "because children are a captive audience when it is shown."

Superintendent Giugni said that while the filmstrip was "on hold," the book would definitely "remain on library shelves." Reported in: *Long Beach Press-Telegram*, September 26, October 17.

#### Oceanside, California

Just when it seemed that the issue of allegedly satanic books on witchcraft in the El Camino High School library was long dead and buried, Oceanside Unified School District trustees

moved October 14 to solicit a third legal opinion on the issue. A month earlier, by a 3-2 vote, the board upheld a July committee decision to keep some two dozen books targeted by a group of Christian students and parents on library shelves (see *Newsletter*, September 1986, p. 151; November 1986, p. 224). Among the works challenged were *The Satanists*, *The Popular History of Witchcraft* and a multivolume series published by Time-Life Books, entitled *Man, Myth and Magic*.

The action was a belated response to one parent's suggestion earlier in the evening that the district seek a legal opinion from the county counsel. That suggestion came amid pleas from Christian parents and students to reverse the earlier verdict. One of those parents, Shari Thomas, questioned the district's argument that to require parental consent before allowing students to read books on witchcraft violated their constitutional rights. Thomas cited several legal precedents for restricting books.

Trustee Robert Nichols, an opponent of restrictions on the books, made the suggestion to seek another opinion. "I'm interested in what the county counsel has to say," he explained.

"It gives protection for the board so there's nobody who can come back to us and say you didn't get another opinion," added Trustee Richard Lynch, one of the two board members who voted with the protesting parents. "I'm very disturbed that we seem to be ignoring parental responsibility," Lynch added. The ten-month long debate over the books has evoked interest in witchcraft books in other Oceanside school libraries. Parent and city council candidate Dorothy Oak said she visited Lincoln Junior High School and found similar titles in its library. Reported in: *Oceanside Blade Tribune*, October 15.

#### Tulare, California

A children's book containing "objectionable" language was removed from the Roosevelt School library October 17, following a decision earlier in the week to keep the book on the shelves but edit out what school officials felt was inappropriate. The book, *Anastasia Krupnik*, by Lois Lowry, won the Young Readers' Medal Award in 1984. It does, however, contain the phrase "crock of shit" in two places.

The decision to remove the book came after Principal Mike Wenn received a complaint from a parent. "If it is offensive, I'm not going to argue with it," Wenn said. The principal took the complaint to a meeting of Tulare City School District principals October 15, where he said it was agreed in a "group decision" to edit the objectionable word and return the book to the shelves. He said he decided to pull the book from the library entirely in the wake of controversy spurred by the earlier decision.

Superintendent Bill Postlewaite supported Wenn's action. "I'm comfortable with his decision. If he decides to keep the book off the shelves or edit the word, it's fine with me.

I think everyone was in agreement that even though you can turn on your TV any given night and find worse, we don't have to encourage that in a school setting. We have a philosophy in the district that would dictate to us that we protect kids from objectionable language the best we can. If we can censor a novel without destroying the meaning of it, we'll do that." Reported in: *Tulare Advance-Register*, October 17; *Visalia Times-Delta*, October 18.

### Jefferson County, Colorado

Parent Claudia J. Johnston of Littleton filed a protest in October against the presence of the book *Unicorns in the Rain*, by Barbara Cohen, in the Jefferson County School District libraries.

The book is a variant of the Noah's Ark story set in a future society that is so dangerous that all citizens wear helmets, carry guns, and use drugs. Told by a friend's father that God intends to destroy this society, the story's young female protagonist witnesses the rising tension that comes in the wake of societal destruction.

Johnston objected to several specific passages, including one that read: "It was Lora, she was just getting up, she wore a pair of absolutely transparent baby doll pajamas. This time I could see the rounded belly and enlarged nipples that gave evidence of her pregnancy."

Copies of the book are in about ten elementary, junior and senior high school libraries, a district representative said. This was the fifth challenge to a school library book in Jefferson County in 1986. Four books challenged for encouraging satanism received district approval in May (see *Newsletter*, May 1986, p. 82; September 1986, p. 173; November 1986, p. 225). Reported in: *Denver Post*, October 30; *Rocky Mountain News*, October 30.

### Gwinnett County, Georgia

After being besieged by parental complaints about books in public school libraries (see page 32 and *Newsletter*, November 1985, p. 193; January 1986, p. 8; March 1986, p. 57; July 1986, pp. 117, 135; September 1986, p. 151), the Gwinnett County school board and superintendent want to have more input from parents in the book selection process—a move that anti-censorship groups charged smacks of "mob rule."

Superintendent Alton Crews and some board members proposed in October that PTAs or the school district office choose parent volunteers at random for school media committees that choose library books. Parent representatives on those committees have always been chosen by principals.

"If different parents had the opportunity to look at books before they are selected, they might feel better about the book," said board member Louise Radloff. "Hopefully, it

will cut down on the number of appeals." Crews said that numerous parents had complained that the district is "stacking the deck" on the committees.

"Almost every time we have a challenge to materials, this accusation comes up," Crews said. "There might be some truth in the fact that if you don't randomly select the parents, you might be picking parents with one point of view."

But George Wilson, a leader of the anti-censorship Free Speech Movement of Gwinnett, said the idea to change the system was a threat to quality education since "a vocal, small right-wing minority" may be the only faction to volunteer to serve on these committees. "That just opens up a whole can of worms," Wilson said. "You may have censorship before it goes on the shelf. To turn that responsibility over to the general populace—it's almost mob rule."

The local school media committees vary in size, but usually five or six parents and four to six teachers and administrators sit on each committee. Some principals already pick parents to serve on a random basis, while others choose PTA officials and some appoint volunteers, Reported in: *Atlanta Journal*, October 23.

### Nekoosa, Wisconsin

*The Last Mission*, by Harry Mazer, a young adult novel, was moved from the Alexander Middle School library to the high school library by decision of the school board August 12. A request for removal of the book was made by Teri Grosskreutz after her seventh-grade son, Shane, brought it home from school. Ms. Grosskreutz said she objected to profanity in the book, which tells the story of a boy who lied about his age to become a fighter pilot during World War II.

The request was sent to a review committee which recommended to the board in June that the book remain in the library. When Grosskreutz appealed, committee chair Bruce Dethlefsen suggested moving the book to the high school library as a compromise.

"This can be an emotional issue," Dethlefsen said. "A board member told me he wanted the school district to be known for its nice kids, good ball teams and good scholarship. It would be a shame to have it be known as banners of books."

The book was recommended for grades 7-10. Because there are also fifth- and sixth-graders in the middle school, Dethlefsen said he would agree to the compromise. "We'd prefer to see the book remain where it is," he added.

Board members Lee Pech and Roy Taylor said they wanted the book out of the district. Board member Leroy Breeze said he would like it moved to the high school, and board member Tom Sorenson wanted it to stay in the middle school. Sorenson moved the compromise, which passed 3-2, with Pech and Taylor voting no. Reported in: *Wisconsin Rapids Daily Tribune*, August 13.

## schools

### Prince George's County, Maryland

Elaine Carter was helping her daughter with her homework one night when she discovered the child had learned a new word in the third grade—eviction. After listening to a description of “Sidewalk Story,” by Sharon Bell Mathis, she wrote the girl’s teacher and asked to borrow a copy of the reader in which the story is included. After reading the story, Carter said she asked a counselor in her daughter’s school if the story could be taken out of the reader. She said she was told it could not, but that teachers would not use it.

That was in late 1985. When Carter learned in October that the story was still being used she made a formal complaint to the county Board of Education. The complaint set in motion the school system’s procedure for dealing with objections to instructional materials.

“Sidewalk Story” won an award from the Council on Interracial Books for Children, but Carter didn’t like what she felt was the stereotypical environment in which the story is set and the fact that a character lied to police and a reporter in seeking help for a friend’s family. She charged that the story is a too-negative portrayal of Black family life.

“Just to read the story is negative,” Carter said. “It’s about a mother who has seven children, no husband, and a menial job that doesn’t pay her when she is sick, so she can’t pay the rent and she gets evicted.”

Louise F. Waynant, associate superintendent of instruction for the school system, said the story would be reviewed by a group of outside experts, including Linda Shevits, of the Maryland Department of Education; Bette McLeod, coordinator of the school system’s Human Relations Department; Sandra Chinn, McLeod’s assistant; and Evangeline Wise of the system’s Staff Development Department. They were to report back to Waynant who, in turn, was to make a recommendation to the Board of Education. Reported in: *Prince George’s Journal*, November 6.

### Plymouth, Michigan

The movie *The Breakfast Club* was banned from the Plymouth-Canton School District in October because of complaints from district residents and parents about profanity and marijuana used by its characters. The R-rated 1985 film was shown the previous school year to a psychology class and to an interpersonal communications class.

In a letter to Diane Daskalakis, an unsuccessful candidate for the school board who collected 700 signatures on a petition against the movie, Assistant Superintendent for Instruction Michael Homes said the film was banned for its “blatant and gratuitous use of profanity.”

Daskalakis also filed a complaint about a showing of the film *The Sword and the Sorcerer* in a class studying the middle ages. She said the movie promotes “devil-worship.” She

also said she would object to showings of *Ghostbusters*, *Teen Wolf* and *Excalibur* because there is an “overall theme of teaching the occult and the powers of hell” in them. Daskalakis also led an unsuccessful fight to bar a speech to students by Gundella, a self-proclaimed witch, on Halloween, 1985.

In that instance, a special school review committee, consisting of two parents, an administrator, a librarian and a teacher, concluded that “there is room in any carefully developed curriculum for the use of a wide variety of educational strategies. To take one of these strategies out of context is to cast a chill on all that is creative and innovative in the profession of teaching.” Marion Kuclio, under the pseudonym of Gundella, spoke on the history of witchcraft and positive thinking, despite the protest of a coalition of parents and local ministers that Gundella would “indoctrinate the students in the virtues of witchcraft.”

In this latest controversy, Superintendent John M. Hoben wrote in a memo to principals, area coordinators, assistant principals and other administrators: “Because we are entrusted with the education of the community’s youth we must, rightfully, take a leadership role in determining what is appropriate and acceptable. Resources which are obvious in their depiction of such factors as profanity, violence, nudity and promiscuous sexual conduct are clearly inappropriate and unacceptable for use as educational resources in the classrooms of this district.”

The decision to ban *The Breakfast Club* led to over two hundred students attending an October 11 board meeting to protest, but the ban was not lifted. Scott Smith, a graduate of Plymouth-Canton High School, told the board the film had important psychological and sociological content, as it dealt with stereotyping among students. “There are thousands of people living in the community. How can you let 700 decide?” he asked.

Dawn Soerries, an English teacher at Plymouth-Canton High, described the action as “an overt act of censorship. Obviously, the censors equated the value of the film with the amount of ‘offensive language’ found within it. As a result of this decision, teachers no longer have the option of using this film in class, students of legal adult age are denied the right to view it as part of their education, and the decision of whether minor aged students should be allowed to view the film has been wrested from their parents.”

“We don’t deny that [censorship is] what we’re doing,” Daskalakis said. “Censorship is not a dirty word. We censor everything we do. I censor everything that comes in and out of my personal and social life. Free speech is one of the great freedoms of this country,” she continued, “but, if I disagree with what an individual is saying or teaching I want the right to get away from them and not accept their ideas.” Reported in: *The Community Crier*, October 22; *Detroit Free Press*, August 28, October 11, 16; *Plymouth Observer*, October 16.



### Omaha, Nebraska

A group of parents said October 20 they will appeal the Papillion-LaVista School District's rejection of their request that the book *A Light in the Attic*, by Shel Silverstein, not be read to elementary pupils without parental permission. A committee appointed by the district to hear the complaint recommended no change in the district's policy.

"I'm not surprised by the decision, but we will certainly appeal it," said Imogene Biers of the Voice of Informed Parents. She said the group thought the book promoted behavior abusive to women and children, suicide as a way to manipulate parents, mockery of God, and behavior that is selfish and disrespectful of parents. Reported in: *Omaha World-Herald*, October 21.

### Charlotte, North Carolina

An effort began in October in the Charlotte-Mecklenburg County school system to remove *Flowers for Algernon*, by Daniel Keyes, from a supplementary reading list for tenth graders because, critics say, the book contains pornographic passages. Forty-three citizens signed a petition to remove the book from the list.

"Our community has the right to exclude *Flowers for Algernon* from use in the public schools if in the community's view the book is pornographic or inappropriate," said Timothy Kroboth, a Charlotte attorney and former school board candidate.

Kroboth was scheduled to present the petition to the school board October 28, but did not do so because of what he termed "a hostile environment created by school officials." School officials countered that they cannot respond to charges that the book is pornographic because they did not receive a formal complaint or challenge to it. "If a parent objects to a book, the school system has a procedure in place to address that," said acting Superintendent Robert Hanes. "But to my knowledge the procedure has not been used."

Kroboth objected to the district's policy whereby complaints are reviewed by a school committee, with appeals to, first, the superintendent and, only at the last resort, the school board. "The community has the right to set a standard for all children," he said. "Presently the procedure for reconsideration of instructional material does not sufficiently involve the community. It relies heavily on school employees and is particularly defective for not including the school board, which represents the community and as such is best able to apply a community standard." Reported in: *Charlotte Observer*, November 1.

### Raleigh, North Carolina

The Rev. Jerry Falwell called North Carolina's educational leadership "pro-abortion" September 27, saying the state had withheld from students a book written primarily by President Reagan that espouses anti-abortion views. Speaking before about 275 people at Mount Olivet Baptist Church in

Raleigh, Falwell charged the State Department of Public Instruction would not allow copies of *Abortion and the Conscience of the Nation* to be donated to school libraries.

"[If] there's nothing wrong with giving young people access to all information to make their own decisions . . . then why can this book not be in the library?" Falwell asked. "Because you have a pro-abortion leadership in the Department of Public Instruction in North Carolina who is not willing to allow this to be aired."

State Superintendent of Public Instruction A. Craig Phillips said Falwell was misinformed. "Obviously, he doesn't know what he's talking about," Phillips said. "There's no such thing as a policy of the Department of Public Instruction that deals with pro- or anti-abortion. . . . I invite him to look at the curriculum."

The 1984 book consists of an essay by Reagan, plus writings by U.S. Surgeon General C. Everett Koop and British journalist Malcolm Muggeridge. A Gaston County Right to Life chapter tried unsuccessfully in 1985 to donate the book to the county's school libraries. Gaston school officials said they rejected the book on the advice of a state education official.

Falwell quoted a November, 1985, memo from George Shackleford, chief consultant for health education with the Department of Public Instruction, which said the book "cannot be recommended . . . as this topic is not included as part of the Comprehensive Health Education Curriculum." Shackleford later explained the state could comment on books but had no authority to decide which ones were placed in school libraries. Reported in: *Raleigh News and Observer*, September 28.

### Cleveland, Texas

School officials in Cleveland confiscated copies of Stephen King's vampire novel *Salem's Lot* from a class of ninth graders even though teachers had inked out objectionable words with a felt-tip marker. The book was issued to a class October 13 and withdrawn two days later after parents complained that the book contained objectionable language and subject matter.

"If what's in it is what I'm told is in it, then it's offensive to me," Superintendent Charles Barker said. "I don't think it's appropriate, even though bad language and other problem spots had been edited out with a black marker by the English teachers. That makes a kid want to get one and read what it really says. That's one of the worst things you can do."

Barker, who said he had not read any of King's works, said two parents called his office to complain about the book's racy language and sexual content. The dialogue is frequently colloquial, and Barker said "quite a bit" had been marked out by the teacher. He also acknowledged that two parents called in support of the book. "They wanted their children exposed to the famous author and saw nothing wrong with it," he said.

Barker said the book would be reviewed for its appropriateness, but declined to specify who would make the review and when it would be complete. Cleveland High School librarian Etta David said King novels are available in the school library, but not *Salem's Lot*.

Don Belt, president of the Cleveland school board said he approved removing the book from the classroom. "There are many, many books from which to choose and rather than cause a problem I'd substitute another book." But, he said, he's surprised at the outcry. "I feel kids see worse stuff on TV on *Dynasty*, *Dallas* and the soap operas. Even the Bible and *Romeo and Juliet* have some passages that might be offensive," he said.

"I am not 'for' or 'against' the book. I'm just against any controversy it might create," Belt concluded. Reported in: *Houston Chronicle*, October 17.

### Woodstock, Vermont

Barnyard epithets, sexual language and repeated, offhand references to the deity brought the cancellation of Vermont poet David Budbill's play, *Judevine*, at Woodstock Union High School. "Several people have commented that the language is offensive," said Leo Corriveau, school principal. "It looks like a fine piece of work but there are words that some people would find objectionable. And we didn't want to put parents in that position."

The play, about life in an imaginary Vermont town, debuted at the Vermont Repertory Theatre and toured the state in September, where it was performed at several high schools. In Woodstock, only a performance scheduled during school hours was cancelled. An evening performance open to all went ahead as scheduled.

Budbill said he felt said about the decision. "This is a serious First Amendment issue, free access to ideas," he said. "The kids in Woodstock High School are not going to see something that kids in the Rutland area got to see, and loved."

Budbill admitted that "the show is raunchy, but it's joyously raunchy. Antoine swears constantly, he does it like a litany. And because he does it so much, it becomes ineffective. I think adults continuously underestimate teenagers," he continued. "If you treat them like kids, they're going to act like kids. If you treat them like adults, they'll act like adults." Reported in: *Burlington Free Press*, September 25.

### South Milwaukee, Wisconsin

After a 1½ hour discussion, a South Milwaukee School Board committee recommended that two novels by S. E. Hinton be kept on an eighth grade reading list but that steps be taken so that no student would be required to read either book for regular or extra credit. The issue was raised by Chris Giese, co-director of Citizens for Excellence in Education, who complained that two of Hinton's novels on social rela-

tions among American teenagers—*The Outsiders* and *That Was Then, This is Now*—were too negative.

In some eighth grade English classes, *The Outsiders* was required reading. In others, both Hinton novels were on a list of three elective novels. Students seeking extra credit had to read two of the three novels.

"We seem to have a whole generation of educators who believe that children must be taught the philosophy of the 'real world,'" Giese said. "I personally believe they get enough of that philosophy through movies, music, TV and many magazines. We teach fear, violence, and frustration, and our society is becoming exactly what we're teaching." Giese complained that drug and alcohol abuse was common in both books, and that virtually all characters were from broken homes.

Daniel Bowe, South Milwaukee Junior High principal, said *The Outsiders* had been on the reading list since 1970, and *That Was Then, This Is Now* had been included since 1972. He said Giese's complaint was the first raised about the books. He said the books had been selected because they appealed to students and would encourage them to read. "There is nothing as good in adolescent literature," he said. Reported in: *Milwaukee Journal*, September 30.

## broadcasting

### Washington, D.C.

The Public Broadcasting System has refused to broadcast a documentary about the making of *Sun City*, the anti-apartheid song in which 54 leading pop, jazz and soul stars pledged to boycott South Africa and its satellite "homeland" states. According to PBS, broadcast of the program, in which such artists as Bruce Springsteen, Bob Dylan, and Miles Davis explain their anti-apartheid stand, would jeopardize the "journalistic integrity" of the network.

"PBS is not 'your public broadcasting system' in the sense that it is required to endorse your effort to persuade other performers to avoid *Sun City*, congratulate you for your moral position on apartheid, or help stimulate sales of the *Sun City* video or album," PBS executive Barry Chase wrote *Sun City* organizer Little Steven Van Zandt. Chase charged that "the central purpose" of the documentary "is to advertise the views and personalities of [its] producers."

Van Zandt and other *Sun City* figures were outraged by the PBS letter, especially its "terse and arrogant" tone which, they charged, "impugns the motives and integrity" of the artists involved. *Sun City* backers said rejection of the documentary, recently nominated as a finalist in the International Documentary Awards, constituted a "ban" on their work.

The decision, which the network had been discussing for months, was made shortly after the launch of PBS' controversial *Africans* series, which drew fire from right of center

groups for its allegedly anti-American slant, and while pressure was mounting for a "content analysis" seeking an allegedly liberal bias in PBS documentaries (see page 24). *Sun City* organizers speculated that fear of further conservative pressure may have influenced their rejection.

Van Zandt approached the network in June, 1986, and the initial response was, he said, "extremely enthusiastic," with both sides agreeing the program—previously aired on MTV and Black Entertainment TV—could be updated with new footage, including a new interview with Winnie Mandela and a live performance of *Sun City* by Yoko Ono, U2, Peter Gabriel and others recorded in New York's Central Park. At the time, Van Zandt wrote PBS programmer Karen Watson that he was "prepared to tailor the program to PBS specs."

Although no formal guidelines were received from the network, the program's sponsors learned that PBS was questioning the program's "objectivity." Van Zandt and others were surprised, given the clearly partisan nature of the sponsoring group. Nevertheless, the program's producers said they would be willing to tack a conventional post-documentary debate onto the end of the show, if necessary. Finally, in September, shortly after the Congress overrode President Reagan's veto on South African sanctions, the proposal was rejected outright.

"It is hard not to suspect that this decision reflects politically conservative values, inflexible guidelines (which have yet to be shared with us), and possible behind-the-scenes pressure," Van Zandt told PBS in a letter seeking a review of the decision.

PBS' Chase said that suggestion "borders on the slanderous." He described the documentary as "a one-line joke" and said its stars "fall in the category of spoiled brats, including Little Steven. They may be people for whom others fall down in hotel lobbies but that ain't the case at PBS."

According to Chase, PBS was intrigued by *Sun City* because "it did have some pluses. It had entertainment value and it seemed to appeal to an age mix we don't have enough appeal for." But, he stressed, the documentary was still a problem due to "a combination of self-promotion, journalistic and possible commercial problems." *Sun City* did not address issues in a "scholarly" way and "clearly was meant to stimulate sales." Most important, he said, the documentary breaks a cardinal PBS rule that the subject and the producer of a show not be one and the same.

In fact, however, PBS had earlier broken that rule at least three times when it aired a series of specials about the making of George Lucas' *Star Wars*, *Indiana Jones*, and *Raiders of the Lost Ark*, each produced by Lucasfilm Productions. "For PBS to take this tone, that they don't take movies produced by the subjects of the movies, is ludicrous," commented Robert Guenette, president of the International Documentary Association, who asked the network to reverse its decision.

*Sun City* co-coordinator Rick Dutka described Chase's comments as "outrageous and arrogant, . . . reducing the anti-racist stand of Bruce Springsteen and 54 other artists to a matter of hyping themselves." Dutka said Chase's views reflected "elitism" and a "clear hostility to contemporary popular music." Reported in: *Variety*, October 29.

## books

### Winter Park, Florida

The owners of a Winter Park bookstore said they were discouraged from participating in the October 11 Authors in the Park literary festival because the event's organizers did not like some of the material to be included in their display. Hank and Jane Roth, owners of Book Mania, said they were told by festival organizer Debby Barr that books on lesbians and gays were not suitable for the festival. The festival is a cooperative effort with the city library, county library and various groups and individuals.

Roth said they planned to make their exhibit "representative of whatever we exhibit in the store. We would carry mostly magazines since we have the greatest selection and diversity of magazines of any store in the area. We would carry examples from our political section and, of course, alternative lifestyles since we consider homophobia a social disease and we see nothing wrong with exhibiting books that represent a section of society."

"They called and said they would have lesbian and homosexual literature in their exhibit. I said it was a family event and these were not appropriate topics for this festival," Barr said. "They said this was censorship but my belief is some things are more appropriate for some places than others. In the brochure we have for the festival one of the first things that's said is 'Authors in the Park is a family event, and displays must be suitable for the enjoyment of all age groups.' Anything that has possibilities of being considered pornographic would not be suitable."

Barr said she was fearful that, with many of the festival's exhibits geared to children, one exhibit like Book Mania's would endanger the possibility of the Winter Park city government allowing the event next year. Indeed, city manager David Harden pointed out that a January, 1983, resolution adopted by the city commission prohibits "activities which are inappropriate in Central Park or which tend to detract from its use as a park by all the people of the city." Harden also noted that the same resolution prohibits in the park "acts as are the nature to corrupt public morals or outrage the sense of public decency."

"I think they made a wise decision," Harden concluded. "we're extremely sensitive to what goes on there. Anything not in keeping with families is inappropriate . . . Whether the kinds of things this book store wanted to go in there would cause a problem I don't know. I haven't seen the material."



Hank Roth said that after an exchange of letters with Barr, he and his wife decided not to enter the festival. "I felt angry about it because it goes against everything we stand for," he said. "We are vigorously opposed to any form of censorship and because of those restrictions we chose not to participate."

Hank Roth was a communications security specialist for the federal government from 1959 to 1979. He and his wife opened Book Mania in September, 1985, and the store quickly became known for the wide variety of dissident political and social literature available on its shelves. "We understand that every idea is capable of being obscene in someone's mind. We don't think anyone should be so presumptuous as to dictate what our customers can and cannot read or look at," Roth said. "We defend the idea that all of us have a right to read and write and listen and speak and think for ourselves." Reported in: *Orlando Sentinel*, October 1, 5, 10.

### New York, N.Y.

Andrea Dworkin, the self-styled radical feminist who has spoken out against pornography as perpetuating women's "second-class status" and "powerlessness," has charged that her novel, *Ice and Fire*, while critically acclaimed abroad, has been a target of censorship in the United States. The book, Dworkin's first work of fiction, was published last May in England, but, according to Dworkin, more than twenty American publishers rejected the book. In an interview with *The Women's Review of Books*, she charged that there was "a very real, very serious blacklisting of my work." The book is being published by Weidenfeld and Nicolson.

Dworkin told the *Women's Review* that "pornography actually does subordinate women. It does something to women and to women's civil status that really nothing else does." She admitted, however, that her own book contains much graphic sex. "The reason this book isn't pornography simply has to do with my skill as a writer. Pure and simple. It has to do with the fact that the kind of prose that I've written has so much control and is, I hope, so masterful in what it shows that what you come away with understanding is the reality of the degradation and what it means. It doesn't do it to you: it allows you to understand something that maybe you have never understood before." Dworkin did not address the question of whether a less "skilled" writer seeking to treat sexual themes might inadvertently produce pornography.

Dworkin charged that publishers found particularly objectionable "the whole last part of *Ice and Fire*, which is about this woman being totally sexually harassed by her [male] publisher." The one editor [a woman] even willing to talk to her about publishing the novel told her "to rewrite this last part," Dworkin said, because "it can't be about publishing." Reported in: *Publisher's Weekly*, September 26.

## film

### Tulare, California

A Tulare city council member's crusade to ban the videocassette *Faces of Death* drew support from the League of California Cities in October. *Faces of Death* and its sequels feature footage of actual deaths and dismemberments in which gory news outtakes and film of executions are spliced together.

Council member Joseph Reynolds originally pursued a ban on the video within Tulare city limits. In January, 1986, he raised a question about the availability of the video at a city council meeting after receiving a complaint from a constituent. But Tulare City Attorney Clark Ide raised a touchy question: How do you ban a movie that contains gory news footage without infringing on the right to sometimes broadcast such footage as part of the news?

The resolution introduced by Reynolds to the 430-member cities league, and passed without discussion at its convention October 22, did not mention *Faces of Death* by name. Instead, it called for state and local legislation to define as a nuisance and prohibit distribution and display—"in so far as consistent with constitutional limits"—of videotapes to minors which meet the following definition: "motion pictures showing the intentional killing of or cruelty to a human being or animal where such motion picture has joined many such incidences together to produce a prolonged visual experience for the primary purpose of depicting violence and cruelty."

Passage of a resolution places the lobbying muscle of the league behind it, but doesn't always assure that legislation will be introduced, said Clark Goecker, assistant director of the league. Reported in: *Fresno Bee*, October 23.

## rock music

### Tyler, Texas

Community controversy and the possibility of violence prompted the owner of a Tyler exhibition hall to cancel an October 11 concert by rock singer Ozzy Osbourne. In a prepared statement released October 8, Oil Palace owner Bobby Joe Manziel said, "We do not wish to present an event which would be a divisive influence in the East Texas community, nor do we want to present an event which would provide an opportunity for public confrontation between well-meaning citizens of the community."

Church leaders had earlier petitioned Smith County commissioners seeking to halt the concert, charging that Osbourne's music promotes devil worship, suicide and drugs. County commissioners said they were powerless to stop the show since it was to take place in a privately owned venue. The Tyler Council of Parent-Teacher Associations had also publicly opposed the concert.

Gara LaMarche, executive director of the Texas Civil Liberties Union, said he was disappointed to see the Oil Palace "cave in to the fundamentalists." Reported in: *Dallas Morning News*, October 9.

## art

### Livermore, California

An official's decision to ban three disputed photos from the Livermore Arts Festival in September touched off an uproar, eliciting charges of censorship from two of her colleagues. Shirley Fernandez, chair of the festival, removed the pictures by Donald Dinizo after deciding they were unfit for viewing by children.

The pictures showed a man holding a *Hustler* magazine centerfold, a nude woman with a doll's head peering out over her thigh, and a bloodied woman tied to a metal shower rod.

"I just didn't think these pictures were appropriate for this festival, which is family oriented," Fernandez said. "They are not something I think people want their children to see. I'm not trying to censor these pictures, I'm just saying that this is not the place to show them."

Al Weber, who was chosen to judge the photographs, called the removal "blatant censorship. One person took it upon herself to prejudge the show, that's what I'm upset about. Two of the pictures were of such poor quality that they wouldn't have been considered for a prize anyway, but the one of the woman and the doll's head was pretty good. My main protest is with the method of disqualification."

"I agree with Al 100 percent," said Ron Suttora, the festival's photo exhibit chair. "The problem is that it wasn't made clear in the entry rules what was acceptable and what wasn't. . . . The entry only said that those photos deemed to be 'in poor taste' would not be judged. Well, what one person considers poor taste the next person might not."

Fernandez said she had received considerable community support. "I think Mr. Weber has blown this all out of proportion," she said. "He's not part of the community, he doesn't live here. He's putting his own judgment over the good of the community as a whole. There are plenty of places to rant and rave about censorship, if that's what he wants to do. This isn't one of those places." Reported in: *San Francisco Examiner*, October 3.

## foreign

### Santiago, Chile

Chilean authorities seized copies of a book about the late President Salvador Allende, who was killed when his elected

government was ousted in a 1973 military coup led by the current president, Augusto Pinochet. The book, *Allende: An Intransigent Democrat*, was written by the widows of two Allende government officials. It was removed from shelves in the capital in November by military officials who cited the state-of-emergency law imposed since a September 7 assassination attempt against Pinochet. Reported in: *Los Angeles Times*, November 20.

### London, England

*Jenny Lives With Eric and Martin*, a book published for 8- to 12-year-olds about a little girl who lives with her homosexual father and his lover, became a target of censorship last fall when it was circulated for school use by the Inner London Education Authority. One group of parents vowed to destroy every copy of the book in local school and public libraries. "We won't rest until we have publicly burned every copy of that book that is available to our children," one mother declared.

Education secretary Kenneth Baker was so angered by the book's use in schools that he took the unprecedented step of demanding its removal. As education secretary, he does not have the power to order a local authority to ban a book. "But I can make the strength of my views known to them and ensure that the public are also aware of my thinking," he said. He said the book is "blatantly homosexual propaganda and totally unsuitable for use in classroom teaching or school libraries."

Former teacher Aubrey Walter of Gay Men's Press, which published the book, said it "was not designed to be specifically a schoolbook, but an anti-sexist book to teach children about the gay lifestyle and as a confidence-builder for children in those situations. The book is pointing out that gays are as much a part of the social fabric as straight people."

Baker's call to remove the book was rejected by the IL-EA. Frances Morrell, the authority's leader, accused Baker of "a cheap and disgraceful stunt" and said the book's use was entirely consistent with advice on sex education given by Baker's department. "Whether Mr. Baker likes it or not, marriages do break up, and parents do set up with partners of the same sex," she said. Reported in: *Baltimore Sun*.

### Tel Aviv, Israel

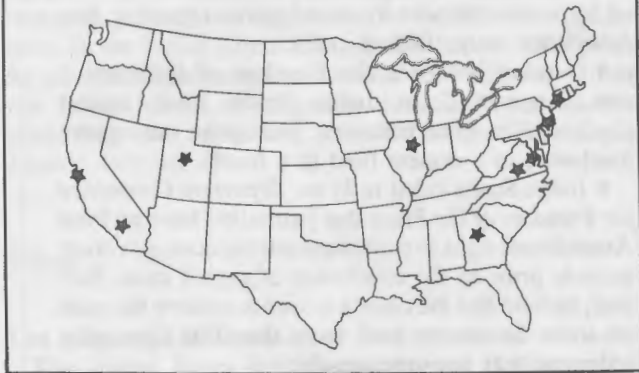
The Israeli Education Ministry has banned from religious schools books by the Nobel Prize-winning author Isaac Bashevis Singer and several other prominent writers. A ministry official said November 7 that the books were not suitable for religious students.

About 25 percent of Israeli schools are religious.

Novels and short stories by Singer, a Polish-born Jew who writes in Yiddish, were rejected because "his values do not

(continued on page 22)

## from the bench



### U.S. Supreme Court

In one of its first actions of the new term, the U.S. Supreme Court agreed to consider an obscenity case that turns on the question of whether national or local standards should be the determinant in defining what is legally "obscene." At stake is the 1973 ruling in *Miller v. California* that said three tests must be met before material could be declared illegal because it is obscene. The first two require application of community standards and determination that the work is patently offensive. The third asks "whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."

In the case of *Pope v. Illinois*, two bookstore clerks were arrested in two adult bookstores in Rockford, Illinois, and charged with violating the state obscenity statute. In court, their attorneys asserted that the state statute failed to require that the third part of the *Miller* test "be adjudged on an objective basis." The lower courts disagreed, and in their appeal to the high court, attorneys for the men argued that the court ruled in a 1977 case that subjective standards such as how the community feels apply only to the first two parts of the *Miller* test. In addition, the clerks contended that the Illinois statute goes beyond the *Miller* definition by describing what "prurient interest" means.

In *Miller*, the state argued, the court explicitly said that the First Amendment does not require "that the people of Maine or Mississippi accept public depiction of conduct found tolerable in Las Vegas or New York City." The *Miller* decision also said, "To require a state to structure obscenity proceedings around evidence of a national community standard would be an exercise in futility."

The clerks argued, however, that those quotes applied only to the first two tests of *Miller*, that the third part "is not discussed in *Miller* in terms of contemporary community

standards." Ironically, the appellants' principal citation for this argument is a 1976 book by Frederick Schauer, University of Michigan law professor, who was a member of the Meese Commission on pornography and a principal author of its report. Reported in: *Publishers Weekly*, October 24.

In another obscenity case, the Supreme Court let stand a lower court ruling that government prosecutors do not have to present expert testimony to determine the "contemporary community standards" in a civil obscenity case tried before a judge. The case involved the Florida Literary Distributing Corporation, which was enjoined by Miami authorities from selling or distributing eight allegedly obscene magazines. When the case came to trial, the company sought a dismissal because the prosecution failed "to offer any testimony establishing the contemporary community standards of Dade County."

The judge issued permanent injunctions against the distributor, but a higher court overturned the verdict. The city appealed to the Florida Supreme Court, which agreed with the trial judge, stating such testimony was not needed for a nonjury proceeding.

Justices William J. Brennan and Thurgood Marshall dissented, indicating that they would have reversed the Florida Supreme Court decision. Reported in *Publishers Weekly*, November 14.

In an important decision placing limits on Christmas displays by government authorities, the Supreme Court prevented the city of St. Charles, Illinois, from lighting its Christmas cross above the city firehouse by refusing November 17 to review a lower court ruling against the cross' display. The high court let stand without comment a decision of the U.S. Court of Appeals for the 7th Circuit that the cross is an impermissible government endorsement of Christianity.

The appellate decision, written by Judge Richard Posner, stated that: "When prominently displayed on a public building that is clearly marked as and known to be such, the cross dramatically conveys a message of governmental support for Christianity, whatever the intentions of those responsible for the display may be." Posner has been mentioned as a possible Reagan administration Supreme Court nominee because of his generally conservative judicial views.

St. Charles officials argued that the cross was part of an overall secular Christmas display, including lighted Christmas trees, Santas, wreaths, reindeer, stars, and snowflakes. In 1984, in a case involving a Christmas display in Pawtucket, Rhode Island, the Supreme Court ruled that erection of a creche in the context of a broader display including both religious and secular symbols was permissible. The high court's refusal to hear the St. Charles appeal suggested that the display of at least some religious symbols by themselves or, as in St. Charles, at a physical distance from other elements of a Christmas display is unconstitutional. Reported in: *Chicago Tribune*, November 18.



## Scalia on the press

Although the record of new Supreme Court Chief Justice William Rehnquist was well discussed during his confirmation hearings last summer, the public review of new Associate Justice Antonin Scalia's record was so brief as to be almost nonexistent. While Scalia is widely recognized to be a leading judicial conservative and strict constructionist, it is, perhaps, less well known that Scalia's record on the issue of press freedom is remarkably one-sided. According to a survey of decisions in which Justice Scalia participated as a judge of the U.S. Court of Appeals for the District of Columbia Circuit, reported in *The News Media & The Law*, a publication of the Reporters Committee for Freedom of the Press, "Justice Scalia not only never voted in favor of the news media, but has been overtly hostile to the press on several occasions."

Some examples:

- Justice Scalia authored the opinion in *Liberty Lobby v. Anderson* in which he stated that forcing libel plaintiffs to prove actual malice with "convincing clarity" at the pretrial summary judgment stage placed too great a burden on them. That decision was overturned last spring by the U.S. Supreme Court.

- Scalia dissented in *Ollman v. Evans*, in which the majority found that allegedly libelous statements in a column were protected as commentary. His dissent noted that "perhaps those are right who . . . view high libel judgments as no more than an accurate reflection of the vastly expanded damage that can be caused by media . . ."

- Scalia joined the majority opinion in *Tavoulareas v. Washington Post*, which noted that "the evidence that a newspaper followed a sensationalistic policy . . . provides a motive for knowing or reckless

falsehood, and is evidence of actual malice." In this case a "sensationalistic policy" was one characterized by a commitment to investigative reporting (see *Newsletter*, July 1985, p. 123).

- In cases involving the Freedom of Information Act, Appeals Court Judge Scalia ruled against disclosure in three instances, and spoke out against disclosure in a dissent filed in a fourth.

- Judge Scalia ruled in *In re: Reporters Committee for Freedom of the Press* that journalists have no First Amendment right to contemporaneous access to court records prior to the conclusion of a civil case. Further, he held that the court's failure to remove the seals on some documents until more than fifty days after judgment was not unreasonable.

- In *Block v. Meese*, Scalia found that the government's interest in knowing the names of organizations booking three Canadian-produced documentaries, which had been labeled "political propaganda" by the Justice Department, outweighed any First Amendment privacy interests of the viewers. He also rejected the argument that designating the films "propaganda" was tantamount to an expression of governmental disapproval. This term, the Supreme Court has agreed to hear an appeal of a California court's decision enjoining the application of the Foreign Agents Registration Act to these three films.

Summarizing its assessment of the new associate justice, *News Media & The Law* concluded that "Scalia is a brilliant and charming man. He has already shown himself to be an aggressive interrogator at oral arguments, and will undoubtedly be a powerful force on the high court. His appointment suggests that the news media's First Amendment rights may be in greater peril than ever before." Reported in: *The News Media & The Law*, Fall 1986.

A divided U.S. Supreme Court ruled in July that Puerto Rico did not infringe the First Amendment rights of casinos by prohibiting them from advertising in media circulated on the island. Writing for the majority, Justice William Rehnquist wrote that "the greater power to completely ban casino gambling necessarily includes the lesser power to ban advertising of casino gambling."

In a 5-4 decision, the court held in *Posadas de Puerto Rico Associates v. Tourism Company of Puerto Rico* that the restrictions on advertising were narrowly drawn and did advance the substantial governmental interests "in the health and safety of its citizens." The narrow interpretation given the statute by the Superior Court judge who heard the case eliminated any unconstitutional restrictions on protected speech, according to the opinion. As interpreted, the law dealt

only with "pure commercial speech," which is not fully protected by the First Amendment, Rehnquist found.

Justice William J. Brennan, joined by Justices Thurgood Marshall and Harry Blackmun, dissented, saying that states may regulate commercial speech only to protect against dissemination of false or misleading information. Restrictions on commercial speech are not justified, "where, as here, the government seeks to manipulate private behavior by depriving citizens of truthful information concerning lawful activities."

In a separate dissent, Justice John Paul Stevens called the ad restrictions "rather bizarre restraints on speech" which are plainly forbidden by the First Amendment. Reported in: *The News Media & The Law*, Fall 1986.

Gov. William Janklow (Rep.-S. Dakota) said October 14

that the Supreme Court's refusal to review his unsuccessful libel suit against *Newsweek* magazine basically means that the press can now lie about public figures. The court, without comment, let stand an April ruling by the U.S. Court of Appeals for the Eighth Circuit that a 1983 article which repeated an old rape allegation against Janklow did not libel the governor. Three federal investigations determined that the rape allegations were unfounded. Reported in *Sioux Falls Argus-Leader*, October 15.

## film

### Los Angeles, California

The United States Information Agency (USIA) said it would appeal an October 24 decision by a federal judge in Los Angeles who held unconstitutional the regulations the agency uses to approve distribution of documentary films abroad. In deciding *Bullfrog Films v. Wick*, U.S. District Court Judge A. Wallace Tashima ordered the agency to reconsider its refusal to grant certain films "certificates of educational character" and said the agency's guidelines for picking films that qualify for the certificates "on their face violate the First and Fifth Amendments to the Constitution." Tashima said the guidelines, which prohibit granting certificates to films presenting opinions or points of view on controversial subjects, effectively prevent financially strapped independent film makers from distributing their films abroad.

The regulations that Tashima declared invalid outline the agency's administration of a 1949 international treaty written to "promote the free flow" of educational, scientific and cultural films throughout the world. While lack of a certificate doesn't block export of a film, the certificate does exempt films from many import duties and red tape requirements of foreign governments which, in many, if not most, cases, can effectively eliminate circulation of limited-audience films like documentaries.

Ten film makers from four production companies filed the suit in December, 1985. Because they claimed no damages the case was not argued before a jury. The film makers charged that the USIA used the regulations to censor opinions that were at odds with those of the Reagan administration. They claimed that the agency's refusal to grant the export certificates "chilled" their right to make and distribute films that "present a point of view that is considered unfavorable" by the government.

From 1981 to 1985, USIA officials approved about 30,000 films and rejected 80. Among those rejected were the six films named in the lawsuit: *In Our Own Backyards: Uranium Mining in the United States*; *Peace: A Conscious Choice*; *Whatever Happened to Childhood?*; *Save the Planet*; *Ecocide: A Strategy of War*; and *From the*

*Ashes . . . Nicaragua Today* (see *Newsletter*, March 1986, p. 53).

The agency refused certificates to the films when, in its opinion, they "attempt generally to influence opinion, conviction or policy [religious, economic or political propaganda], to espouse a cause, or conversely, when they seem to attack a particular persuasion."

Among the rejected films, the agency said, is one that leaves the impression "that the U.S. has been the aggressor" in the Nicaraguan conflict and another that offers a picture of drug use and pregnancy among American teenagers that could be "misunderstood by foreign audiences."

At the same time, however, the agency approved a film that played down the role of industrial polluters in the formation of acid rain while detailing the natural causes of the phenomenon, and another that argued women should "submit" to the wills of their husbands.

Judge Tashima said the regulations that allowed the agency such wide discretion were "a broad invitation to subjective or discriminatory enforcement that the Constitution forbids." In a 41-page ruling, he said the regulations were vague and unenforceable. They were "inherently incapable of objective application" and, in some instances, "hopelessly unclear."

"These regulations are not merely flexible," Tashima wrote, "they are boundless" and put the agency "in the position of determining what is the 'truth' about America, politically and otherwise. This, above all else, the First Amendment forbids."

In its defense, the USIA argued that the issue before the court was a tax matter and not a First Amendment concern. Further, the agency contended that since the regulations were derived from an international agreement and involved foreign affairs, constitutional standards should be flexible.

Tashima rejected that argument: "The court must reject these overly broad propositions which are fraught with the most serious constitutional implications and which would open the door to unprecedented and intolerable government interference with freedom of expression," he wrote.

Tashima not only ordered the USIA to reconsider films denied certification, but permanently enjoined the agency from enforcing its regulations for certifying films until it formulates "standards consistent" with the Constitution.

Michael Ratner, of the Center for Constitutional Rights, which represented the film makers, called the ruling "a major free speech victory. It's a way of taking the Reagan administration out of being the ideological censor of what goes out to other countries."

USIA general counsel, Joseph A. Morris, said, "We don't believe in censorship. At no time in President Reagan's administration, and as far as I can tell, at no time in the administration of any previous president, has any decision in this whole program been made by a politically appointed government employee. Nor has any decision been made on

the basis of any political motivation." He said an appeal was necessary to fulfill U.S. treaty obligations. "All the agency is trying to do is live up to the treaty's terms," he said.

In announcing the agency's decision to appeal, Joseph O'Connell, acting director of the USIA public affairs department, said the agency "would be much happier" if documentary film makers were untaxed altogether. "If that were the case then these certificates would not be needed and the USIA would cheerfully get out of the film reviewing and certificate issuance business." Three years ago the U.S. dropped all import duties on documentary films, but other governments have not as yet reciprocated. Reported in: *Los Angeles Times*, October 25; *Washington Post*, October 25; *New York Times*, October 30; *Wall Street Journal*, October 27; *Variety*, October 27.

## obscenity

### Atlanta, Georgia

A federal judge on September 25 declared unconstitutional the controversial "display" provision of Georgia's obscenity law, saying the law as written, in effect, would "reduce an adult's selection of reading materials to a book list suitable for a fifth-grade class." U.S. District Court Judge Marvin Shoob concluded that the provision, which prohibits the display of sexually explicit material where minors might see it, is overly broad and imposes an unreasonable burden on the First Amendment rights of authors, publishers, booksellers, and adult readers.

Shoob also declared unconstitutional another portion of the law that exempted public libraries from the display provision, saying the defendants had not proved how the exemption would protect minors from harmful materials.

Georgia's previous obscenity law was ruled unconstitutional in 1981. That law was rewritten and signed in April, 1984, but Shoob later barred state officials from enforcing the newly added display provision after it was challenged by the American Booksellers Association and other organizations.

"We're pleased that the judge has adhered to his preliminary decision and followed what I think is the current thinking of most courts, that such laws constitute an unconstitutional infringement of First Amendment rights on both children and adults," said attorney Michael Bamberger, who represented the booksellers and seven other plaintiffs.

Shoob said the display provision "goes well beyond the permissible boundaries of regulation, prohibiting the display not only of sexually graphic magazines and novels, but also of classic works of literature and a significant portion of popular fiction."

"Simply stated, because display is the critical element in the marketing of books, and because the [provision] would represent a major disruption in the business of bookselling

and as a practical matter, would drastically reduce adults' selection of reading material," Shoob wrote.

"The evil in the [provision] is not its purpose, but rather its breadth," he added. Shoob said the law could be rewritten in a way that would reasonably restrict the display of graphic magazines. He gave the state twenty days to address whether it would delete the display provision and library exemption. Reported in: *Atlanta Constitution*, September 26.

### Champaign-Urbana, Illinois

A federal judge struck down October 17 part of an Illinois law allowing adult bookstores to be shut down as public nuisances. The law, in effect since January 1, 1986, allowed judges to close a business if they deemed it a public nuisance, based on affidavits or other sworn evidence from the state.

U.S. District Court Judge Harold Baker struck down part of the law, saying it "would suppress the moral along with the prurient and the aesthetic . . . along with the obscene." Baker ruled unconstitutional a section of the law which permitted the state to bar business owners from removing stock and forced them to "padlock" their business until a court made a final judgement on the nuisance charges. He said the law was "aimed not so much at punishment as at suppression of the dissemination of the material alleged to be obscene."

The law was challenged by Eagle Books, Inc., which runs the Urbana News Bookstore, in a suit filed against Champaign County State's Attorney Thomas Difanis. Although the law was not applied in the county, Eagle Books said they feared it would be used by Difanis to shut down their Urbana operation. A similar public nuisance statute was employed in the county several years earlier to shut down massage parlors. Reported in: *Champaign-Urbana News-Gazette*, October 19.

## cable TV

### Salt Lake City, Utah

The U.S. Court of Appeals for the 10th Circuit in Denver ruled in September that a Utah law prohibiting cable companies from distributing indecent programs was unconstitutional. It concluded that the First Amendment prevents government from interfering with cable operators' programming decisions unless the material aired is obscene. The court rejected the state's argument that cable is like over-the-air broadcasting and does not enjoy full First Amendment protection from content regulation.

In 1981, the Utah Legislature enacted a statute making it a crime for a cable franchise to distribute any "pornographic or indecent material" to subscribers. The law was declared unconstitutional in January, 1982, by a federal district judge. The state did not appeal, but in 1983, the Legislature enacted



a second statute over the governor's veto. Home Box Office and several Utah cable operators and subscribers immediately challenged the new law. In April, 1985, the court struck down the Utah statute, saying it was "unconstitutionally overbroad" because it prohibited transmission of material that was not obscene (see *Newsletter*, July 1985, p. 131). The court also found the statute "unconstitutionally vague."

The state appealed to the U.S. Court of Appeals in Denver. In a brief opinion released in early September, the court accepted completely the trial judge's reasoning and ruled the statute unconstitutional. In March, 1985, the U.S. Court of Appeals for the 11th Circuit in Atlanta struck down a similar Miami, Florida, law. Reported in: *The News Media & The Law*, Fall 1986.

## libel

### Richmond, Virginia; San Francisco, California

The U. S. Court of Appeals for the Fourth Circuit ruled in August that under Virginia law a jury can award damages against a publication for intentional infliction of emotional distress even when it determines that published material was not libelous. The court affirmed a \$200,000 award to the Rev. Jerry Falwell in his suit over an advertisement parody published by *Hustler* magazine (see *Newsletter*, March 1985, p. 53). The jury in *Falwell v. Flynt* found that the parody "offended generally accepted standards of decency" and intentionally caused severe emotional distress.

Flynt and *Hustler* appealed to the Court of Appeals, arguing that the parody was protected under the First Amendment as opinion and that Falwell had failed to prove the parody was published with "actual malice." They argued that under Virginia law Falwell's emotional distress claim was dependent upon his libel claim and should have been dismissed when the libel claim failed.

A three-judge panel of the Court of Appeals affirmed the jury verdict and the \$200,000 damage award. It upheld the trial court's ruling that Falwell's libel and intentional infliction of emotional distress claims were legally independent, holding that Falwell's failure to recover for libel did not prevent him from recovering for his emotional distress. *Hustler* and Flynt asked for a rehearing by the full court.

Meanwhile, in a related case in California, the U. S. Court of Appeals for the 9th Circuit ruled that Falwell's use of the parody advertisement published in *Hustler* to solicit contributions to finance his libel suit over the ad did not infringe the magazine's copyright. The 2-1 decision stated that Falwell's mailings containing copies of the parody were "fair use" which did not require *Hustler's* consent.

The court's primary concern was whether Falwell's use of the work affected the market value of *Hustler* in general. Because the parody was only one page of the 154-page magazine, the court ruled that the effect of Falwell's use on

the marketability of back issues of the entire magazine would be inconsequential.

The evangelist mailed more than a million copies of the parody to members of the Moral Majority and contributors to the Old Time Gospel Hour. The solicitations raised nearly \$1 million to finance the suit against *Hustler*. Reported in: *The News Media & the Law*, Fall 1986.

## "fair use"

### New York, N. Y.

A federal appeals court affirmed publishers' rights to use long excerpts from other works without permission, addressing the murky legal question of how much of a copyrighted work may be "borrowed." The decision took a less harsh view of the controversial practice than a recent U. S. Supreme Court ruling, which seemed to limit the "fair use" of copyrighted material.

Affirming a lower court decision, the U. S. Court of Appeals for the Second Circuit said that *Rachel Weeping*, a book by Rev. James Tunstead Burtchaell about abortion, didn't infringe the copyright of a 1973 book, *Pregnant by Mistake*, by Katrina Maxtone-Graham, from which he excerpted interviews. According to a lower court calculation, the excerpts amounted to 4.3% of the words in Burtchaell's book.

In 1985, the U. S. Supreme Court sided with Harper & Row, which had sued the *Nation* magazine for running excerpts of former president Gerald Ford's memoirs. The publisher claimed the excerpts violated the bounds of "fair use" (see *Newsletter*, July 1985, p. 122). The October 15 ruling by the influential Second Circuit, however, suggested that the high court's decision might not be interpreted as calling for a narrower view of "fair use." In the *Nation* case, the court said the fact that the magazine was "commercial as opposed to non-profit tends to weigh against" a finding of proper "fair use." In the New York case, Judge Irving R. Kaufman asserted that the Supreme Court was not trying to attach "heightened significance" to whether a book that borrows from another is commercial or not.

Maxtone-Graham said that her main complaint with Burtchaell's book was that it distorted the context of her interviews. The appeals court agreed that "Burtchaell's scholarship clearly leaves something to be desired," but said such errors don't by themselves negate the "fair use" right. Reported in: *Wall Street Journal*, October 16.

## free press

### Trenton, New Jersey

In two opinions issued October 21, the New Jersey Supreme Court expanded the ability of news organizations

to defend themselves against defamation suits. In one case, the court ruled 6-0 with an abstention that a private citizen must establish "actual malice" on the part of a newspaper to collect damages, a requirement that previously applied only to public figures. In the other case, the court, also by a 6-0 margin, extended the doctrine of "fair comment" to cover published facts as well as opinions.

The court said it realized it was going beyond protections offered newspapers by the U. S. Supreme Court, but said it looked to common law and to the free speech article of the New Jersey Constitution in doing so.

First Amendment attorney Floyd Abrams called the action "an important opinion by one of the country's most influential state supreme courts . . . It's another signpost that the state supreme courts may prove the ultimate protector of constitutional guarantees of free speech."

In one opinion, the court overturned two lower court rulings and threw out a \$1 million award won by a businessman against *The Courier News*, which admitted it had published erroneous information about him, but did so without "malice." In the other case, the court upheld a lower court opinion that rejected a suit brought by Krauszer Food Stores against the Sentinel Publishing Company. Reported in: *New York Times*, October 22.

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## Texas drops health text

One of the most widely used health education textbooks in the nation was tentatively rejected by the Texas Board of Education November 6 because the book contained only minimal information on human reproduction. Board members, agreeing with textbook critics who contended that sex education cannot be ignored in Texas high schools, voted 7-3 to reject the purchase of *Modern Health*, published by Holt, Rinehart & Winston.

The book was among five health texts recommended by the State Textbook Committee. *Modern Health* was the only one of five that did not include information on reproduction. Textbook committee members said they wanted to provide at least one book for school districts that do not wish to offer their students sex education.

But that rationale, school board vice chair Rebecca Canning asserted, is flawed in today's society, especially in Texas, which ranks near the top of all states in teenage pregnancies. "There are four good textbooks here and one that concedes to public opinion. We cannot concede to public opinion," she said "This is a textbook that is seriously inadequate." Reported in: *Dallas Morning News*, November 7.

(censorship dateline . . . from page 16)

conform to the values of the religious public," Azriel Ziv, a representative of the ministry, said. Singer, who lives in New York, won the Nobel Prize for literature in 1978. Many of his works, including *Sosha* and *Satan in Goray*, deal with Jewish life in Poland before World War II.

"We represent a public that has values of its own," Ziv said. "We are constantly choosing books that are appropriate for this public. This is our lawful right, similar to the right to appoint suitable teachers for religious schools." Other works that were barred from religious schools included *One Hundred Years of Solitude*, by Gabriel Garcia Marquez, also a Nobel Prize winner, and Vladimir Nabokov's *Lolita*. Reported in: *New York Times*, November 8.

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(religious intolerance . . . from page 8)

nation and they don't want to be a Christian, then there are many other countries that are not Christian." . . .

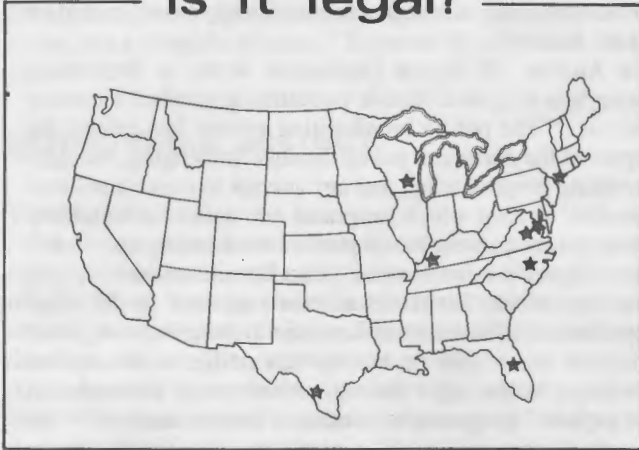
Another new dimension to the Religious Right's activities is the introduction of deceit into the political process. The Iowa flyer, "How to Participate in a Political Party," said, "The activities of the church must not become public knowledge. There are those who seek to undermine our work." The flyer advised activists to "keep your positions on issues to yourself," and, citing the Gospel of John, the flyer continued, "Jesus didn't overwhelm even his disciples with truth."

Similarly, activists are urged to "give the impression that you are there to work for the party, not to push an ideology. . . . Try not to let on that a close group of friends are becoming active in the party together. . . . Hide your strength. . . ."

A flyer distributed anonymously in Republican caucuses in Minnesota said, "Experience has shown that it is best not to say you are entering politics because of Christian beliefs on life issues. It is better to say you favor the Republican Platform (it is pro-life) and support President Reagan. . . ."

Finally, there have been some examples of old-fashioned religious bigotry. In the Republican primary in the 21st District in Texas, Van Archer said he "would think" that the religion of his opponent, Lamar Smith, a Christian Scientist, would be an issue. Archer said that if Smith were elected and had to vote on matters involving health care, he would have to choose between being a good congressman and a good Christian Scientist. Christian Scientists believe that prayer and understanding will cure sickness and avoid medical treatment for themselves, but do not impose their views on others. . . . Smith, who was endorsed by the American Medical Association, said, "Attacking an individual's religion is an attack on one of our most basic institutions—freedom of religion. It has no place in American society." (Smith won the nomination) . . . .

## is it legal?



### libraries

#### Madison, Wisconsin

Computerized catalog records are public records, according to a Wisconsin attorney general's opinion received August 20 by the state Department of Public Instruction. The opinion also said that a compilation of the Wisconsin holdings of bibliographic records on computer tapes purchased from the Online Computer Library Center (OCLC) is a public record. The attorney general said it would be inconsistent with Wisconsin's public records law for a state agency to enter into a contract under which it agreed not to provide such computer tapes to persons requesting copies under the public records law.

Although copyrighted materials are exempt from the public records law, the attorney general concluded that no copyright protection exists for OCLC's compilation of records.

The department requested the opinion when OCLC copyrighted the compilation of individual records created by its member libraries and began to renegotiate contracts with its members that restricted the transfer of records in the data base to nonmember libraries. In 1982, the department's Division of Library Services received permission from all 95 Wisconsin OCLC members to use their OCLC tapes of bibliographic records to create a statewide data base called the Wisconsin Catalog (WISCAT). Wisconsin libraries, including non-OCLC members, then added their holdings to WISCAT. Once a library added its holding to the data base, it could extract a complete bibliographic record and use the record for other automation projects.

The statewide data base project allowed small public libraries and schools, which cannot afford OCLC membership, to be equal partners in resource sharing and to create affordable local holdings records. If left unchallenged, OCLC's copyright of its data base, and the restrictions on the use of records proposed in its new contract language, jeopardized the future of WISCAT.

Leslyn M. Shires, assistant state superintendent, Division for Library Services, said that as a result of the opinion, the DLS will not enter into a contract with OCLC which does not comply with the Wisconsin public records law.

State Superintendent Herbert J. Grover said he was gratified with the attorney general's opinion, because "complete and equal access to information in all formats is imperative for an informed and democratic society." Reported in: *Channel DLS*, September 1986.

### schools

#### Washington D.C.

A House committee report released in late October charged that the federal Department of Education has censored the publication of many research and classroom materials. The report contended that the department had tried to cover up the censorship by maintaining it was merely trying to trim federal spending when it refused to finance printing of certain documents.

The House Committee on Government Operations concluded that the department had wrongly refused to publish some materials that contained messages contrary to the Reagan administration's policies and had wasted public funds by using a too-cumbersome review process. The report was released after the conclusion of a year-long investigation prompted by charges raised by educators that the department's system of reviewing materials for publication was too complicated and unduly influenced by politics.

The report charged that certain programs not favored by administration officials, such as those authorized under the Women's Educational Equity Act, have been treated particularly unfairly. The report said some researchers at federally supported education-research units had to wait as long as nine months to get their publications approved. The report said the delays had a "chilling effect" on scholars and led many of them to find ways to circumvent the process.

Education Department officials dismissed the charges. "All we've done is look for dollars that can be saved," said Bruce M. Carnes, Deputy Under Secretary for Planning, Budget and Evaluation. "The House committee had an agenda in mind when it started this investigation, and it's clear they found what they wanted to find." Reported in: *Chronicle of Higher Education*, October 29.



## Laredo, Texas

A pupil's inability to pay \$14.95 for a lost textbook has prompted a lawsuit challenging the constitutionality of a Texas law prohibiting students from obtaining free textbooks if they have not paid fees for unreturned books. The suit was filed in federal court September 17.

The class action was filed by attorneys from Texas Rural Legal Aid on behalf of Rosario Reyna, as next friend of Roberto Reyna, a seventh grader at Cigarroa Middle School. The suit seeks to have declared unconstitutional the section of the Texas Education Code which states that "each pupil or his parent or guardian, shall be responsible to the teacher for all books not returned by the pupil and any pupil failing to return all books shall forfeit his rights to free textbooks until the books previously issued but not returned are paid for by the parent or guardian."

Because his family is unable to pay for the lost book issued to him last year, Roberto Reyna was not issued textbooks for the current school year. The suit charges that by failing to provide the student with textbooks, the school denied his right to an "unabridged public education." Such action, the TRLA says, constitutes "arbitrary, capricious, unreasonable and excessive harsh punishment." Reported in: *Laredo Morning Times*, September 18.

## public TV

### Washington, D.C.

Rep. Don Ritter (Rep.-Pennsylvania) thinks that a significant number of public television documentaries display a left-wing bias that violates federal law and threatens to turn the broadcast system into a forum for liberal propaganda. In the waning hours of the 99th Congress, Ritter introduced a bill to require the Corporation for Public Broadcasting (CPB) to perform an ongoing content analysis of CPB-funded programs to determine whether it is meeting federal requirements of objectivity and balance.

Early last spring, CPB board member Richard Brookhiser, a former senior editor at the conservative *National Review*, proposed a two-year \$180,000 study of PBS programming by Washington-based social scientists Robert and Linda Lichter. The Lichters published a book, *Media Elite*, which contends that the American media are an elitist group, more liberal and more secular than the American population.

Brookhiser's proposal raised "a little bit of a red flag" on Capitol Hill, according to Rozanne Weissman, vice president of corporate communications for CPB. Rep. John Dingell (Dem.-Michigan), chair of the House committee which oversees public broadcasting, asked the board for more information. "The CPB is supposed to be a shield against outside interference. There was some concern that this was an attempt to gain evidence for a campaign to eliminate some programming and to highlight other programming," a

Dingell staff member recalled. In July, Brookhiser announced that his proposal, although temporarily approved, would be put on hold.

In August, 19 House Democrats wrote to Brookhiser urging him to ignore outside pressures to conduct a content analysis. "The public broadcasting system has gained the respect of the American public through challenging, thought-provoking programming, and any attempt to create a political 'baseline' against which programs are tested for suitability would betray the mission of public broadcasting and undermine respect for the system," the Democrats wrote.

In September, Ritter, in a letter endorsed by 52 other Republicans, used identical language to describe how public television was conceived, but reached a different conclusion. The Republicans urged Brookhiser to "move forward with and expand" proposals to conduct a content analysis. "An objective, peer-reviewed, content analysis could help to determine whether PBS or CPB programming policies have effectively created a forum for propaganda for one side or another of the political spectrum."

On October 17, Ritter introduced a bill mandating an ongoing systematic content analysis of CPB-funded documentaries. His action was interpreted within the public broadcasting community as putting "clear and unmistakable" pressure on the board to move forward with a study.

It was not unexpected, then, when, on October 23, the CPB board announced it had sent out requests for proposals to conduct the study to eighty groups.

"I am a great fan of public television," Ritter said. But "in the arena of political documentaries—a fairly narrow arena—I've been a little disturbed by what I feel is a lack of adherence to 'objectivity and balance,' which is in every major piece of legislation which has evolved with respect to public television. It seems to me there is a significant amount of programming which portrays a point of view that's decidedly left of center."

Ritter noted the difficulty in winning PBS approval of a documentary on the Ukrainian famine of 1933, "Harvest of Despair." He also criticized the controversial series "The Africans." "It blames all of Africa's problems on the West," he said.

"In no way are we seeking to exert congressional control over programming," Ritter said. "We are seeking to understand where programming stands with respect to the law. PBS officials have expressed opposition to a content analysis. If they were adhering to the law, why should they be opposed?"

PBS president Bruce Christensen said CPB's request for proposals to conduct the study could have a "chilling effect" on public television news and public affairs programming. "Television, and public TV in particular, has long been the target of concerted attacks by ideologues who seek to limit the broadcast of views at odds with their own," he said. "These attacks have led CPB board members, members of Congress, and others to urge that public television submit

to an uncertain research methodology for dubious ends. Determination of political bias is an inherently subjective exercise, not a scientific process." Reported in: *Allentown Call*, October 29.

## government secrecy

### Washington, D.C.

The Reagan administration issued new guidelines to federal agencies October 26 restricting the release of a broad range of government data that are unclassified but considered "sensitive." According to a Defense Department official, the new directive did not give agencies new authority to restrict documents but "just provides guidance for federal agencies as to what is considered sensitive information even though it is not classified."

The new measures are being carried out under National Security Decision Directive 145 of September, 1984, a presidential order that created a top-level interdepartmental group to explore ways to better protect government information. The directive granted to the heads of federal agencies authority to apply the new "sensitive" label as they choose. Information so designated could not be disseminated outside the government. This authority would resemble the powers that the departments of state and defense now have to classify data and documents, but would not require extensive physical security measures that now must be used with classified material.

The guidelines describe "sensitive" national security material as "those unclassified matters that are related to the national defense or foreign relations of the U.S. government," including "a wide range of government or government derived" arenas from economics to technology to industry to finance to agriculture. Reported in: *Washington Post*, November 13; *New York Times*, November 14.

### Washington, D.C.

The Defense Department is studying ways to limit access to a variety of unclassified computerized government and commercial data banks in an effort to make it difficult for the Soviet bloc to gather such information. Some of the data banks contain items ranging from news articles to highly technical scientific research papers.

One Pentagon official said the study was focusing initially on the Defense Technical Information Center and the National Technical Information Service. But executives with private electronic data banks say they have been approached by officials from the Pentagon, CIA, and FBI asking how controls might be placed on subscribers to their systems.

"They were all asking questions about whether we can deny access," said Jack W. Simpson, president of Mead Data Central, Inc., a major commercial operator of computerized data banks such as Nexis, which catalogues news articles from a variety of publications.

"We don't believe they have a right to put a muzzle on us, and we don't believe these are the right folks to make such decisions," he said. "They are apparently suggesting monitors and controls on electronic distribution systems in the private sector to control information going to the Soviets."

The issue was raised November 11 at the convention of the Information Industry Association when Diane Fountaine, director for information systems in the office of Assistant Defense Secretary Donald C. Latham, said: "The question is not will there be restrictions or controls on the use of commercially available on-line data bases. The question is how will such restrictions or controls be applied."

Fountaine later said she was trying to inform the industry that "we are very serious about protecting information, including unclassified but sensitive information." She said the controls could take the form of screening of subscribers or assignment of passwords or special codes.

"The question is what you define in there as sensitive," Fountaine said. According to Simpson, the Defense Department has taken the position that "these various documents, although unclassified, can become classified when they're put in a computer and organized." Fountaine did not dispute that characterization. Reported in: *New York Times*, November 13.

### Winston-Salem, North Carolina

The United States Information Agency (USIA) distributes a Russian-language propaganda magazine called *Amerika* in the Soviet Union. In exchange, the Soviets distribute *Soviet Life* in the United States. However, by federal law, the USIA may not distribute copies of *Amerika* and similar publications it circulates abroad in the United States. The idea is that this would open the door to a state propaganda machine.

But what about Americans who want to judge how well and in what ways our government describes us to foreigners? Joe Felmet, a member of the War Resister's League in Winston-Salem, sued the USIA, asserting that denial of access to *Amerika* violates a right derivative of the First Amendment to receive information promulgated by the U.S. government and distributed to civilians of other nations. The USIA told Felmet that he may read the magazine only at the agency's Washington office, and even then he would not be allowed to take notes or make copies. Felmet thinks there are eighteen such propaganda publications distributed by the USIA. Reported in: *The Nonviolent Activist*, June 1986.

## FOIA

### Washington, D.C.

The revision of the Freedom of Information Act that President Reagan signed into law October 27 gives federal law

enforcement agencies new authority to withhold documents they believe might compromise current investigations. The Justice Department and the FBI have warned for years that the FOIA was being abused by organized crime and narcotics traffickers. Proposals for addressing the problem had been the subject of numerous hearings and bills, but last fall a bipartisan compromise resurrected the revisions, adding them to the \$1.7 billion anti-drug bill.

The revisions also include a new fee schedule that lowers the cost news organizations and non-profit groups bear in making requests for documents. But the cost of making requests under FOIA for "commercial use," a category that makes up a majority of the requests in some federal agencies, was increased.

In one of the key provisions, the new bill for the first time gave agencies the authority to refuse either to confirm or deny that certain records exist at all. Under the old law, agencies could withhold records only by citing specific exemptions from disclosure, such as release of the information would compromise investigative techniques or the identity of a confidential source. But in citing an exemption, the agency was in effect forced to confirm that particular records existed and, by extension, that a particular investigation was being conducted.

Under the new law, agencies may refuse requests, while neither denying nor confirming that any records exist, under particular circumstances. Those circumstances include records dealing with an informer that are requested by a third party, or records, where, if there is "reason to believe" that the subject of an investigation is unaware that he is being investigated, disclosure that such records exist "could reasonably be expected to interfere with enforcement proceedings." The law also permits the FBI to take this approach in responding to requests for classified information on foreign intelligence, counterintelligence, or international terrorism.

In most circumstances, agencies would still be able to resist disclosure only by citing one of the specific exemptions provided by the information act. But the new law rewords some exemptions to make it easier for agencies to justify withholding documents.

Under the act's new fee schedule, news organizations and noncommercial scientific or educational organizations can be charged only for the costs of duplication and not, as is sometimes the case under the old law, for the agency's cost in conducting the search. Those requesting records for commercial use may be charged for duplication, the search itself, and, for the first time, for the agency's cost of reviewing the documents and deciding which ones could be released. Reported in: *New York Times*, October 29.

## visas

### New York, N.Y.

The U.S. government October 16 refused to let a reporter for Colombia's leading newspaper stay in the United States because it was believed she might "engage in subversive activities" here. The journalist, Patricia Lara, a reporter for *El Tiempo*, was taken into custody when she arrived at Kennedy International Airport October 12. Immigration and Naturalization Service agents said her name appeared in the agency's "Lookout Book," which lists people who are not to be admitted. The State Department then revoked her visa.

Lara, who wrote a book profiling Colombian guerrilla leaders, flew to New York to attend an awards dinner at Columbia University, where she earned a Master's degree in journalism in 1980. During the awards ceremony, Columbia presidential Michael I. Sovern said Lara's case was "anathema to a free society."

Earlier, the Colombian government asked the State Department to release Lara into the personal custody of its ambassador. Colombia also offered to guarantee her departure. The request was denied. A representative of the Colombian embassy said Lara "is a respected journalist, and in Colombia, where we have free press, she has never been denied the right to write or the right to report."

The Immigration and Naturalization Service said no hearing was held on Lara's case and it refused to reveal the charges against her. "We can't be specific," a representative said. "It is based on information concerning her. It's of a confidential nature that we can't disclose." Reported in: *New York Times*, October 15, 17.

## church and state

### Richmond, Virginia

An attorney for a man whose use of a license tag "ATH-EST" was denied by the Department of Motor Vehicles told the Virginia Supreme Court November 14 that the decision was a violation of his client's constitutional freedoms of religion and speech.

Speaking on behalf of Arnold M. Via, a retired merchant seaman and "committed atheist" who lives in Grottoes, Virginia, attorney H. Watkins Ellerson told the three-judge panel that the DMV allowed Via to use the tag on his 1980 Cadillac for three years, but, after receiving anonymous complaints, "perhaps from people who were denied God or Jesus plates," in 1985 demanded that he surrender it. Via turned in the plate but sued the agency. Augusta County Circuit Court Judge Thomas H. Wood upheld the agency, saying the state cannot prevent Via "from holding and espousing any belief he may have concerning religion," but, in this instance, "Via seeks to use state property to express his beliefs."



Ellerson charged that DMV Commissioner Donald E. Williams acted on the basis of "his personal feeling that the plate was offensive." Ellerson told the court that the DMV invites motorists to buy the so-called vanity tags and to "express their opinions about what they like and don't like." He granted that the state had a right to regulate tags that are libelous, lewd, and obscene, but he said his client "seeks not to offend." He noted that tags had been issued for ZEUS, APOLLO, and MERCURY, apparently because the agency "does not define them as real deities," and others with religious content, including SAVED, PRAY, DEACON, CLERGY, XMAS, and RISEN.

Ellerson said Florida had issued an ATHEIST plate. Via chose ATH-EST because vanity plates were limited to six letters or numbers. The maximum has since been raised to seven. Reported in: *Washington Post*, November 15.

## privacy

### Washington, D.C.

President Reagan has signed the Electronic Communications Act of 1986, which brings new forms of telecommunications under the protections of the 1969 federal law on wiretapping. Reagan was expected to also sign the Computer Fraud and Abuse Act, which makes it a crime to access a computer system from across state lines for a fraudulent purpose.

The communications act amends the federal wiretap law to cover cellular telephones, electronic mail, papers, and electronic data transmissions. The law makes interception of such communications by a private party or the government a crime, and requires the government to secure a court order before intercepting such communications. Passage of the bill in the closing weeks of the 99th Congress culminated two years of cooperation between industry representatives and the ACLU, with support from the American Bar Association. After initial opposition, the Justice Department joined the coalition. Exempted from the new law's coverage are the radio portion of a cordless phone call, paging devices with no message (only a tone), ham radio, mobile and airline radios, and other radio transmissions "readily accessible to the general public."

The computer crime bill also plugs a loophole, this one in a 1984 federal law protecting only computers operated by the federal government, by banks, and by credit reporting companies. The 1986 law extends protection to all systems and punishes "hackers" who traffic in computer passwords belonging to others. Reported in: *Privacy Journal*, October 1986.

etc.

### Washington, D.C.

A U.S. Senate committee concluded that laws already in place are sufficient to combat child pornography and that no further legislation is needed. On the final day of the 99th Congress, however, the Senate voted final passage of a bill that would make illegal any advertising connected with child pornography. The report also suggested that, despite First Amendment problems, there may be a need for legislation to halt the distribution of child pornography information by computer.

After a year-long study of the problem, the Governmental Affairs Committee's Investigations Subcommittee concluded, "We see no need for major revisions in the 1984 law at this time." The report said the 1984 Child Protection Act "has been highly successful, leading to a substantial increase in federal prosecutions and the placing of higher priorities on such investigations." The 1984 law states that material does not have to be first judged obscene to be seized.

Ironically, the Senate report said that the seriousness of the child pornography problem that led to passage of the Child Protection Act was overstated at the time. It said the commercial child pornography industry amounted only to about \$5 million, far less than earlier estimates. Reported in: *Publishers Weekly*, November 14.

### Orlando, Florida

Christian fundamentalists seeking to drive rock 'n' roll shows out of Orange County, Florida, proposed an ordinance in September to prohibit shows that they define as "obscene to children" and to bar attendance by minors without a parent.

As defined in the ordinance proposed by the group headed by radio evangelist George Crossley, obscenity could include "a description or explicit reference" to anal sex, sex with animals, sadistic, masochistic or violent sexual relationships, sexual relations with a child or corpse, exhibition of the genitals, rape or incest, or "a vulgar, profane or indecent reference to sexual intercourse, excretory functions of the body or male or female genitals."

Under the proposal, it would be a misdemeanor for anyone involved in a performance to use such references if they know an unaccompanied child is in the audience. The ordinance would require shows to be taped so the county could prosecute if a show is obscene. The ordinance would also require a notice in advertising to warn parents that the performance could be obscene.

Crossley cited Metallica, the Plasmatics, Raven and Kiss as examples of bands that would be affected by the proposed ordinance. None of those bands have ever appeared at the Orange County Convention and Civic Center.

Crossley, a former disc jockey, objected when singer Ozzy

Osbourne appeared at the center last summer. He said Osbourne has invited young people at concerts to "come forward and take Satan by the hand." Other heavy metal groups also have an "anti-Christian and anti-biblical" message, he said. The county got nearly five hundred calls from people seeking cancellation of the Osbourne show, which was picketed by several church groups.

Several county commissioners said that censorship of material is an area they would like to avoid, but that limiting the age of those who can attend concerts without a parent is appropriate. Reported in: *Orlando Sentinel*, September 19.

### **Glasgow, Kentucky**

Faced with the probability of a court challenge, the Glasgow City Council has repealed an ordinance restricting the use of roadblocks to distribute literature. But the council replaced the provision with a measure that bans roadblocks altogether. "I think the civil liberties union will have as many concerns with the new ordinance as it did with the old one," said Sara Pratt of Louisville, chair of the Kentucky chapter of the ACLU.

Roadblocks are a popular fundraising vehicle for many community organizations in Kentucky. Bucket-carrying members position themselves at busy intersections and solicit donations from drivers stopped at traffic lights. Last May, citing concern about public safety, the Glasgow council passed an ordinance limiting individuals or organizations to one roadblock a year and requiring that it be for a charitable purpose. Groups were also required to obtain a roadblock permit from police at least seven days in advance and to list the names and addresses of all participants.

The provision was approved just three weeks after members of the Ku Klux Klan had sponsored a roadblock in Glasgow and four days before they planned another. The ACLU chapter's board of directors voted September 10 to challenge the ordinance on behalf of Donald W. Ater, a Louisvillian who is Kentucky grand dragon of the Invisible Empire of the Knights of the Ku Klux Klan. Ater contended the measure was aimed at keeping the Klan out of Glasgow. He was arrested May 11 for holding a roadblock without a permit and fined \$50.

The new measure prohibits any attempt by citizens or organizations to stop traffic to solicit money or distribute literature. Mayor Charles B. Honeycutt said he hoped the new ordinance would keep the council out of court. "We don't have the resources to go into litigation with somebody like the American Civil Liberties Union," he said. Reported in: *Louisville Times*, September 24.

## **two more confidentiality laws**

Two more states have joined the honor roll of states which have enacted statutes protecting the confidentiality of library circulation records. In 1984, Kansas added the following statement to its state legal code: "Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose . . . library patron and circulation records which pertain to identifiable individuals." Kansas, belatedly, becomes the 33rd state we can identify with a confidentiality law.

On June 19, 1986, Missouri House Bill 1372, "Confidentiality of Library Patron Records," passed. It reads: "Notwithstanding the provisions of any other law to the contrary, no library or employee or agent of a library shall be required to release or disclose a library record or portion of a library record to any person or persons except: (1) In response to a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library; or (2) In response to an order issued by a court of competent jurisdiction upon a finding that the disclosure of such record is necessary to protect the public safety or to prosecute a crime."

Missouri thus became number 34 in the roll call of states passing legislation protecting the privacy of circulation records. The following states do *not* have statutory protection for library circulation records: Arkansas, Georgia, Hawaii, Idaho, Kentucky, Mississippi, Montana, New Hampshire, New Mexico, Ohio, Tennessee, Texas, Utah, Vermont, West Virginia, and Wyoming. Reported in: *OIF Memorandum*, October, 1986.

## **mailbag**

To the Editor:

Your readers are invited to participate in a national media research project by nominating one of the "Ten Best Censored Stories of 1986." They can help the public learn more about what is happening in its society by nominating stories they feel should have received more coverage in the major news media.

The issue should be current and of national or international importance. It may have received no media coverage at all, appeared in the back pages of a newspaper, or in a small circulation magazine. The deadline for nominations for the 11th annual effort of *Project Censored* is March 1, 1987.

To nominate a "censored" story of 1986, readers should send a copy of the story, or information about it, including the source and date, to Dr. Carl Jensen, Project Censored, Sonoma State University, Rohnert Park, California 94928.

Sincerely,  
Carl Jensen  
Sonoma State University

## success stories



### libraries

#### Hayward, California

Although several commissioners said they found the sex education book *Show Me!* objectionable and would not show it to their children, the Alameda County Library Commission voted 10-1 October 1 to keep the book and *Playboy* magazine on library shelves and to continue the county's "open access" policy regardless of age. About 40 anti-pornography and free speech activists attended the meeting, which was otherwise basically a repeat of one held in February where hundreds of demonstrators rallied for or against *Show Me!*, the opponents calling it child pornography (see *Newsletter*, May 1986, p. 97).

"Until we have complaints from the county, state or federal District Attorney we believe we are obeying the law keeping this book on the shelf," said commissioner Dr. J. Henry Kruse.

*Show Me!*, which is no longer in print, has been on county library shelves for eleven years, said County Librarian Ginnie Cooper. But only one copy of the book remains in the system's thirteen branches. At the time of the meeting there was a waiting list of thirty people to use it.

Although the library has defended its open access policy with respect to *Show Me!*, in June, Cooper decided to put *Playboy* on restricted access at three county branches. "It was a difficult decision," she said, "but it was made partly in response to concerns raised about access to the magazine." Cooper said *Playboy*, now kept behind the counter, is the only restricted item in the system, which contains about

800,000 books and periodicals. No one under the age of 16 can check out the magazine without parental permission.

At the commission meeting, Joanne Stansberry of Concerned Women for America asked that *Playboy* be banned entirely from the library system. Reported in: *Hayward Review*, October 3.

#### Jefferson County, Colorado

A sixth-grade teacher withdrew her request to ban a book from Jefferson County school libraries October 31, charging that extensive and unexpected media coverage "made it impossible for me to pursue the challenge process." Susan Cameron, a teacher at Maple Grove Elementary School in Golden, said she withdrew her request to have *The Fragile Flag*, by Jane Langton, removed because media coverage would interfere with her ability to effectively work with students.

Despite the withdrawal, however, Cameron reiterated her concern that the book portrays the U.S. government as "shallow" and "manipulative," and "lacking in intelligence and responsibility." The book is a fictional account of a 9-year-old who, after writing letters and organizing a march on Washington, persuades a fictional president to pursue world peace. Cameron charged that the book "does nothing to promote children's respect for adults in authority." She added that the story "amounts to thinly disguised anti-nuclear weapons propaganda at best, designed to appeal to boys and girls who won't find much in their school libraries to balance this view."

"I believe my concerns are well-founded," Cameron said. She also praised district administrators for giving assistance and encouragement. "I am saddened that it seemed to be so newsworthy that a teacher would desire to express concern for children and their reading materials."

The challenge to *The Fragile Flag* would have been the sixth in 1986 in the Jefferson County School District. Four books challenged for encouraging satanism received district approval in May (see *Newsletter*, May 1986, p. 82; September 1986, p. 173; November 1986, p. 224), and a challenge from a Littleton parent to the book *Unicorns in the Rain* was still pending (see page 10). Reported in: *Rocky Mountain News*, October 30, November 1; *Denver Post*, October 30, November 1.

#### Gainesville, Georgia

After three months of debating the issue, the Chestatee Regional Library board voted September 23 to remove books on controversial subjects from restricted access rooms in the Gainesville public library. The books will go back on the shelves in three phases: first, all adult-oriented books will be put in general circulation immediately. Second, books intended for children will be put on reserve for sixty days. Third, those books then will go back on the shelves as well.

The procedure came as a recommendation from a board



committee appointed in July to study the problem (see *Newsletter*, November 1986, p. 207). "We, I think, realized that we were bordering on placing ourselves in the position of censorship," said Dr. Ed Cook, chair of the committee. "We want the books on reserve so they are available for parents to examine them and be familiar with them. Then these books should be returned to their proper place in the collection."

About forty books, on topics ranging from sexual behavior to hypnosis to drug abuse, had been kept in librarians' offices—only at the Gainesville library—as part of an unwritten policy dating back to the 1950s.

The decision met with approval from representatives of the National Organization for Women, which first brought the restricted rooms to light. "I'm real happy with it," said Marta Shelton, president of NOW's northeast Georgia chapter. "I feel the censorship issue has been resolved."

Several board members said their own positions had changed during discussion of the issue. "I'm a father who has come full cycle in this," said Tony Colins. "At first I was worried about these books getting into the wrong hands. . . . But as my boys grow, I'm finding out that I can't keep everything bad from them. But if they can come to this library or the one in Gainesville, and get this information, maybe we'll help a lot more than we think we might have hurt them."

When one board member said that some of the books "should only be used with parental guidance," board member Virginia Simpson replied that "parental guidance should go with all reading. Unfortunately, we cannot legislate that." Reported in: *Gainesville Times*, September 24.

#### **Hammond, Indiana**

*A Kid's First Book About Sex*, by Joani Blank, a sexually explicit educational book for preteens, will remain on the shelf at the Hammond Public Library, despite vigorous objections raised to an earlier library board ruling at two public meetings November 18.

"We think the library should have the book, even though it contains the kind of information many people won't want to share with children. But we shouldn't deny access to those children whose parents do not share sexual information with them," Library Director Arthur S. Meyers told one meeting. "Children are human. They want to find out about their bodies and their feelings, too. If they do not get the information from a factual source, they'll find it somewhere and possibly be misinformed," he said.

The Rev. Billy Williams, pastor of the Praise Fellowship Church, was among those objecting to the book. "If it comes down to it, I'd like to see the book banned," he said. "The book promotes immorality and promiscuity. It promotes no moral values whatsoever."

Hobart School Superintendent Raymond Golarz, who is also president of the Indiana chapter of the National Com-

mittee for the Prevention of Child Abuse, said he believed the book should be restricted so children could not read it by themselves. "I have real concerns about this book from a child abuse and sexual abuse viewpoint," he said.

The controversy began when Marijeanne Fischer and Joan Percak found the book in the open stacks in the library's children's section. They asked the library board to place the book in the adult section. About 75 people turned out November 6 as the board held a special meeting on the issue. The crowd seemed about evenly divided between those favoring and those opposed to restricted access. After nearly three hours of debate, the board voted unanimously to endorse a proposal by Meyers to reshelve the book in a special "parenting" section in the children's department where children may still read it and check it out without adult intervention.

Board President Richard Spisak called the decision "soul wrenching," and said he knew it wouldn't satisfy the women who complained. "We are here to answer the needs of all the people in the community," he said. "It is not for us to judge whether a book is good or bad. Parents must come into the library and make sure your children select the books you want."

"My feelings about the book are not the issue here," added board member Barbara Linos. "As a library trustee, my obligation is to support the *Library Bill of Rights*, which says that all points of view must be represented."

Fischer and Percak said that in order to protect children they would not return the two copies of the book which they had checked out. In addition, Percak said she also objected to a second, unnamed title, and would regularly check library shelves for other objectionable works.

Library Director Meyers said the decision to keep unrestricted access is final, but noted that "this controversy is only the beginning. There is a concern that this is just the start of a national trend to remove books that some people find offensive." Meyers said the two remaining copies of the book had been temporarily withdrawn from circulation "so they don't become lost, too. When the controversy quiets down, they will be back on the shelf. We hope the overdue books are returned. The library is obligated to present all sides of an issue," he concluded. Reported in: *Gary Post-Tribune*, November 7, 18, 19; *Hammond Times*, October 16, 17, 24, November 7.

#### **Elmira, New York**

The controversial sex education book *Show Me!* will remain on the shelves of Steele Memorial Library in Elmira. During its monthly board of trustees meeting October 20, officials heard comments regarding the library's materials selection policy, but declined to vote on a proposal to remove the book. "I've heard nothing here that would warrant further discussion on the subject," board president W. Jackson Woodin, Jr., said after the comments ended.

The book had been challenged the previous week by Darold Champaign of Wellsburg, who implored the Chemung County Legislature to remove it. Champaign said *Show Me!*, by Helga Fleischauer-Hardt with photographs by Will McBride, promotes masturbation, sex between young people, and incest. "In one picture the mother is standing there naked and the young boy with an erection is touching her breast," he said. "That's incest as far as I'm concerned, and I don't think it has any place in the library."

Champaign did not attend the library board meeting, but two other opponents of the book, Burton and Nancy Graham, voiced their disapproval. "I've gone on public record for being against censorship," Mrs. Graham said, "but I strongly believe it's not right in a cultural (sic), civilized society to show photographs of sexual actions. It's just not necessary."

"I don't believe that a man and woman who have children need photographs of sexual activity to teach sexuality to their children," her husband added. He said the county was undergoing a moral decline that he compared to that of the Roman Empire.

Cynthia LaPier, a librarian at the Schuyler-Chemung-Tioga Board of Cooperative Educational Services, defended the book. "The mission of the library is to provide access to all different kinds of information to help make decisions," she said. "And we have to be very careful not to let the library become a place of censorship."

According to Woodin, the book had already been reviewed by a library committee after a previous complaint. He said the board of trustees had supported the committee's recommendation that *Show Me!* remain in the library. "There are always going to be, and probably should be, things on the shelves of a good library that people would find offensive," Woodin said. "If they want to read it they can read it, and if they don't want to read it they don't have to."

The library's Material Selection Policy, adopted in March, 1985, states: "General books on sex which are well-balanced, authoritative, current and scientifically accurate are purchased; however, technical books may not be within the Library's scope. Materials should be obtained which reflect several levels of educational background and representative of differing social and religious beliefs." Reported in: *Elmira Star-Gazette*, October 12, 21.

#### Charlotte, North Carolina

An article in the September/October newsletter of the Concerned Charlotteans anti-pornography group called on members to complain to the public library system about *Naomi in the Middle*, by Norma Klein, a book about a girl who is upset because her mother is pregnant. "The book is a perfect picture of secular humanism," the newsletter said.

Library director Bob Cannon said he received five complaints about the book. He said the complaints concerned three passages. One, he said, was "frank sex talk," the

second says people who hit children should be jailed, and the third quotes a grandmother's disbelief in God.

Cannon said the book was reviewed but not withdrawn. "Our main principle here is that . . . it's up to parents to have the freedom to control their own kids' reading," he said. "And we don't have the right to take that right away from parents." Reported in: *Charlotte Observer*, November 1.

#### Spokane, Washington

Saying they won't "knuckle under" to a carefully organized protest, Spokane Public Library officials announced October 10 that they would not remove *Playboy* magazine from the library's periodical shelves. "We felt strongly in all we believe in about the library that no one has the right to make the choice for someone else," said Toni Savalli, collection development coordinator.

"While we can respect the views of the complainants about the magazine, and respect their right to those views, I have to allow it to stay in the collection," added Nancy White, the library's assistant director.

The decision came in response to a group of protesters who picketed the library in May, calling *Playboy* pornography and demanding its removal from shelves where it may be seen by children. The library received more than 300 written complaints from people who said the magazine demeans women, encourages child pornography and is generally offensive.

A library committee reviewed the complaints and, in a lengthy written report concluded that the magazine is not legally obscene. Savalli said that while *Playboy* may be offensive and demeaning to some people, it is a valuable research tool and has nothing to do with child pornography. The decision can be appealed to the library director and the library board.

Savalli said the written complaints were "obviously managed" by a small group of protesters. Most of the complaints were photocopied from the same complaint form, and many contained the same text. One church mailed in 74 complaints, she said. About half the complainants did not have library cards, many lived outside the county, and some objected to additional adult magazines not even carried by the library. Reported in: *Spokane Chronicle*, October 10.

#### Muskego, Wisconsin

A parent's attempt to ban an award-winning children's novel from libraries in Muskego elementary school failed November 17. In a 6-1 vote, the Muskego School Board upheld a library committee's recommendation to keep author Judy Blume's novel *Blubber* on the shelves.

Linda S. Cefalu said she objected to the story about an overweight girl ridiculed by her classmates because the characters curse and the leader of the taunting is never punished for her cruelty. "The things they did to that little

girl were terrible," Cefalu said. "She was forced to recite, 'I am blubber the smelly whale of class 206,' before she could use the bathroom or get a drink of water."

In her original complaint to Principal Thomas Brown of Lakeview Elementary School, Cefalu said: "I am appalled that an adult would write such garbage in a book meant to be read by children. I am even more amazed that it is allowed in a grade school library."

After reviewing the book and the complaint, however, a review committee agreed the book realistically portrayed children and their world. Responding to Cefalu's complaints that the instigator of the ridicule is not punished, the committee wrote: "In real life, justice is not often carried out as we perceive it should be."

Cefalu, who collected 100 signatures from parents who objected to the book, said she was not satisfied and appealed to the board. "Fourth graders do not have the knowledge to know the moral of the story. All of the swearing in the book is underlined and they laugh about it," she said.

But school board members agreed with the committee, declaring that it is the parents' responsibility to monitor their child's reading. "You have the choice whether your daughter should read this book or not," said board member Linda Balint. "You don't have the right to deny my child the right to read it." Reported in: *Milwaukee Journal*, November 18.

## **schools**

### **Gwinnett County, Georgia**

In the latest episode in an ongoing battle over school library censorship, the Gwinnett County Board of Education voted September 30 to keep the book *Go Ask Alice* in the schools. The decision affirmed an earlier ruling by a Gwinnett High School media committee which rejected a request for removal made by parent Judi Hoover. Hoover had been supported by local activist Theresa Wilson, who in 1985 convinced the board to remove the novel *Deenie*, by Judy Blume, from school libraries (see *Newsletter*, November 1985, p. 193; January 1986, p. 8; March 1986, p. 57; July 1986, pp. 117, 135; September 1986, p. 151).

While parents from both sides complained that language in the book -- the diary of a teenage drug user who committed suicide -- was "shocking," there was debate over whether the book would promote or discourage experimentation with sex and drugs.

"Really, the book is filth. I don't see any justification for it," complained parent Mark Rush. "It titillates, it glorifies and does very little else but takes up room in the library for a good book."

But George Wilson, leader of the Free Speech movement of Gwinnett, which formed after the *Deenie* dispute, said, "We believe the use of profanity should not automatically disqualify some material. Providing access to ideas is not the same as advocating those ideas." Reported in: *Atlanta Constitution*, October 1.

### **Indianapolis, Indiana**

A book that presents the seventh-century epic poem *Beowulf* from the viewpoint of the monster he defeated has some Indianapolis parents enraged. Parents Against Vulgarity at North Central High School (PAVNoC) has fought for a year against use of *Grendel*, by the late John Gardner, in accelerated English classes. In August, the group distributed a flyer urging parents not to enroll their children in the classes using the book.

Earlier, the parents had submitted a formal complaint and *Grendel* was reviewed by a committee appointed by a principal. The committee rejected their request. Then, after district review policies were amended, PAVNoC submitted its call for removal to a second committee. The new body included two members of the group but they were outvoted 9-2 by faculty and other parents. A PAVNoC request that the school board publish all reading lists in advance in a regular bulletin to parents was also rejected.

"We would not support a censorship effort," said Norman R. Turchan, associate superintendent for elementary education. "Academic freedom requires we look at the value of a book. Our teachers point out that *Grendel* is written from the point of view of a monster. It presents the view that people can make decisions about their lives" and are not animals bound by nature. "The literature we choose does represent the world as it is, or was, at some time," Turchan continued. "I think [PAVNoC] is asking that literature only show one part of the world. That's not learning or scholarship." Reported in: *Indianapolis Star*, September 22.

### **Carthage, North Carolina**

A woman who objected to John Steinbeck's prize-winning novel, *The Grapes of Wrath*, on the grounds that it took the Lord's name in vain withdrew her request that the book be removed from Moore County schools' required reading list. Marie Mofield had requested on August 5 that the book not be used in the county public schools after her child was assigned it in an eleventh-grade English class at Pincrest High School (see *Newsletter*, November 1986, p. 210). Her written request had cited verses from the Bible to support her action.

Mofield left a meeting with a school review committee September 18 after twenty minutes, informing school officials that she would be satisfied if the book were removed from her own child's reading list. She also asked to be kept informed about materials her child would be assigned in the future.

Director of Public Information Brenda Phelps emphasized after the meeting that Mofield's actions were "based solely on her own decision. I feel Mrs. Mofield was courteous and gracious. We appreciated the way she handled the request for review. She was never critical of the administration. I believe the request was sincere and based on her own convictions. I was pleased she withdrew her request or challenge."

The incident received considerable press coverage and Phelps said that Mofield had been unfairly harassed by reporters. "She was just a sincere person with a request . . . The lady has chosen to be very private. We really tried to protect her. We did not reveal her name or the student's name until we were forced to by the media. Reported in: *Sanford Herald*, September 19.

## obscenity

### Plymouth, Massachusetts

A proposed ban on the sale of obscene materials in local stores was overwhelmingly defeated on a voice vote October 27 by Plymouth town meeting members. Marjorie Telford, head of the petition drive in favor of the ban, said, "I didn't expect it to lose that badly. I expected it to be close."

She said she was not sure what her next step would be, adding, "others are talking referendum. I'll see what people say in the community."

The proposal was aimed at halting the sale of adult magazines and videos within the town borders. It also would have applied to the distribution of photographs, writing, drawings, films, recordings, telephone transmissions, and other material judged obscene.

The town finance committee recommended against passage of the law, citing vague wording and enforcement problems. But a lawyer for Citizens for Decency Through Law argued otherwise. "You do have the right to set standards in your community and you do not jeopardize the First Amendment," attorney William Swindell said.

Peter Miller apparently reflected the wishes of the majority, however, when he said: "I do not want anyone telling me what to see, what to read, what to think. This is Plymouth, America's Hometown, and freedom is very important to us." Reported in: *Quincy Patriot-Ledger*, October 28.

(*'humanism' on trial . . . from page 6*)

a federal judge as well as others into a forum for fundamentalist Christians to complain about everything that is going on in the public schools that they don't like," he added.

George H. Mernick, an attorney for the parent-defendants, said the plaintiffs are wrong about what is contained in the textbooks and have overlooked supplementary materials used in classrooms. Also, the freedom of speech argument is faulty, he said.

"What they're arguing, from a legal standpoint, it doesn't matter if it's true or not. . . . You have no right to demand a certain issue be addressed in textbooks," Mernick said. "What the plaintiffs are trying to do is make the curriculum of the schools . . . conform to their religious agenda."

A central issue in the trial is whether secular humanism constitutes a religion and, therefore, should be excluded from schools under the doctrine of separation of church and state.

"Our claim," said attorney William Bradford, who defended the school board, "is that secular humanism is not a religion, and even if it were a religion, there is no evidence it is being espoused in these texts." Secular humanism, Bradford continued, "is nothing more than a convenient label to attach to opinions and facts that do not comport with the plaintiffs' religious world view."

The common legal definition of a religion specifies belief in a superior being, which would seem to be the very antithesis of secular humanism. The plaintiffs argue, however, that in the case of *Torcaso v. Watkins*, where the U.S. Supreme Court struck down a Maryland law requiring candidates for office to declare a belief in God, humanism was acknowledged as a religion with no God. In a footnote to that decision the high court said, "Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others."

Although final written arguments were to be filed in December, the testimony segment of the trial focused on the conflicting views of expert witnesses. Judge Hand said the main issue was to define humanism, determine if it is a religion and if it is being taught in the schools. He even called his own witness to the stand at one point.

More than thirty witnesses—authors, educators, and philosophers from universities across the country—disagreed at length about whether humanism is a philosophy or a religion. Some witnesses provided twenty-minute discourses in answer to single questions and had to stop and spell words and Latin terms for court reporters. It was generally agreed that humanism is an "ism" with belief in the superiority of man and no God or deity, but accord stopped there.

Many witnesses, including State School Superintendent Wayne Teague and board vice chair John M. Tyson, Jr.,



agreed that history and social studies texts tend to overlook religion and avoid controversial subjects. Indeed, earlier in the year, a People for the American Way study reached the same general conclusion (see *Newsletter*, September 1986, p. 196). "We agree that religion has been given short shrift in history books, but lousy books don't violate the Constitution," Anthony Podesta told reporters. "Bad history is not a constitutional violation," echoed attorney Bradford.

If, as seems likely, Judge Hand rules for the plaintiffs—a decision was expected early in 1987—the defense said it would appeal, counting on the not unlikely prospect that he would again be overturned. Yet during the eighteen months or more that an appeal might take, Alabama school officials fear the fundamentalists could get offending texts removed from classrooms or impose their own choices of teaching materials, thus breaking down the public school curriculum.

Despite the involvement of national groups like People for the American Way, the ACLU and Robertson's National Legal Foundation, the greatest impact of the case will be in Mobile, where even the Baptists are divided.

Corrine Howell, Mobile County Outstanding Teacher of the Year for 1985-86, is a member and former Sunday school teacher at Hillcrest Baptist Church. A third-grade teacher, she took the stand to defend the textbooks, saying she saw no hostility to religion in them. One of her fellow teachers at Elizabeth Fonde Elementary School, however, is Karen Phillips, a plaintiff who testified against the books.

Similarly, Patricia Jones, a school teacher who testified that one of the targeted home economics textbooks is the best on the market, attends Cottage Hill Baptist Church. The Rev. Fred Wolfe, pastor of that 8,000 member congregation appeared as a plaintiff witness, charging that humanism gets preferential treatment in the textbooks, and the church furnished many of the plaintiffs.

The only self-proclaimed "humanist" involved in the trial was Professor of Philosophy Paul Kurtz, of the State University of New York, Kurtz, a member of the small American Humanist Association, authored the 1973 Humanist Manifesto II, which is to the Christian right what a red flag is to a bull. Testifying for the defendants, he denied that the manifesto is a religious creed. "I had no idea it would have such an effect," he said. "I don't think secular humanism is being taught in the schools—that is, secular humanism as a specific, organized movement. I don't agree with all the textbooks, . . . but to want to censor is extremely disturbing."

Perhaps one of the most cogent assessments of the controversy was that of *Washington Post* columnist Charles Krauthammer, who wrote: "An undeniable secularism runs through these books. True. But an undeniable secularism runs through society. Schoolbooks have many faults, and giving religion short shrift may be one of them. How, then, to turn the issue into a crusade, a litigable crusade? Argue, in federal court, that these books violate the 'establishment of religion'

clause. Argue that their use constitutes a form of religious proselytization. What religion? Secular humanism. . . .

"What is so agitating the parents and pastors of Mobile is the increasing secularization of American life. This may be a regrettable development, but court is hardly the place to challenge it. That a federal court should spend weeks entertaining well-paid, chin-pulling experts expounding on the 'religion' of secular humanism is the *reductio ad absurdum* of the American tendency to litigate every grievance, no matter how fanciful." Reported in: *Birmingham News*, September 30, October 5, 8, 13, 16, 17, 19, 26; *Mobile Register*, October 15, 17, 19, 21, 22, 23, 24; *Montgomery Journal & Advertiser*, October 10, 15, 16, 17, 26; *New York Times*, October 6, 13; *Newsday*, October 12; *Newsweek*, October 27; *Time*, October 27; *Washington Post*, October 6, 10.

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## Banned Books Week—BANNED!

A window display of banned books was itself the object of censorship in Williamsburg, Virginia, last September. A "Banned Book Peep Show" displayed in the Scribner bookstore in conjunction with national Banned Books Week was ordered removed because the Colonial Williamsburg Foundation, the bookstore's landlord, said the display was inappropriate in the restored 18th century city. According to the store's lease the foundation controls the appearance of the store and to some extent what they sell.

The display attracted large crowds for three days in the front window of the store on Merchant Square, a block of brick shops adjacent to the restored area. The windows of the store were covered with black paper with holes cut out for people to look through. Inside they could see copies of books that have been banned or contested around the world including *Alice in Wonderland*, *Catcher in the Rye*, and *Webster's Ninth Collegiate Dictionary*.

William Gardiner, Colonial Williamsburg's vice president of facilities and property management, explained that the foundation felt the display had a suggestive nature and was in poor taste. He said the foundation was concerned only with the suggestive nature of the display, not with the books themselves or the theme.

But Michael Wyan of the American Booksellers Association said the action "concerns us because it is an issue of censorship, freedom to read and freedom to make your own choice. That's what our whole Banned Books Week is all about." He said Colonial Williamsburg's action "is indicative of the climate of this country toward censorship. It is ironic this happened with banned books." Reported in: *Richmond Times-Dispatch*, September 19; *Virginia Librarian*, September-October 1986.

(AAUP . . . from page 7)

to determine the limits of unobjectionable discourse in the schools. It is not only that good teaching is frustrated. Rather, the intimidating character of suppression undermines the foundation of free teaching as it has progressed in this century, the commonly held confidence that teachers are guided by their professional judgment—that they do not teach in fear of disfavor and that the prejudices of the community have not insinuated themselves into the curriculum—in preparing their pupils for life in a free society.

“The ramifications of suppressing instructional materials for the freedom of students to learn are not less worrisome. Obviously a student can learn nothing from a book which is removed from the school library. . . . Moreover, removing a book from the school library because a passage in it offends members of the community increases in some measure the probability that the student will see suppression as an acceptable way of responding to controversial ideas. Destruction of the book heightens it still further. Suppression thus invites cynicism among students that they would be free to learn.

“ . . . Students learn from their teachers, through instruction and example, how to think independently in order to form their own judgments. . . . Alexander Meiklejohn’s words are to the point: ‘To require teachers to say to their pupils, ‘I want you to learn from me how to do what I am forbidden to do,’ is to make of education the most utter nonsense.’ . . .

“We can think of no reason that is consistent with any proper concept of education in a free society for expurgating a novel, play, or poem. Where literature is concerned, we can think of no reason why the classroom and school library should ever be other than what they seem, places where a work of fiction is as it appears to be. There is no reason why teachers and librarians should be induced to deceive their students, or why students should be misled as to the actual nature or content of what they are reading. Not only does deception have no place whatever in the school, but trimming a work of fiction to fit today’s opinions is utterly reprehensible. . . .

“The role of colleges and universities in setting standards and educating teachers helps us to understand the close ties between the schools and the higher education community, but does not fully explain the interest of the higher education community in freedom in the schools. There is a missing link, needed to draw a direct connection between the freedom to teach and to learn in the schools with teaching and learning in our colleges and universities. That connection is the obvious but compelling fact that completion of high school is the essential precondition for entering a college or university. . . .

“ . . . As members of the college and university academic community, students are encouraged to pursue learning freely, but they are surely limited in doing so if their previous education has ill-prepared them for this responsibility. . . .

“The significance of challenges to school instructional materials for the higher education community lies in the fact that such challenges may hinder the student’s ability to advance to higher education. These challenges may also impede the student’s gaining the full benefit of an undergraduate education. Moreover, challenges to what is taught and how in the schools can threaten academic freedom in colleges and universities. Restraints upon freedom in the schools have often jeopardized freedom at the higher education level. It is thus not surprising, but no less troubling, that infringements on the content of the curriculum can have serious ramifications for the freedom to teach and to learn in colleges and universities. . . .

“The student is not the only one to suffer from inadequate preparation. Faculty in the colleges and universities feel the effects as well. An obligation of university professors is to press their students to extend themselves intellectually. It seems fair to observe that teaching ill-prepared students is unlikely to bring out the finest qualities of their teachers. The opposite is also true: the best prepared and most demanding students are spurs to professors to exert themselves to challenge them.

“Yet the importance of restraints upon freedom in the schools goes deeper than inadequate knowledge of a subject. The knowledge imparted in schools to the most capable students is soon superseded by what is learned in college. Facts gradually fade from memory, but habits do not, and key among them is the disposition of students to think and act as their own intellectual powers enable them. Education, at its best, elicits and stimulates these powers to the benefit of the full exercise of freedom in higher education, by students and professors alike, as well as of the larger free society. Teachers or librarians who are forced to teach what their own best judgment tells them not to teach, or who are forced to remove a book that they have decided is educationally valuable, cannot have any illusions that they are considered by school authorities to be professionals who command respect. And no students taught by educators so constrained or who are witness to suppression can be trained in the habit of thinking for themselves and thus in the ways of freedom.

“Freedom of education is a basic postulate of our society. Freedom in education is no less fundamental an axiom. Practice may fall short of the intention expressed by these words, but they are the standard against which our efforts must be judged.”

Copies of *Liberty and Learning in the Schools: Higher Education’s Concerns* are available from the American Association of University Professors, 1012 14th St., N.W., Washington, D.C. 20005. 1-9 copies, \$4.00 each. 10 or more copies, \$2.00 each.

(Church Hill . . . from page 1)

were being mentioned. "These are supposed to be love-thy-neighbor Christians, but let me tell you, these people are out for every dime they can get. There is no way any school system can stand up under such financial pressure," Coleman added.

On the other side, Vicki Frost, the Church Hill mother of four who has been at the center of the controversy since it erupted more than three years ago, was elated. Frost, who was ridiculed in the press after she testified that she was even offended by the television program *Sesame Street*, said, "I'm very thankful . . . for the decision. I've been confident that it would turn out well. I'm so happy."

In a 27-page decision, Hull—who had previously dismissed the plaintiffs' suit only to be reversed on appeal—said that the case "juxtaposes two of our most essential constitutional liberties—the right of free exercise of religion and the right to be free from a religion established by the state." He found that the families had "sincerely-held religious beliefs" which were protected by the First Amendment. The school board's policy requiring students to attend reading class and use the controversial textbook series "burdened" the plaintiffs' First Amendment rights to exercise freedom of religion.

"The plaintiffs believe that, after reading the entire Holt series, a child might adopt the views of a feminist, a humanist, a pacifist, an anti-Christian, a vegetarian or an advocate of a 'one-world government'," Hull wrote in his decision. "Plaintiffs sincerely believe that the repetitive affirmation of these philosophical viewpoints is repulsive to the Christian faith—so repulsive that they must not allow their children to be exposed to the Holt series."

"This is their religious belief. They have drawn a line, 'and it is not for us to say that the line [they] drew was an unreasonable one,'" Hull said, quoting from a previous court ruling. "It seems hardly possible to question the fact that the plaintiffs' free exercise rights have been burdened," he added. "The uniform, compulsory use of the Holt series . . . is by no means essential to furthering the state's goals" of educating students. Pointing to a line of U. S. Supreme Court cases requiring government institutions to accommodate the religious views of minorities, Hull concluded that "the state can achieve literacy and good citizenship for all students without forcing them to read the Holt series."

Counties in Tennessee are responsible for choosing textbooks used in their schools. Hawkins County, where an overwhelming majority of the population is Southern Baptist or Methodist, makes those selections through a textbook committee made up of representatives from each school. That committee considers a range of books recommended by the state.

Hull did not grant the parents' request that the schools supply alternative textbooks, saying that such accommoda-

tion would advance a particular religion and and "involve an excessive entanglement between the state and religion." The judge added that "considerable evidence" during the eight-day non-jury trial in July indicated that no single reading series on the state-approved list would be acceptable to the families without modifications. He therefore concluded that under a Tennessee law allowing home schooling under state regulation, the parents "are entitled to opt out of the Hawkins County public school reading program while still enjoying the benefit of the rest of the curriculum."

All but one of the children involved in the case are now in private Christian schools. If they wanted to transfer back to public schools, Hull said, they could "withdraw to a study hall or to the library during regular reading periods at school." Reading would be supplemented by home instruction and each child's reading ability tested by state-approved standardized achievement tests. All this could be done "without substantially disrupting the education process and without substantially inconveniencing either the plaintiff-students or the rest of the student body."

"Allowing the student-plaintiffs to opt out of reading class would relieve the school system of any burden that would have been caused by providing alternative teaching arrangements and would relieve the plaintiffs of the burden on their religious freedom," Hull said.

During the trial, defense attorneys argued that a ruling in favor of the fundamentalists would "open the floodgates" to objections from other religious groups. They also contended the fundamentalists were likely to later object to additional curricula and texts, other than the books that were the subject of the trial. "While the court must be sensitive to the widespread implication of its decisions," Hull wrote in response, "it must also limit its decisions to the facts of the case before it."

Hull stressed that the case was a narrow one and that his ruling "shall not be interpreted to require the school system to make this option available to any other person or to these plaintiffs for any other subject." He noted that the parents were not seeking to have the textbooks "banned from the classroom" or to "expunge the theory of evolution from the public school curriculum."

"Despite considerable fanfare in the press billing this action as 'Scopes II,' it bears little relation to the famous 'monkey trial' of 1925," Hull said. "These plaintiffs simply claim that they should not be forced to choose between reading books that offend their religious beliefs and forgoing a free public education."

In their complaint, the families--all from the town of Church Hill near the Virginia border--contended that the readings in the Holt series were "anti-Christian and anti-American" and that the schools had no constitutional right to indoctrinate students with the atheistic philosophy of so-called "secular humanism."

"There's not one story in all the readers . . . that supports



## Cinderella, Oz, Macbeth, Anne Frank challenged

The following is a sampling of stories to which seven fundamentalist Christian families objected in the Holt, Rinehart, Winston series of reading books. There were more than 400 specific objections listed in the plaintiffs' complaint.

- *Cinderella*, because it mentioned magic. (*Peter Pan* was not objectionable, however, because it depicted flying and not growing old as make-believe rather than magic.)

- *Macbeth*, by William Shakespeare, for its mention of witchcraft and magic.

- *The Wizard of Oz*, by L. Frank Baum, because it portrayed a witch as good and because it depicted traits such as courage, intelligence and compassion as personally developed rather than God-given.

- *The Diary of Anne Frank*, because it suggested all religions are equal in a passage by Anne: "Oh, I don't mean you have to be Orthodox . . . I just mean some religion. . . . It doesn't matter what. Just to believe in something."

- *The Revolt of Mother*, by Mary Wilkins Freeman, a seventh-grade short story about a woman challenging her husband's authority, because it attacks the "biblical family."

- A fairy tale by Danish writer Hans Christian Andersen because it described a child's trip to a fortune-teller, which introduced children to the supernatural.

- Accounts of dinosaurs if the creatures were said to be older than the biblical account of the beginning of the world.

- Stories about other religions than Christianity, including worship by American Indians and followers of Islam.

- A story that depicted a child's imagination as a "third eye" inside his or her head, because such representations are considered to be occult and to put too much emphasis on a person's imagination. Reported in: *Dallas Morning News*, October 25; *Los Angeles Times*, October 25.

or portrays the traditional family role," plaintiff Bob Mozart complained. "The few times Christianity was presented in the readers, it was always negative."

The Holt reading series, which is available to all elementary school grades, was first published in 1973 and has been used by more than eight million students in all fifty states. More than 15,000 school districts have adopted the series. Holt representative John Workman said the publisher "firmly disagrees with the allegations made by this group of parents." Although not a party to the litigation, he said, the company will support the school board's appeal. He said the publisher "stands behind the quality and content of this [reading] program," which is designed to "make children aware of diverse cultures and lifestyles" with a "neutral position on religion."

The conflict over the Holt series began in 1983 when Vicki Frost was introduced to an assembly of parents at Church Hill Middle School. The group became known as Citizens Organized for Better Schools. Frost said in reviewing the books used in her daughter's classroom, she found material to which she objected including tales of mental telepathy, witchcraft, children speaking to animals, and stories of religions other than Christianity. She alleged the books were pro-gun control and pro-ERA.

These and other objections were carried to the school board with requests that the books be withdrawn and replaced as teaching tools by books which would not offend the parents'

religious sensibilities. The group also asked for a dress code acceptable to them, a daily salute to the flag, and a moment of silence to begin the school day.

In a steadily mounting controversy, children were withdrawn from school or placed in suspension for walkouts. In November, 1983, Frost was arrested on charges of trespassing when she refused to leave the grounds of Church Hill Elementary School after removing her daughter from a classroom. Instead, Frost began her own reading class in the school's library. That case was later dismissed and Frost won a false arrest lawsuit in federal court which is under appeal.

The lawsuit filed by Frost, Mozart and five other families was initially dismissed in 1984 by Judge Hull, who ruled that the First Amendment did not protect school children against other ideas which offend religious beliefs. That decision was overturned by a three-judge panel of the U. S. Court of Appeals for the Sixth Circuit. The appellate court ruled that two steps must be taken to determine if a burden was placed on the plaintiff's exercise of religion and, if so, the burden should be balanced against the government's claims of a compelling reason why the demands of the plaintiff could not be met.

The case was remanded back to Judge Hull for trial, which began in July. On both sides, teams of local attorneys were headed by a Washington, D. C., lawyer retained by outside groups. Michael Farris, staff counsel for Concerned Women



for America, a conservative group, represented the plaintiffs. Timothy Dyk, retained by People for the American Way, led the school district's defense. The case continued through written briefs in August and final oral arguments in September.

Judge Hull, 60, is a Tennessee native who served for ten years as a Republican member of the state House. Before his appointment to the bench by President Reagan in 1983, he served as a state judge and, later, as legal counsel to Republican Governor Lamar Alexander. He was described by a colleague as a man with a "modest and staunchly religious background," who has more experience with commercial law than with constitutional cases. During congressional confirmation hearings, Hull said he advocates a "strict interpretation" of the Constitution.

Reaction to the decision was, predictably, divided. The plaintiffs and other fundamentalists expressed delight and some surprise with the ruling. Bob Mozert called the decision "a great Christian victory." Another plaintiff, Rachel Baker, said, "We are thankful and very grateful for the decision. That comes from the depths of my heart."

"We were a bit surprised that it was as favorable as it was," said Joy Jowdy, one of four staff attorneys for Concerned Women for America, whose founder and president Beverly LaHaye called the decision a "tremendous step forward for religious freedom in America." Michael Farris also hailed Hull's ruling as a victory for religious tolerance. "Those who wanted to throw children out of school because of their religion have been decisively defeated," he told a Washington news conference. "I think it will hold up all the way," he said of the decision.

According to Farris, the parents were not protesting against the presentation of views they found offensive. "They were complaining that these were the only views represented. Why do we pretend that Christianity does not exist in the public schools?" he asked. "Why do we pretend that traditional women's roles don't exist in the public schools? They censor all these things out," he charged.

People for the American Way attorney Timothy Dyk charged, however, that the ruling would cause chaos in the schools because the objectionable material is discussed throughout the day. "That means shuttling kids in and out of the room, into the cafeteria. That is impractical. What you're going to have is education tailored to the lowest common denominator."

"What this case is, in effect, is a very clever attempt under the free exercise provision of the First Amendment to achieve censorship. What these people want to do is burn these books. They want to burn the values that they represent," added Dyk's local co-counsel, Nat Coleman.

Anthony T. Podesta, president of People for the American Way, which will also back the appeal effort, called the decision "a recipe for disaster in the public schools. It will invite every sect in the country to pick and choose which parts

of the public school curriculum it will accept." He predicted that classroom curriculums would disintegrate if students are allowed to "opt out" of some subjects on the basis of religious belief. "We're not talking about objecting to one story," Podesta said. "We're talking about objecting to pluralism, to science, to religious diversity. We think it would really create havoc."

Educators were also concerned that the ruling might have a broad impact. In Church Hill, elementary school librarian Eileen Collins, a 29-year veteran of the Hawkins County schools, said she thought the ruling would lead to chaos. She predicted the complaints would spread to subjects and textbooks other than reading. "It's going to make it pretty difficult to teach," she said. According to Evelyn Rodriguez, a second-grade teacher in Hawkins County who has spent 11 years in the district, teachers will now "be careful of what to say in the classroom and they'll be afraid."

Tennessee Education Commissioner Robert McElrath said the ruling could force school systems to conduct an almost "minute-by-minute" accounting of school curriculum in order to delete potentially offensive material. "The way we interpret it now, it would be very, very difficult to administer and protect the religious belief of parents," he said.

"What is to keep other interest groups from making similar demands?" asked Lynn McCarter, chair of Tennessee's Textbook Commission. "Where do you draw the line? How many interest groups do you accommodate? There is no way we can address the needs of all the interest groups." She said textbooks approved for use in Tennessee schools are selected only after commission members "very thoroughly" peruse them.

McCarter, who was on the textbook commission when the Holt reading series was approved, said students withdrawing during class could be disruptive to the learning process. "As a classroom teacher," she said, "I think it will be very disturbing to have students leaving the room." Explaining that "public schools are public schools," she said the school system must address the needs of a variety of students, and parents have the option of sending their students to private schools.

Elizabeth Sansom, a lay member of the textbook commission, said, however, that she agreed with the ruling because in most of the textbooks Christianity does not get a "fair shake." But, she admitted, the decision could put a terrific burden on school systems. "I still believe the school district has a terrific load as it is and to provide special education to very special interest groups is too much." The home-schooling option addresses that problem, she said.

The case was watched closely by national education organizations. Roxanne Bradshaw, secretary-treasurer of the 1.8 million member National Education Association, said the decision would cause textbook publishers and teachers to water down education and make it conform to a lesser stan-

dard. "What we are concerned about is what is going to happen to public education when we are offering a universal education," she said. But Albert Shanker, president of the 650,000 member American Federation of Teachers, said Hull's decision would not necessarily invite similar lawsuits elsewhere. "Let's not blow this case way out of proportion," Shanker warned. "I don't think that this [the Hawkins County parents'] point of view is shared by most parents."

Tennessee Attorney General W. J. Michael Cody announced the state would back the district's appeal. "The state has a strong interest in maintaining a uniform, integrated curriculum to provide Tennessee's 800,000 public school students with a sound, well-rounded quality education. The court's decision leaves a gaping hole in our total curriculum and places terrible demands on classroom teachers. Teachers will have to shoulder the burden of restructuring entire classes and altering methods of teaching to avoid offending the religious beliefs of certain children. Reading is not taught in isolation in our public schools. It is an integral part of each of the subject areas. The state believes that the serious constitutional questions raised in this case should be addressed by the appellate courts."

University of Tennessee law professor James Kirby said a successful appeal was by no means out of the question. "A decision by one federal district judge is surely a tentative thing," he noted. "It should not be assumed that he [Hull] will be affirmed." Kirby said the case could be considered a "gain for free exercise [of religion]. But it's a loss for the establishment clause of the First Amendment when people can use the First Amendment to advance their religion."

Walter Dellinger, an expert in constitutional law at Duke University, said "no decision of the Supreme Court has ever required the government to so gerrymander a public program in order to meet religious objections. . . . There is simply no way that the public school curriculum can be individually tailored to accommodate the wishes of hundreds of different religious sects."

However, Lackland Bloom, a constitutional law specialist at Southern Methodist University, said the decision "could not be characterized as off-the-wall. It suggests to me that the court is very cautious when it comes to protecting freedom of religion claims. It's a very touchy area, and the court tries to accommodate religious freedom."

Emotions in Church Hill itself were running strong in the wake of the decision, and it appeared that most residents opposed the efforts of the fundamentalist parents. Rev. Gary Gerhardt, pastor of the First Baptist Church of Church Hill, said the town is in "the heart of the Bible belt and the most conservative part of the conservative state of Tennessee." But Gerhardt, who considers his congregation mainstream, said he found reactions ranging from apathy to anger—anger that the suit had questioned the competency of the school district's teachers and administrators, and also anger that money that could be spent for education is going to pay legal fees.

"Some of us also find it hard to understand why we've been singled out by some of these national groups to be a test case," Gerhardt said. "I think it was very obvious from the beginning that these people intended to set a precedent here." He said he did not understand "how these people can come in here . . . and tell us that we're either ignorant, for letting them teach humanism to our children, or that we're godless because we don't agree with them."

Gerhardt noted that the Church Hill Ministerial Association reviewed some of the passages that the fundamentalists objected to, but decided against endorsing the suit. In fact, the association issued a general statement of support for the school district.

"It would be difficult to find a textbook that would totally satisfy all religions," Gerhardt said. "Being a Southern Baptist, I believe very strongly in the separation of church and state. You are treading on some very dangerous ground when you start crossing that separating line." Reported in: *Chattanooga Times*, October 28; *Dallas Morning News*, October 25, 26; *Kingsport Times*, October 29; *Knoxville Journal*, October 26; *Knoxville News-Sentinel*, October 25, 26, 29; *Los Angeles Times*, October 25; *Miami Herald*, October 25; *Morristown Citizen-Tribune*, October 24, 26, 29; *Nashville Tennessean*, October 25, 26; *Newsday*, October 25; *Washington Post*, October 25.

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(If bibliography . . . from page 40)

- People for the American Way. *Looking at History: A Review of Major U.S. History Textbooks*. Washington, D.C.: PFTAW, 1986.
- Richards, David A.J. *Tolerance and the Constitution*. N.Y.: Oxford University Press, 1986.
- Ross, Steve. "Creation Commotion: Genesis and the Public Schools." *Church and State*, October 1986, p. 8.
- Scheer, Robert. "Inside the Meese Commission: How a Group of Zealots Took Aim at Pornography and Ended Up in a War Against Sex Itself." *Playboy*, August 1986, p. 60.
- Schiller, Anita R. and Herbert F. Schiller. "The Library as Emporium: Commercializing Information." *The Nation*, October 4, 1986, p. 306.
- Taylor, Bruce and Barry Lynn. "Should Citizens Punish Porn Sellers?" *U.S. News & World Report*, July 14, 1986, p. 64.
- Tong, Rosemary. "Brief Encounter" (a review of the Minneapolis Ordinance and of "Brief Amici Curiae of the Feminist Anti-Censorship Task Force") *The Women's Review of Books*, May 1986, p. 7.
- Urfer, Pamela. *Ricky Reading: A Look at Today's Children's books*. Soquel, Calif.: Creative Arts Development, 1983.
- Varlejs, Jana, ed. *Freedom of Information and Youth*. (Papers and discussions from the 23rd Annual Symposium of the Rutgers School of Communication, Information and Library Studies) Jefferson, N.C.: McFarland & Co., 1986.

# intellectual freedom bibliography

Compiled by Patrice McDermott, Assistant Director, Office for Intellectual Freedom

- American Civil Liberties Union. *Polluting the Censorship Debate: A Summary and Critique of the Final Report of the Attorney General's Commission on Pornography*. Washington, D.C.: ACLU, 1986.
- Baker, John F. "On the Front Line in the Censorship Struggle." *Publishers Weekly*, July 11, 1986, p. 45.
- Barber, John. "Sex and Censorship." *MacLean's*, September 1, 1986, p. 36.
- Bob, Murray L. "The Right Questions About Obscenity: An Alternative to the Meese Commission Report." *Library Journal*, October 15, 1986, p. 29.
- Bollinger, Lee C. *The Tolerant Society: Freedom of Speech and Extremist Speech in America*. New York: Oxford University Press, 1986.
- Burstyn, Varda, ed. *Women Against Censorship*. Vancouver/Toronto: Douglas & MacIntyre, 1985. (Distributed in the U.S. by Salem House, Topsfield, Mass.)
- Carmilly-Weinberger, Moshe. *Fear of Art: Censorship and Freedom of Expression in Art*. N.Y.: R.R. Bowker, 1986.
- Curry, Thomas J. *The First Freedoms: Church and State in America to the Passage of the First Amendment*. N.Y.: Oxford University Press, 1986.
- Davis, Michael. "Academic Freedom, Impartiality, and Faculty Governance." *Law & Philosophy*, August 1986, p. 263.
- "Dissident for the Duration . . . Louise Armstrong Talks to Andrea Dworkin." *The Women's Review of Books*, May 1986, p. 5.
- Donnelly, F.K. "Catalogue Wars and Classification Controversies." *Canadian Library Journal*, August 1986, p. 245.
- Donnerstein, Edward F. and Daniel G. Linz. "The Question of Pornography: It is Not Sex, But Violence, That Is an Obscenity in Our Society." *Psychology Today*, December 1986, p. 56.
- "Fed Report Asks for Tough Stand Against TV Porn." *Variety*, July 2, 1986, p. 1.
- Ferguson, Ann. "Pleasure, Power and the Porn Wars." *The Women's Review of Books*, May 1986, p. 11.
- Fields, Howard. "A More Difficult Climate." *Publishers Weekly*, July 11, 1986, p. 36.
- Foley, Denise. "Why Won't They Let Your Children Read These Books?" *Children*, vol. 1, no. 5, 1986, p. 83.
- Gardner, Frieda. "Getting Past the Censor." *The Women's Review of Books*, May 1986, p. 9.
- Gastil, Raymond D. *Freedom in the World: Political Rights and Civil Liberties, 1985-1986*. Westport, Conn.: Greenwood Press, 1986.
- "Henry E. Hudson; Christine Hefner; Rev. Donald Wildmon; Barry Lynn." *Meet the Press*, July 13, 1986, p. 1.
- Hentoff, Nat. "The Student Who Shocked the Supreme Court." *The Village Voice*, Oct. 14, 1986, p. 25.
- Horn, Zoia, ed. *The Right to Know*. (Reprints of articles, bibliography, organizations list) Oakland, Calif.: Data Center, 1986.
- Humana, Charles. *World Human Rights Guide*. N.Y.: Facts on File, 1986.
- Inglehart, Louis, E. *Press Law and Press Freedom for High School Publications*. Westport, Conn.: Greenwood Press, 1986.
- Irvine, Reed. "Public Broadcasting Digs Its Own Grave." *Conservative Digest*, November 1986, p. 17.
- Kappeler, Susanne. *The Pornography of Representation*. Minneapolis: University of Minnesota Press, 1986.
- Kelley, David. "Whose Ethics? Public Schools Have No Business Trying to Teach Moral Values." *Barron's*, Oct. 27, 1986, p. 10.
- Kittay, Eva Feder. "Pornography and the Erotics of Domination." in Carol Gould, ed. *Beyond Domination: New Perspectives on Women and Philosophy*. Totowa, N.J.: Rowman & Allanheld, 1984, pp. 145-174.
- Kuhn, Annette. *The Power of the Image: Essays on Representation and Sexuality*. London/Boston: Routledge & Kegan Paul, 1986.
- Leedes, Gary C. *The Meaning of the Constitution: An Interdisciplinary Study of Legal Theory*. N.Y.: Associated Faculty Press, 1986.
- Leo, John. "Sex and the Schools." *Time*, Nov. 24, 1986, p. 54.
- "Meese Commission Vigilantes." *Publishers Weekly*, July 11, 1986, p. 43.
- Meigs, James B. "University Under Fire." *Rolling Stone*, September 25, 1986, p. 77.
- Miller, William Lee. "The Statue of Liberty: Jefferson and Madison Gave Americans Freedom of Mind, But Can We Keep It?" *Church and State*, November 1986, p. 11.
- "National Security and the Press: An Interview with CIA Chief William Casey." *Washington Journalism Review*, July 1986, p. 14.
- Nelson, Dale. "Dateline Washington: Rehnquist, Scalia, and the First Amendment." *Wilson Library Bulletin*, October 1986, p. 30.
- "A New Porno Report Bodes Ill for Legitimate Photography." *American Photographer*, July 1986, p. 19.
- Nobile, Philip and Eric Nadler. *United States of America vs. Sex: How the Meese Commission Lied About Pornography*. N.Y.: Minotaur Press, 1986.
- "Opinion Roundup: Pornography Report." *Public Opinion*, September/October 1986, p. 21.
- O'Rourke, P.J. "Dirty Words." *Rolling Stone*, September 25, 1986, p. 77.
- Orovitz, Marcia. "A Commentary on Censorship." *Circulation Council Newsletter*, August 1986, p. 1.

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