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Alabama judge bans 45 'secular humanist' books

In a ruling which surprised few who have followed the case from the beginning (see *Newsletter*, January 1987, p. 3), U.S. District Court Judge W. Brevard Hand in Mobile, Alabama, ruled March 4 that 45 social studies, history, and home economics textbooks must be removed from Alabama's list of approved texts—and from the state's classrooms—because they promote the "religion" of "secular humanism." The decision was the first by a federal court to support the long-standing claim by some fundamentalist Christians that "secular humanism" is a religion and that it is being taught in public schools, and the first time a federal judge has prohibited any school board from using specific books.

Judge Hand's ruling was the second in recent months to favor fundamentalist parents challenging public school textbooks. In October, a judge in Tennessee ordered the Hawkins County School Board to exempt fundamentalist children from a reading program to which their parents objected. But that decision was much more limited in its impact, since it applied only to the plaintiffs and since no books were ordered restricted or removed from libraries or the curriculum (see p. 82 and *Newsletter*, January 1987, p. 1).

Although many observers expect Judge Hand to be reversed on appeal, his decision applied to all Alabama schools. Of the state's 129 school systems, 114 use at least one of the banned volumes. Moreover, several of the books banned under the ruling are among the most widely used in the country and the list includes books put out by such leading textbook publishers as McGraw Hill, Globe, Macmillan, Rand McNally, Houghton Mifflin, and Harcourt Brace & Jovanovich. (For a complete list of titles banned by Judge Hand see page 105).

School officials in Mobile were served with Hand's injunction just hours after the ruling was handed down, and within 36 hours nearly 7,000 copies of the banned books were being removed from shelves and taken out of the hands of students. Other districts in the state were awaiting guidance from state officials before acting. On March 12, the Alabama State Board of Education voted 5-4 to appeal the ruling, with the tie-breaking vote cast by Gov. Guy Hunt. The next day, the American Civil Liberties Union, People for the American Way, and attorneys for twelve parents of Alabama school children said they would join in the appeal. On March 27, the U.S. Court of Appeals for the Eleventh Circuit in Atlanta issued a temporary injunction staying Hand's ruling and ordering the Mobile schools to return the confiscated books to classroom use.

In his 172-page decision Judge Hand put secular humanism on the same Constitutional footing as religion, holding: "For purposes of the First Amendment, secular humanism is a religious belief system, entitled to the protections of, and subject to the prohibitions of the religion clauses. It is not a mere scientific methodology that may be promoted and advanced in the public schools."

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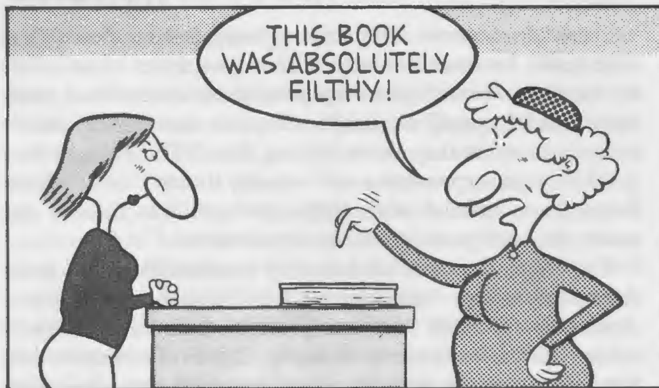

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"sensitive but unclassified" policy withdrawn

The sudden cancellation of a five-month old directive that tightened control over sensitive but unclassified information appears to mark a major setback for the Reagan administration's effort to keep strategic technologies developed by scientists and engineers from leaving the United States. The "National Policy on Protection of Sensitive, But Unclassified Information in Federal Government Telecommunications and Automated Information Systems," promulgated by former National Security Adviser Admiral John M. Poindexter, effectively created a new class of government data, material that is not secret enough to be classified, but that could aid economic or military opponents.

The policy had come under sharp attack from industry and civil liberties groups. On January 21, the American Library Association Council approved a resolution proposed by the Intellectual Freedom Committee which called for the repeal or rescission of the policy (see *Newsletter*, March 1987, p. 70).

The sudden and rare decision to withdraw the policy, made March 17 by Frank C. Carlucci, who succeeded Admiral Poindexter, and Howard H. Baker Jr., the new White House chief of staff, took many in the government and the computer industry by surprise. "We didn't expect it but we are obviously delighted," said Kenneth B. Allen of the Information Industry Association, which lobbied against the policy.

Some government officials suggested that the policy was withdrawn because it subtly raised the specter of an effort by the nation's intelligence agencies to monitor who is using hundreds of openly available computer data bases, and to investigate what they were looking for. "The policy was a good idea, in response to a real security threat," one Defense Department official said. "The problem was that no one really thought through all the implications."

The policy defined "sensitive but unclassified data" as information whose "disclosure, loss, misuse, alteration or destruction" could "adversely affect national security or other Federal Government interests." One official conceded, however, that the definition was so broad that "it covers anything anyone wants it to cover."

Under the policy, the heads of all federal departments and agencies were charged with protecting such data, particularly if stored in computer systems accessible by foreigners and other outsiders. The policy did not say what protection entailed, or who should be excluded.

"Our point was that if it is really that sensitive, classify it," Allen said. "But once it is in the public arena, whether in a book or a computer, it is ridiculous to try to limit how it is used." Reported in: *New York Times*, March 19.

Rep. English on "sensitive but unclassified"

On February 25, Rep. Glenn English (Dem.-Okla.). Chair of the Government Information, Justice and Agriculture Subcommittee, testified before the Legislation and National Security Subcommittee of the House Committee on Government Operations to support (with suggestions for improvement) the proposed Computer Security Act of 1987 (H.R. 145). Although Rep. English spoke before the October, 1986, policy memorandum issued by Admiral Poindexter was rescinded (see story above), his comments on the problems associated with the concept of unclassified national security information remain relevant. The edited text of Rep. English's testimony follows.

Mr. Chairman, I want to thank you and the members of the Subcommittee for allowing me the opportunity to appear here today. I share your concern about the need for an appropriate level of protection for government information maintained in computers and transmitted over telecommunications facilities. I am very much in agreement with the objectives of H.R. 145.

As I begin, I want to make it clear that none of my testimony addresses questions of security for *classified* information. No one disputes the need for a high degree of protection for information that has been properly classified in the interests of national defense and foreign policy. Classified information has been properly excluded from the scope of H.R. 145.

I believe that many of the problems being addressed at this hearing are the direct result of the lack of clarity in National Security Decision Directive 145. NSDD 145 introduced the elusive idea of sensitive but unclassified information the disclosure of which could adversely affect national security.

I do not understand the concept of unclassified national security information. Under the classification rules promulgated by President Reagan in 1982, federal agencies are *required* to classify any government information whose disclosure "could reasonably be expected to cause damage to national security."

Thus, the Reagan rules on classification divide government information into two categories. The first is information whose disclosure *could reasonably be expected* to cause damage to national security. This information must be classified. The second category is information whose disclosure *could not reasonably be expected* to cause damage to national security.

This second category is where we must find the unclassified national security information that NSDD 145 refers to. But how can we expect to find unclassified national security information when we start with information whose disclosure

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witches, demons, ghosts, and werewolves . . . in our schools!?

Recently, many efforts to remove books and other educational materials from public school libraries and classrooms have focused on the alleged promotion of witchcraft and the occult in these materials. The Plymouth-Canton school system in Canton, Michigan, is one place where concern about such matters has led to a censorship controversy (see Newsletter, *January 1987, p. 12). Diane Daskalakis, a Plymouth resident, has been in the forefront of an effort to ban two books—*Zen Buddhism: Selected Writings, *by D. T. Suzuki and* Rules for Radicals, *by Saul Alinsky—and five movies—* The Breakfast Club, Excalibur, Teen Wolf, Ghostbusters, *and* Winnie the Witch*—from the schools.*

In February, Citizens for Better Education distributed a six-page printed sheet written by Daskalakis and entitled Witchcraft and the Occult Are Being Taught in the Plymouth-Canton Schools *which outlined in considerable detail her objections to the above books and movies and to several other items found in school classrooms and libraries. Because many* Newsletter *readers may not be familiar with the rhetoric and arguments of those concerned about the occult, we reprint below excerpts from Daskalakis' handout. Interpolations by the* Newsletter *are in brackets. Misspellings and grammatical errors found in the original are followed by the indicator (sic).*

. . . Our schools are teaching our children witchcraft and the occult and if we do not voice our objections and reclaim our children's education, they will continue to undermind (sic) our Christian beliefs that we have chosen to teach our kids at home. It is imperative that we read the Bible, pray and follow our Lord's Word or we will not only lose our Christian heritage, but see the continued decline of this country. . . .

God's hand played a part in America's founding and it's (sic) very discovery. . . . On every island that Columbus stopped, he had his men erect a large wooden cross "as a token of Jesus Christ our Lord, and in honor of the Christian faith." Our schools refuse to teach these facts because they claim through the "doctrine" of separation of church and state, this would be teaching Christianity. . . . It should be impossible to rule out Christianity in this free country because through the 1st amendment we have the right to freedom of religion. . . . Our children should not have to turn it off while at school and allow themselves to be taught witchcraft and the arts of the occult.

Let's examine what our Father has to say about witchcraft: [Several excerpts from the Bible follow.] The above are only a few places in the Bible that God warns us to stay away from witchcraft. Yet here alone He shows us that it is detestable, evil and will provoke Him to anger and keep us from His kingdom. This is madness that we go to church on Sundays, claim the Christian faith and allow our children to be taught the ways of witchcraft Monday through Friday at school. . . . In the *Witch's Bible* (both volume I and II) it states that witchcraft is a religion that is ritually expressed. Where is the separation of church and state for this religion?

Please examine the following witchcraft and occult materials being taught at our Plymouth-Canton schools. While not a complete list it is enough to substantiate my statements and to make you aware of the problem.

Tales of Winnie the Witch . . . This is a six part animated film series starring Winnie the Witch and portraying her and her craft as constantly saving a town that is being foolishly and incompetently run by someone referred to as Lord Mayor and your Lordship.

This Lordship is a stumbling, bumbling idiot that must call upon a witch and her companion, a black cat named Lucifer, to solve all the problems of the town. We all know that Lucifer is the name for Satan or the Devil yet these movies uplift both Lucifer and the witch as role models for our children. In one movie a child yells "Oh, Winnie when I grow up, I'm going to be a witch just like you." . . . .

Ghostbusters . . . Profanity and vulgar language are contained throughout. A complete theme of the occult, with demon possession, witchcraft, astro-projection, clairvoyance and levitation is presented as found in the *Witch's Bible* volume II page 100. The God of Zule is worshipped and the name of the Lord is taken in vain along with a complete mockery of the end times.

This film is based totally on the powers and practices of witchcraft. This is a Hollywood style production and has no place in our classrooms as a learning tool. . . .

The Sword and the Sorcerer . . . The opening scene shows a witch calling up a devil from the pit of hell while the walls come alive with anguished humans, bleeding and screaming in agony. The witch proceeds to worship the devil by *licking* and *kissing* [italics in original] him throughout several scenes, calling him "my god" and "my master." As with the others above, no permission slips were sent home. . . .

Palm reading, crystal ball gazing and card reading . . . Mrs. Trout handed a four page, step-by-step instruction program out to all of her 4th grade students. Under "Gaze into my crystal ball" it states . . . "you too can try to tell a fortune. Since most fortune tellers have some type of ritual they perform to help set the mood and create a sense of expectation, the room is usually dimly lit by a candle. . . The more they believe in your pròhesy, the more likely it is to come true. . ." From a practical view, it would be dangerous for fourth graders to light candles and could result in fire, personal injury or loss of property.

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200 years—and still nobody's read it

A majority of adult Americans misunderstand many basic provisions of the United States Constitution, but they nonetheless support changing the Constitution on certain issues, according to a new national survey.

Among the survey's most important findings, a large majority (73%) of Americans would favor a constitutional amendment guaranteeing citizens the right to adequate health care if they cannot afford to pay for it and six in ten (61%) Americans say a Constitutional Convention should be convened this year, the bicentennial of the Constitution, to consider amendments dealing with such controversial issues as prayer in public schools, abortion and freedom of the press.

The nationwide survey, "The American Public's Knowledge of the U.S. Constitution," was sponsored by The Hearst Corporation to coincide with the Constitution's bicentennial; the findings were reported to the midyear meeting of the American Bar Association/National Conference of Bar Presidents.

Among the opinions expressed on a range of contemporary constitutional issues were the following:

• A significant majority of the American public say there should be a constitutional amendment that would require Supreme Court Justices to be reappointed after serving a term of years. (68% in favor/28% opposed)

• A majority say the constitutional separation of church and state should not be interpreted to prohibit members of the clergy from holding public office. (72% opposed/25% in favor)

• A majority would oppose an attempt to repeal the 22nd Amendment in order to grant a President more than two terms in office. (62% opposed/36% in favor)

Analysis of the survey data indicates that those Americans who are most knowledgeable about the Constitution are the least likely to support these changes.

Flaws in the public's knowledge of the Constitution's origin and the fundamental principles it embodies were uncovered by the survey.

Forty-six percent (46%) of the adult American population do not know the purpose of the original U.S. Constitution was to create a federal government and define its powers. Twenty-six percent (26%) believe the Constitution's purpose was to declare independence from England and 10% believe it was intended to create the original 13 states.

A majority of the American public (59%) do not know what the Bill of Rights is. Only 41% correctly identify it as the first ten amendments to the original Constitution. Twenty-seven percent (27%) say the Bill of Rights is a preamble to the Constitution and 19% identify it as any bill involving personal rights that passes through Congress.

Another 64% of the public is under the misconception that the Constitution establishes English as the national language. And although 76% understand the basic process by which the Constitution is amended, only 34% know approximately how many actual amendments there are.

On domestic issues, 49% of the public erroneously think the President can suspend the Constitution, more than one-third (35%) incorrectly believe the President, on his own, can appoint a Supreme Court Justice.

The survey found similar inconsistencies in the public's understanding of the powers granted the states, particularly public knowledge of states' rights involving religion in the schools. Among the findings:

• Only 49% of the American public know a state is not permitted to declare an official state prayer.

• Less than half (47%) are aware that states are prohibited from giving money to religious schools.

• Exactly half (50%) do not know it is illegal for schools to establish a moment of silence for the purposes of prayer.

• 57% mistakenly believe local schools may require children to pledge allegiance to the U.S. flag.

Knowledge of recent landmark Supreme Court cases is likewise faulty. Forty-four percent (44%) are unable to identify Brown versus Board of Education as a landmark school segregation case; less than half (45%) know Miranda versus Arizona dealt with the rights of the criminally accused; and only 30% know Roe versus Wade dealt with abortion rights.

The Hearst survey further indicates a mixed understanding by the American public of the individual rights embodied in the Constitution. For example, fully three-quarters (75%) of the public erroneously believe the Constitution guarantees them a free public education and one-half (50%) mistakenly think it guarantees them the right to own a handgun. Another 42% incorrectly say they have a constitutional right to free health care if they cannot afford to pay for it.

Sixty-nine percent (69%) of Americans, however, know the Constitution does not guarantee them the right to a job.

The American public proves most knowledgeable about the criminal justice system, the Hearst survey reports. Among the survey findings:

• 92% know a person accused of a crime must be provided with a lawyer if he or she cannot pay for one.

• 83% are aware of the Constitutional provision for a trial by jury.

• 81% know a person cannot be compelled to testify against a spouse in a court of law.

• 69% are aware of the legal principle of "double jeopardy."

• 62% know minors can be punished for crimes committed before the age of 18.

• 55% know a convicted felon can be denied the right to vote.

In the area of First Amendment freedoms, however, only 48% of the American public know that in a libel suit, the burden of proof is on the plaintiff, and not on the media

representative charged with libel. Fifty-four percent (54%) know there are restrictions on the printing and distribution of hard-core pornography.

The survey represents the results of 1,004 telephone interviews conducted last October and November among a randomly generated sample of adults across the United States. The statistically valid results have an overall margin of error of plus or minus 3.2 percent.

Meese report reverberations

The following "Extraordinary Memorandum" was sent March 6 by the ALA Office for Intellectual Freedom to all state library association intellectual freedom committees.

This extraordinary memorandum is to bring to your attention reports from Media Coalition of state legislative activity that is directly ascribable recommendations to the state legislatures.

Among the Commission's many recommendations, there are a few of primary concern to librarians upon which states are not acting. One of these is that those states that, to date, have defined obscene materials as being "utterly without redeeming social value" adopt, instead, the "Miller definition." The *Miller* decision established the following guidelines for determination of obscenity: (a) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value (the so-called LAPS test).

Acting upon another Commission recommendation, no fewer than four states are considering bills that would increase the role of local communities in regulating obscenity—either by proposing the repeal of the preemption statutes that up to now have reserved police power in this area to the state or by making local community standards, rather than state standards, the basis that juries consult when considering alleged obscenity.

Using the local community as the basis for "contemporary community standards" would "chill" librarians' efforts to provide access to a diversity of viewpoints and materials, and could make statewide cooperative networks a legal nightmare. Interlibrary loan arrangements could also be seriously affected if every community had different standards for "obscenity."

A case currently before the Supreme Court, *Pope* v. *Illinois*, deals with the "third prong" of the *Miller* test—the serious literary, artistic, scientific or political value of a work—and whether the basis of this standard is to be the local community or the more objective and comprehensive national community. The court has heard oral arguments in this case and we are hoping for the best. But we are cognizant that the battle continues, as evidenced by moves in state legislatures.

Media Coalition has also brought to our attention striking similarities among other bills being proposed to state legislatures. These similarities, too, are directly attributable to the language of the Meese Commission Report and to the Commission's recommendations. Specific examples of proposed legislation include:

- In Missouri, Nebraska and Wyoming, bills have been introduced to implement the Meese Commission recommendation on penalties (increasing the penalty to a felony for second time offenders) for manufacture and sale of obscenity;
- Legislators in Georgia and Wyoming are pressing for forfeiture provisions that would authorize confiscation of the profits earned from child pornography, in addition to seizure of the pornographic material itself;
- In West Virginia, which has no law against the sale of obscenity to adults, a new effort is being made to enact a *Miller*-type statute.

We are not hitting the panic button—there have been only a handful of bills introduced thus far. But the similarity in the types of legislation that we are seeing suggests that we need to be prepared to meet a possible assault by legislators who have been reinvigorated by the Meese Commission findings and are eager to cooperate with the Reagan administration.

We urge you and your committee members to exercise extra vigilance: legislation (particularly the community standards bills) should be tracked as soon as you become aware of it—whether from us or another source—and other state actions (such as commissions) should be monitored. As we all know too well, libraries are directly in the line of attack when the sole criterion of judgment is local community standards.

Playboy v. Meese Commission

On January 30, Playboy Enterprises Inc. and the American Booksellers Association filed legal papers in response to the defendant's motion for summary judgment in the suit against the Attorney General's Commission on Pornography. The other plaintiffs in the suit are the Council for Periodical Distributors Association and the International Periodical Distributors Association.

The legal papers added significant allegations to the case. They charge that an unnamed commissioner engaged in "personal and secret contact" with an executive of the Southland Corporation and that the contact unlawfully influenced the corporation's 1986 decision to stop selling *Playboy, Penthouse* and *Playgirl* in its 4,500 company-owned 7-Eleven stores.

The legal jousting is the latest development in the suit, which was initiated last May after 23 businesses received a letter from the commission's director, Alan Sears. Sent in February, the letter alleged that the businesses had been named in testimony as "distributors of pornography." Sears' letter, on Department of Justice stationery, stated that the commission wanted to offer an opportunity "to respond to the allegations" before "drafting its final report section on identified distributors . . . [and that] Failure to respond will necessarily be accepted as indication of no objection."

After receiving the letter, Southland Corporation stopped selling the three adult magazines and recommended the same action to its 3,600 franchise-owned 7-Eleven stores. Southland has denied that the letter influenced its decision. In July 1986, U.S. District Court Judge John Garrett Penn issued a preliminary injunction preventing the commission from including in its report a listing of companies as "distributors of pornography" and ordering the commission to issue a retraction letter to all businesses that received the Sears missive (see *Newsletter*, May 1986, p. 73; July 1986, p. 11; September 1985, p. 162).

The papers opposing the motion for summary judgement state that sometime after October 1985, when the commission heard testimony from Rev. Donald Wildmon naming Southland and others as pornography distributors, and before Southland's decision to drop the magazines, an unnamed commissioner contacted John H. Rodgers, vice president and general counsel of Southland. The commissioner informed Rodgers of the commission's "finding" of a "link between *Playboy* and similar men's magazines and child abuse." The papers further allege that the commissioner "knew that this representation was false" and contend that "the threatened finding linking *Playboy* to child abuse would be of particular concern to Southland" because the corporation was at that time leading a nationwide campaign against child abuse. According to the papers, Southland's CEO and its chairman were "informed of the substance of the commissioner's communications" and that "based in substantial part on this communication by the commissioner" Southland dropped *Playboy, Penthouse* and *Playgirl.*

In its motion for summary judgement—which if granted would lift the preliminary injunction and effectively end the case—the Justice Department argued that Sears' letter did not violate the First Amendment rights of the plaintiffs; and, furthermore, that none of the defendants, including Attorney General Meese and the eleven commissioners, are liable for damages. In addition, the department argued that because the commission has been disbanded, and its report published without a "blacklist" of pornography distributors, there can be no "future violation of [plaintiffs'] rights stemming from the activities" of the commission. Justice also asserts that the court's July injunction corrected "any such injury . . . as much as it can be."

In response, *Playboy* and ABA argued that Sears' letter and the "threatened public dissemination of" a list of distributors "constitutes an informal method of law enforcement" that "has already achieved the results of a criminal prosecution or other law enforcement proceedings" without affording plaintiffs constitutionally required protections. Attorney David Ogden, co-counsel for the plaintiffs, stressed that "we believe that such a 'blacklist' still exists," and that even if it is not disseminated by the government, "it could still make its way into the public domain." Ogden characterized the summary judgement motion as an attempt by the government to delay efforts to discover what further contacts the commisison or its staff might have initiated. Knowledge of such contacts could, according to Ogden, significantly widen the scope of the case and undercut the goverment's arguments, both that the commission exerted no undue influence and that the commissioners are immune from damages. Reported in: *ABA Newswire*, February 16.

Church Hill decision appealed

Attorneys for the Hawkins County School Board filed an appeal with the U.S. Court of Appeal for the Sixth Circuit in Cincinnati January 29, hoping to overturn the October 24 decision of U.S. District Court Judge Thomas E. Hull which permitted children of fundamentalist parents to "opt out" of school reading programs which the parents charged violate their religious convictions (see *Newsletter*, January 1987, p. 1).

The appeal, filed by attorneys representing the board from Washington, D.C., and from Greeneville, Nashville and Rogersville, Tennessee, argued that the right to free exercise of religion is not burdened by the textbooks and that parents could avoid the material through home or private schooling.

"The government continually takes actions which expose people to things they find distasteful or offensive. If mere exposure to ideas that someone finds objectionable were automatically sufficient to constitute a burden, there would be virtually no bounds on the scope of the Free Exercise clause," the appeal said.

The appeal quotes a decision by the U.S. Supreme Court which said the courts "are ill-equipped to determine the necessity of discrete aspects" of education. Other Supreme Court rulings cited emphasized the role of schools in exposing students to controversial ideas, breaking down stereotypes, and "promoting cohesion among a heterogeneous democratic people." Reading lessons are used to teach critical thinking, tolerance and to "teach students to make their own judgments about moral questions," the appeal notes.

The appeal also argues:

- The textbook material is not offensive to the "central religious beliefs" of the fundamentalists.

• The "opt out remedy" creates religious divisiveness in schools, disrupts the classroom and will discourage inclusion of controversial material.

• Hull's ruling has the effect of "advancing religion" in violation of the establishment clause of the First Amendment.

Even as the appeal was being filed, however, it was reported that letters asking for the removal of items from school curricula were arriving daily at the Tennessee Department of Education. According to Fay Taylor, state director of elementary education and an expert witness on behalf of the school board at the trial, the results of the decision are continuing to be felt.

"The great difficulty is there is no agreement across the state as to what should be included [in the curriculum] and what each child should learn," she told a Knoxville audience February 25. Some parents consider an autobiography essay assignment an invasion of privacy. And "there are some parents who feel there are no issues not rooted in their religion."

"We have teachers scared to death to answer questions about AIDS or answer questions about teenage pregnancy. They do not know where they stand legally," she said. According to Taylor, teachers think "if we can take classical literature into court and lose the case, we don't have a leg to stand on." Reported in: *Kingsport Times*, February 6; *Morristown Citizen-Tribune*, February 8; *Knoxville Journal*, February 26.

California dispute over bicentennial book

California Governor George Deukmejian refused February 19 to fire his appointees to the California Bicentennial Commission of the U.S. Constitution for making what he called a "very, very major mistake" by endorsing a constitutional textbook that describes blacks as "pickaninnies," contends that slave owners were the "worst victims" of slavery, and promotes extreme right-of-center political views. Deukmejian, a Republican, said he was satisfied with the commissioners' public apology.

The three Deukmejian appointees had agreed last year to distribute as a fund-raiser *The Making of America*, by W. Cleon Skousen, a former FBI agent and Utah police chief, who is associated with the ultraconservative National Center for Constitutional Studies. The commission sold 215 copies of the book at $24.96 a copy. Commission executive director Jeffrey D. Allen arranged to obtain the books. Until four years ago he was West Coast director of Skousen's organization.

Commission chair Jane Crosby said she had not read the book when she voted to promote it. She said agreeing to distribute the book "doesn't mean we agree with what it says." Commissioner Coann Cubete said she also voted to promote the book without having read it, while Marguerite Justice, who is black, said she had read portions of the book. Stanford University history Professor Jack Rakove, appointed to the commission by the state Senate Rules Committee, voted against the book.

After the *San Jose Mercury-News* reported that the commission was selling the 888-page book, two Democratic legislators, Sen. Gary Hart of Santa Barbara, who wrote the 1984 bill creating the commission, and Assembly Speaker Willie Brown of San Francisco called on Deukmejian to dismiss his appointees. "There is absolutely no place at all for a book like this to be in any way sanctioned or promoted or sold by an official state commission," Hart said. At a press conference with fellow Republican Sen. Pete Wilson, Deukmejian criticized the commissioners but stopped short of their dismissal.

"It's pretty hard for me to understand how anybody on that commission—if they did, in fact, read that book—would have agreed to, in effect, allow it to be distributed under the auspices of the commission," the governor said. "It seems to me that if they did not read it and weren't aware of it, that they were indeed grossly negligent and made a very, very major mistake."

Several days later the commission issued a statement that it "deeply regrets the controversy surrounding its distribution of [the book]. It was clearly a serious error in judgment." The statement also denied an intent to promote "any particular viewpoint," and added, "to those who have taken offense, the commissioners offer their sincere apology." Deukmejian then announced he would accept the commissioners' self-criticism as adequate. Reported in: *Los Angeles Times*, February 7; *San Jose Mercury*, February 11; *San Francisco Examiner*, February 14; *Sacramento Bee*, February 20.

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in review

Believing the News. Edited by Don Fry. Poynter Institute for Media Studies, 1985. xxxii, 301 p. $3.00

"They are the sort of assassins who sit with loaded blunderbusses at the corners of streets and fire them off for hire or sport at any passenger they select." So stated John Quincy Adams on the journalists of his day, *Anno Domine* 1820.

The current reputation of journalists languishes. Gallup reports (August 1985) that clergymen, pharmacists, physicians, dentists, college teachers, engineers, policemen, bankers, TV reporters/commentators, and even funeral directors rank higher in the public's scheme of things. The exclusion of reporters from the Grenada invasion caused no consternation or outcry among the public at large. In various

informal polls, letters and phone calls, people backed the Reagan administration and expressed their support for the ban, sometimes in "gleeful, even vengeful terms."

Some causes for this low esteem are cited in this work. They include an excessive reliance on anonymous sources; perception of the press, especially the television press, as abrasive and intrusive (this same combination seems to work well in *60 Minutes*, perhaps because the newshounds are set on exposing villains); an unending succession of bad news; arrogance quick to cite its First Amendment rights and wrap itself in the flag' a disingenuous blend of fact and opinion. Still, all is not totally black. People apparently believe in notions of fairness; that the presentation of opposing opinions on the issues of the day, including minority opinions, maximize free speech. This finding, if true, seems to argue that the American public believes, with H.L. Mencken, in "liberty to the limits of the bearable." Still, a public prepared to banish reporters from past or future battlefields is perhaps prepared to trade its liberty for a more quiet life.

Arguably, the public wanted television out of Grenada to prevent the recording of death and mutilation by the skulking minicams in the rear. Victory does not photograph well; bodybags, brass bands and grieving relatives do. So it is possible public wrath may be directed more at dramatic or tendentious television pictures ("moments" is the name) than those cold, incorruptible facts in pica. The aptly named Mr. Creed Black, chairman and CEO of the *Lexington Herald-Leader*, took precisely this line in his 1984 swansong as president of the American Society of Newspaper Editors.

The Poynter Institute, on learning that the print division of the media was accusing its sexy televisual counterpart of undermining the credibility of the press, scented blood. It promptly sponsored a two and a half day seminar, January 1985, in St. Petersburg, Florida, to discuss this grand hypothesis. The participants included well-known television journalists (Marilyn Berger, John Chancellor, Don Hewitt (*60 Minutes*), Barbara Matusow, Van Gordon Sauter, Sander Vanocur, Judy Woodruff) and editors, CEOs and vice-presidents from the print division, presslords powerful enough to make an angel blanch.

This book is a heavily edited transcript of the St. Petersburg proceedings. It makes, alas, for singularly dull and uninformative reading. Many an untrenchant word was spoken. Industry gossip was aired. Trivia was dissected in a trice. The assorted journalists referred again and again to the following sad scenario. The stentorian Sam Donaldson must compete with the Camp David bound helicopter in prime time. The rotors move, Donaldson bellows, the President cups an ear, face wreathed in a televisual grin. There are chortles in the White House, and the press is made to look silly.

Still, the assembled intelligentsia were thoughtful here and there. Judy Woodruff states that television news should include more than the mere hard slab of facts; it includes, and should include, analysis and opinion. "We are not in the business of putting out press releases from the White House anymore." Fair comment. Television's problem, in my view, is that it does not clearly demarcate news from comment.

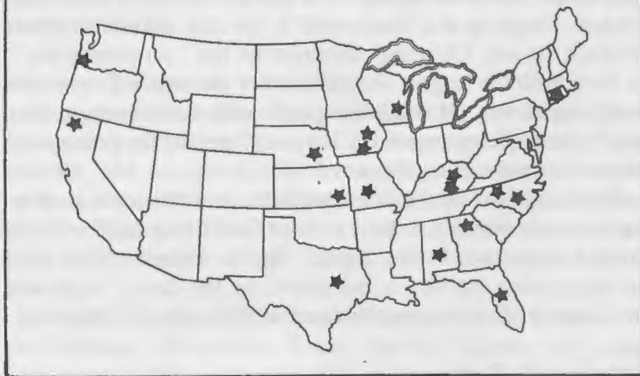
The discussion of anonymous sources is at least interesting. It appears there are sources and *sourcerors* (useful neologism); the sources are good guys/gals who need the billowing cloak of anonymity while the "sourcerors" are generally government hacks dead set on manipulation who should be exposed. To distinguish one from the other can be an exercise of casuistry all in itself. Newsman Nolan (*Boston Globe*) talked tough and to the point: "My favorite rule (and I don't recommend it to others because it can get you in trouble) is: you peddle it, you get your name on it."

Newsman Eugene Patterson paraphrased Solzhenitsyn. "We should listen to Solzhenitsyn who spotted our weakness in his Harvard talk, that we are pursuing fashionability. He was astounded when he came to America and looked at the media, which he had heard was a free press full of independent people." Again, fair comment. Where are the reports, in print or television, of the voting records of our saintly representatives, federal and state? They are nowhere to be seen, and must be ferreted out of specialized books of reference or Vuetext.

Is the media in the U.S., both press and television, a fair media? The answer to the question would probably consume whole forests of newsprint, and dissenters would still grumble at the answers. Here is a Whitmanesque response to the issue from Van Gordon Sauter of CBS News, the channel which is giving us an actress and fluff, and actors and actresses galore, in the morning hours. "We have in this society, through the brillance and the chaos of the free enterprise system, an ideal system for informing the American public. And there are six tiers to the system. First, radio with its immediacy, then television with its immediacy and cinematic revelation, and then the newspapers with their broad information base, and then the weekly news magazines with details and scope and quality writing, and then the monthly publications with the editorial perceptions afforded by widely-spaced deadlines. And finally, the books, with documentation and perspectives."

So there you are. We have six tiers. And with patience and time and reflection, doing much more reading than mere listening and watching, we can make sense of it all, and pronounce infallible judgments. Van Gordon Sauter clearly believes that the truth resides in libraries. For that is where four of his six tiers of information and wisdom reside and have a home. One wonders, given this finding, what degree of credibility the public gives the librarian. It is idle to ask Gallup for he does not put or answer the question, at least not in 1985—*Reviewed by Paul Boytinck, Head of the Catalog Department, Ellen Clarke Bertrand Library, Bucknell University, Lewisburg, Pa.*

censorship dateline



libraries

Wethersfeld, Connecticut

"When the issue comes out, what I do is get out my Magic Markers and redo the suit. For this one, I combined blue and purple and colored in the bust line and the hips where the bathing suit went up real high. The whole suit is blue and purple, so the kids can't tell that I did it. I also cut out the bathing suit pictures in the middle."

Librarian Marion Degen of Hamner Elementary School was talking about the annual swimsuit issue of *Sports Illustrated.* Yes, it's that time of year again. Like many other school and some public librarians, Degen has come to anticipate the prurient attraction to subscribers and schoolboys of the sports journal's annual excursion into the world of beachwear titillation. The *Sports Illustrated* swimsuit issue is probably the most heavily purloined item in American libraries. Some librarians take steps to deal with the demand; others merely cope with it. Sadly, more than a few censor it. This year the *Newsletter* will focus on the response of some librarians in Connecticut.

At the Bolton Center School in Bolton, for instance, only the faculty got to look at the magazine. Library media specialist Linda Brown said she chose not to put the issue in the library. "We thought we might get repercussions from the parents if we made it available for students," she said. "The magazine was pretty popular with the staff members."

Public libraries that put the issue on display generally "lose" it. Some librarians who keep it at their desks or require people to sign for it manage to retain at least a semblance of the issue. At Kent Memorial Library in Suffield, reference librarian Nancy Wissemann went to look for the missing magazine and even checked the computer to be sure it arrived. "It just walked out of here," she said.

Phyllis Nathanson, a reference librarian at Russell Public Library in Middletown, said she had what at least appeared to be the swimsuit issue. "This magazine has gotten some heavy use," she said. "There are pages missing in the center where the models are."

At West Hartford Public Library, the 1983 and 1986 issues have pages missing, reference librarian Gerry Molyneaux reported. The 1984 and 1985 issues are missing. As of late January, the 1987 issue was still intact. Reported in: *Hartford Courant,* January 21.

Spring Hill, Florida

The Hernando County School Board February 3 banned from a middle school library an oral history of the Vietnam War that includes harsh words and an issue of *People* magazine containing a feature on nudism with pictures of bare bottoms. Board members rejected complaints of censorship, saying the two disputed items presented a moral danger to students.

The issue was raised when West Hernando Middle School principal Dan McIntyre removed the magazine and the book *Bloods: An Oral History of the Vietnam War by Black Veterans,* by Wallace Terry, from his school library. Media specialist Susan Vaughn filed a grievance, charging that McIntyre violated School Board policy by removing the items without getting an opinion from the school's Media Center Advisory Committee. The school board unanimously upheld McIntyre's action.

"Our policy at West Hernando Middle School has been that if the material in question would have gotten a child in trouble if he'd brought it from home . . . then we don't allow it in the library," McIntyre told the board. "We have punished kids at our school for passing around Polaroid pictures no more explicit than the pictures in that magazine."

School Board attorney Joe Johnston told the board that before he could give a legal opinion he needed to study the board's review policy and the teacher contract guaranteeing academic freedom. But he added that "you cannot allow segments of society to control your library" by claiming First Amendment rights, which, he charged, are sometimes "prostituted." Johnston agreed that most children have been exposed to nudity and profanity, but said such exposure shouldn't be reinforced in school literature.

Commenting on *Bloods*, Johnston said harsh words were unnecessary. "I served in a war myself, and I don't feel I need to revert to that language to recall my experiences."

Others at the meeting disagreed. Hernando resident Louise Andruyski said the harsh language in *Bloods* was consistent with the soldiers' experiences. You wouldn't expect them to say 'Gloriosky!" she said. Language inappropriate in classroom discussion is germaine to such a bitter and emotional narrative, she argued.

Teacher union representative Carl Harner told the board that it wasn't objectionable for a principal to take quick action in response to "an imminent danger." But, Harner said, "there is no imminent danger" in waiting for a review committee to study book complaints.

School Board member Leland McKeown disagreed. "According to my moral standards, that [the presence of objectionable material] is a matter of imminent danger to the students."

After the meeting Chang C. Lee, chair of the Florida Library Association Intellectual Freedom Committee, called the board ruling an example of "totalitarianism." Clare Ferraror of Ballantine Books, publisher of *Bloods*, said she learned of the decision on a visit to Florida and said her company was "definitely very interested in this case." Betsy Wagner, publicity manager of *People* said that her company might also respond to the board's action. "*People* is purchased by an average of 2.8 million people every week," she said. "We consider ourselves in the mainstream of American culture. And we find it abhorrent that any one individual would attempt to dictate the rights of others to read whatever magazines they choose." Company officials, she stressed, "view *People* as suitable reading for any member of the family."

Mike Young of the ACLU also expressed concern about a process in which "an individual's values are allowed to be so dominant." He urged the board to "get the smell of censorship out of Hernando County Schools." Young stressed that the "cruddy situation" in which the board found itself could have been avoided had McIntyre suggested to those complaining that they follow the board's own review process. "In terms of a realistic solution, what is necesary is a virtual requirement that the principal put *all* complaints—no matter where they originate—through the review committee so that he's not in this position."

The incident was not the first confrontation between the Hernando board and the Florida ACLU. Last year the board ordered Springstead High School's senior class to change its yearbook theme from "It's All in the Cards" because the theme might be interpreted as endorsement of tarot cards and demon worship. ACLU officials charged that the action amounted to censorship. Before that, the board approved in-school distribution of Bibles, which stopped only after the ACLU threatened a lawsuit. Reported in: *St. Petersburg Times*, February 4, 6.

Somerset, Kentucky

The Boy and the Devil, an adaptation of a Norwegian folk tale, has been targeted for removal from the library at Science Hill Elementary School by a mother of three school pupils who charges the book hints of a satanic cult. Ellen Bjorkquist called on the Science Hill Board of Education to permanently ban the book from the library and requested permission to check other reading materials at the school to see if anything else is objectionable to her.

The book is about a small boy who meets the devil and tricks him into a wormhole in a nut and puts the nut in his pocket. Stopping at a blacksmith's, the boy asked the smith to crack the nut. Obliging, the smith hit the "screaming nut" so hard with his largest sledgehammer the entire shop came tumbling down. "I think the devil must have been in that nut," the smith announced. "He was," smiled the youngster, pleased at outwitting the devil.

Bjorkquist, of the Pentecostal faith, said "there's no way a person can outwit the devil without God's help and nowhere is God mentioned in the book." She said illustrations give an impression the boy is possessed by the devil. Reported in: *Somerset Commonwealth-Journal*, February 27, March 5.

Larchwood, Iowa

The West Lyon School District removed six books by popular horror writer Stephen King from the library at West Lyon Community School, a school of 912 students in grades kindergarten through 12, February 9. "They don't meet the standards of our district," explained Superintendent Frank Ashmore.

The action was taken, Ashmore said, after the school received a complaint from a parent about King's *The Bachman Books*, an anthology of King works originally published under the pseudonym Richard Bachman. Ashmore said he and Principal James Van Steenwick reviewed the book and "glanced through" the library's other King holdings before deciding to remove them until the school board establishes a policy on the issue.

The six books removed from the school south of Larchwood were *The Bachman Books*, *Carrie*, *Christine*, *The Dead Zone*, *Different Seasons*, and *Night Shift*. "I was shocked when I saw some of the words," said Van Steenwick. "That kind of thing doesn't have to be among our high school library books."

School librarian Joli Gallagher said she understood the action but did not agree with it. "It's a small community," she said. "Some things are not as accepted as in larger places. But you hate to see censorship. It goes against your grain." She said she believes students should be exposed to a wide range of books. "I didn't buy the books because I think they should read vulgarities, but because Stephen King is a popular author."

Cryss Farley, executive director of the Iowa Civil Liberties Union in Des Moines, said the officials' action could be challenged in court and that her group would consider a lawsuit if a student or parent requests help. "It's appalling when one or two parents can set themselves up as censors for the whole district," she said.

In the wake of the decision, school officials reviewed a proposal to establish two new committees, one to review purchases of books for the district and another to referee complaints made against books in use. The school board set a

vote on the proposal for April. School officials declined to disclose the names of parents who complained about the King titles. Reported in: *Des Moines Register*, March 6; *Sioux City Journal*, March 11.

Lincoln, Nebraska

Citing more than fifty passages which they say contain profanity or deal with such topics as drugs, group sex, theft, murder, and deception, Charles and Beverly Bennett called on the Lincoln Board of Education to remove the book *When the Sky Began to Roar,* by Alice Bach, from the library at East Junior-Senior High School and from other school libraries.

A school district committee that reviewed the book after the Bennetts complained found that it "shows very real adolescent problems that should not be ignored," Associate Superintendent Daisy Arrendondo said. Appealing that verdict to the board, the Bennetts countered that the book creates despair, disrespect for parents and a sense of hopelessness. Reported in: *Lincoln Evening Journal*, March 5; *Lincoln Star*, March 6.

Taylorsville, North Carolina

In response to a parental complaint, the Alexander County Board of Education agreed to consider whether two books should be removed from the libraries at Alexander Central High School and East Junior High School. Marjorie Lackey, who has one child in each school, filed a complaint early this year asking for the removal of *Angel Dust Blues*, by Todd Strasser, because of several sexually explicit passages, and *Run Shelley, Run,* by Gertrude Samuels, owing to foul language.

"I didn't think this was proper reading material for children in school," said Lackey, who wrote a letter to the board requesting review of the material. "I was just concerned about it, and I thought it should be brought to the attention of the people who could do something about it."

Committees at each of the schools had recommended the books remain on library shelves. "We felt that there was a valid purpose in the book overall," said high school review committee chair Wyenne Duncan. At its March 10 meeting, the board appointed a special three-member panel to review the books, then meet with each school's media committee before making a recommendation to the full board. Lackey said she would accept whatever decision the board makes. Reported in: *Charlotte Observer*. March 13.

Vancouver, Washington

Evergreen School District elementary school students will need parental permission to see eight library books on human growth and development, a district committee decided November 19. Voting by secret ballot, the seven committee members selected the books for placement on "restricted shelves" in each school library. Two other books identified by the committee October 28 were also pulled from general circulation.

The books restricted in November were: *Before You Were a Baby*, by Paul Showers and Kay Sperry Showers; *Growing Up: How We Become Alive, Are Born and Grow,* by Karl de Schweinitz; *How Babies Are Made*, by Andrew C. Andry and Steven Schepp; *How You Were Born,* by Joanna Cole; *Life Before Birth: The Story of the First Nine Months,* by Stephen Parker; *The Reproductive System: How Living Creatures Multiply,* by Dr. Alvin Silverstein and Virginia B. Silverstein; *Sex: Telling it Straight,* by Eric W. Johnson; and *Where Do Babies Come From?*, by Margaret Sheffield. *A New Baby Comes*, by Julian May, and *A Baby Starts to Grow,* by Paul Showers, were removed from general circulation October 28.

In June, the school board voted to restrict student access to sex education books in elementary school libraries. The committee was formed to examine non-fiction books currently in such libraries and to decide which books should be sent to restricted shelves. The committee consisted of three board members, two school staffers, and three citizens. At the November meeting, the group perused almost fifty books that they had previously identified as possibly objectionable. Members examined each book individually, then cast a vote on an unsigned slip of paper.

Seven books were placed on restricted status as the result of a split vote, with at least four members in favor of restriction. The committee was unanimous, however, in its decision to send Margaret Sheffield's *Where Do Babies Come From?* to the restricted shelf. That book was one of two criticized by a parent the previous spring, prompting adoption of the restricted shelf policy. The other book, *Inside Mom*, by Sylvia Caveney, was among six to be reviewed that were checked out and unavailable to the committee. Those books were to be reviewed at a future meeting. Reported in: *Vancouver Columbian,* November 20.

schools

Montgomery, Alabama

Bowing to the wishes of the Eagle Forum and other conservative groups, the Alabama Board of Education unanimously voted February 12 to delay approval of most social studies textbooks pending a new review by the state textbook committee. Gov. Guy Hunt presided as the eight-member board left texts on economics and sociology pending, approved a few Alabama history books and returned all other history texts to the committee.

The committee will reconvene for two purposes, the first fairly simple, the second time-consuming and controversial. First, in its deliberations, the committee failed to understand the intent of the board with respect to eighth-grade social studies. In the past, the course was to focus primarily

on civics and law, with an emphasis on American history. After some controversy, however, the board amended that to make the course focus on history with an emphasis on civics and law. The committee did not note the change and recommended texts with the former mandate in mind.

The second issue was more controversial. The board ordered the committee to study all the books for references to the contribution of religion to American history and society. Originally, the committee was assigned to report on what "facts about religion" had been omitted from the books. But, according to textbook committee chair Dr. Carlton Smith, Superintendent of the Vestavia Hills school system, the panel found that assignment impossible. "To my knowledge there is no agreement on a list of facts to include. So it is virtually impossible to say what is not included," Smith explained.

With the assistance of publishers and the state Department of Education, the textbook committee carried out the review and in mid-March presented the board with a hefty compilation of references to religion in the texts. The contributions of religion to society are facts of history that "I think everyone would like to have pointed out," Smith said. But, he added, "I don't know what they're going to do once they get it all. Once you have it, so what? Who's going to determine when enough is enough? This whole thing is getting so complex. What if someone raised another issue? Would we have to go back through the books again?"

James Vickrey, president of the University of Montevallo and a member of the textbook committee, said he thinks the group should be abolished because it had become a forum for sterile debates on topics like the creation of the world.

Although Eagle Forum members testified before the board that religion was given short shrift in school texts, board vice president John Tyson Jr. of Mobile told the textbook committee that he wanted the list in part because he testified before U.S. District Court Judge W. Brevard Hand that the board would collect evidence of whether Alabama schools are including religious influences when teaching American history. On March 4, Judge Hand banned 45 textbooks from use in Alabama schools, including several American history books. He charged that by ignoring the contributions of theistic religions the books promote a religion of "secular humanism" (see cover story).

Tyson said the lack of religious content is a side effect of poor quality generally, poor writing, and guidelines that result in cursory attention to too many facts with no unifying themes. He and other board members urged state School Superintendent Wayne Teague to join with other southern superintendents to try to influence textbook quality.

While Alabama board members discussed the idea, Margaret Marston, a member of the Virginia State Board of Education, acted. Marston, who served on President Reagan's National Commission on Excellence in Education, and Virginia School Superintendent S. John Davis invited chief state school officers and state board members from fifteen Southern Regional Education Board states to attend a meeting April 30 in Atlanta to discuss joining together to influence textbook quality. Tyson and Teague have joined seven other states in accepting the invitation. Reported in: *Anniston Star*, February 13, March 4; *Florence Times*, February 13; *Montgomery Advertiser*, March 2; Montgomery Journal, February 12.

Cutten, California

A "ghoulish" Halloween record was banned from further use after being played to a third grade class at Cutten Elementary School. "We had to make a decision in a very sensitive area," said vice principal Ron Pontoni, "it is the district's policy to not censor things."

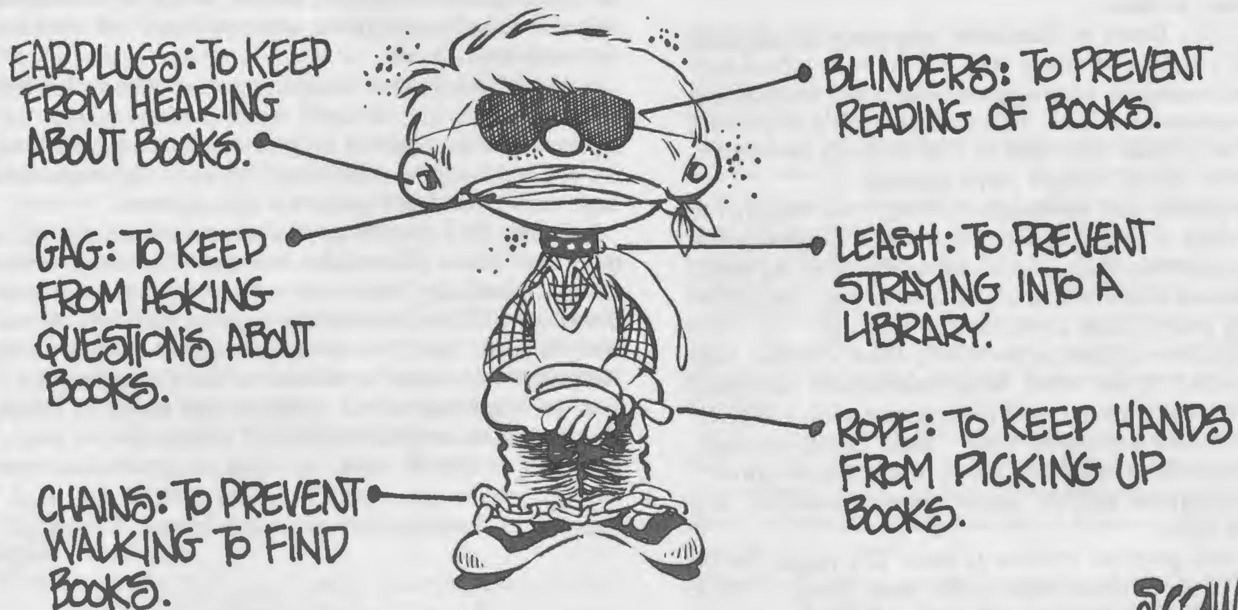
In an effort to set a Halloween mood October 31, a third grade teacher played the record, *Graveyard Tales*, a collection of "scary" poems. Unfortunately, one poem, "The Ghoul," turned out to be a bit too intense. Pontoni said the poem frightened some pupils, who later told their parents about it. The result was an investigation by a parent-school committee, which recommended that the poem in printed form be restricted to fifth and sixth graders and that the record be retained for teacher use only.

On January 12, after a 90 minute discussion, the school district board of trustees agreed with the committee's findings. The board meeting was well attended by those speaking for a ban of the record. Opponents of the removal charged that they had been misled into believing there would be no public discussion of the issue.

"Some parents were satisfied with the decision [and] some parents were not," said Don Filteau, whose daughter was frightened by the poem. Filteau said more than seventy parents signed a petition asking that the record be removed from school grounds and that some of them would have preferred *Graveyard Tales* to not even remain in the library. The record was originally purchased by library technician Janet Grandfield after it was named an ALA Notable Record. Reported in: *Eureka Times-Standard*, January 15.

Gwinnett County, Georgia

Equal pay. World hunger. Dungeons and Dragons. Gloria Steinem. Those are the kind of references in textbooks being proposed for Gwinnett County schools to which fundamentalist parents objected March 2. The complaints were filed as part of a parental review of proposed language arts textbooks by members of Citizens for Excellence in Education (CEE), whose earlier campaign against "objectionable" library books led to the removal of *Deenie*, by Judy Blume, and to a series of other challenges, as well as to a burgeoning debate over censorship (see *Newsletter*, November 1985, p. 193; January 1986, p. 8; March 1986, p. 57; July 1986, p. 117, 135; September 1986, p. 151; January 1987, p. 32; March 1987, p. 65).



CEE asked that some books be rejected due to subjects including death, the occult, mythology, and witchcraft. JoAnn Britt, CEE's textbook review chair, said some books expose pupils to too much death and dying and other depressing topics. She said the books also challenged traditional values. "Where are these people coming from, and where is the white male?" she asked. "He seems to be forgotten these days. You had a very heavy feminist theme, a very heavy minority theme."

In the twelfth grade grammar book, *English—Writing and Skills*, by Coronado Publishing, Mrs. Britt objected to a section asking the reader to define "feminism," and to use as a reading comprehension text portions of an article by Gloria Steinem on equal pay. She also was offended by a reference to the game Dungeons and Dragons and to a passage which states: "We must find a way to feed the world's growing population. We must face the prospect of worldwide famine."

Another CEE member, Linda Rogers, questioned the proposed Harcourt, Brace & Jovanovich series, *Ride the Silver Seas*, for seventh grade and the Macmillan *American Literature* for eleventh grade. "I am opposed to any occult-type things, and it was in the two literature books I reviewed," Rogers said. "The occult is a religion . . . yet Christianity is not mentioned. Witchcraft is mentioned too, and that is a satanic thing. I didn't recommend either one of them."

Many CEE members, including Britt and Rogers, have enrolled their children in private schools, and many of their opponents believe that has undermined their influence. "I question what their motives are," said Pam Davis of the Georgia Coalition Against Censorship. "I have reviewed the literature books, and none portray witchcraft as a way of life. There is nothing wrong with portraying women in a non-traditional role, and death is a reality."

"I don't think the board will adopt those [CEE] proposals

because the word is out among the people in Gwinnett County . . . and they [CEE] are out on a witch hunt," added Jim Litchfield, a parent and member of the Free Speech Movement of Gwinnett. Gwinnett County, the fastest-growing county in the U.S., is part of a rapidly expanding belt of mainly white and relatively affluent suburbs north of Atlanta. Reported in: *Atlanta Journal,* March 4.

Fort Scott, Kansas

The U-234 Board of Education took under advisement March 2 a request to take a book off the high school supplemental reading list after a parent complained the book was not appropriate for minors. Board members said they would discuss the content and value of *The Butterfly Revolution,* by William Butler, at their April meeting.

Devney Mack said his daughter, Cindy, was required to read the book as part of an assignment in her eleventh grade English Literature class. Mack said he also read the book, and presented board members with a three-page complaint. Referring several times to the book as "garbage," the complaint cited several paragraphs which, Mack charged, suggested dislike of the Bible, belief in atheism, vile social habits, obscene language, and plots against adult authority. The book was compared with "smut books normally associated with those usually found in adult book stores." Mack also argued that the author presents Marxism in a favorable light.

"My own personal opinion is these 221 pages can be recycled to use as tissue paper in the water closets," Mack said. Reported in: *Fort Scott Tribune,* March 3.

Sinking Valley, Kentucky

A parent of a 15-year-old high school sophomore in February demanded removal of a novel by Nobel laureate William Faulkner and three other books from the required reading list in the advanced English class of Pulaski County High School. "It's pure filth," said Connie Bullock of Faulkner's *As I Lay Dying.* "The man that wrote it must be a little off his gourd." The book, which Bullock said she "browsed through," contains profanity and a segment about masturbation.

"In my opinion, it's not just my daughter I'm fighting for—I'm fighting for the rights of others," she explained. "I can't see where it would enrich them. They're filling their heads with this junk. Bullock also wants *Death of a Salesman* and *The Crucible,* by Arthur Miller, and Thomas Mallory's *The Death of Arthur* removed from the curriculum.

Bullock said she had contacted 24 of the 26 parents of students in the advanced placement class, and said all but two wanted *As I Lay Dying* withdrawn. "They were very furious about it," she said. "I believe I have an open mind and I can accept some cussing. But not like this. We want these books totally out."

Teacher Ron Parkey said the Faulkner book was pulled from the classroom in accordance with school policy pending final resolution of the complaint. "My feeling is a parent has the right to object as to what their child reads," he said. "But I'm not comfortable with withdrawing a book because one person complains. To withdraw a book by Faulkner over one objection just doesn't seem right." Parkey added that Bullock had contacted a local newspaper before bringing her objections to him. He said he met with her and four other concerned parents, and offered to substitute alternative readings for their children, but little was accomplished.

Pulaski County schools superintendent Woody Joe Barwick appeared ready to resist removal of the books. "It's fashionable these days for people to pick up a book and say it's unsuitable for the classroom," he said. "I thought those days were over, but I guess it's coming back."

Last fall, *As I Lay Dying* was removed unanimously by the school board from classrooms and libraries in Graves County, Kentucky, but a week later, after intense pressure from the ACLU and considerable negative publicity, the book was reshelved (see *Newsletter,* November 1986, p. 208). Suzanne Post, executive director of the Kentucky ACLU, said the organization was ready to take action in Pulaski County if it received a complaint. "If they cave in there," she said, "they'll cave in right and left on other books. . . soon you won't have any left on the shelf." Reported in: *Somerset Commonwealth-Journal,* February 27.

Lamar, Missouri

In 1884, President Harry S Truman was born in the small southwestern Missouri town of Lamar. More recently, the town has become the site of yet another banning of J. D. Salinger's *The Catcher in the Rye.*

The Lamar R-1 School District Board of Education voted in January to remove Salinger's famous novel from the high school English Department's optional reading list. Now, according to a department member, the book not only may not be taught, but English teachers are also enjoined from encouraging students to read it and prohibited from giving book report credit to any students who do read and review it.

The board member who introduced the motion banning Salinger objected to the author's use of purportedly obscene language. "If a child talks that way during class," he said, "they will be suspended. Why should it be OK to read and teach the same things?"

The Lamar board banned *Catcher in the Rye* without following its own procedures for resolving disputes over curricular materials. These procedures are contained in a policy unanimously adopted by the board a year earlier. The English Department was denied the opportunity to defend the book, and members of the board voted to condemn it without reading it. Reported in: *St. Louis Post-Dispatch,* February 27.

Raleigh, North Carolina

I Know Why the Caged Bird Sings, the first in a widely praised series of autobiographical works by Maya Angelou, was removed from the required reading list for Wake County high school juniors in regular and college prep English classes because of complaints about a scene in which 8-year-old Maya is raped. The book remains on the supplemental reading list, however, and paperback copies are available for classes in which a teacher decides to use the work.

"This is the first step toward censorship. We felt strongly it should be kept" on the required list, said Marian Timothy, English department chair at Broughton High School. "Now some of us are scared about Macbeth."

Linda Suggs, secondary English supervisor for the district, said Angelou's book was placed on the required reading list to represent the works of modern black women. 1985-86 was the first year it was taught in many schools. Although there were no formal challenges to *I Know Why the Caged Bird Sings*, there were enough oral complaints from parents, students, and even some teachers, that English department chairs from high schools throughout the county met to discuss the book's place in the curriculum, Suggs said. Although opinions varied on the committee, the group voted to replace the book with *Their Eyes Were Watching God*, by Zora Neale Hurston. Reported in: *Raleigh Times*, February 14.

Racine, Wisconsin

Four pages of a 600-page biology text triggered discussion at a meeting of the Racine Unified School Board March 2 about whether the schools should teach the creationist theory of how the world began if evolution is included in the curriculum. Board member George Petak objected to a $13,776 expenditure for a tenth grade life sciences book, *Biology: An Everyday Experience*, because the book failed to discuss creationism.

"The biology text doesn't give equal balance to creation-science and evolution-science," Petak said. "In the absence of a creation-science model, we are giving the students of this district an unfair viewpoint." The biology book was one of 35 books that the board eventually adopted by a 7-1 vote, with Petak dissenting and one board member absent.

Petak argued that if teachers are going to deal with the theory of evolution, they are obligated to also deal with the theory of creation. But board member Eugene Dunk said the book recommended by a committee of teachers and parents and also by the school administration gave only brief mention of evolution and treated it as theory instead of fact. Chester Melcher, director of science for the district, said the classes using the book in most cases would not get to the topic.

In December, the Racine district's Library Materials Review Committee voted to limit access to Kurt Vonnegut's novel *Slaughterhouse Five*. Last May, the Wisconsin Library Association unanimously adopted a resolution censuring the district for its library materials selection policies and practices which conflict with "the principles of intellectual freedom as supported by the Library Bill of Rights" (see *Newsletter*, July 1986, p. 114; March 1987, p. 51). Reported in: *Racine Journal-Times*, March 3.

student press

Urbandale, Iowa

A high school newspaper column satirizing bowling caused several bowling alleys to cancel $8,000 worth of advertising in an Urbandale newspaper and may lead to greater restrictions on the freedom of scholastic journalists. Joel Fenton, a senior at Urbandale High School, writes a weekly column in the *JayHawker*, a two-page school newspaper that is inserted into the *Urbandale News*, a community weekly. In early February, his column was entitled "Let's *Not* Go Bowling," parodying an Iowa television show, "Let's Go Bowling."

"When you get to the bowling alley you approach the front desk, where an old guy with six teeth and a hearing aid takes your money," Fenton wrote. "The whole concept of renting shoes is terrible. Would you rent a Kleenex after someone used it?"

Dennis Tollerud, general manager of Merle Hay Lanes was one who didn't think the column was funny and canceled his $3,000 in advertising in protest. "I haven't seen anyone with no teeth and hearing aids in bowling alleys ever," he said. "I'm sure he meant it as just a joke, but we're trying to attract young people to our business, and I'm sure the kids took it seriously."

Kevin Brown, publisher of the *Urbandale News*, said Fenton has the right to express his opinions in the column. He called the bowling alley owners' reaction "juvenile," and said he expected some to reconsider. Fenton said the bowlers' reaction "really threw me," and said he was visiting local alleys with Urbandale School Superintendent John Cox to try to win back advertisers.

Cox said he asked Fenton's principal to investigate the school newspaper's rules. Guidelines for determining what may be published will be issued, he said. "I wouldn't say we're looking into what gets in the paper because of Joel's column, because I have no particular problem with it. This just gives us an occasion to look at it. They are not adults; they need a little more direction," Cox said.

"We're worried that the guidelines may violate our rights, but we'll have to wait and see what they say," Fenton responded. "The column was just a humorous look at something people do. I wasn't trying to make fun of anyone or hurt their feelings." Reported in: *Des Moines Register*, February 14.

religious press

Dallas, Texas

The *United Methodist Reporter*, a weekly newspaper with a circulation of about 500,000, refused to run an advertisement for Affirmation, an unofficial caucus of lesbian and gay United Methodists. The paper's editor and general manager, Spurgeon Dunnam III, said that the ad would "put us in position of promoting something" that is repudiated by the denomination's governing council, which termed homosexuality "incompatible with Christian teaching." Affirmation had sought to place an ad for its magazine, *Open Hands*, which reports on programs in a network of United Methodist congregations that welcome lesbians and gays. Reported in: *Baltimore Sun*, February 7.

foreign

Beijing, China

The editor of a literary magazine was sentenced to seven years in prison for defaming China's socialist system, the daily *China Legal News* reported February 6. It was the first reported criminal case in China's recent campaign against Western liberal tendencies. The report did not say when the editor, Liu De, was sentenced.

The newspaper said Liu "desperately pursued and preached the so-called 'democracy' and 'freedom' of capitalist countries." It said that in a lecture he had "uglified the socialist system," criticized China's capitalist-style economic changes, and called on his audience to "take immediate action and join in a common struggle."

The anti-liberal campaign earlier resulted in the forced resignation of Communist Party chief Hu Yaobang, the demotion of the party propaganda chief, and expulsion from the party of three prominent intellectuals. Calls for democracy and greater freedom were widespread when thousands of students demonstrated in the streets of at least eleven cities in December and early January. Reported in: *New York Times*, February 7.

(continued on page 110)

South Africa quandary— sanctions or academic freedom?

University Microfilms International has suspended the only service that provides microform copies of unpublished research material such as Ph.D theses from the United States to South African universities. The action was the latest of a series of international sanctions and boycotts aimed at scholarly activities in South Africa.

Librarians at the country's three largest universities described the move as "a very serious blow" for graduate research and scholarship. They said the reference service was suspended January 1 to comply with the policy of UMI's parent company, Bell and Howell, "to discontinue selling to or buying from any South African institution."

Thys Du Preez, a librarian at the University of South Africa, said the university had ordered 447 doctoral theses from UMI in 1986. With 87,000 students, 40 percent of whom are black, the university is the largest higher education institute in the southern hemisphere. "It is now easier to get research out of Russia than it is from America," Du Preez said.

International sanctions have become the focus of intense debate on South African campuses as academics increasingly feel their effects. Invitations to South Africans to attend international conferences have been withdrawn, some foreign lecturers have shunned contact with South African universities, and journals are increasingly refusing to publish papers submitted by South African academics. Many scholars, especially scientists, who are critically dependent on international contact for their work, are leaving or considering emigration.

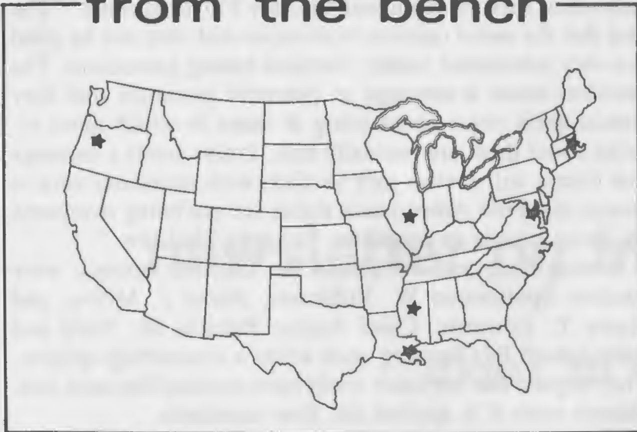
The strongest proponents of a total boycott in South African universities are student groups that believe they are supporting the policy of the banned African National Congress. They argue that the academic boycott is part of the overall attempt to isolate the regime and to make an exception of scholars would dilute the impact of isolation.

Recent contacts between faculty members and the ANC, however, have confirmed that the movement is reviewing its position on the academic boycott and attempting to define criteria for a "selective boycott." Many opponents of the apartheid regime have argued that a total boycott policy will hinder progressive scholars from making serious analytical criticism of South African society, while making little impact on apartheid. Effective opposition depends, they say, on a reliable flow of information and research.

In addition, they contend, conservative academics and institutions abroad would ignore the boycotts. As a result, only those who oppose the regime would be isolated, and many would be forced to emigrate, leaving the conservatives in control.

But proponents of a "selective boycott" have been unable to arrive at widely acceptable criteria by which to carry it out. One major unresolved question is whether academics would have to "prove" that their work made a significant contribution to the struggle to qualify for exemption from the boycott. Reported in: *Chronicle of Higher Education*, February 11.

from the bench



U.S. Supreme Court

The U.S. Supreme Court agreed in late February to hear the appeal from the decision in the case of *Virginia* v. *American Booksellers Association, et al.* In that case, the U.S. Court of Appeals for the Fourth Circuit unanimously held unconstitutional a Virginia statute making it a crime for a bookstore to display any materials deemed harmful to persons under the age of eighteen. Joining Virginia in asking the court to hear the appeal were twenty-one other states that have so-called minors access laws. Given the broad interest in the issue as well as the disparate decisions that have been handed down by lower courts, most legal experts were not surprised the Court chose to hear the appeal.

Max Lillienstein, counsel for ABA, called the issue the most important case dealing with books including sexual content since the 1960s. "If the Virginia law is found constitutional," he said, "it has the potential to eliminate from sale sex education books as well as best sellers by such authors as Harold Robbins."

To comply with the law, opponents have argued, booksellers and distributors of periodical literature would have to engage in self-censorship and screen out books they feel may violate the law, making them unavailable to adults as well as minors. A second option would be to create an adults-only section and a third would be to ban minors from the store. The legal effort is being headed by the Media Coalition. Arguments in the case are not expected before the court's 1987-88 session. Reported in: *BPReport*, March 2.

The Supreme Court ruled 8-1 February 25 that the state of Florida violated the religious freedom of a woman who was denied unemployment benefits after she was fired for refusing to work on Friday evenings and Saturdays. The woman said she had become a Seventh Day Adventist in 1984 and couldn't work on those days. State officials labeled her action "misconduct" and said this excluded her from eligibility for unemployment compensation.

But in an opinion written by Justice William Brennan, the court ruled that the denial of benefits placed too great a "burden" on the woman's First Amendment right to "free exercise" of her religion. Chief Justice William Rehnquist was the sole dissenter. Reported in: *Wall Street Journal*, February 26.

libel

Washington, D.C.

In a major victory for investigative journalism, the U.S. Court of Appeals for the District of Columbia reversed a $2 million judgement against the *Washington Post*, ruling 7-1 that a 1979 article did not libel William P. Tavoulareas, former president of the Mobil Oil Corporation, or his son Peter. The story had said the elder Tavoulareas "set up" his son in a shipping company that had dealings with Mobil.

In overturning an April, 1985, decision by a three-judge panel of the same court, the justices said the article's main contention, even when viewed in the light most favorable to Tavoulareas, "was substantially true." The majority opinion, written by Judge Kenneth W. Starr and senior Judge J. Skelly Wright, said, "The record abounds with uncontradicted evidence of nepotism in favor of Peter." The decision was the latest in a series of verdicts in which each court, reviewing the decision on appeal, overturned the previous ruling (see *Newsletter*, July 1985, p. 123).

The case may still be appealed to the U.S. Supreme Court, but that was considered unlikely. "It seems to me that this opinion was carefully crafted in a way to insulate the case from further review by the U.S. Supreme Court," said Bruce Ennis, attorney for the Freedom to Read Foundation.

"What I hope is that a celebrated case like Tavoulareas will usher in a new era of enterprise reporting," said Bruce Sanford, a prominent libel attorney. Sanford said that four or five years ago, libel attorneys and media experts were concerned that the increasing number of libel suits would bring about "an era of low-risk journalism. And to some extent we have seen that come to pass," he said. "A lot of us assumed the *Post* would win, though it would be important how they won it," Sanford said.

He said it was important that the vote was overwhelming and that the judges issued a strong defense of a 23-year-old precedent, namely, that public figures must prove "actual malice" as well as falsehood to prove libel, which makes it difficult for such figures to win libel suits.

Judge George E. MacKinnon, who wrote the majority opinion for the three-judge panel, dissented in the court's decision, saying the newspaper and its reporter, Patrick Tyler, had "demonstrated an ambition at the very outset to 'bring

down' Mobil," which "may properly be considered evidence tending to prove a reckless disregard of the truth." Judge MacKinnon had been joined in the overturned decision by Antonin Scalia, who has since been appointed to the U.S. Supreme Court. Judge Wright dissented in that earlier 2-1 ruling.

The court not only found that the information published by the *Post* was essentially accurate, but also ruled that the newspaper did not act with malice against Tavoulareas. The general standard for determining malice was set down by the Supreme Court in 1964 in *New York Times* v. *Sullivan*, and it was that yardstick which the court used. The majority specifically rejected suggestions that it apply an expanded standard offered by the High Court in its 1984 *Bose Corp.* v. *Consumers Union* decision. Judges Starr and Wright said it wasn't necessary to use the *Bose* precedent since the article was found to be true.

"We have at every turn accepted only undisputed factors or Tavoulareas's version of disputed facts, avoided any evaluations of credibility and credited all permissible inferences the jury may have drawn favorably to Tavoulareas. Having done so, we nonetheless are constrained to conclude that the evidence is insufficient to constitute clear and convincing evidence of actual malice," they wrote.

"Tavoulareas relies heavily on internal unpublished *Post* memoranda to establish the meaning of the article," the decision continued. "This will not do. Nothing in law or common sense supports saddling a libel defendant with civil liability for a defamatory implication nowhere to be found in the published article itself."

The decision noted that comments made by *Post* reporters—including a comment by Tyler that "it is not every day that you knock off one of the seven sisters [Mobil Oil]"—were not evidence of malice in the legal sense. "These statements, not unknown to the vernacular of litigators, seem to us well within the everyday parlance of an investigative reporter," the opinion said.

In the overturned panel opinion, Judge MacKinnon had written that the *Post* "is a newspaper which seeks, among other things, hard-hitting investigative stories," and that such "sophisticated muckraking" could provide "a motive for knowing or reckless falsehood." The full appeals court ruled, however, that "an adversarial stance is certainly not indicative of actual malice under the circumstances, where as here, the reporter conducted a detailed investigation and wrote a story that is substantially true."

That reversal was viewed by many libel experts as the most important result of the decision. "It means that people in the newsroom no longer have to fear that trivial and aside comments . . . are going to be evidence of actual malice if a story becomes the subject of a libel case," said Washington attorney Andrew A. Merdek.

"The panel opinion posed more of a threat to the ability of the press to function than any libel decision of the decade," said noted First Amendment attorney Floyd Abrams. "The fact that the panel opinion is no more and may not be cited is a very substantial victory for hard-hitting journalism. The decision sends a message to potential plaintiffs that they should think twice about suing in cases in which news articles about them are basically true. It also sends a message that courts will review jury verdicts with enormous care to assure that First Amendment rights are not being overcome by juries unable or unwilling to apply libel law."

Joining Starr and Wright in the majority opinion were Justices Spottswood W. Robinson, Abner J. Mikva, and Harry T. Edwards. Chief Justice Patricia M. Wald and Justice Ruth B. Ginsburg each wrote a concurring opinion. They argued that the court could have reached the same conclusion even if it applied the *Bose* standards.

The majority view was based on "truncated facts and incomplete law," Judge MacKinnon wrote in his dissent. "The outlandish refusal of the majority to consider the article as a whole surfaces throughout its discussion of defamatory meaning, falsity and actual malice," he wrote. "The majority goes to great lengths to avoid imposition of any liability on the *Post*—it whittles down the defamatory meaning of the article, stacks selective facts in an attempt to establish the truth of a stripped-down version of the 'set up' charge and fails to acknowledge the clear and convincing evidence that the *Post* published the article with reckless disregard for its truth or falsity." Reported in: *Washington Post,* March 14; *New York Times,* March 14.

political expression

Washington, D.C.

A 38-year-old federal law that prohibits protests on the steps and plaza of the U.S. Supreme Court Building was upheld as constitutional March 4 by a unanimous three-judge panel of the U.S. Court of Appeals for the District of Columbia. The decision overturned a 1985 lower court ruling that the prohibition unreasonably infringed on First Amendment protections, but left intact a 1983 Supreme Court ruling permitting demonstrators to protest on the sidewalks around the building.

Judge Theodore R. Newman Jr., writing for the panel, said there was a "significant governmental interest" in upholding the restrictions and that "the danger of the appearance of outside influence upon the court is ever present."

"It is our view that citizens are entitled to influence the court, be it through writing an editorial or picketing in front of the courthouse," commented Arthur Spitzer, legal director of the ACLU.

The ruling came in the case of a man who was among a group of 29 people arrested while kneeling and praying on the Supreme Court steps January 22, 1985, as part of a protest of the Court's decision legalizing abortion. The arrested

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man was part of a demonstration of about 50,000 who paraded up to the court building.

The panel also rejected arguments that a distinction should be made between demonstrations occurring while the Court is hearing oral arguments and when they are not. "The building remains open for business even when oral arguments are not taking place," the panel said. Judge Newman was joined by Judge James A. Belson. Judge John M. Ferren concurred in the decision, but issued a separate opinion. Reported in: *Washington Post,* March 5.

Springfield, Illinois

The Illinois Supreme Court ruled February 20 that the First Amendment protects publishers of campaign brochures and handbills from being required to print their names on the election circulars. "The state has an interest in preventing intentional deception of the voters, but that interest cannot be served by a statute that sweeps too broadly, and in doing so stifles speech which has little or no tendency to misinform, let alone deceive," Justice Seymour Simon wrote for the court.

The case involved a woman who was dissatisfied with the performance of her county state's attorney and allegedly distributed a leaflet urging voters to write in the name of another candidate. The circular did not contain the name and address of the person or group who published it as required by a four-year-old state law.

Noting that the Federalist Papers written to urge ratification of the U.S. Constitution were published under pseudonyms, the court said the statute unnecessarily restricted free expression and could not be considered the "least drastic alternative" for preventing character assassination campaigns, including the possibility that an election could be swayed "on the strength of an eleventh hour anonymous smear campaign."

Judge Simon said the law "sweeps within its net a great deal of anonymous speech" completely unrelated to such concerns. "By banning anonymity, the law deters many from expressing their opinions at all, resulting in an overall decrease in the flow of information to the public," he said. "Far from creating a more informed electorate, the statute extinguishes sources of information." Reported in: *Chicago Tribune*, February 21.

obscenity

Salem, Oregon

In a decision critical of U.S. Supreme Court rulings on obscenity, the Oregon Supreme Court held January 21 that state criminal obscenity laws violate the free speech clause of the First Amendment to the U.S. Constitution. The unanimous decision said there was no historical basis for exempting sexually explicit writings, pictures, or art from the protection of the free speech clause of the Oregon Constitution.

The laws struck down in *State* v. *Henry* were based on the 1973 U.S. Supreme Court ruling in *Miller* v. *California*, which defined a work as being obscene if "the average person applying contemporary state standards would find the work, taken as a whole, appeals to the prurient interest in sex" and if the work "lacks serious artistic, political, or scientific value."

Justice Robert E. Jones, writing for the court, said that definition was too vague to specify a prohibited activity, and that such writings or pictures or art were protected. After a historical review of the issue going back to the sixteenth century, Justice Jones suggested that Justice William J. Brennan Jr., writing for the U.S. Supreme Court, acted "precipitously" in linking profanity with obscenity to conclude in the 1957 case of *Roth* v. *U.S.* that sexual obscenity is not protected by the First Amendment. "Obscene speech, writing or equivalent forms of communication are 'speech' nonetheless," Jones wrote.

Article I, Sec. 8 of the Oregon Constitution states, "No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write or print freely on any subject whatever."

The Oregon court said that protections afforded under the Oregon Constitution were broader than under the First Amendment, but the court also questioned whether the framers of the First Amendment intended for sexually explicit materials to be excluded from its purview. Justice Jones said historical review indicates that there may have been a view that "obscene" materials were not privileged, but he said "the pejorative label has not described any single type of impropriety." He said the term had included blasphemy, profanity, corruptness and impurity.

"Early American laws made blasphemy or heresy a crime, but sexual materials not having an anti-religious aspect were left generally untouched," Jones said. Under the current interpretation, the First Amendment protects anti-religious or heterodox religious expression, but does not protect sexual material.

The Oregon court said its decision did not rule out possible regulation of sale, production, and distribution of pornography, however. "We do not hold that this form of expression, like others, may not be regulated in the interests of unwilling viewers, captive audiences, minors and beleaguered neighbors," Jones wrote. "We also do not rule out regulation, enforced by criminal prosecution, directed against conduct of producers or participants in the production of sexually explicit material." Reported in: *National Law Journal*, February 16.

Salem, Oregon

The Oregon Supreme Court has again overturned a state law against making obscene phone calls. The court had overturned an earlier law in 1979, and the legislature passed a new statute in 1981. But the court said February 10 that the new version was also unconstitutional.

"This telephone harassment statute is hopelessly overbroad," the court said in a unanimous opinion upholding the State Court of Appeals. The criminal law forbids causing harm or annoyance "by telephonic use of obscenities or description of sexual excitement or sadomasochistic abuse or sexual conduct" and describes several specific sex acts. The law did not explicitly limit its coverage to calls that were unsolicited and unwanted. Reported in: *New York Times*, February 12.

parody

Boston, Massachusetts

The U.S. Court of Appeals for the First Circuit in Boston February 11 rejected a suit by L.L. Bean, Inc., to halt distribution of a pornographic parody of its famous catalog. In a 2-1 ruling, the court said the parody, published in *High Society* magazine, was protected by the First Amendment. Bean sought a restraining order to remove from circulation the October 1984 issue containing the parody, entitled "L. L. Beam's Back to School Sex Catalog."

"Denying parodists the opportunity to poke fun at symbols and names which have become woven into the fabric of our daily life would constitute a serious curtailment of a protected form of expression," Judge Hugh H. Bownes wrote for the majority. "Although parody is often offensive it is nevertheless deserving of substantial freedom as entertainment and as a form of social and literary criticism. It would be anomalous to diminish the protections afforded parody solely because a parodist chose a famous trade name rather than a famous person," the opinion said.

The court overturned a ruling by a U.S. District Court Judge in Maine who found that under Maine law the article amounted to an illegal dilution of Bean's trademark. The article displayed the company trademark alongside pictures of nude models in sexually explicit poses using products described in crudely humorous fashion, the court said. But the appeals court noted that the magzine did not use Bean's trademark to market goods or services but rather "solely to identify Bean as the object of its parody." Applying the Maine trademark law in the case, the court said, would improperly expand it "far beyond the frontiers of commercial use and deep in the realm of expression." Reported in: *Boston Globe*, February 12.

church and state

Jackson, Mississippi

U.S. District Court Judge William Henry Barbour, Jr., granted a preliminary injunction January 16 to the Mississippi ACLU and individual plaintiffs who sought to prevent state officials from illuminating an image of a Christian cross on a state office building. Judge Barbour ruled that the plaintiffs were likely to succeed in their claim that the display would foster excessive government entanglement with religion. There was, he said, substantial evidence to show that display of the cross was intended exclusively as a religious symbol, with the purpose of endorsing the Christian religion. Reported in: *West's Federal Case News*, February 20.

university

New Orleans, Louisiana

A college teacher can be fired for swearing in the classroom when his language is solely for the purpose of "cussing out" his students, the U.S. Court of Appeals for the Fifth Circuit recently ruled. The court upheld the firing of a Midland College economics instructor who was dismissed for using language—specifically the phrase "God damn"—that students complained about and college officials had already warned him against.

J.D. Martin, who was fired in 1984, argued that his language was protected by his rights to free speech and academic freedom. He said he was only trying to motivate his students because he was frustrated with their lack of progress and their unruly behavior. Martin said he was concerned the case might set a bad precedent by stifling academic freedom. "When you are always having to worry—'Gosh, did I say hell or damn?'—you are censoring your ability to be creative in the classroom," he said.

In 1985, a jury decided that Martin's firing was unjustified and awarded him $28,000. But the judge in the case overruled the jury, and that decision was upheld by the appeals court in December. The court said Martin's statements to his class were "derogatory" and "offensive," and said they were a "superfluous attack on a captive audience." Reported in: *Chronicle of Higher Education*, January 21.

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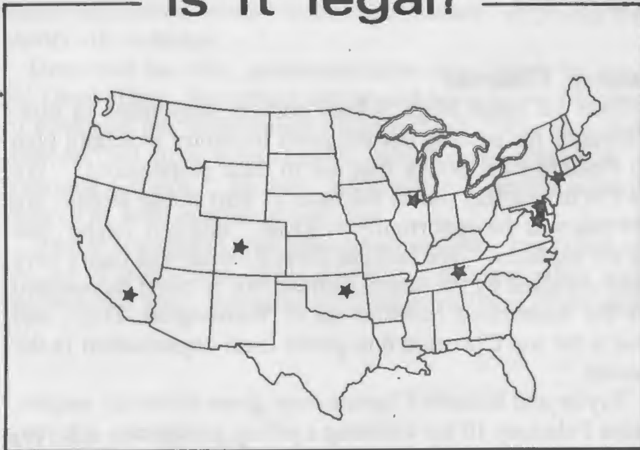
is it legal?



academic freedom

Washington, D.C.

The Rev. Charles E. Curran, a liberal Catholic theologian under fire from the Vatican, said in January that he was considering a lawsuit against the Catholic University of America, which temporarily suspended him from all teaching duties and canceled his courses for the spring semester. The dismissal came after the Vatican declared him unfit to teach Catholic theology because of his dissent from church teachings. Curran, who faces possible dismissal from the Vatican-chartered university, called the suspension "unwarranted" and a violation of due process and academic freedom.

"As a tenured professor, I have a legally binding contract," he said. "The question is, can an external authority break that contract? Obviously, it's a lawyer's dream."

After word of his suspension was released, Curran announced he would defy the order and hold classes anyway, but changed his mind after Archbishop James A. Hickey threatened to use his authority under canon law to block Curran's teaching. Use of the canon would be a "catastrophe" for Catholic higher education, Curran said, and could threaten the university's accreditation and federal funding. Canon 812, which requires that theology instructors at any Catholic college or university have a church mandate, has never been invoked in American higher education. Reported in: *Chronicle of Higher Education,* January 21.

Evanston, Illinois

A Northwestern University faculty member who stirred controversy when she disrupted a campus speech was denied tenure in late February. Northwestern President Arnold R. Weber told the faculty member, Barbara C. Foley, that he supported the decision of the university provost, who had called her behavior unacceptable in a university setting. Foley, an assistant professor of English, said she would file suit against the university.

"It is entirely hypocritical for Arnold Weber to cover himself in the mantle of defending free speech and academic freedom," Foley said. "I consider this a blatant political attack and reprisal for my activities as a Marxist at Northwestern."

The professor was reprimanded last year for her role in preventing Nicaraguan contra leader Adolfo Calero from speaking at a campus function. After a local uproar, the university reprimanded Foley for her behavior—calling it "grave professional misconduct"—and threatened her with dismissal if she ever participated in such a disruption again. She promised never to do so.

Foley, a campus activist with the International Committee Against Racism, an offshoot of the communist Progressive Labor Party, ran into trouble again, however, when she came up for tenure and promotion. Her colleagues took pains to point out that Foley does not fit the stereotype of a dogmatic ideologue, saying she is "reasonable" and open to varied views and debate. The English Department voted 10 to 5 for promotion and tenure and two other faculty committees and her dean all supported that vote. One of the faculty groups asked 35 outside scholars—an unusually high number of referees—to review her work, and reports indicated their comments were largely favorable. The Modern Language Association also urged the university to grant tenure to Foley.

Nevertheless, then-provost Raymond Mack rejected those recommendations. "Tenure is not an entitlement," he said. "It means the position we've offered is for someone who is worthy of permanent status in the university." A faculty group to which Foley appealed found the university had not violated her academic freedom or discriminated against her. It did, however, conclude that Mack was convinced beforehand that she did not merit tenure. Consequently, the positive recommendations of her department and others were "scripts played to an empty theater."

Foley won the support of the American Association of University Professors. "We're not supporting her in terms of disrupting a speech," explained history professor David Joravsky, local chapter president. "My concern is in due process and the constitutional guarantees that should govern her punishment and the procedures for tenure. "Informed of President Weber's decision, Joravsky said, "I have the same reaction as Barbara Foley—I'm not surprised, but I'm disgusted."

In upholding Mack, President Weber said, "It would be anomalous to ignore a severe transgression against a central value of the university when considering whether or not to confer on a candidate the institution's most prized status." Tenure, he said, was intended to protect the pursuit of truth and not to "shield those who seek to abridge the freedom of others to speak and hear."

Some colleagues, however, maintain that Foley never did anything wrong. They see an important difference between advocating a shout-down of a speaker, which Foley did, and actually barring the speaker from speaking, which others did, and probably would have done anyway, no matter what Foley said. If she had spoken against Calero's right to speak a few days beforehand, they argue, Foley would have been exercising *her* right to free speech. The fact that she spoke fifteen minutes before Calero's appearance shouldn't make a difference, they say.

Richard Kieckhefer, a professor of the history and literature of religions, wondered whether it was proper for Calero to appear on campus in the first place. His visit was, after all, part of a partisan political effort to gain support for the contras in Congress. At the same time, the State Department was denying visas to some Sandinistas. "From a moral viewpoint, I have serious problems with a university campus being a forum for privileged discourse," Kieckhefer said. Paul Breslin, associate professor of English agreed: "Free speech as it was disrupted was already compromised."

One thing people on both sides of the controversy agree upon is that it has invigorated political life at the university. "Anything that reactivates students to be political is probably in the best interests of education," observed classics professor Daniel Garrison, one of Foley's most strident critics. "Academe is lost if there's no political activity," said Foley. "In that sense, what happened was positive. It got people thinking again."

Some faculty and graduate students planned a demonstration to protest the denial. Foley, however, said she had filed a complaint of discrimination with the Equal Employment Opportunity Commission, which decided to investigate her charges. She cited a 1971 incident when two male faculty members disrupted a speech by a South African government representative. Neither was disciplined at all. "They've set a definition of professional conduct, where if a man does this, it's a courageous thing to do," she said. "With a woman, it's irresponsible." Foley said in the meantime she would accept a job offer from Rutgers University at Newark. Reported in: *Chronicle of Higher Education*, February 18, March 4.

schools

Denver, Colorado

Two La Junta High School seniors suspended in mid-February for passing out religious literature at school plan to challenge the policy that led to their suspensions. "We as Christians feel this is the time to start doing things. We felt this was the opportunity to do so," said Jeff Taylor, one of the students. "We feel our First Amendment rights have been abridged by the school district. We're being represented by the Rutherford Institute out of Washington, D.C., and that's the top Christian non-profit legal organization in the nation."

Taylor and Ricardo Chavira were given three-day suspensions February 10 for violating a policy prohibiting distribution of non-curriculum material without approval of the school superintendent. The previous day, the two students distributed copies of *Issues and Answers*, a newsletter published by Student Action for Christ in Illinois. "We started handing them out in November on public property in front of the school, but it wasn't until Monday that we decided to go on campus," Taylor said.

He said the students wanted to challenge a recent revision of the long-standing policy on literature distribution. "The school board expanded the policy that they had from a little paragraph to a four-page policy," said Taylor. Jack Lowe, a member of the school board, said the expansion was intended to enhance student rights and comply with state guidelines by adding an appeal process to the old policy. He said that neither student attended open meetings in November and December at which the policy was discussed. Taylor said the meetings were closed.

Whether the students will pursue the case in court "will depend on how the school reacts," Taylor said. Reported in: *Rocky Mountain News*, February 12.

Nashville, Tennessee

Tennessee schoolchildren should be taught that evolution is only a theory, "not a proven scientific fact," state Rep. Pete Drew (Rep.-Knoxville) believes. Drew has sponsored legislation requiring that evolution and "creation science" receive "balanced treatment" in the public schools as explanations for the origin of life on earth. The bill defines "creation science" as "the scientific evidences for creation" of life on earth, and proposes that each school system develop a curriculum guide on "creation science."

A board of seven "creation scientists" would be designated by the governor to help the schools develop the curriculum guides. The board members would be Tennessee university and college faculty members. Another bill sponsored by Drew would prohibit use of school textbooks which "contain information to explain the origin of life based solely upon the theory of evolution." Drew has also sponsored a bill re-

quiring that school courses in which evolution is taught include information about "scientific evidence" opposing the theory of evolution.

Drew said the bills, sponsored in the state Senate by Sen. Ed Davis (Dem.-Memphis), are needed because the teaching of evolution has undermined belief in God. "The idea that man derived from a monkey or animal does away with a Supreme Creator," he said, adding that a person cannot believe in both evolution and God.

Similar legislation was introduced in 1986, but failed to get out of committee. Drew said that a stronger effort was planned this year. Reported in: *Kingsport Times*, February 10.

student press

Garden Grove, California

An ACLU attorney who contends it is unlawful for school officials to censor student newspapers acknowledged January 21 that if he wins his case, some schools may discontinue the publications entirely. "I think that's a real problem," said Gary L. Williams, who is challenging the authority of Garden Grove school officials to ban a high school newspaper they claim contained false statements.

At issue is a decision by Principal James DeLong of Rancho Alamitos High School to confiscate all copies of *La Voz Del Vaquero* before its distribution on April 2, 1984. DeLong found "inappropriate" and potentially "libelous" a jesting article in the April Fool's issue reporting that *Playboy* magazine was interviewing candidates for a photo feature titled "The Girls of Rancho." Newspaper editor David Leeb went to court, but Orange County Superior Court Judge Philip E. Schwab refused to order distribution of the paper, and Leeb appealed to the Court of Appeals.

A state statute specifically allows school districts to censor student publication containing "obscene, libelous or slanderous" material or statements that would cause "substantial disruption" of school operations. Reported in: *Los Angeles Times*, January 22.

Howard County, Maryland

On March 9, the Howard County school superintendent denied a bid by student editors to survey Atholton High School students about their sexual practices and attitudes. Michael E. Hickey said the survey is "not a right protected by the Constitution." The superintendent said the school system's policy requiring prior review of such surveys "recognizes the school system's responsibility to protect the instructional process from excessive interference, and to protect the right of privacy of the students and parents it serves."

The survey had been distributed to all second-period classes at the school March 3 by the staff of the newspaper, *The Raider Review*, but the pollsters were thwarted when a teacher brought the survey to the attention of Principal William Chesnutt, who quickly announced over the public address system that its distribution should be halted. Chesnutt said that all research involving students must have prior approval from the board of education.

On March 5, more than thirty students demonstrated in support of the survey and said they would appeal to the school board, but other students said they were glad it had been stopped because they would feel uncomfortable completing it in class. "We felt the survey was informative. We didn't do it for fun," said Alicia Cross, the newspaper's editorials editor.

Halaine Steinberg, a journalism teacher at the school and adviser to the newspaper, asked Superintendent Hickey to permit circulation of the survey. She said she had been told "it would be an act of insubordination, and possibly would result in a job loss for me, if we passed out the survey based on the superintendent's denial." She said she would seek to negotiate a policy change and, if that fails file suit with the assistance of the Student Press Law Center.

"I realize I am fighting the entire school system," she said, "but, as a teacher of students, it is important to show students that you stand up for what you believe even at the risk of your job."

Hickey said he denied Steinberg's request because the questionnaire was "poorly constructed and ambiguous;" the survey failed to follow through on its intent to determine students' knowledge of and attitudes about sex; the questionnaire would interfere with the "instructional process" and invade student and parental privacy; and because the survey was "not integral to successfully presenting the journalism curriculum." Reported in: *Washington Post*, March 7; *Baltimore Sun*, March 10.

Tulsa, Oklahoma

The Tulsa Junior College publication, *Horizon*, lost its second editor in a month March 3 when journalism student Dana Mitchell was fired because she "could not follow policy in good conscience." A month earlier, editor David Arnett was also dismissed by adviser M. Rogers "Boomer" McSpadden. Since Arnett's departure, Mitchell had left a blank following the title Editor-in-Chief where his name had been printed "in silent demonstration against David's firing without reason."

Tulsa Junior College administrators say *Horizon* is a laboratory product of the journalism program without protection of the First Amendment. Arnett and Mitchell contend the sixteen-year-old publication is a newspaper and call efforts to control what students print in it censorship.

The controversy began when Arnett ran letters to the editor critical of administration restriction in the January 26 issue.

In that issue, he also published an editorial which said: "*Horizon* has always been a student newspaper. With that one statement we set ourselves apart from the official administration position of Tulsa Junior College. However, we are in line with the Constitution. All we want is a recognized student newspaper just like every other college and most high schools in Oklahoma."

College publication policy forbids printing letters to the editor and editorials. The policy was written by the administration and approved by the school's regents in 1978 after a *Horizon* editorial disagreed with the school's opposition to construction of a proposed treatment center near the school. The editorial contributed to Arnett's dismissal, McSpadden said.

In 1985, the administration cut the circulation of *Horizon* from 5,000 to 200 copies and then to 100. Circulation was restricted to the journalism room.

Arnett said he had the support of a local investor for the establishment of an independent student newspaper. He said he had gathered more than a hundred signatures of faculty and staff asking that the college establish a newspaper, and said that the Student Association also had made such a request of the administration. One faculty member said most of the faculty was supportive of the effort, "but intimidated because the administration has never lost a conflict yet."

"We don't want anything more than is common around the country on the campuses of colleges and high schools," Arnett said. The ex-editor brought his case before the college Board of Regents February 11, but no action was taken. He said he has also been in contact with the ACLU and the Society of Professional Journalists Sigma Delta Chi. With their assistance, he said, legal challenges of administration policies may be the next step. Reported in: *Tulsa Tribune*, February 4, 5, 11, March 4.

publishing

New York, N.Y.

Random House publishers filed application February 12 for a reconsideration by the full federal appeals court of the court panel's earlier decision to prevent publication of *J. D. Salinger: A Writing Life*, by Ian Hamilton (see *Newsletter*, March 1987, p. 60). Salinger had contended that the biography drew excessively on his unpublished letters, and the court agreed with him, reversing a lower court ruling that threw out Salinger's suit.

Joining the publisher in *amicus* filings were the Association of American Publishers, the Organization of American Historians, Magazine Publishers Association, Gannett Co., Inc., and the Hearst Corporation.

"The appeals court panel has ordered the prior restraint of an important scholarly biographical work," a Random House representative said. "In taking this virtually unprecedented action, the panel failed to consider the serious consequences for the First Amendment rights not only of Hamilton and Random House, but of all publishers, biographers and historians."

A reconsideration *en banc*, in which all judges on the U.S. Court of Appeals for the Second Circuit rule on the case, is rarely granted. In the original Salinger appeal, however, the decision was written by a two-judge panel; the third judge died while the case was being heard.

Random House argued that the panel overestimated the "amount and substantiality" of the biography's use of the letters and that it "failed to recognize" that some of the letters had been publicly disseminated in newspapers and a previous biography. Reported in: *Washington Post*, February 13.

obscenity

Denver, Colorado

Two of Colorado's best-known bookstores and a bookseller's trade association went to state district court January 30 to ask that Colorado's obscenity statute be declared unconstitutional. The Tattered Cover Bookstore, the Bookplace of Applewood, and the Mountains and Plains Booksellers Association argue that the law, which went into effect in April, 1986, violates both the federal and state constitutions. They claim its language is so broad and provides such imprecise standards that they have no idea when material is considered obscene.

Because violators of the law face criminal penalties, the booksellers say they are forced to engage in a "system of self-censorship by restricting the sale, exhibition or publication of a wide variety of presumptively protected. . . material."

The statute says that a person commits "wholesale promotion of obscenity" if he or she sells materials which the "average person" would find appeals to a "shameful or morbid interest" in sex and affronts current community standards of "tolerance." Reported in: *Denver Post*, January 31.

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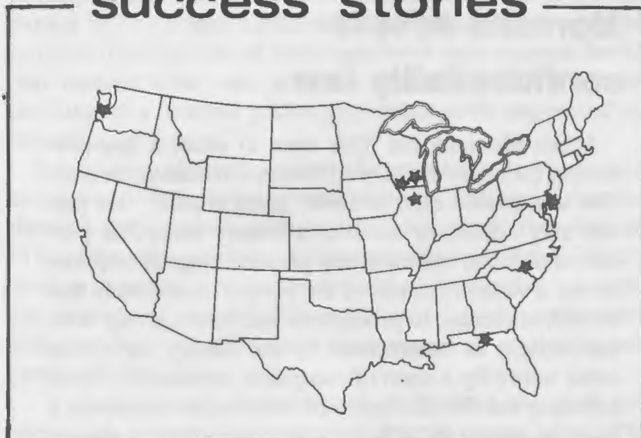
success stories



libraries

Middletown, Delaware

On January 13, the Appoquinimink School Board denied seven actions requested by a parent, Katherine Price, who was concerned about references to death in a fifth grade reading textbook. Price first presented her concerns to board members at a public hearing January 8 where she, Patricia Petro, and Donald G. Hawk expressed their opposition to the reader, part of the Houghton-Mifflin Keystone series, and a library book by Shel Silverstein, *A Light in the Attic*.

Price asked the board to:

- Write a letter to textbook publishers suggesting that they "choose constructive, positive, accurate and appropriate stories and illustrations for children."
- Write a letter to parents of children, making them aware of the stories presented in class so that parents had the opportunity to "present them in a light of their own thoughts and family life."
- Instruct teachers to be selective in their choice of ancillary materials.
- Remove *A Light in the Attic* from the school library as well as seven stories in the reading textbook.
- Establish a group of community people to review books purchased with taxpayer money.
- Establish a network of safeguards to protect against textbooks that foster acceptance of suicide and dangerous thinking processes; and to identify risk factors and evaluate factors that affect learning in relationship to suicide and dangerous thinking processes.
- To make the process for a parent who comes before the board easier.

A Light in the Attic contains violence, idealizes death, and makes light of manipulative behavior, Price said. "Textbooks teach not only reading and writing, but transmit values," she added. "If we can root out any source of teenage suicide we should go for it."

In rejecting Price's requests, the board cited their confidence in the competence of teachers in presenting materials, the ultimate responsibility of the parent to educate and instill values in children, and satisfaction with the present system of choosing materials. Reported in: *Middletown Courier*, January 14; *Middletown Transcript*, January 15.

Glen Ellyn, Illinois

The Glen Ellyn Public Library reversed a decision on March 17 to bar future meetings of the National Organization for Women (NOW) and will honor its "gentleman's agreement" until June, 1987. "It doesn't make a whole heck of a lot of sense to spend library funds on litigation," said library board trustee William D. Schaefer.

While the Du Page County chapter of NOW alleged that it was barred from meeting at the library after the organization announced plans to show *Holy Terror*, a pro-choice movie, library director Ruth Faklis denied the charge. Faklis said that she never brought up the film's subject matter, noting that the movie was shown on schedule. "I want to absolutely confirm the fact that the library is a place of non-censorship," she said.

Library Board President Peter Ramsey agreed: "this is strictly a policy issue," he said. According to library policy, meeting rooms are "available for groups of a civic, cultural, or educational character." They are "not available for meetings for social, political or religious purposes" or "for the presentation of one side only of controversial matters." According to its tax status, which is 501(c)(4), NOW is a political organization.

Ramsey said an "oversight" was made in allowing NOW to use the meeting room. Initially, an error was made when NOW was not provided with the application forms required by library policy. A verbal agreement was made, allowing NOW to use a library meeting room from September 1986 through January 1987. "Ruth Faklis, who was just appointed director of the library in the fall, then discovered that allowing the group to meet in the library was against our expressed policy," said Ramsey.

Donna Kotecki, attorney for NOW and a chapter member, said she "freely acknowledges we have political aspects, but we also have civic and educational aspects." All meetings of the organization are open to the public, she said, and opposing views are welcomed. "From our point of view, we have a right to meet" [at the library], she concluded. Reported in: *Chicago Sun-Times*, March 15, 18; *Glen Ellyn Press*, February 19.

Vancouver, Washington

Evergreen School District's Instructional Materials Committee agreed unanimously January 27 to allow a book depicting record album covers to remain on junior high school library shelves. Ann and Don Douglas had challenged *Album Cover Album*, a 160-page anthology of album covers compiled by Roger Dean, because of the way some of the covers represented women. During testimony before the nine-member committee, Mr. Douglas acknowledged that the book did not lack educational interest, but cited one album cover which depicted the Statute of Liberty with bare breasts as exemplary of several photos that were "pretty raw toward women."

The Douglases were the only ones to oppose the book. Cascade Junior High media specialist Barbara Wills called the book "informative" and "fascinating." She said its coverage of album art from the 1950s through the '70s illustrated important changes in pop music, culture and society. "Remember, library materials are not required reading, the student seeks it out," she added. Reported in: *Portland Oregonian*, January 28.

Evansville, Wisconsin

By unanimous vote, the Evansville School Board agreed March 9 to keep a controversial book in the Evansville High School library under restricted conditions. *A Woman's Body: An Owner's Manual* was called "filth" by Tom and Carolyn Veek and 46 supporters, who requested the removal of the book and "all others of its type" from the library. The book, which had been purchased as reference material for Human Growth and Development classes and was to be kept on a restricted shelf behind the librarian's desk, had been mistakenly placed on a regular shelf and checked out only once—to the Veek's 15-year-old daughter.

In February, the board agreed to have the school's Human Services Committee review the book and decide if it should stay in the library. But the board rejected the petitioners' request to set up a permanent prescreening committee to prevent similar books from winding up on the library shelves in the future. "That really made me mad," said Tom Veek. "They just brushed this under the table and said if we find any more books like this, let them know. That's not my job. Our ultimate goal is to have a committee set up that will screen all books before they get into the library." The Human Services Committee recommended that the book remain on the restricted shelf and that its use be controlled by requiring parental permission for it to be used. The Veeks appealed that ruling, which basically endorsed the library's existing practices, to the board.

"The book may be OK for New York City but not for the kids here in Evansville," said Veek. "We were amazed at its contents when we saw it. We showed it to many friends and they overwhelmingly agreed it's not what we want our children to be reading." One of the Veek's supporters added, "When picking books for the school we should go to a Christian book store. This is filth."

"This book hides behind the guise of education," petitioner John Mauerman told the board. "This is not education. This is sick." But several residents spoke in favor of the committee decision. "I don't want one group of people to determine what my kids should read. I commend your decision," Carolyn Schneider said.

"Personally, I don't think it is offensive," commented school board president Wayne Wilson. "It primarily contains many facts, figures, graphs and statistics." Wilson said he discussed the work with several local clergy, who "saw no problems with the book. They deal with morality, and their only concern was the book did not deal with morality." Wilson said his only concern was with the age of the book, which was published in 1977. He noted that some information in it could be out of date and that the book lacked information about AIDS.

Veek said the protest would end with the school board decision. "We've made our point. We've tried. You can't fight the bureaucracy," he said. Reported in: *Janesville Gazette*, February 10, March 10; *Madison Capital Times*, February 19; *Wisconsin State Journal*, February 12.

Montana adopts confidentiality law

Make Montana the 35th state to enact a law protecting the confidentiality of library circulation records. The law, passed early in 1986, states in part: "No person may release or disclose a library record or portion of a library record to any person except in response to: (a) a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library; or (b) an order issued by a court of competent jurisdiction, upon a finding that the disclosure of such record is necessary because the merits of public disclosure clearly exceed the demand for individual privacy."

schools

Tallahassee, Florida

Arguing that school boards can screen materials they find objectionable, Florida Governor Bob Martinez and his Cabinet approved a new list of state-sanctioned textbooks February 17 by a vote of 6-0 over the objections of crea-

tionists. Leaders of a Pensacola-based group called the Accuracy in Textbooks Committee had asked the governor to remove from the list of state-approved texts science books that include what one protester described as "dogmatic teaching of a heathen philosophy supposedly supported by scientific evidence."

Information about the origin of the universe is "presented as science," complained creationist Phil McDaniel, but the theories are "merely philosophy" and offend the children of families who ascribe to fundamentalist teachings of God's hand in creation. "May I be so bold as to suggest," he told the cabinet, "that as Florida's highest education authorities it is our duty to make sure these errors in textbooks are corrected."

"I'm not sure it's the proper place for the Cabinet to dictate which of these books to use," Martinez responded. "In fact, if you have a broad menu [of state-approved texts], what you're seeking could be accomplished by those [local school boards] making the choices." Martinez pointed out that the creationists approve of some texts on the list, so they can lobby school boards to use those books. According to Education Commissioner Betty Castor, Florida school districts must spend only half of their textbook funds on state-approved books, which gives local boards "great latitude." Reported in: *Miami Herald,* February 18.

Charlotte and Newton, North Carolina

Efforts to remove school books in Charlotte and Newton-Conover High School were defeated early this year, although censorship advocates pledged to continue the fight in Charlotte. In January, the Newton-Conover Board of Education voted to keep *The Martian Chronicles,* by Ray Bradbury, on the high school supplemental reading list, despite a complaint from a parent who demanded that the book be removed from the curriculum entirely. The parent had objected to the use of profanity in the novel.

In Charlotte, a review committee at Independence High School decided against the removal of *Flowers for Algernon*, by Daniel Keyes, after a citizen group petitioned for its rejection from the school's supplemental reading list. Timothy Kroboth, a Charlotte attorney who represents the 43 petitioners, said he was disappointed, adding that "responses other than removal of the book" were available, including "the use of a parental notificaton form."

Originally, Kroboth's group had hoped to ban *Flowers for Algernon* from use in all Charlotte-Mecklenburg County schools, but the Charlotte-Mecklenburg Board of Education could not decide whether its guidelines permitted a systemwide decision on curricular materials. Meanwhile, Kroboth referred his challenge to individual schools for consideration (see *Newsletter*, January 1987, p. 12; March 1987, p. 54). Reported in: *People for the American Way North Carolina News Bulletin,* February.

Stoughton, Wisconsin

An attempt to have a book removed from the Stoughton Middle School reading program failed March 3, but the parent who brought the original complaint against *Snow Bound*, by Harry Mazer, said she was satisfied with the outcome. The committee appointed to review the complaint suggested that in the future, parents be notified in advance that their child would be required to read the book. If parents object, an alternative book will be selected by the teacher.

That, said Nancy Armstrong, was all she really wanted when she first complained about the book, although her original request for reconsideration had called on the school district to have *Snow Bound* "withdrawn from all students."

Armstrong objected to language in the book, including several profane oaths invoking the deity, two four-letter words for bodily wastes, and the terms "crazy bitch" and "stupid female" used by *Snow Bound's* teenage protagonist. "It was taking God's name in vain; it was using other language that I don't think is proper reading material, especially for kids, to say nothing about adults," Armstrong said. "Would you hear it on 'Bill Cosby'?" she asked. "Would you hear it on 'Family Ties' or any other program that is oriented toward families? I don't think so."

About fifty people attended the review committee meeting, and about half of them spoke, the majority favoring Armstrong's request. But committee member Carole Roslak, an elementary school librarian, said it would be difficult to find books without objectionable language. Even some books used in grade schools contain profanity, she said, adding that she had a "gut feeling" that "we might be here next week with another book."

After a lengthy exchange with committee members, Armstrong agreed that the book should stay in the curriculum but that parents should be told about it in advance. She added, however, that she remained concerned that "next month my child could get another book in class that could be as bad or worse."

"The only thing we can deal with is your request to deal with a particular book," responded committee chair Kay Davis, the district's director of instruction. Reported in: *Madison Capital Times*, February 4, March 4.

SUPPORT THE FREEDOM TO READ

(*Alabama . . . from page 75*)

In declaring "secular humanism" a religion, Hand cited humanistic tenets that define the nature of man and the universe and goals for human existence. He also noted that some humanist organizations proselytize and issue publications. "The most important belief of this religion is its denial of the transcendent and/or supernatural: there is no God, no creator, no divinity," Hand wrote. "Secular humanism is religious for First Amendment purposes because it makes statements based on faith assumptions."

do the schools teach 'humanism'?

Having judged "secular humanism" religious in nature, Hand turned to the question of "whether this religious belief system of humanism, in whatever particular strain it occurs, is involved in a constitutional controversy before this court. As already noted, the Supreme Court has declared that teaching religious tenets in such a way as to promote or encourage a religion violates the religion clauses [of the Constitution]. This prohibition is not implicated by mere coincidence of ideas with religious tenets. Rather, there must be a systematic, whether explicit or implicit, promotion of a belief system as a whole. The facts showed that the state of Alabama has on its state textbook list certain volumes that are being used by school systems in this state which engage in such promotions."

According to Hand, 39 history and social studies texts used in Alabama schools "discriminate against the very concept of religion and theistic religions in particular, by omissions so serious that a student learning history from them would not be apprised of relevant facts about America's history." Hand charged that the books ignored the history of the Puritans and presented colonial missionaries as oppressors of native Americans. "References to religion are isolated and the integration of religion in the history of American society is ignored," he concluded.

"The texts reviewed are not merely bad history, but lack so many facts as to equal ideological promotion. Omissions, if sufficient, do affect a person's ability to develop religious beliefs and exercise that religious freedom guaranteed by the Constitution," the opinion said. "The vast majority of Americans, for most of our history, have lived in a society in which religion was a part of daily life. For many people, religion is still this important. One would never know it by reading these books. . . . This view of religion is one humanists have been seeking to instill for fifty years. These books assist that effort by perpetrating an inaccurate historical picture."

Hand also banned six home economics texts for their treatment of family life, death, sex roles, and personal values. For example, one of the banned home economics books contained the statement, "You are the most important person in your life." According to W. R. Coulson, a professor at U.S. International University in San Diego, who served as an expert witness for the plaintiffs, the statement is clearly religious in character even though it doesn't refer directly to a deity.

Although the case originated in a challenge to an earlier school prayer law which Judge Hand upheld and the U.S. Supreme Court overturned, Hand stressed that his decision was not about returning prayer to the schools. Neither does the case "represent an attempt of narrow-minded or fanatical pro-religionists to force a public school system to teach only those opinions and facts they find digestible," he wrote. "Finally, this case is not an attempt by anyone to censor materials deemed undesirable, improper or immoral," Hand declared.

Instead, the case is about "the allegedly improper promotion of certain religious beliefs. Teaching that moral choices are purely personal and can only be based on some autonomous, as yet undiscovered and unfulfilled, inner self is a sweeping fundamental belief that must not be promoted by the public schools." Hand said the state can teach the law of the land, which is that each person is responsible for, and will be held to account for, his actions. But, he declared, "there is a distinct practical consequence between this fact, and the religious belief promoted, whether explicitly or implicitly, by saying 'only you can decide what is right and wrong.'"

"With these books, the state of Alabama has overstepped its mark, and must withdraw to perform its proper nonreligious functions," the judge ordered. "These books are not to be used as primary textbooks, as the primary source for a course that is designed for use without a primary text, or as a teaching aid, in any course, but may be used as a reference source in a comparative religion course that treats all religions equivalently."

from school prayer to book banning

The case, *Smith* v. *Board of School Commissioners of Mobile County,* had its roots in a 1982 suit in which a Mobile attorney, Ishmael Jaffree, challenged the constitutionality of an Alabama law permitting a moment of silent prayer in public schools. Judge Hand upheld the law in January, 1983, and in a footnote to his opinion indicated his interest in exploring the issue of "secular humanism," which was raised by a group of 624 Mobile parents and clergy, who filed an amicus brief in defense of the prayer law.

"It was pointed out in the testimony that the curriculum in the public schools of Mobile County is rife with efforts at teaching or encouraging secular humanism—all without opposition from any other ethic—to such an extent that it becomes a brainwashing effort," he wrote in the 1983 decision. "If this court is compelled to purge 'God is great, God is good, we thank Him for our daily food' from the classroom, then this court must also purge from the class-

45 'secular humanist' texts

There are 45 textbooks affected by the March 4 "secular humanism" ruling by U.S. District Court Judge W. Brevard Hand. The ruling banned the use of all Alabama public school textbooks that promote "the religion of secular humanism." The following is a list of books specifically found by Judge Hand to meet this criterion:

Home Economics texts

- *Caring, Deciding and Growing,* by Helen McGinley, Ginn and Co., 1983 edition.
- *Contemporary Living,* by Verdene Ryder, Goodheart-Wilcox Co., Inc., 1981, 1985.
- *Homemaking: Skills for Everyday Living,* by Frances Baynor Parnell, Goodheart-Wilcox, 1981, 1984.
- *Teen Guide,* by Valerie Chamberlain, McGraw Hill Book Co., 1985.
- *Today's Teen,* by Joan Kelly, Bennett & McKnight Publishing Co., 1981.

History texts

- *America Is,* by Frank Freidel, Charles E. Merrill Publishing Co., 1978.
- *The American Dream,* by Lew Smith, Scott, Foresman and Co., 1980.
- *Exploring Our Nation's History,* by Sidney Schwartz, Globe Book Co., Inc., 1984.
- *History of a Free People,* by Henry W. Bragdon, MacMillan Publishing Co., 1981.
- *A History of Our American Republic,* by Glenn M. Linden, Laidlaw Brothers, 1981.
- *Our American Heritage,* by Herbert J. Bass, Silver Burdett Co., 1979.
- *People and Our Country,* by Norman K. Risjord, Holt Rinehart & Winston, 1978.
- *Rise of the American Nation,* by Lewis Paul Todd, Harcourt Brace & Jovanovich, 1977.
- *These United States,* by James P. Shenton, Houghton Mifflin Co., 1981.

Social Studies texts

- Rand McNally series (1980 editions) of following books: *You and Me; Here We Are; Our Land; Where on Earth; Across America;* and *World Views.*
- Scott Foresman series (1979 editions) of: *Social Studies,* grades 1-6.
- Speck (1981 editions) of following: *Our Family; Our Neighbors; Our Communities; Our Country Today; Our Country's History;* and *Our World Today.*
- Houghton-Mifflin (1980 editions) of following: *At Home, At School; In Our Community; Ourselves and Others; Our Home, The Earth; America: Past and Present;* and *Around Our World.*

room those things that serve to teach that salvation is through one's self rather than through a deity."

Hand's decision to uphold the prayer law was reversed by the U.S. Court of Appeals for the Eleventh Circuit in 1984 and that reversal was upheld in 1985 by a 6-3 vote of the U.S. Supreme Court. But when the Supreme Court sent the case back to Hand to issue a final order, he converted the 624 Mobile parents into plaintiffs, dismissed Jaffree, and transformed the case into a class action lawsuit challenging the teaching of "secular humanism" in Alabama's public schools.

The Mobile School Commission, the Alabama State Board of Education and then-Governor George C. Wallace were named defendants. Wallace and the Mobile schools agreed to sign consent decrees indicating they would not contest the charges. Judge Hand then permitted twelve citizens, who were supported by the ACLU and People for the American Way, to join the case as defendants alongside the Alabama Board of Education. "He sort of made it known that he was looking for a class to challenge this thing, and miraculously they appeared," said one Mobile lawyer.

a judge for the far right

A former corporate lawyer who spent his legal career in the firm founded by his father, Hand, Arendale, & Bedole, Judge Hand, 63, was appointed to the bench in 1971 by President Richard Nixon. His nomination was considered routine and sailed unopposed through the Senate, and he soon established a reputation as a conservative judge who occasionally displayed a wry sense of humor, but who was not reluctant to penalize lawyers who arrived in court unprepared or who did not submit briefs on time.

A deeply religious man and a passionate adherent—to the point of judicial activism—of the strict interpretationist school of constitutional law, Hand seldom leaves any doubt about his staunchly conservative sympathies and often iconoclastic approach to jurisprudence. Nevertheless, admirers and detractors alike give him high marks for running an efficient and competent court and for facing issues head on. "He's a decent, well-rounded, competent jurist who was an excellent lawyer. I don't think he needs to be painted any way other than that," said Jack Edwards, a friend of Hand's and

a former U.S. Representative who nominated him to the federal bench, but who questions the wisdom of the textbook decision.

"I'm nervous, as I think many people are, when someone says books should be pulled from shelves," Edwards said. "But you have to understand that a person can disagree with a decision without thinking that the person who wrote it is any less competent as a judge. Nobody in this town in the legal profession would suggest anything but that Judge Hand was a highly skilled lawyer who is now a highly competent judge."

Not all would agree with that assessment, however. "To anyone who could be considered open-minded, forward-looking, or progressive, Judge Hand is controversial," says James Byrd, a Mobile criminal defense attorney. "But to anyone with the good ol' boy mentality of the Old South, he's a good judge. He's pro-authority, pro-police, and on the side of law and order."

According to Hand's critics, his legal zealousness has produced one of the highest reversal rates in the federal court system. "Whenever you try a case with Judge Hand, you always know that you have a pretty good chance of an error in the record that makes his decisions appealable," said another Mobile attorney.

Civil rights lawyers, in particular, dread arguing cases before him. They complain that he is often openly contemptuous of them in his court. Last year, he came under fire for allegedly referring privately to a white Mobile attorney as "a disgrace to his race" for representing civil rights litigants. Moreover, in a case of great importance to blacks, the U.S. Court of Appeals for the Eleventh Circuit in Atlanta ruled in 1984 that Hand had erred when he decided the at-large voting system and racial polarization in Dallas County, which includes the city of Selma, did not dilute black voting strength. Dallas County is 55 percent black but has not had a black member on the county commission in this century. In his ruling, Hand attributed the failure of blacks to win county office to voter apathy.

Hand has left no doubt about the strength of his own religious views. In a speech to a church group he noted that as a boy, "I was never permitted the luxury of not being in Sunday School on Sunday mornings." Moreover, he added, his faith was strengthened when he survived a brush with death during World War II. "I had no reason to be alive," he said, "So I knew there was still something left for me to do."

One measure of Hand's involvement in the textbook case was his appointment of Russell Kirk, a prominent figure in the conservative movement, as a supposedly neutral witness on secular humanism. Kirk was editor of *The Assault on Religion,* a book published in 1986 by the conservative Center for Judicial Studies. The book is dedicated to "Judge W. Brevard Hand, defender of the Constitution and religious liberty."

reactions left and right

Reaction to the decision was generally predictable, with religious fundamentalists and many conservatives applauding, and civil liberties groups, educators, and liberals—as well as some conservatives—criticizing.

"We are just overjoyed with the decision that Judge Hand has entered in this case," said Bob Sherling, a Mobile attorney for the plaintiffs. "We were accused at the outset of having some hidden agenda in this matter. I think Judge Hand has seen right to the heart of our request here and he has stated very succinctly what this case is and what it is not."

"It's a great day for religious freedom," added Robert Skolrood, chief counsel for the plaintiffs and executive director and general counsel of the National Legal Foundation, a conservative advocacy group. "This is one of the most significant decisions on religious freedom in the last forty years. Humanism is now out of the closet for the first time. It's going to make a lot of difference in America and it's going to bring us back to the way we were in many of the values we have had in the past," Skolrood said.

Speaking before the national convention of the National Association of Evangelicals one day after Hand's decision was announced, presidential hopeful Rev. Pat Robertson called the ruling "a landmark case in America for the freedom of religion and the return of traditional values that made this country great. It is a victory for every schoolchild in every school in America." Robertson told the evangelicals that "the ultimate thrust of the new textbooks and the new learning is to move the United States into an international alliance with the governments based on the socialist model of the Soviet Republic. In Alabama, we took a stand and said, 'No more.' "

"We're astounded that a judge found the ideas in these textbooks to be unconstitutional," said Mary Weidler, director of the Alabama ACLU. Weidler called Hand's ruling "a severe threat to the separation of church and state." She said the decision "confirms our worst fears about federal censorship over local public school matters. This is one we see as severely threatening to non-sectarian public education not only here in Alabama but around the country."

John H. Buchanan, a former eight-term Republican U.S. Representative from Biriminghan and president of People for the American Way, called the order "judicial book burning. Never before has a federal court injected itself in the curriculum of public schools," he said. "This precedent applies not only in the state of Alabama but of course will stand, unless or until it is overturned, as a precedent throughout the United States. The fact is this is the first time in human history that a religion has been created and defined by its opponents—by those who are hostile to it."

Harvard Law School Professor Alan Dershowitz called Hand a "shrewd, calculating, hypocritical" judge who helped "lace the federal judiciary with mediocrity." He "is saying non-religion is a form of religion. He's declaring

secular humanism to be any statements about life that don't refer to religion—and on that basis he's banning everything." Dershowitz warned that the decision could have a national impact. He pointed out that Hand did not uphold the practice of a local school board that was already banning secular humanist books, but rather imposed a new policy banning their use in every school district in the state.

U.S. Attorney General Edwin Meese, usually a supporter of conservative causes, said in testimony before the House Judiciary Committee that he had serious concerns about the decision. "I have a great reservation, quite frankly, about banning, about judges interfering with local decision-making, and particularly prescribing what should be taught in schools," Meese said.

off with the books

Even before Hand's decision, the effects of the case were being felt in Alabama. The state textbook committee, which was in the process of reviewing history books for the next six-year cycle—the banned history books were approaching the end of their use—was charged by the state Board of Education to look with a critical eye at the issues raised by the Christian conservatives (see page 87).

Board vice president John Tyson Jr., of Mobile, who led the fight to get the board to appeal the ruling, said it was "too important for this country not to have further review by higher courts. If this decision is good, then it should be the law of the land, not just Alabama. If this decision is bad, then we need to know."

Although he said it was not his "place" to decide if Hand had made a "good" or "bad" decision, Tyson said the ruling's "lack of refinement will throw the [education] system into chaos. We simply cannot afford to buy these books without precise definition, only to find later they must be removed from the classroom by another federal judge on another day. Not only does it waste our tax dollars, but it handicaps our teachers and harms our students," he said.

"I don't know how to make decisions in the future about textbooks unless we have better definitions," Tyson argued. "Without the definition, I can't make decisions about the textbooks . . . and I cannot in good conscience approve textbooks knowing that millions of dollars will be spent and there's no way to know if they will be pulled off the desks again . . . In Judge Hand's decision, he did not find fault with the way that we select textbooks, and he didn't give us any definitions or any clues as to how we are to pick textbooks or how we are to measure whether or not the textbooks are unconstitutional," he continued.

"I don't think for a moment that you can accurately teach American history without discussing religious influences on our institutions. And I've stated many times in the past that we must do an accurate, full job of those explanations. But when Judge Hand says it rises to a constitutional violation, then I need some definition in order to make informed judgement," Tyson concluded.

Tyson's logic apparently swayed Governor Hunt, who took no position on the decision except to state that it would divide the country. Hunt broke a tie on the board—the governor is the ex officio chair of the board, but may vote only to break ties—in favor of an appeal. That decision meant that most districts in the state did not take immediate action against the banned books.

In Mobile, however, where the school commission had agreed to a consent decree, school officials moved swiftly to comply with the judge's order. School board attorney Robert C. Campbell III said he recommended that the school system move rapidly because the court order was "very clear, concise, and to the point." He said other school systems which did not immediately remove the books "could be subject to sanctions of contempt."

Calling the order to remove the books "frightening," Tonia Eason, an English teacher at Leflore High School and secretary of the Mobile County Education Association, told the school commission that "teachers are very concerned about the supposed religion of secular humanism and whether they might be teaching it without the texts. Even though I have enough confidence in our judicial system to be sure that one day it will be overturned, how long will that take? What supposed infractions will each of us make in the meantime? Will you stand with us if we make a statement that is contrived as secular humanism or will we be sacrificed to Mammon?" she asked.

Principal E. N. Green of predominantly black Williamson High School, said he received a telephone directive "to pack them up in boxes today and tomorrow and they will be picked up and sent back to the textbook depository." Expressing surprise at the speed with which the order was carried out, Green said, "Even if this decision was rendered as it was, I would have expected it to be done with 'deliberate speed.' My interpretation of 'deliberate speed,' thinking back to the 1954 school [desegration] decision, is different from yours or the judge."

At Murphy High School, dozens of students lined up to hand over textbooks. "This is really something. I'm afraid I can't say that we understand what's going on here. Many of us aren't even clear on what's supposed to be so wrong," commented Assistant Principal Serena Edgar. "It's all very funny in a way," added history teacher Reba Cunningham. "I suppose if they knew how little the books get read in the first place, they'd have second thoughts about all this."

One Murphy High student commented that the whole scene was "too weird," and another pointed to the title of his now-banned book, *History of a Free People*. "Great joke," he quipped. Reported in: *Atlanta Constitution*, March 5; *Atlanta Journal*, March 7; *Dallas Morning News*, March 5, 6; *Los Angeles Times*, March 16; *Mobile Press*, March 5, 12; *Mobile Register*, March 6, 12; *Montgomery Advertiser*, March 5, 11; *Newsday*, March 8; *New York Times*, March 5, 13; *Norfolk Virginian-Pilot*, March 6; *Quincy Patriot-Ledger*, March 7; *San Francisco Chronicle*, March 28; *Washington Post*, March 5.

(*Rep. English . . . from page 78*)

could not reasonably be expected to cause damage to national security?

I keep asking that question, but I never get a clear answer. I do hear from time to time about the so-called mosaic theory. According to this theory, the combination of unclassified data elements can permit the deduction of classified information.

There are two problems with the mosaic theory. First, if an item of information can be readily used to deduce classified information, then that item should be classified in the first place. Frankly, given the tremendous amount of overclassification that already takes place, it is hard to believe that there could be any potentially sensitive information that is not already classified. You have to remember that the mosaic theory is presented by those who find a need to classify newspaper clippings.

The second problem with the mosaic theory is that it proves too much. Carried out to its logical conclusion, the mosaic theory justifies the withholding of *all* information, no matter how innocuous. Since you can never be sure what another person knows, any information that is disclosed could, in theory, be helpful. One could even argue that it would be dangerous to disclose the results of elections because it might help our adversaries to make decisions if they knew who was setting policy in this country. That is an example of why the mosaic theory is useless. It doesn't identify critical information. It is no substitute for the classification system.

The same concept of sensitive unclassified national security information is found in the October, 1986, policy memorandum issued by John Poindexter, then chairman of the National Telecommunications and Information Systems Security Committee. I wrote to Frank Carlucci, Mr. Poindexter's successor, complaining that this policy memorandum: (1) endangers the national security of the United States by encouraging agencies to maintain unclassified national security information; (2) is directly contradictory to the Executive Order on Security Classification; (3) will actually facilitate the disclosure of information deemed to be sensitive; (4) is so vague as to be almost meaningless; and (5) will undermine the existing classification system.

The policies for government information set out in NSDD 145 and its progeny are bad enough. But NSDD 145 also suggests the need for controlling unclassified, privately-owned information as well. I find this part of the directive to be even more troubling.

I do not believe that the national security bureaucracy has done such an exemplary job of protecting classified government information that it should be assigned any responsibility over unclassified, privately owned information. Further, I do not know where the government derives authority to regulate or control privately owned, unclassified information. Doesn't the First Amendment to the Constitution prevent such activity by the government? Finally, I do not understand why the private sector cannot be allowed to provide for the security of its own information. If the private companies need help from the government, let them ask for it.

My second point this morning relates to the type of records for which security controls are appropriate. Let me describe my concern by talking about systems of records containing personal information that are subject to the Privacy Act. Both NSDD 145 and H.R. 145 include Privacy Act records within their scope.

The Privacy Act covers virtually all records about individuals maintained by the federal government. This includes many truly confidential records, including tax, social security, and census records. However, the Privacy Act also covers many records about individuals that are less personal, including agency telephone directories, lists of parking permit holders, and other records that could be routinely disclosed.

While all of these personal records are covered by the Act, a different level of security is appropriate for different records. Thus, tax records might require considerable protection, while parking permit records require minimal, if any, protection.

We must be careful when prescribing general rules for the protection of records not to require more security than is warranted. We cannot afford to allow agencies to spend scarce resources protecting records that are not sensitive.

How can we accomplish this? I don't believe that it is possible to write a complete definition in the law. What we need to do instead is to require procedures that will force agencies to justify all proposed security measures. The procedures should be just cumbersome enough to dissuade waste, but not so difficult as to discourage necessary security.

This brings me to my last point. Both H.R. 145 and NSDD 145 recognize a category of information deemed to be "sensitive". I am troubled by the creation of formal new categories of information. I envision an army of bureaucrats armed with ink pads running around stamping "sensitive" on masses of documents. Any such markings are likely to be misinterpreted and result in confusion, inefficiency, and unnecessary expense. Markings also have a way of unduly interfering with public access to documents that belong in the public domain.

To be sure, the definition of sensitive information in H.R. 145 is a clear improvement over the one in NSDD 145. But I still do not know what is meant by "adversely affecting the national interest or the conduct of Federal programs." This phrase is simply too unclear. I wish that I were able to offer some more precise language. It is not easy to find alternative definitions.

We can, however, supplement the definition with some limitations to make sure that the intent is not misconstrued. For example, I recommend that a provision be added pro-

viding explicitly that nothing in H.R. 145 affects the availability of information under the Freedom of Information Act. Information that is not exempt from disclosure should be available in either paper or electronic format at the option of the requester. Agencies should not be allowed to deny access to nonexempt, unclassified records in electronic format on the basis of vague and unsubstantiated "national security" concerns.

I also recommend that language be added providing that nothing in H.R. 145 gives the federal government any new authority to regulate, restrict, or control privately-owned, unclassified information. This suggestion is in response to the confused signals coming out of the Department of Defense about controlling access to private databases. I don't really understand what DOD has in mind—possibly because DOD doesn't know itself—but we should make sure that we do what we can to encourage DOD to mind its own business.

In concluding my statement, I want to refer to the espionage problems that have been so much in the news in the last few years. The espionage cases taught us that we need to classify less information and that we need instead to control classified information more effectively.

This lesson has apparently been lost on the national security establishment. It is not enough for the military bureaucracy to classify millions of documents each year. Now they want to impose restrictions on unclassified information and on privately-owned data as well.

The apparently insatiable desire of the military for controlling information—whether classified or unclassified, whether government or private—is the most convincing argument for H.R. 145. One only has to examine the record to understand the need for a legislative rejection of the National Security Decision Directive and for preserving civilian agency management of civilian informaton.

Mr. Chairman, I look forward to the opportunity to support H.R. 145.

(witches . . . from page 79)

The Bible has plenty to say about fortune-telling. [More biblical quotes follow.] It is clear that it is forbidden for Christian children to partake in this hand-out given to them. . . .

Excalibur . . . This movie shows complete mutilation of the human body in bloody battles and remains exceedingly violent throughout. It is based on incest, adultry (sic), rape, witchcraft, sorcery, magic and spells, and the powers of hell. This movie is sick and offensive to parents and children inside and outside the Christian faith. . . .

Teen Wolf . . . . promotes drinking underage, the acceptance of premarital sex for schoolaged children, fowl (sic) language, use of marijuana and once again it has a complete occult theme with the promise of power and the advantages of being a werewolf. The young boy, who is a loser, finds out that he is a werewolf and can now excel at basketball, have sex with the prettiest girl at school, buy alcohol for all his friends and make lots of money selling his promotional goodies. He decides that the powers of the occult are the way to succeed. . . .

Rules for Radicals . . . [Although it might be expected that protesters would object to this book by the late labor and civil rights activist Saul Alinsky for its left-of-center politics, Daskalakis focuses instead on what she finds to be blasphemous and satanic themes:] Prior to the table of contents the author writes: "Lest we forget at least an over-the-shoulder acknowledgement to the very first radical: from all our legends, mythology and history (and who is to know where mythology leaves off and history begins—or which is which) the first radical known to man who rebelled so effectively that he at least won his own kingdom—Lucifer."

It is obvious that this statement is holding Lucifer or the Devil up as a role model. He rebelled, he won, and now he has his own kingdom. Do the parents of the children who take this course know that Lucifer, the devil, will be viewed as a role model and has been uplifted by the author of a book their children will be taught from? Children from Christian homes are taught that Lucifer has not won but was defeated at the cross and is out "on bond" until the final judgment. . . .

The Breakfast Club . . . This movie contains the four letter F word twenty-three times. The S.O.B. phrase four times. Sh-- word twenty-one times along with a full array of every imaginable cursing and fowl (sic) language. . . . Of course, for a teacher to present this movie is also a form of sharing such talk.

Zen Buddhism . . . This book details the teachings of the religion of Buddhism in such a way that the reader could very likely embrace its teachings and choose this as his religion. [Daskalakis then analyzes four excerpts from the book, including the following:] "The existentialist [looks?] into the abyss of tathata and trembles, and is seized with inexpressible fear. Zen would tell him: Why not plunge right into the abyss and see what is there? The idea of individualism fatally holds him back from throwing himself into the devil's maw." We are told in the Bible that the abyss is hell and that will be the eternal home for Satan and his workers when Jesus comes back to pronounce judgement on them. Never, never do we suggest to our children, in any form, to jump into the abyss to see what is there. . . . How can they teach this religion but not Christianity?

Earth Science . . . This teaches the theory of evolution exclusively. It completely avoids any mention of Creationism . . . Most children grow up in homes where they are taught that the earth and everything in it was created by a

Supreme Being. Yet when they enter public schools, suddenly they are confronted with evolution, a concept quite foreign to them. This experience does damage to the young mind as the evolutionary indoctrination begins in the first grade. This evolutionary propaganda also underminds (sic) the parental guidance and teachings the children are receiving at home and from the pulpits on Sundays and Saturdays. . . .

The Library at Salem High School. I cannot completely overlook this institution. Here is a very *brief* list of some of the books that deal with witchcraft. Bear in mind that we pay for these books with our tax dollar.

1. *On Jesus and His Church:* "We learn that Jesus had appeared on earth in previous incarnations. The Essenes had predicted his coming by astrological means and had trained the Virgin Mary from her childhood for her role as his mother." This is a particularly blasphemous remark as all Christians share the knowledge that the Holy Spirit came to Mary and told her she would have a child named Jesus. No group of people trained her for this. We certainly do not believe that Jesus was ever here in any other form and another time as this book jacket states.

2. *Witches and Their Craft:* Contents are "Portrait of a Witch, The Devil, Devil-Marks, Familiars and Witch-Marks, Spells and Charms, White Witchcraft, The Black Mass, etc." I have listed on the table of contents and will let it speak for itself.

3. *The Complete Illustrated Book of Divination and Prophecy:* Step by step instruction and the history of tarot cards, palmistry, i ching and many other others.

4. Arthur Ford: *The Man Who Talked With the Dead:* "This is the most candid, informed biograph (sic) ever written of the world's greatest medium, who was also a remarkable human being."

5. *You Cannot Die*: "And most of all, you will be shown the astounding, indisputable evidence for reincarnation—a theory which has existed for centuries and only ceased to be taken seriously in recent 'scientific' age. The evidence is clear that there are people alive today who died in the past, that you have lived before and you will live again, that you CANNOT DIE." Not only is this offensive to our faith, but it is a dangerous teaching to children today when the suicide rate is so high. More teens die from auto accident and suicide than any other cause.

6. *The Right to Lie:* A psychological guide to everyday deceit.

We all agree that these are times of violence, drugs, broken homes, AIDS and suicide among our young. As if this isn't enough for our precious young, we now add witchcraft. We let the other destroyers creep into our flock. Are we going to let witchcraft and indecent teachings, too, or are we going to see this as a chance to reclaim a decent life style for our children? . . . .

(censorship dateline . . . from page 92)

London, England

The chair of the British Broadcasting Corporation filed a protest with the government February 2 over a series of police raids on BBC headquarters in Scotland that resulted in the seizure of film and tapes that the government views as potentially harmful to national security. Prime Minister Margaret Thatcher moved to distance the government from the raids, maintaining they were carried out without high-level approval. But her opponents charged the government with a campaign to stifle dissent and control the BBC.

Seized in three raids over a 28-hour period by the Special Branch, or intelligence unit, of the Glasgow police, were two vanloads of material related to a six part BBC series entitled "Secret Society." Since early in the year, the government had opposed showing or discussion of the contents of one program in the series, charging it compromised a highly classified spy satellite. Even after a newspaper disclosed the content of the suppressed documentary, the government continued to threaten charges under the Official Secrets Act in an effort to suppress further circulation of the information.

In his letter to the government, BBC chair Marmaduke Hussey expressed "strong reservations about the timing and the manner of the Special Branch operation. We shall, of course, take whatever legal action may be appropriate." The political effect of the raids was increased because the police struck just a day after the resignation under pressure of Alasdair Milne, BBC director general, who was widely viewed as in disfavor with the Thatcher government. In addition to targeting the "Secret Society" programs, Thatcher's political associates have complained about BBC news reporting. Reported in: *New York Times*, February 3.

Dublin, Ireland

One of the institutions established by the Irish Free State in the 1920s, after independence was won from Britain, was the Censorship of Publications Board. It was a product of Victorian values reinforced by a desire to make civil law conform to the views of the Roman Catholic church on morality. Members of the public had the right to submit books for action, and the censors took their jobs quite seriously. In its heyday, the board took action against works by some of the great literary figures of the twentieth century, including William Faulkner, F. Scott Fitzgerald, Somerset Maugham, and Graham Greene. In the 1960s, the law was eased, and over time, many people even forgot legal censorship existed. In 1986, for instance, not a single title was banned.

But this year is different: The censors prohibited distribution in Ireland of Alex Comfort's *The Joy of Sex*. Condemnation of the unanimous ruling poured in from medical, literary, and business circles. The Irish Writers' Union called

the censorship board a "wholly unnecessary and offensive mechanism."

Judge Diarmuid Sheridan, chair of the board, said *The Joy of Sex* was banned to protect the young. "Imagine," he said, "the effect it would have on a thirteen-year-old."

"I find [that] really ludicrous as a reason," said Frank Vaughan of the Irish Family Planning Association, which had been using the book as a manual for people with sexual problems. "It's not a book you're going to sell to twelve-year-olds, for God's sake."

"What the censorship board obviously doesn't know is the difference between a manual and a piece of pornography," said Harold Clarke, chair of Eason and Son, Ireland's largest bookseller. "I think it's a bit of Irish weirdness that we will get over."

Others were less optimistic. Dr. Andrew Rynne, a physician who used the book as a treatment aid, said the ban is one of several incidents pointing to a right-wing resurgence in Ireland. He cited a recent court decision prohibiting two Dublin clinics from giving pregnant women telephone numbers of abortion clinics in Britain. In 1983, Irish voters enacted a constitutional amendment prohibiting abortion and last year defeated an attempt to remove the constitutional ban on divorce. "I just wonder where it's all going to end," Rynne asked. Reported in: *Boston Globe*, March 1.

Dublin, Ireland

Prominent Irish Jews on February 4 condemned an effort to stage a play in Dublin that accuses Zionist leaders of collaborating with Nazis in the murder of Jews in World War II. London's Royal Court Theater canceled a production of the play in January after protests by some historians and Jewish groups over its accuracy.

The play, *Perdition*, by Jim Allen, is about a fictional libel trial set in Britain in 1967, but is based on a libel case tried in an Israeli court in 1954 that set off a still-unresolved debate about the role of Jewish leaders in wartime Hungary.

"It has been hauled around cities throughout Europe and it is no great compliment to Dublin that it is the last city in which they are trying to stage it," said Dr. Joe Briscoe of the Jewish Representative Council. Another prominent Dublin Jew, Martyn Taylor, a Labor Party Member of Parliament, called the play insulting, pernicious, and in poor taste. "As a regular theatergoer, I am not trying to be a censor, but I would be saddened and distressed if the play were staged in Dublin," he said. Reported in: *New York Times*, February 5.

Tel Aviv, Israel

The Israeli Education Ministry has banned Jewish schools from teaching the Holy Scriptures from Bibles that include the New Testament, the *Jerusalem Post* reported March 16. The newspaper quoted a ministry representative as saying the ban was imposed after Christian missionaries gave free Bibles containing both Old and New Testaments to schools in kibbutzim, collective agricultural settlements.

Mati Dagan, deputy director of the ministry's religious education division, defended the decision by saying the Old Testament comes from God while the New Testament was written by men.

"Jews have been murdered and persecuted for centuries because of the New Testament," an elementary school principal, Moshe Edelstein, told the newspaper. "The Old Testament must remain sacred, even to those of us who are not observant, because it represents what makes us Jews." Reported in: *Chicago Tribune*, March 17.

FOIA survived 'onslaught'

Despite what he called a six-year "legislative onslaught by the Reagan administration" to weaken the Freedom of Information Act, Rep. Glenn English (Dem.-Okla.), chair of the House subcommittee that oversees the law, said the measure has survived "substantially intact." English told the American Society of Access Professionals in mid-February, that he intends to police a key amendment Congress enacted last Fall to eliminate all but duplication fees to the news media.

"There is a heavy irony in this," he said, pointing out the failure of a long-sought FOIA amendment that would have helped the business community protect records it wanted to keep confidential. Not only is that amendment dead, English observed, but under the new measure "it is the business community which will have to pay the higher fees."

English warned that any government agencies that dream up new procedural devices to discourage disclosure under FOIA "will be invited to explain their creativity to my subcommittee."

"When I learn that an agency has denied a fee waiver to a qualified requester, has charged the wrong fees, or has unfairly treated a requester under the new law," English said, "I will invite the responsible agency officials to explain their actions at a public hearing. Agencies that attempt to treat reporters or public interest groups as commercial users will be star witnesses."

The luncheon speech ammounted to almost nonstop criticism of the administration's implementation of the FOIA. Reported in: *Washington Post*, February 17.

(from the bench . . . from page 96)

solicitation

Boston, Massachusetts

A Massachusetts statute which imposed a nonwaivable percentage limitation on the compensation of professional solicitors impermissibly intruded upon the free speech rights of charitable organizations, U.S. District Court Judge Andrew A. Caffrey ruled December 31. A charitable organization's fund raising scheme, including its decision to pay whatever it chooses to a professional solicitor, is a right so intertwined with speech that it is entitled to the protection of the First Amendment, the court said. While Massachusetts had a legitimate interest in promoting the public's perception of the integrity and efficiency with which charitable funds are raised and used, the statute was not appropriately tailored to further that interest. Reported in: *West's Federal Case News*, January 16.

(is it legal? . . . from page 100)

broadcasting

Washington, D.C.

A proposed "objectivity" study of Corporation for Public Broadcasting programming was squelched in March by the corporation's board of directors. The action came at a board meeting in Seattle and was sure to ire conservative groups which have long viewed public broadcasting as a forum for leftist views. The study had been proposed by the board's Mission and Goals Committee chair Richard Brookhiser, but that committee reported that requests for proposals to a number of media researchers revealed that no one was "able to define or measure sufficiently the concept of 'objectivity and balance'." The committee also said the proposals were "too expensive."

The proposed study had come under considerable criticism as an unwarranted intrusion by a board dominated by Reagan-appointed conservatives. Partly as a way of undercutting the push for such a study, the Public Broadcasting Service in December appointed its own committee, headed by former FCC chair William Henry, to review PBS program policies (see *Newsletter*, January 1987, p. 24; March 1987, p. 62). Reported in: *Variety*, March 11.

Patrick to replace Fowler at FCC

President Reagan announced February 5 that he would designate former White House aide Dennis Patrick as the new chair of the Federal Communications Commission. A Los Angeles native, Patrick, 35, has been a member of the commission for three years. He will succeed the controversial Mark Fowler. As a current member of the commisison, Patrick does not need congressional confirmation.

The appointment was a defeat for a coalition of anti-pornogrpahy groups which urged Reagan to select Jack Smith in order to continue strong enforcement of anti-obscenity laws. Brad Curl, head of Morality in Media and a leader of the newly-formed National Decency Forum, said thirty organizations were backing Smith, a former FCC general counsel.

The Forum credits Smith with initiating "inquiries" concerning allegedly obscene broadcasts by three radio stations—the FCC's first action of the kind since 1978, when a radio station allowed a talk show host to say the "seven dirty words" usually forbidden on broadcasts. The Forum organized demonstrations, letter-writing campaigns, and meetings with FCC officials to get the actions against two radio stations in California—one operated by the Pacifica Foundation in Los Angeles and a University of California campus station in Santa Barbara—and a New York City station.

Curl said that some radio and television broadcasters have begun to resort to "pretty rough stuff," especially for children. "They are using gutter terms, four-letter words," Curl said. "Practically every ad [young people] see on television encourages them to be sexually active."

Barry Lynn, legislative director for the ACLU, accused the coalition of raising "a bogus issue," in part because many of their complaints involve broadcasts that are not legally obscene. "What they really want to do is to find ways to use the FCC to limit showing of non-obscene motion pictures generally that deal in a somewhat frank fashion with human sexuality."

Patrick took exception to the view of Forum members that he might enforce obscenity laws less vigorously than Smith. "Broadcast obscenity is prohibited by law and does not constitute protected speech under the First Amendment " he said. "I have supported and will continue to support efforts to enforce that law. I supported initiating the inquiries that are currently pending at the FCC and have pressed for better cooperation among the different branches of government to mount an effective enforcement effort."

The appointment of Patrick is not expected to substantially alter the policies of deregulation, lenient enforcement of rules, and opposition to the "fairness doctrine" which were the hallmark of Fowler's turbulent five-year reign as FCC chair. Reported in: *Washington Times*, February 6.

Bush, Meese stump for First Amendment?

Vice President George Bush cautioned conservative Christians February 2 not to "dictate their interpretation of morality" by seeking to ban books in schools. Speaking to a gathering of the National Religious Broadcasters, Bush warned that the rising influence of the religious right in some areas poses a "dilemma."

"There are those who would seek to impose their will and dictate their morality on the rest of society," Bush said. But "there is no reason *The Diary of Anne Frank* should not be read. Closing our children off from the outside world will not protect them. Please, don't take away generally accepted books now that you have greater influence."

Bush reminded his audience that the Bible, filled with stories of massacre and rape, is an "extremely honest book. God's prophets never sheltered their readers from the ugliness of life. The Bible doesn't protect children from the dangers or the injustices or the evils of a 20-minute speech made his remarks toward the end of a 20-minute speech which generally praised the political activism of evangelical Protestants.

Later in the month, Attorney General Edwin Meese III, whose pornography commission was cited by a judge for trying to discourage the sale of *Playboy* and *Penthouse* magazines, told an audience of high school students that he did not think either magazine has violated obscenity laws. Jared Scogna, 17, of Falls Church, Virginia, displayed the March *Playboy* centerfold and asked Meese to explain the link between pornography and violent crime. "In my opinion there has not been any court that has held *Playboy* or *Penthouse* to be within the Supreme Court definition of obscenity," Meese responded. "And so I do not feel that those are the kinds of things that should be subject to prosecution under the law."

Meese's comments repeated an argument he made in January at a private meeting with lawclerks of federal court judges. In that talk, Meese acknowledged that he had read both *Playboy* and *Penthouse* and that as a youth he read magazines then considered pornographic. Reported in: *Atlanta Journal*, February 3; *Memphis Commercial-Appeal*, February 3; *Raleigh News & Observer*, March 1.

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