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FBI asks libraries to report foreign readers

Agents of the Federal Bureau of Investigation (FBI) asked librarians in New York City this summer to watch for and report on library users who might be diplomats of hostile powers recruiting intelligence agents or gathering information potentially harmful to U.S. security. The initiative upset library officials, who fear violations of the library patron's right to confidentiality and academic freedom and who see the effort as an attempt to turn librarians into government informants, undermining confidence in the library profession.

The FBI's "Library Awareness Program" apparently began last spring as a result of a sensational espionage case in which a Soviet UN employee recruited a Queens College student through contacts made at a library. FBI officials acknowledged that staff members at fewer than twenty libraries, most of them academic, had been asked to cooperate with agents in a Library Awareness Program that is part of a national counterintelligence effort.

"Hostile intelligence has had some success working the campuses and libraries, and we're just going around telling people what to be alert for," said James Fox, deputy assistant director of the New York FBI office. "All we are interested in is the fact that a hostile diplomat is there. We don't want librarians to become amateur sleuths." Fox said he did not know whether FBI bureaus in other cities had made similar contacts, and national FBI officials declined to discuss the scope of the program.

The effort came to light in June when two FBI agents began to question a clerk at the Columbia University Math/Science Library about use of the library by foreigners. A librarian overheard the conversation, stopped the agents, and told them to talk to Paula Kaufman, Director of the Columbia library's Academic Information Services Group. Special agent Valerie Vella then met with Kaufman to explain the program. Kaufman refused to cooperate, describing the library's commitment to privacy, confidentiality, and academic freedom. Kaufman then informed the New York Library Association of the incident.

Officials at Columbia, NYLA, and the New York Public Library called the effort a violation of basic freedoms. They said the government should obtain subpoenas if it wanted information. "I find it amazing that a librarian could be supposed to recognize someone who is a national of a hostile power," said Nancy Lian, NYLA executive director. "Does anyone with an accent come under suspicion? These things are so far removed from the professional duties of a librarian that I find it almost inconceivable that the whole thing is happening."

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correction

In the July 1987 issue of the *Newsletter,* Stephen King's novel *Pet Sematary* is incorrectly reported on p. 117 and p. 149 as *Pet Cemetery*. Our apologies to Mr. King and to any offended pets.□

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Alabama, Tennessee textbook decisions overturned

Two widely publicized court decisions in Tennessee and Alabama about school textbooks, the rights of fundamentalist Christians, and the alleged influence of "secular humanism" in school curriculums, argued earlier in the summer (see *Newsletter,* September 1987, p. 166), were overturned in late August by U.S. appellate courts.

On August 24, the U.S. Court of Appeals for the Sixth Circuit reversed Judge Thomas G. Hull's October 24, 1986, ruling that the Hawkins County Board of Education violated the rights of seven fundamentalist families by requiring their children to read assigned texts or leave the school (see *Newsletter,* January 1987, p. 1). Two days later, the U.S. Court of Appeals for the Eleventh Circuit reversed Judge W. Brevard Hand's March 4 decision banning use of 44 Alabama public school textbooks for allegedly promoting the "religion" of "secular humanism" (see *Newsletter,* May 1987, p. 75).

Coming close on the heels of a June ruling by the U.S. Supreme Court against a Louisiana statute compelling the teaching of "creation science" whenever evolution is taught (see *Newsletter,* September 1987, p. 181-82), the two decisions appeared to strike mortal blows at legal efforts by fundamentalist Christians to mold public education. Nevertheless, the plaintiffs in the two cases said they would pursue appeals to the Supreme Court. And People for the American Way chair John Buchanan warned that censorship by groups seeking to steer public education in a Christian direction remains "a real and growing threat."

In the Tennessee case, *Mozert* v. *Hawkins County*, the appellate panel in Cincinnati ruled 3-0 that the textbook challenge should be remanded to Judge Hull with directions that the case be dismissed. Hull had ordered the schools to excuse the children from reading classes, allowing the parents to teach their children at home subject to Tennessee laws governing home schooling. He stopped short, however, of granting their request that the school supply alternative textbooks to the contested reading series published by Holt, Rinehart & Winston. In finding for the school board and against the parents, the court also reversed Hull's order that the public school pay private school tuition and other costs to the families, who had said the books promoted "anti-Christian" themes.

Writing for the panel, Chief Judge Pierce Lively said "that the requirement that public school students study a basal reader series chosen by the school authorities does not create an unconstitutional burden under the free exercise clause when the students are not required to engage or refrain from engaging in a practice prohibited or required by their religion."

Judge Lively added that the school system had not violated the Constitution, saying there was no proof "that any plaintiff student was ever called upon to say or do anything that required the student to affirm or deny a religious belief or to engage or refrain from engaging in any act either required or forbidden by the students' religious convictions." According to the ruling, "witnesses testified that reading the Holt series 'could' or 'might' lead students to come to conclusions that were contrary to teachings of their and their parent's beliefs. This is not sufficient to establish an unconstitutional burden."

Judge Lively based his opinion on Supreme Court rulings which affirm that "public schools serve the purpose of teaching fundamental values 'essential to a democratic society.' These values 'include tolerance of divergent political and religious views' while taking into account 'consideration of the sensibilities of others.' "

According to Lively, "the 'critical reading' approach [used in Hawkins County schools] furthers these goals. . . .The 'tolerance of divergent . . . religious views' referred to by the Supreme Court is a civil tolerance, not a religious one. It does not require a person to accept any other religion as the equal of the one to which the person adheres."

The opinion noted that parent Vicki Frost testified "that she did not want her children to make critical judgments and exercise choices in areas where the Bible provides the answers. There is no evidence that any child in the Hawkins County schools was required to make such judgments . . . When asked to comment on a reading assignment, a student would be free to give the biblical interpretation of the material," Lively concluded.

Tennessee Attorney General W. J. Michael Cody welcomed the decision. "I'm very pleased," he said, "because if Judge Hull had not been reversed, it would have opened the door to a cafeteria-style education system where people pick and choose the types of courses they want. We felt you couldn't effectively run a school system with this kind of 'opt-out' system." Attorney Timothy Dyk, who represented the school board, said the decision "reflects a great sensitivity to the role of the public schools and how impossible it would be to do what the plaintiffs would like to do."

Nat Coleman of Greeneville, Tennessee, another attorney for the board, said the ruling would create a "healthy climate" for education. "Although the [1986] opinion originally was crafted as a very narrow opinion supposedly affecting just the 15 or 16 children in Hawkins County, the sweep of the opinion was . . . enormous and affected public education in the entire United States."

"Now the fear and the chill has been removed from the heads of teachers and the writers of textbooks," Coleman continued. "These books and these teachers . . . are simply exposing children to a diverse culture that exists in this world and letting the children make their own decisions as to values."

A concurring opinion by Judge Cornelia G. Kennedy went

beyond Lively's lead opinion to endorse the specific arguments of school board attorneys that the solution proposed by Judge Hull was inherently disruptive to education. "Even if I were to conclude that requiring the use of the Holt series or another similar series constituted a burden on appellees' free exercise rights," Judge Kennedy wrote, "I would find the burden justified by a compelling state interest."

"Teaching students about complex and controversial social and moral issues is . . . essential for preparing public school students for citizenship and self-government," Judge Kennedy stated. "Mandatory participation in reading classes . . . is essential to accomplish this compelling interest and . . . this interest could not be achieved any other way."

Moreover, Judge Kennedy declared, the board also has a "compelling interest in avoiding disruption in the classroom." Its integrated curriculum "reinforces skills and values taught in the different subject areas . . . The divisiveness and disruption caused by the opt-out remedy would be magnified if the schools had to grant other exceptions. . . . This case would create a precedent . . . [and] result in a public school system impossible to administer."

Michael Farris, attorney for the parents, said he was "not particularly surprised" by the ruling. "We are not pleased, but we are not discouraged. We don't think this is the final decision. It's just a whistle stop on the way to the U.S. Supreme Court. Everybody has thought so from the beginning."

Farris said the appellate court decision was "totally without precedent." "We simply don't believe the ruling will hold up," he told reporters. "They said that you can force kids to read books as long as you don't force them to believe what they read."

Although the decision of the panel was unanimous, the parents could take some solace from the concurring opinion of Justice Danny J. Boggs, who agreed with Judge Lively's conclusions on the basis of binding precedents but seemed to seek a redirection from the Supreme Court more attuned to the parents' desires.

"As this case now reaches us," Judge Boggs wrote, "the school board rejects any effort to reach out and take in these children and their concerns. . . . I disagree with the first proposition in the court's opinion that plaintiffs object to any exposure to any contrary idea. . . .A reasonable reading of plaintiffs' testimony shows they object to the overall effect of the Holt series, not simply to any exposure to any idea opposing theirs."

"It is their belief," Judge Boggs continued, "that they should not take a course of study which, on balance, to them denigrates and opposes their religion, and which the state is compelling them to take on pain of forfeiting all other benefits of public education. . . . .

"On the question of exposure to, or use of, books as conduct, we may recall the Roman Catholic Church's *Index Librorum Prohibitorum*. This was a list of those books the reading of which was a mortal sin, at least until the Second Vatican Council in 1962. I would hardly think it can be contended that a school requirement that a student engage in an act—the reading of a book—which would specifically be a mortal sin under the teaching of a major organized religion would be other than 'conduct prohibited by religion,' even by the court's fairly restrictive standard. Yet, in what constitutionally important way can the situation here be said to differ from that?"

"Here," Judge Boggs concluded, "plaintiffs have drawn their line as to what required school activities, what courses of study, do and do not offend their beliefs. . . . It could hardly be clearer that they believe their religion commands, not merely suggests, their course of action."

"For me, the key fact is that the Court has almost never interfered with the prerogative of school boards to set curricula, based on free exercise claims," Boggs wrote. "A constitutional challenge to the content of instruction . . . is a challenge to the notion of a politically controlled school system."

"It is a substantial imposition on the schools to require them to justify each instance of not dealing with students' individual, religiously compelled, objections. . . and I do not see that the Supreme Court has authorized us to make such a requirement."

"Therefore," Boggs "reluctantly" concluded, "under the Supreme Court's decisions as we have them, school boards may set curricula bounded only by the Establishment Clause, as the state contends. . . . a significant change in school law and expansion in the religious liberties of pupils and parents should come only from the Supreme Court itself, and not simply from our interpretation."

In the Alabama case, *Smith* v. *Board of Commissioners*, the appellate panel ruled 3-0 that Judge Hand's order had turned the First Amendment requirement that the government be neutral on the subject of religion "into an affirmative obligation to speak about religion." The court ordered Hand to dismiss a lawsuit brought by over 600 fundamentalist parents, largely at the judge's own initiative, following an appellate court reversal of an earlier decision by Hand favoring prayer in school. The court returned the case to Judge Hand for the "sole purpose of . . . dissolving the injunction and terminating this litigation."

Jim Ippolito, a lawyer for the state school board, said the unusually strong order to terminate the case probably reflected "the concern they [the appeals judges] voiced during oral arguments about the nature of the case and the way it has progressed." Robert Skolrood, executive director of the National Legal Foundation, an arm of Rev. Pat Robertson's evangelistic empire which supported the parents' suit, agreed that the termination order was "highly unusual. . . . It's almost like an exclamation point to a decision, which isn't the usual way of doing it." Skolrood called the decision "a tremendous blow to religious freedom in our country."

report finds censorship still on rise

Despite recent court defeats for fundamentalist Christians, public school censorship driven by the religious right is soaring, especially in the Midwest, People for the American Way announced August 27. The liberal group's fifth annual report on *Attacks on the Freedom to Learn* recorded 153 attempts to remove books from public schools or libraries in 41 states during the 1986-87 academic year. That was a 21 percent increase over the previous year (see *Newsletter,* November 1986, p. 203) and a 168 percent jump since the group's first report in 1982.

Overall, 37 percent of the challenges were successful, the report said, compared with 26 percent five years ago. "In nearly one-third of the 1986-87 cases, the censors were defeated and the challenged materials retained," the report continued. Action was pending on the rest.

"The notion that it's a redneck, rural problem is a myth," said Arthur J. Kropp, People for the American Way executive director. "Censors in the Midwest, a region considered among the most mature and sophisticated, have the best batting average anywhere."

In 13 Midwestern states, opponents of various books succeeded in restricting their use in 25 instances, the most for any region, out of 50 attempts. There were also 50 attempts in the West, but only 13 succeeded. The South had 38 attempts, with 15 successful and the Northeast had the fewest incidents, with just 15 challenges reported, only 4 of which led to removal or restriction of material. Two states, Nebraska and Washington, reported 12 incidents each, the most of any states.

Library materials were targeted for censorship in 52 incidents recorded by People for the American Way. Challenges to classroom curricula numbered 84. In 54 incidents, those filing the complaint were affiliated with an organized group.

The Rev. John H. Buchanan, chair of People for the American Way, attributed the national increase to the televised preaching of Christian evangelists and the greater activism of conservative religious groups. "I think censorship is on the rise because you have militant national groups that are stimulating cases [and] because every time you turn on a television set you can hear a Pat Robertson, a Jerry Falwell, or a Jimmy Swaggart talk about the evil of 'secular humanism' in public education," Buchanan said.

According to the report, over the last five years the most challenged title was *The Chocolate War,* by Robert Cormier, followed by *Catcher in the Rye,* by J.D. Salinger, *Of Mice and Men,* by John Steinbeck, *The Adventures of Huckleberry Finn,* by Mark Twain, and *Deenie,* by Judy Blume.

Most frequently banned was *Catcher in the Rye,* followed by *Of Mice and Men, The Adventures of Huckleberry Finn, The Diary of Anne Frank,* and *To Kill a Mockingbird,* by Harper Lee. Judy Blume was the most banned author, with four books among the 14 most frequently censored titles. Reported in: *Cleveland Plain Dealer,* August 28; *Detroit News,* August 28; *Philadelphia Inquirer,* August 28. □

Writing for the appeals panel, Judge Frank Johnson Jr. said there was no question that the purpose behind using 39 history and social studies books was secular, and that selecting a textbook that omits a topic for nonreligious reasons is different from requiring the omission of material because it conflicts with a particular religious belief.

The court said there was nothing to indicate that "omission of certain facts regarding religion from these textbooks of itself constituted an advancement of secular humanism or an active hostility towards . . . religion." The other five books included in Hand's order were home economics texts that he said promoted "secular humanism," which he described as a religion.

The appellate court said that even if "secular humanism" is a religion, which the government may not lawfully promote, it was not shown that Alabama had promoted it by using the textbooks. "Examination of the contents of these textbooks . . . reveals that the message conveyed is not one of endorsement of secular humanism or any religion," Judge Johnson wrote. "We do not believe that an objective observer could conclude from the mere omission of certain historical facts regarding religion or the absence of a more thorough discussion of its place in modern American society that the state of Alabama was conveying a message of approval of the religion of secular humanism."

The court declined, however, to address the question of whether such a religion as "secular humanism" does, in fact, exist, whether or not it has been unconstitutionally promoted by the controversial textbooks.

Alabama Superintendent of Education Wayne Teague applauded the ruling. "We have felt all along that the state Board of Education had acted properly in adopting the textbooks questioned in this lawsuit," he said. John Tyson, Jr., of Mobile, vice president of the Alabama Board of Education, said the decision would avert federal court control of state classrooms. "I have said all along that the job of textbook selection is that of the state's, not Judge Hand's," he said.

Mobile County Public School Board President Judy McCain said most people suspected Hand's ruling would be overturned at the appellate level. Indeed, Robert Sherling, an attorney for the parents' group, commented, "We knew that whether we won or lost the case it would be appealed to the Supreme Court. I don't think that we would have any

intellectual freedom leadership development institute

An Intellectual Freedom Leadership Development Institute, to be held May 5-7, 1988, is the major program initiative for 1988 of ALA's Intellectual Freedom Committee/Office for Intellectual Freedom. The institute will give newly-identified intellectual freedom leaders the information and skills needed to combat assaults on intellectual freedom and attempted restrictions on materials and/or library services, in violation of the *Library Bill of Rights.*

Of particular concern for those of us committed to diversity and free access are governmental assaults on intellectual freedom exemplified by, but not limited to, the Attorney General's Commission on Pornography. Such assaults are characterized by an intention to limit the ideas and representations that are widely available to the general public, as well as an intention to foster an ideologically limited and religiously-oriented point of view. These assaults have been affected by an alliance of segments of the executive branch and the fundamentalist Christian right, who are increasingly organized and skilled in public relations. The targets of this alliance are schools and bookstores, as well as libraries. The ultimate target is the diversity of thought and products of the imagination that undergird a pluralistic society.

These assaults are the most insidious because they threaten to undermine our and our children's capacity to think, to analyze, to imagine and to create. The result has been referred to as "dumbing down" and the appellation appears to be quite accurate. Among the main targets of the fundamentalist Christian right are books and materials, in our libraries as well as our classrooms, which encourage children to imagine and to think creatively—and critically.

The institute will acquaint (or refresh) participants with the *Library Bill of Rights* and its interpretations, as well as with key court decisions. A separate session will familiarize participants with the variety and extent of resources available when problems arise, and with how to make effective use of such support. The institute will also provide in-depth information on national level pressure groups and other would-be censors—who they are, what their goals are, what their strategies and tactics are.

Other sessions will train participants in the most effective strategies to use when countering attacks on intellectual freedom, in the use of public relations techniques and the media to influence community opinions, and in how to conduct a "challenge hearing." Participants also will be provided with information on how to work with legislators, government officials and administrators to ensure a productive presentation of the intellectual freedom perspective.

Finally, attendees at this institute will be taught how to plan a workshop program, gather the necessary resources, and conduct evaluation and follow-up.

Participants will be chosen on the basis of applications submitted to the Office for Intellectual Freedom by December 15, 1987. Selection of participants will be made by a subcommittee of the Intellectual Freedom Committee of the American Library Association. Selection criteria include a demonstrated commitment to intellectual freedom, geographic balance, and representation of all types of libraries. Notification of selection will be made no later than February 1, 1988. Selected participants will be required to pay their own expenses to and from the institute, but all institute-related expenses will be paid by the Office for Intellectual Freedom of the American Library Association. Applications may be obtained from the Office for Intellectual Freedom, American Library Association, 50 E. Huron St., Chicago, IL 60611.□

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great cause for elation had we won, because we would have known the case would be appealed to the Supreme Court anyway."

However, the Supreme Court's June decision in the Louisiana creationism case led many observers to question whether it would agree to hear an appeal of the Alabama humanism case. "The court may not take up the case," concluded John Buchanan of People for the American Way.

Buchanan, a Baptist minister and former Republican member of congress from Alabama whose organization helped pay legal fees for a group of parents who intervened to defend the challenged textbooks, called the ruling "a major victory for freedom to learn." He added, "there's one thing I would like for the people of Alabama to understand: It is their elected school board and their democratic process that is being upheld . . . This is certainly not a battle between Christians and people who are not Christian."

Both appellate court decisions were criticized by prominent figures in politically conservative and Christian fundamentalist circles. "It is clear Christians no longer have equal standing before the court," declared a discouraged Robert Skolrood. "It is a tragedy that in this year of our Constitution's bicentennial, the court has decided to disenfranchise a majority of Americans."

Phyllis Schlafly, president of the Eagle Forum, said she was not surprised by the rulings because "that's been the bias of the court for so many years. The bias of the court has been clearly against recognizing the right of those who believe in religion."

Schlafly predicted that both cases would reach the Supreme Court, but stressed that no matter what their final outcome they "served the useful purpose of bringing to the attention of the American people the way in which the rights of parents are trampled upon by the school systems. The controversy

in review

The Supreme Court and Its Justices. Edited by Jesse H. Choper. Chicago: American Bar Association, 1987. ISBN: 0-897-07-290-1. 267 p. $24.95.

The Supreme Court and Its Justices is the first volume in an anthology series, "The Best of the *ABA Journal*." With two exceptions (Sen. Barry Goldwater and journalist Anthony Lewis) the authors are lawyers or judges who originally wrote these essays for American Bar Association members.

Editor Jesse H. Choper, dean of the University of California, Berkeley, School of Law, chose a distinguished group of authors for this volume. The list includes two former chief justices, Charles Evans Hughes and Earl Warren; William H. Rehnquist, the current chief; six former Supreme Court justices, Harold H. Burton, Tom C. Clark, Felix Frankfurter, Charles E. Whittaker, Robert H. Jackson, and Lewis F. Powell, Jr.; noted legal scholars Paul A. Freund and Lawrence H. Tribe; and other attorneys from various parts of the U.S. The book is divided into seven sections: "Establishment of the Power of Judicial Review," "Portraits of Past Justices," "Qualities, Characteristics, and Activities of Past Justices," "The Court As a Center of Controversy," "Internal Operation of the Court," "Appointment of New Justices," and "Lawyering Before the Court." Dean Choper provides a one-paragraph introduction to each section.

The essays make interesting reading for the student of American legal institutions, particularly Harold Burton's background and analysis of *Marbury* v. *Madison*, which established the Supreme Court's power to declare acts of Congress and the president unconstitutional; the word portraits of John Marshall, Roger B. Taney, and Charles Evans Hughes by Justices Warren, Hughes, and Jackson, respectively; attorney Alan B. Morrison's review of *The Brethren*, discussing the secrecy surrounding much of the court's work; and "The Ten Commandments of Certiorari," designed to increase the odds that the court will hear a given case.

Unfortunately, the book lacks an index to direct the reader to discussions of First Amendment issues which concern readers of this *Newsletter*. In his essay "Storm Over the Supreme Court," Paul Freund briefly discusses the First Amendment. If we view it historically, Freund says, the First Amendment "probably was meant denotatively to outlaw prior restraint and to assume that a jury in criminal libel could return a general verdict of not guilty." Other essayists touch briefly on issues which have a relation to the First Amendment such as school prayer.

In-depth discussion of the First Amendment and of Hugo Black, William Brennan, and William O. Douglas, the Court's best-known champions of First Amendment rights, are missing here. This reviewer hopes that First Amendment issues and the people who shaped the law in that area will be the subject of a future volume in this series.

Librarians may wish to keep in mind that lawyers were the original audience for these essays. The legal slant should not, however, deter them from acquiring the book. *The Supreme Court and Its Justices* is recommended for academic, public, and secondary school libraries as we observe the Bicentennial of the U.S. Constitution for its discussion of the third branch of government.—*Reviewed by Sue Kamm, Reference Librarian, Library Management Systems, Los Angeles, CA.* □

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will go on as more and more parents are exercising their rights."

Actually, according to Prof. Joe Barnhart of North Texas State University, who has studied church-state issues, no matter which way the court decisions go, "at the local level, the effort already has been to find the lowest common denominator to avoid controversy. In that sense all these court cases are up in the clouds. They don't have that much influence at the local level."

Barnhart said that the political nature of American public school systems makes it imperative for school administrators to seek the path of least controversy. Thus, he said, few schools will even allow discussion of sensitive topics like creationism and evolution or "secular humanism."

Other observers predict that the series of defeats suffered by fundamentalists in the courts will lead to increased activity by such groups in politically based efforts to influence education, especially at the local level.

The Rev. Pat Robertson said the Supreme Court ruling on creationism strengthened his resolve to run for president. "The state steadily is attempting to do something that few states, other than the Nazis and the Soviets, have attempted to do, namely to take the children away from the parents and to educate them in a philosophy that is amoral, anti-Christian and humanistic and to show them a collectivistic philosophy that will ultimately lead toward Marxism, socialism and a communistic type of ideology," Robertson told viewers of his *700 Club* cable television program.

According to People for the American Way, Citizens for Excellence in Education (CEE), a branch of the National Association of Christian Educators, is the most active group seeking "to bring public education back under the control of Christians." Recently, CEE set as its goal electing its members to school boards around the country.

"When we can get an active Christian parents' committee in operation in all districts, we can take complete con-

(continued on page 238)

Ohio teachers confused on creation

More than one-third of Ohio's high school biology teachers advocate teaching creationism in public schools and more than one-fifth are doing so, a survey in the September issue of the *Ohio Journal of Science* revealed. Some of the science teachers said they did not believe in evolution; others said they acted under pressure from ministers, administrators, or parents. Only 12 percent of the biology teachers surveyed correctly defined the modern theory of evolution, while most opted for a statement describing evolution as "a purposeful striving" toward "higher life forms," which is contradictory to the discoveries of both Darwinian and post-Darwinian evolutionary biology.

"It's frightening," said Oberlin College biology professor Michael Zimmerman, who conducted the study. "We've learned enough to know the world is not flat or that languages were not given to humans at the tower of Babel, but we've obviously poorly educated our teachers—and that means they are poorly educating our children."

"Some people obviously are confusing preaching with teaching," said Robert Bowers, Ohio assistant superintendent of public instruction. "Religious beliefs should not be part of the science curriculum."

Zimmerman said 37.6 percent of the 404 teachers surveyed favored teaching creationism, and as many as 21.8 percent were teaching it—three-fourths of them as a "favorable" explanation for the origin of life.

One teacher told Zimmerman creationism was "a valid scientific option," and another boasted: "I teach creationism just to be safe. I have never had any parental objections for 25 years."

Another teacher expressed the belief that "teaching of creationism is fundamental to the preservation of America," Zimmerman reported. "Many of them spoke of teaching it because of pressure—from ministers, churches, school administrators, parents, students, colleagues, spouses. A couple of people even said the pressure was coming from God."

Although a June Supreme Court decision barred states from *requiring* the teaching of "creation science" where evolution is taught, nothing forbids local school districts from including it in the curriculum, if it is presented in a secular form. Until 1984, the Columbus Board of Education officially advocated teaching creationism in science classes.

"This is very disturbing," commented Donald McCurdy, past president of the National Science Teachers Association. "Religion should be kept out of the science classroom. Any qualified science instructor knows that." Donald Emmeluth, president of the National Association of Biology Teachers, however, said Zimmerman's findings were "very surprising."

"We deal in empirical evidence, what is and isn't factual," he said. "These religious ideas are based on faith." Reported in: *Cleveland Plain Dealer,* September 3. □

new threats to press freedom

Recent laws and court rulings on libel, invasion of privacy, and related issues surrounding the press are growing increasingly complex. As a result, it is more difficult for reporters to steer away from prospective lawsuits.

That was the message delivered to the convention of the Association of Alternative Newsweeklies by Jane Kirtly, executive director of the Washington-based Reporters Committee for Freedom of the Press. Kirtly said that with libel and privacy "always on journalists' minds," the question she most often gets is: "Are we going to get sued if we publish this?"

"And the answer can never be 'No, you won't get sued.' The answer may be: 'You may get sued, but you probably will win—or maybe you won't," she said.

Many state courts, Kirtly reported, "have started to look at the old idea of the 'neutral report' privilege, the notion that if you go to a public meeting and report what is said in that public meeting, that's going to be absolutely protected" from a libel suit, that "you cannot be sued for accurately and fairly reporting what is said in that meeting."

That is no longer true in Alabama, Kirtly continued, where the state Supreme Court ruled that an accurate report of someone else's false statement about another person means a reporter "can be held liable" in libel cases. Moreover, in Michigan, the state Supreme Court ruled against the press in a libel case based on incorrect information provided by police about an arrest. In that instance, a man arrested in a sex crime incident was released without being charged, although police told a reporter he had been charged. The reporter and his newspaper were found at fault when the man filed suit.

"A lot of the things in libel areas that we've taken for granted as being settled are not settled at all," Kirtly told the convention. She also predicted that the most troublesome legal pitfalls for the press would be "in the issue of trespass, as a type of invasion of privacy," citing recent decisions in California and Wisconsin involving reporters who followed ambulance technicians and police officers into private homes.

"The cops were either conducting a drug raid or were trying to resuscitate a gentleman who had had a heart attack. In all three of those cases, the courts said 'You have invaded these people's privacy, you had no right to be in these people's homes, and the fact that the cops or the paramedics said you could be there did not protect you at all."

Kirtly also warned that "courts are showing a certain reluctance to uphold reporters' privileges [against divulging unnamed sources] when the reporter is a defendant in a libel case or an invasion of privacy case." In some pending cases in states which have laws shielding reporters from being forced to identify sources, she said, courts are saying those laws violate state constitutions which give plaintiffs the right to protect their reputations. Reported in: *Portland (Maine) Press Herald,* July 25.□

censorship dateline

libraries

Westport, Connecticut; Bellport, New York

Two apparently unrelated demands were made last spring in northeastern libraries for the removal of videocassettes of Jean Luc Godard's 1985 film *Hail Mary*. Libraries in Bellport and Westport received phone calls protesting the inclusion of the "blasphemous" film in the library's collection. Both libraries requested that the protest be put in writing. Suffolk County Public Library System in Bellport subsequently received a letter from the president of the Catholic League for Religious Rights.

Hail Mary is Godard's updated version of the Annunciation and virgin birth. Mary is portrayed as a gas station attendant. She appears nude in several scenes. The film was labeled blasphemous by Pope John Paul II, and its showings in the U.S. and Europe have prompted protests and picket lines. Reported in: *OIF Memorandum*, May 1987.

Newport News, Virginia

In July, a Ferguson High School media committee approved principal John W. Kilpatrick's request to move the Pulitzer Prize-winning novel *The Color Purple*, by Alice Walker, into the school's professional library, accessible only to teachers. Students under age 18 are now required to have written parental permission to use the book.

School librarian Anne Roseman said she was not sure if removing the book from open shelves discouraged students from reading it, especially since librarians took extraordinary measures to make sure they understood how they could. "If they were interested, the book was still listed in the card catalog," she emphasized. "We also had a dummy book on the shelf where *The Color Purple* was supposed to be with a note explaining that the book had been removed and saying that should you wish to read it, it's available in the professional library." Reported in: *Hampton Roads Daily Press*, June 16.

schools

Lake City, Florida

U.S. District Court Judge Susan H. Black in Jacksonville heard arguments September 10 in a lawsuit filed by the American Civil Liberties Union of Florida on behalf of several parents who objected to a ban on classroom use of a literature anthology, *The Humanities: Cultural Roots and Continuities*, containing material from the classic Greek comedy *Lysistrata*, by Aristophanes, and from Geoffrey Chaucer's *The Miller's Tale*. The works were banned in April 1986, after a Baptist minister objected when they were read aloud in his daughter's class (see *Newsletter*, September 1986, p. 153; November 1986, p. 207).

A review committee appointed by the school board to review the complaint filed by Rev. Fritz Fountain recommended that the book remain in the curriculum, but that the two targeted works be removed from the list of required readings. But on April 22, 1986, the Columbia County School Board accepted Superintendent Silas Pittman's alternative recommendation to remove the entire book from the curriculum. After the board's action, a single copy was kept in the school library; all other copies were locked in a storage room.

Monya G. Virgil, who with her husband, James, Claudia H. Johnson and Susan G. Davis, sued Pittman and the school board, said young people should not be shielded from literature because of ideas expressed or "bad words" used. "They've got to give kids an open education," she said. "They've got to allow kids to think for themselves."

Attorney Samuel S. Jacobson, who represents the parents, said, "Only occasionally is a trial court presented with a true case of fundamental First Amendment constitutionality. This is one of them. Liked or not by Columbia County's School board, the [contested] works have earned such stature and esteem that cognizance of them is part of a proper liberal arts education," he continued. "Only if sexuality per se is to be a forbidden part of the Columbia county curriculum can there be any reasonably articulable basis for banning the works on content or vocabular grounds."

The school board contends, however, that it has broad legal power to regulate how students are taught. "No violation of students' rights of free speech is adequately stated in the present complaint in view of the simple fact that the school board exercised its very broad discretion, based upon its own judgment of community values, in restricting or excluding a book from the school curriculum," board attorney Daniel C. Shaughnessy told the court. Reported in: *Florida Times-Union*, September 8.

Panama City, Florida

The Bay County School Board voted 4-1 September 9 to ban an acclaimed young adult novel, *I Am the Cheese,* by Robert Cormier, from district middle schools, adding another chapter to a major censorship controversy that has been lingering for more than a year and that will probably be resolved in the federal courts (see *Newsletter*, July 1987, p. 126-28; September 1987, p. 168). The board upheld school Superintendent Leonard Hall who refused for a second year to allow the book to be used in advanced eighth grade classes.

I Am the Cheese was originally banned under an old selection policy in October, 1986. The policy was changed, however, to give teachers an avenue of appeal to the school board after Hall in May attempted to ban dozens of books, including such classics in *Hamlet* and *Oedipus Rex.* Mowat Middle School teacher Gloria Pipkin, one of several plaintiffs in a lawsuit against the earlier banning, decided to try again to win approval for the book. She was supported by her principal and the district's assistant superintendent for instructional services.

But Hall stuck to his guns. "There is not one chapter in that book, not one paragraph, that is uplifting," he told the board. "The book was not appropriate for that grade level then, and it's still not appropriate. It contains some of the most morbid circumstances; it deals with the total helplessness of the child, a mother who cannot face reality. Our children don't need to be looking at death. They're already depressed. There's nothing uplifting, no merit, nothing positive and it doesn't meet the emotional level of our students."

Pipkin was questioned by board members about use of the novel. She praised the book because it raised questions. "If you found a book that no one had questions about," she said, "it would be so bland that no one would want to read it." Others in the audience also supported the book, but Panama City developer Charles Collins, who instigated the book's original banning, called the novel "vulgarity for vulgarity's sake."

Following discussion, the board voted to continue the ban on the book. "I don't want to deprive students of the chance to learn;, but I don't want to expose them to something that's to their detriment," board member Tommy Smith said.

Pipkin said the book's 14-year-old hero had given her a lesson in coping with the censorship controversy. "I've drawn a lot of courage from Adam that you can keep in on keeping on," she said. "We go nowhere from here except into the courts," she concluded. Reported in: *Panama City News-Herald,* September 10; *Tallahassee Democrat,* September 10.

Fitzgerald, Georgia

Fitzgerald school officials decided August 18 that a policy that resulted in the banning of *Slaughterhouse Five,* by Kurt Vonnegut, from all city schools offered sufficient protection against "objectionable" materials. The Fitzgerald school board rejected a request by Farise and Maxine Taylor, who filed the complaint against the Vonnegut novel, for a parental committee to review instructional and library materials.

The Taylors decided to seek parental review after filing the complaint against *Slaughterhouse Five,* saying they wondered what other books in the curriculum, especially sex education materials, might contain. "We more or less want to be an advisory committee and tell the board, 'This is what's going on and this is how we feel about it'," Mrs. Taylor said.

She said she and her husband had objected to certain classes in the past and withdrew their children from those classes. She said they decided to become more active after their 15-year-old daughter came home last spring with a copy of the Vonnegut book. "I was just shocked," she said. "This time, we decided to go ahead and do something about it. I'm not trying to tell anyone else what they can read," she continued, "but if we don't do anything about it, they're putting that garbage in the classroom and we're putting our stamp of approval on it. It was filled with profanity, but that's not our main objection. It's full of explicit sexual references."

The Taylors filed a formal complaint in June, which was rejected by a school media committee. In July, they met with school board members and in early August, took their complaint to a district appeal board. That group voted 6-5 to remove *Slaughterhouse Five* permanently from the curriculum. Reported in: *Albany Herald,* August 13; *Macon Telegraph & News,* August 19.

Gwinnett County, Georgia

A local chapter of a national conservative organization, which has led a protracted fight against controversial school textbooks, backed down in August from a threat to take the Gwinnett Board of Education to court over 15-20 books it deemed objectionable. In March, a set of three language arts books challenged by Citizens for Excellence in Education (CEE) were adopted by the board. CEE then announced it would challenge additional books over their treatment of evolution and promotion of allegedly anti-family, anti-Christian, and anti-American values. In 1985, members of CEE successfully won removal of *Deenie,* by Judy Blume, from county high school libraries, which prompted the formation of pro- and anti-censorship groups in the county (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; July 1987, p. 128.)

Jo Ann Britt, a CEE leader, said the group would abandon confrontational tactics to work more quietly on a one-to-one basis to influence school board members. "I realize we gave board members and staff the idea that we were hostile to them and we weren't," Britt said. "A lot of time

we gave the wrong impression. If we are able to sit down with them on a one-to-one basis, we can show them in detail without them being under pressure to make a decision."

Britt's announcement came in a television interview in which she said prolonged public attention had led school board members to "tune us out." Her statement was met with skepticism from several sources, however. School Board chair Louise Radloff said the board would "meet with any citizen's group . . . but the board has to listen to the professionals, weigh the information and make an informed decision."

George Wilson, chair of the Free Speech Movement, formed after the *Deenie* controversy to oppose CEE's efforts, said the group was changing its tactics because "their ideas have not withstood the test in the marketplace. Nobody is buying what they have to say." Wilson added, however, that he was concerned that the group would now work in a secretive manner. "I like things out in the public spotlight," he said. "When you put it in the spotlight you get rationality." Reported in: *Gwinnett Daily News,* August 15.

Lincoln, Nebraska

Leaders of Taxpayers for Quality Education met with Nebraska Gov. Kay Orr's "kitchen cabinet" dealing with education issues September 15 to make a number of recommendations. The group asked the governor to consider requiring that reading be taught by the phonics method rather than through so-called "look-say" techniques. The group also urged a return to basics in school curricula and a reduction in school administrations.

In addition, the group will monitor books in school libraries and recommend reading lists, working to remove books that are "unfit" for school-age children, according to TQE president George Darlington. "These may not be more than a handful in number, but they inflict a cancer on the body of education we want our children to develop," he said.

Darlington praised the Lincoln school system for removing the novel *Quartzite Trip,* by William Hogan, from the library at East High School. The book contained explicit sexual references, he said. He also called for the removal from school libraries of *Black Boy,* by Richard Wright, and *It,* by Stephen King.

"We will continue to call these literary misfits to the attention of school officials and we believe that a vast majority of the public, when they are made aware of the corruptive, obscene nature of these books, will agree with us," Darlington said. He stressed, however, that his group did not want to be known as book banners. "We're often characterized as people that want to have *Mary Had a Little Lamb* removed from the public school libraries, and that is not the case," he said.

Lincoln Public Schools officials confirmed September 11 that *Quartzite Trip* had been placed in a collection for teacher use only after a complaint was filed by a teacher. Media Director Clara Rottman did not explain the reasons for the reassignment. Reported in: *Lincoln Star,* September 12.

Omaha, Nebraska

In a decision described by school board president Fritz Stanek as "a compromise," the Omaha School District approved use of a controversial sex education textbook by an 8-2 vote August 10. Opponents of *Family Life and Human Sexuality,* to be used as a supplemental text in an elective course, objected to the book, saying it promotes Planned Parenthood, abortion, and artificial methods of birth control. One board member singled out a passage on prevention of sexually transmitted diseases which recommended condom use. The book was adopted after the course's previous supplemental text, *Finding My Way,* was replaced because it was considered too controversial. Board member David Wilken abstained from the vote because he preferred the original text. Reported in: *Omaha World-Herald,* August 16.

Tipp City, Ohio

"We're not worshipping Satan in the Tipp City schools." Those were the words of Tipp City schools superintendent Dean Pond in response to charges that the school mascot, a Red Devil, promoted satanism among students. "I think you sell kids short if you don't think they know the difference between a mascot and a religious symbol," Pond added.

But in a late August letter to the school board about 40 people denied that they were accusing the schools of practicing devil worship. Instead, they charged that use of the mascot infringed "upon the rights of our children to be as involved in school programs as they would like, due to an imagery that is in direct conflict with the religious convictions we possess."

Nancy Shereda, a member of the Ginghamsburg United Methodist Church, said the idea started when a California family, members of the Church of the Nazarene, moved into the school system and were upset to find the devil mascot. "Before something like this comes up, you accept what the school rules are. I never really questioned it," said Mrs. Shereda. "But it seemed it was time to start showing our faith."

Students voted to keep the devil mascot when the same issue came up about four years ago. "It's a community thing," Superintendent Pond explained. "You have restaurants that serve a devil burger and ice cream shops that have devil cones." Reported in: *Findlay (Ohio) Courier,* September 1.

Putnam, Oklahoma; North Huntington, Pennsylvania

A questionnaire being distributed to school board candidates in Putnam asked whether or not the candidate would support banning "humanistic" textbooks which do not in-

clude "Christian viewpoints" and whether or not the candidate would support the teaching of the "Science of Creationism." The covering letter, from the Putnam City Baptist Church, warned that completed questionnaires would be duplicated and widely distributed. If a candidate failed to respond, the letter said, a blank questionnaire with the erring candidate's name would be circulated.

Similar issues were the focus of a hotly-contested school board election in North Huntington, near Pittsburgh. There, five candidates were trying to oust the incumbents for their tolerance of "unacceptable" textbooks. Reported in: *Censorship News*, #26.

Elkhorn, Wisconsin

A theater group decided to perform *The Best Little Whorehouse in Texas* at a local dinner theater in August instead of in a high school auditorium due to protests from school officials. "The bottom line was self-preservation," said Peter Kouzes, president of the Lakeland Players. "With the flak that was created, we decided it was better to move it."

The group had asked permission from the Elkhorn Area School Board to use the high school auditorium. But Joseph-Louis Golden, a board member, protested, saying he objected to the message the play might convey to students. Golden noted that in one scene, a football team that wins an important game is rewarded with a night at the brothel. "Well that's certainly not why we have a sports program," he noted.

As a compromise the school board voted August 10 to let the group use the auditorium if the word "whore" was not used in advertising. But the group decided to withdraw to a local dinner theater instead. "We live in a small town," explained Kouzes. "We have old-timers with conservative ideas. It's kind of like the minority ruling the majority." Reported in: *Milwaukee Journal*, August 27.

Racine, Wisconsin

The Case High School production of the play *Dark of the Moon*, in which one character is a "witch boy" and in which one scene involves adultery, was cancelled because of objections from three Racine ministers. Although director Jay Rattle and Case principal Joe Mitchell did not find anything objectionable, fears of further repercussions led to a decision to produce a substitute play.

In other news from Wisconsin schools, it was reported that *Cujo*, by Stephen King, was temporarily removed from a high school library in Durand pending review by a nine-member panel of school personnel and community members. In addition, the Gale-Ettrick-Trempealeau School Board decided to leave in circulation in the school library *The Devil in the Drain*, by Daniel Pinkwater, despite objections by a district resident. Reported in: *Wisconsin Intellectual Freedom Coalition Newsletter*, Summer 1987.

student press

Glendale, California

When the annual prom issue of the Hoover High School newspaper, *Purple Press*, was distributed in June a public service advertisement urging condom use to prevent the spread of AIDS had been replaced with a statement by district superintendent Robert Sanchis explaining his decision to bar the ad. Sexually related advertising "must be evaluated for its suitability to the majority of its student readership and to the parents and other members of the community also reading the newspaper," Sanchis wrote.

The ad would have been the first of its kind in a Glendale school publication, and perhaps one of the first in a high school newspaper nationwide. It was adapted from a Planned Parenthood flier, but the newspaper staff deleted all references to birth control.

When the idea for the public service ad came up, journalism adviser Diane Bell suggested showing it to principal Don Duncan as a courtesy. At the time, he approved it. But controversy arose when another teacher suggested that *Purple Press* notify local media. When papers and television stations began calling, school administrators said the ad would have to be held, pending a policy review.

Superintendent Sanchis defended the censorship decision. "If the school district goes beyond providing factual information and begins to make recommendations, [it] must consider the legal, medical and social policy implications of such actions," he said. Sanchis added that the ban "wasn't a question of a First Amendment issue." He said the main legal question involved the California definition of statutory rape.

"Plus," he said, "The ad was misleading. Nowhere did it refer to the fact that [condoms do not provide] 100 percent prevention of the spread of AIDS. . . . As a first attempt to deal with a very sensitive and complex issue [the ad] was a very weak approach."

Sanchis said the incident "prompted a new look in the matter of student publications and raised a new dimension of the possible legal implications [of student newspapers]." An ad hoc committee was appointed to formulate a new publications policy for the Glendale high schools.

"We're not sure just how aggressive they're going to be in their policy," commented Judy Lind, journalism adviser at neighboring Glendale High School. "This is a rather conservative community and they're going to discover that if they want something to stand up in the courts, it won't be easy to write." Reported in: *SPLC Report*, Fall 1987.

South Bend, Indiana

University of Notre Dame officials suspended the operation of the student weekly literary and news magazine for four days in February after the staff printed a photograph of artwork that had been previously censored from the student art journal. The work was an impressionistic depiction of what some described as a sexual act.

Member of the *Scholastic* magazine staff were locked out of their offices after an article, along with a photo of the disputed artwork, appeared in their February 19 issue discussing the censorship of the art journal *Juggler* in late 1986. "We felt that the artwork was relevant to the news story," said Maher Mouasher, editor of *Scholastic.*

Earlier, Adele Lanan, assistant director of student activities for media and programming, asked *Juggler* editor Mike Morales to show her the magazine proofs before it was printed. Without Morales' knowledge, she removed a photograph and replaced it with another. "I felt that they couldn't do this . . . this was wrong," Morales said. "I felt what she had done was ridiculous." But Morales did not fight the censorship because the publication came out only twice a year and he thought he would have little leverage.

When *Scholastic* reported the incident and printed the censored photo, the staff believed it was operating under a university policy stating that "student publications should be free of censorship and advance approval of copy, and their editors and managers should be free to develop their own editorial policies and news coverage."

The policy also noted, "Editors and managers of student publications which are supported by recognized university bodies should be protected from arbitrary suspension and removal because of student, faculty, administrative or public disapproval of editorial policy or content."

On February 22, however, *Scholastic* staff members were informed that they would be suspended because "the decision to run the photograph in the *Scholastic* was done without consultation with or knowledge of the Student Activities Office. After four days, an agreement was reached, lifting the suspension and insuring future publication "free of prior approval." But the *Scholastic* agreed "to keep the Office of Student Activities informed of pertinent issues." Reported in: *SPLC Report,* Spring 1987.

broadcasting

Wyoming, Michigan

The music director at a student-run radio station cried censorship in May after a record ban was imposed prior to a change in the station's format. The ban at WYCE-FM was a precautionary move until a new music format could be implemented, according to school administrators. The station is part of an adult education program in the Wyoming Public Schools.

According to Susan Walter, director of communications for the school district, some fifty groups were banned by superintendent David Bailey to curb WYCE from playing music "questionable to good taste." The station's estimated listener's age is 25. The banned music was mainly progressive and "alternative" rock music.

"I don't see it as censorship," Walter said. "As the holder of the license, the school district has the right to make this choice. I do not see it as a First Amendment issue at all. I find some of the material offensive and I consider myself to be a very liberal person."

Brian Tennis, the station's music director, did not like the ban or the new format. Music that was cut gets played everyday on other area stations, he charged. "We went from being a station for the community to something the administration wanted to hear," Tennis said. "There were definitely some types of music that WYCE played that no one else did. Now they can't be heard in the community at all." Reported in: *SPLC Report,* Fall 1987.

New York, New York

"Four out of five young women who don't use birth control get pregnant before they want to. Birth control—from saying 'no' to taking the pill. You're too smart not to use it."

This message was to be broadcast for eight weeks last summer in New York City and Buffalo as the opening to a five-year compaign by the New York State Family Planning Media Consortium. But all six commercial television stations in New York City turned it down. Two Buffalo stations ran the ad.

Public service announcements in favor of birth control have occasionally appeared on New York stations. But the consortium sought to buy time, rather than receive it free, so it could choose when the commercial would be aired. Stations tend to schedule public service announcements at hours when there are few viewers.

"CBS has had a policy in place for some time that we don't accept advertising of this nature," explained Roger Colloff of WCBS-TV. "The reasoning: this is an issue involving intimate personal behavior, the sort of subject matter that some portion of our audience would consider intrusive into their moral or religious beliefs. It was not deemed suitable for mass audience advertising."

"By blacking us out on all the major New York City television stations, they have created their own kind of censorship," countered Alfred F. Moran, executive directory of Planned Parenthood of New York City, a member of the consortium. "The issue here is the public interest. In this country we have six million pregnancies a year, and it is estimated that half of them are unintended. Half of those end in abortion. The stations are withholding information from people at risk and failing to provide them with information that would help them avoid being dependent on abortion." Reported in: *New York Times,* August 24.

periodicals

Lansing, Illinois

On December 10, 1986, six police officers entered Friendly Frank's Comic Shop in Lansing, closed the store, and arrested manager Michael Correa. The charge: "Intent to disseminate obscene materials." Specifically, Correa was arrested for selling certain comic books, including *Omaha the Cat Dancer, Weirdo, Heavy Metal, Murder,* and *The Bodyssey.*

After the arrest eight more comics, including *Elektra: Assassin,* and *Ex-Mutants,* were added to the list. Frank Mangiaracina, owner of Friendly Frank's, said the arresting officers verbally objected to a Wonder Woman poster and referred to some of the books as "satanic."

Many of the confiscated comics were of an adult nature, depicting sexual behavior and nudity, although these were marked with a warning to store owners not to sell to minors. Some, however, were simply comic books. A group of fourteen comics artists formed the Comic Book Legal Defense Fund to assist Correa and other comic book vendors. Reported in: *San Franciscans ACT!*, August 1987.

Goshen, Indiana

The editor of a rock magazine in Goshen may be forced to shut down the magazine and leave town if local protesters have their way. Marion Hatfield, editor of *Rock Rag Plus*, received threatening phone calls and was accused of devil worship. When Hatfield called the sheriff's office for protection, an employee told her to get out of town. "If they burn you or bomb you," he said, "don't look to us for help." Reported in: *NCAC Censorship News*, #26.

obscenity and pornography

Fort Lauderdale, Florida

According to the anti-pornography group Morality in Media, Fort Lauderdale "is now clean of obscene videotapes." Moreover, on June 22, "the city also became clean of 'adult' bookstores when the last two closed down as part of a plea agreement." Jerome Cohen, the city's last X-rated movie and bookstore operator, pleaded guilty to one charge of racketeering and five misdemeanor counts of possession and sale of obscene materials. As part of a plea bargain to avoid a 30 year prison sentence, Cohen agreed to close his stores and drop anti-censorship lawsuits against the city.

According to Morality in Media, Fort Lauderdale joins a growing list of cities with no outlets for the distribution of X-rated materials. These include: Cincinnati, Ohio (see *Newsletter,* March 1987, p. 43); Atlanta, Georgia; Jacksonville, Florida; Fayetteville, North Carolina; and the entire state of Utah. Reported in: *MIM*, June 1987.

Roseville, Minnesota

Oakland Athletics slugger Mark McGwire and teammate Terry Steinbach, from New Ulm, Minnesota, did not show up for a scheduled autograph signing at a Roseville store after a group called the Cleanup Project began picketing the store and distributing a leaflet charging it with being a "leading seller of hard core triple X magazines."

Dawn DeWitt of Roseville, a protest organizer, estimated that there were 35-40 demonstrators at the Shinder's store, which she charged sells materials with "scenes degrading women, picturing bestiality, and all forms of perversity." DeWitt charged that the business practice of also selling baseball cards "draws children into the pornography outlets."

Both McGwire and Steinbach said they cancelled their appearances only out of fear of possible disorders. The players said many major leaguers from the area had appeared at the store in the past without incident. "Shinder's from what I've heard," said McGwire, "is a very credible place, a very upright, nice store. But for what was going to happen, we felt it was not right for us to show up." Steinbach noted that the store management supported the players' decision.

Joel Shinder said the store sells adult magazines in a section where minors are not permitted. "We regret very much as a company that the extreme views of a few prevented very, very many fans, young and old, from visiting," he said. Approximately a thousand baseball fans had shown up for the autograph session. Reported in: *Minneapolis Star & Tribune,* August 9.

burning

Seminole, Oklahoma

A Pentecostal preacher and his congregation at the Temple of Praise church in Seminole burned rock 'n' roll records and cassettes, videotapes, cosmetics, and revealing clothes August 10 to cleanse themselves of items they said are ungodly.

"We were called demonic worshippers by one group because we were burning," said Rev. Harold A. Turner. "But we were burning things of the devil, not things of God." Turner said some 60 people, many of them teenagers and young married couples, gathered at the rural home of a church member where the items were burned in two large barrels.

"I did not tell them what to burn," Turner said. "I just left it up to them and God what they wanted to burn." He said one church member burned her state license to sell beer at her restaurant. "They burned shorts and halters, bikini swimsuits, books, tapes, videos of bad movies and stuff," Turner said. "They burned stacks of records."

"One woman, who was married just two months ago, told her husband he was the head of the house and to clean it

out, so he did," the minister continued. "They brought several things to burn." The preacher said the church youth minister's wife burned a sack full of cosmetics.

Turner said he had been a pastor for 23 years, but said this was his first organized public burning. However, he said that when he was in Amarillo, Texas, several years ago he led his congregation in marching around a bar protesting its nearly nude go-go dancers. "We marched around the building for three weeks and consequently the building burned to the ground, but we didn't do it. We had a burning, but God did it." Reported in *Daily Oklahoman*, August 12.

foreign

London, England

The British government said August 4 that it would prosecute a newspaper that published excerpts from the banned memoirs of a former counterintelligence agent. The government told *The News on Sunday* that it may have committed contempt of court by violating a secrecy ban on the book *Spycatcher*, by Peter Wright.

The ban provoked widespread protest from the press and public figures after it was imposed July 30 by the Law Lords, the country's top court. That 3-2 ruling reimposed a lower court press ban on the book, which charges that MI 5, Britain's secret service, had renegade right wing agents who bugged foreign embassies and conspired to discredit Labor government officials in the 1970s.

Wright's book could not be published in Britain because the author had violated his secrecy oath under the Official Secrets Act. The Conservative government of Prime Minister Margaret Thatcher has sought to bar publication of the book in Australia, where Wright now lives (see *Newsletter*, March 1987, p. 71). On September 24, an appeals court in New South Wales rejected the British effort, but the Thatcher government said it would appeal to the High Court, Australia's highest judicial body.

Spycatcher has been published in the United States, although in March a Thatcher minister wrote to executives of Pearson P.L.C., the British company that owns Viking Penguin, the book's American publisher, asking them to pressure the publisher into withdrawing the title. The request was refused, and until the Law Lords ban newspapers had been repeating the substance of the book's charges and publishing excerpts. Wright's book was being brought into the country with minimal interference by Customs agents.

News on Sunday editor Brian Whitaker said the paper would not be deterred by the legal charges, which carry a threat of imprisonment and heavy fines. "It is unacceptable that in a democracy like ours the British press should not be allowed to publish stories concerning this country which are appearing in other newspapers throughout the world," he said.

"Clearly this country now needs a bill of rights," added Andrew Neil, editor of the *Sunday Times*. "It needs a First Amendment freedom of speech as the Americans have." Ken Dodd, executive editor of *The Guardian*, said the ban on *Spycatcher* "indicates this country is probably the least free and least democratic of any Western European country today." He said the "potential for repression of the British press is enormous." Reported in: *New York Times*, July 31, August 5; September 25.

Nairobi, Kenya

President Daniel arap Moi, apparently angered by mounting press reports critical of Kenya's human rights record, announced September 10 that the government would reexamine the status of the more than 100 foreign reporters based in the country. In a speech following his return from a European trip, Moi questioned why some of the foreign correspondents operating from Nairobi could not base their work in other African capitals and called for a review of their work permits.

Moi added that the government would deny a request by a group of Swedish and Norwegian journalists to visit Kenya.

La Prensa reopens in Managua

The Nicaraguan government authorized the reopening of the opposition daily *La Prensa*, free of censorship, September 20 and on October 1 the paper resumed publication. The paper had been shut June 26, 1986, following approval of $100 million in U.S. aid to contra rebels battling the Nicaraguan government. Before that, it had operated under prior censorship.

The decision was the most significant in a series of actions by the Sandinista government to meet the terms of a peace accord signed in Guatemala on August 7 by the five Central American presidents. "We now have freedom of the press in our newspaper. This is the peace accords at work," said *La Prensa* publisher Violeta Chamorro.

The government also named a commission to oversee implementation of press freedoms, as required by the peace pact. Cardinal Miguel Obando y Bravo, one of the government's most influential critics, was appointed as its head. In addition, two Roman Catholic priests were allowed to return from exile, and on October 2, Radio Catolica, voice of the Catholic church, resumed broadcasting.

According to a joint communique, *La Prensa* will come out "with no other restrictions than those imposed by the responsible exercise of journalism." Chamorro said the government issued no warnings or conditions, and she added that the editors would not engage in self-censorship. However, *La Prensa* promised to promote "a climate of peace." Reported in: *Washington Post*, September 21.□

Earlier Moi had dropped a scheduled visit to those countries after the Scandinavian press gave wide coverage to an Amnesty International report accusing his government of torture, political detention, and unfair trials of dissidents. "They cannot continue insulting us every day," he said.

More foreign correspondents are believed to be based in Kenya than in any other country in sub-Saharan Africa. In the past, the government has taken a lenient attitude toward foreign journalists, although local politicians often criticize their reporting. But earlier this year the government announced new and much more stringent rules for accreditation of foreign journalists. Blaine Harden of the *Washington Post* was ordered out of the country after his articles on torture by Kenyan police appeared during Moi's visit to Washington. The expulsion order was rescinded the same day, however. Reported in: *New York Times*, September 16.

Johannesburg, South Africa

The South African government said August 27 that it would assume powers to censor or close newspapers and magazines that it believes promote revolution. Stoffel Botha, the minister of home affairs, told Parliament that new government restrictions would be imposed the next day giving him greater authority to curb, censor, and silence what he called "revolution-supportive media." South Africa's existing censorship regulations, despite their already sweeping nature, are insufficient, Botha said, to halt "the present flood of revolutionary propaganda."

Under the new regulations, the home affairs minister has the power to warn publications that he believes have been "systematically or repeatedly" publishing "material promoting revolution or uprising" that they are "a threat to public security or the maintenance of public order." If they continue to publish such material, he may close them for up to three months or permit them to opearte only under prepublication censorship.

Although no specific papers were named, the government targets were clearly the increasingly influential "alternative press," particularly the *New Nation*, a radical black-edited newspaper financed by the Roman Catholic Church and widely read in black townships, the liberal *Weekly Mail*, and newsletters published by various anti-apartheid groups.

"The enforcement will be aimed at the optimal maintenance of democratic process," Botha said. He assured legislators that the leftist "alternative media," not the mainstream press, were the intended targets. Reported in: *Los Angeles Times*, August 28.

Seoul, South Korea

Despite widely publicized moves toward political liberalization, the South Korean government has refused to open discussion of the 1973 kidnapping of opposition leader Kim Dae Jung. In September, the government blocked publication of two magazine articles allegedly containing new evidence of government involvement in the kidnapping. The articles reportedly contained interviews with Lee Hu Rak, who headed the Korean Central Intelligence Agency in the 1970s, in which Lee acknowledged that the abduction took place under KCIA auspices. The two articles were to have appeared in the weekly *Shindong-a* and the monthly *Chosun* magazines.

"We believe discussion of the case based on unclear statements will cause a critical diplomatic setback, against the national interest," an official said. The abduction of Kim from a Tokyo hotel room severely damaged South Korea's relations with Japan, and was allegedly opposed by the U.S. CIA, which, according to some accounts, intervened at the last moment to save Kim's life. Reported in: *Washington Post*, September 25.

Ljubljana, Yugoslavia

An official Yugoslav magazine tested the censorship laws this summer, but failed to gain permission to publish controversial materials. After a two-week courtroom battle, the radical weekly *Mladina* appeared with a letter from a Georgetown University professor whited out altogether and six black strips over another article. *Mladina's* editor admitted building the case to test the limits of Yugoslav media openness, the most extensive in eastern Europe.

"I don't think there's very much you can't do," said the editor, Bernard Nezmah, "but I wanted to see for myself." Even after censorship the newspaper contained several items unthinkable in the press of any other Communist country, including the Soviet Union. A naked woman was sprawled across the cover. A joke about former Yugoslav leader Tito and a favorable article about a disgraced political figure were inside.

The *Mladina* case began in late July, when a court ordered an issue of the popular publication destroyed. One objection was to a letter by Cyril Zebot, a Georgetown professor who allegedly had links with fascist Italy during World War II. The letter was about a visit Zebot made to Ljubljana in 1969. "The letter was not at issue," Nezmah said. "What was at issue was the fact that Zebot wrote it."

Also censored was a report about a previously censored attack on a politician in the local student magazine *Katedra*. Nezmah sought to defend *Katedra* by publishing an article including quotes from the judge and from the censored articles. The quotes were ordered blackened out.

Earlier in the year another Ljubljana publication, *Nova Revija*, was attacked for several controversial statements in its February issue but was vindicated in court. Moreover, city newsstands openly display western news weeklies and magazines banned in the Soviet Union, including *Playboy* and *Penthouse*.

"I wanted to show the reader that we still have a little ways to go in media oppenness," Nezmah said. Reported in: *Washington Post*, August 30.

from the bench

U.S. Supreme Court

The U.S. Supreme Court ruled in April that an Arkansas tax law exempting religious, professional, trade and sports publications from the state sales tax unconstitutionally discriminated against other periodicals. By a 6-3 vote, the justices concluded that application of the tax depended on analysis of a magazine's content, which is impermissible under the First Amendment.

In 1980, *Arkansas Times* magazine challenged a sales tax assessment, arguing that it was covered by the exemption. Two years later, the magazine settled and agreed to begin paying the tax, but it reserved the right to stop if courts ruled the tax invalid. After the Supreme Court ruled in 1983 that a Minnesota tax on paper and ink violated the First Amendment, *Arkansas Times* sought a refund.

A judge granted the newspaper summary judgment and ordered a refund. On appeal, the state Supreme Court reversed the lower court ruling. It declined to rule on *Arkansas Times'* constitutional claims.

The magazine appealed to the U.S. Supreme Court in February 1986, arguing that a tax which discriminated against some media organizations violated the First Amendment (*Arkansas Writers' Project, Inc.* v. *Ragland*). In late April, the Court declared the tax unconstitutional. "[T]he basis on which Arkansas differentiates between magazines is particularly repugnant to First Amendment principles: a magazine's tax status depends entirely on its *content*," Justice Thurgood Marshall wrote in an opinion joined by Justices William J. Brennan, Byron White, Harry Blackmun, Lewis Powell, and Sandra Day O'Connor.

Referring to the state's cliam that the tax was designed to help small, financially strapped publications, the majority said the exemption was not narrowly tailored to accomplish this purpose. Justice John Paul Stevens agreed with the majority that the state failed to justify its "content-based discrimination" against general interest publications. But he rejected the majority's conclusion that "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."

Justice Antonin Scalia, joined by Chief Justice William Rehnquist, dissented. He likened the Arkansas tax exemption to a subsidy which was rationally related to the purpose put forward by state officials. Scalia rejected the "strict scrutiny" analysis applied by the majority. "The reason that denial of participation in a tax exemption or other subsidy scheme does not necessarily 'infringe' a fundamental right is that—unlike direct restriction or prohibition—such a denial does not, as a general rule, have any significant coercive effect," he wrote. Reported in: *News Media and the Law*, Summer 1987.

student press

San Diego, California

The California State University system admitted in July that its former policy prohibiting student newspapers from endorsing political candidates was wrong. In a declaration ending a three-year-old lawsuit involving a former editor of *The Lumberjack* at Humboldt State University, the system agreed to eliminate any past policy that required political endorsements to be signed by the author. The declaration also said that no CSU policy would be violated if student editors published political endorsements in the future.

The primary reason for the reversal in policy was a court decision handed down in San Diego March 9. Judge Edward Schwartz ruled that the policy violated the U.S. Constitution and issued a temporary injunction barring disciplinary action against Andrew Rathbone, editor of San Diego State University's *Daily Aztec*. Rathbone was suspended after his paper published endorsements for seven candidates and on two ballot issues. Reported in: *SPLC Report*, Spring 1987, Fall 1987.

Moscow, Idaho

An Idaho state court judge agreed in June that a University of Idaho student newspaper has the right to reject advertising and is not responsible for business lost by advertisers when doing so. In a request for rehearing of a January decision which took the newspaper's side, Bill Owens, the student proprietor of Gotcha Games in Moscow, asked the judge to reconsider his claim that the *Argonaut* was responsible for $2,500 in potential business he lost by its rejection of his ad.

The case began in September, 1986, when the paper refused to print an ad offering special rental rates for paint pistols and pellets used during the mock assassination games. The

FTRF brief in Virginia booksellers case

In its 1987-88 term, the U.S. Supreme Court will consider the case of Commonwealth of Virginia *v.* American Booksellers Association, et. al. *The case concerns a Virginia statute which bars the display for sale of books, magazines and other printed matter considered "harmful to minors" in a way that would permit juveniles to "examine and peruse" them (see* Newsletter, *September 1987, p. 172). On July 3, 1987, attorneys for the Freedom to Read Foundation filed* an amicus curiae *(friend of the court) brief in support of the appellees. Excerpts from this brief follow.*

Librarians have long been aware that government censorship can take many forms and is not limited to direct prohibitions on speech. The First Amendment safeguards speech not only against outright assaults, but also against the eroding force of regulation that burdens and inhibits access to speech. Recognizing the insidious effects of regulations that burden access to speech by imposing so called "inconveniences," the ALA has made protection of "the *free flow* of information and ideas. . . [t]he central thrust of the Library Bill of Rights." . . . The Foundation is participating in this case because Virginia's display law is fundamentally at odds with this principle.

The Foundation is also participating because it is gravely concerned that if Virginia's display law is found constitutional, states and localities will impose similar restraints on display of speech materials in the Nation's libraries. . . . History has shown that if a community will not tolerate certain speech in privately owned places such as bookstores, it will not show greater tolerance toward similar speech in public libraries. . .

. . . this Court has upheld regulations that burden the First Amendment rights of adults in order to shield minors from harmful speech only in very limited circumstances. To satisfy the First Amendment, such laws must meet both of the following requirements. First, the law must substantially further the state's interest in protecting minors from speech that is harmful to them. Second, the law must be "reasonably restricted"[1] to furthering that interest. If the law instead substantially burdens the First Amendment rights of adults, it is unconstitutional. . . .

In the State of Virginia's view, because it is constitutional to forbid selling to minors material that is "harmful to minors," it necessarily must be constitutional to restrict the manner in which that material is displayed to adults and minors. This view ignores a fundamental difference between

(continued on page 237)

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staff objected to wording which seemed to imply that members of the local city council were communists. Reported in: *SPLC Report,* Spring 1987, Fall 1987.

New York, New York

A federal judge in New York ruled in July that a former high school newspaper adviser could sue the school that removed him from his position based on the possible abridgment of his students' First Amendment rights. In denying the school's motion for judgment before trial, U.S. District Court Judge Raymond J. Dearie ruled July 7 that Michael Romano, former newspaper adviser at Port Richmond High School in Staten Island, had standing to assert the constitutional claims of his students.

Romano was removed as adviser of the *Crow's Nest* in 1984 by Principal Margaret Harrington because of an op-ed column that was published in the newspaper. The article opposed adoption of a federal holiday in honor of Martin Luther King, Jr. Harrington thought Romano should have encouraged and printed an alternative viewpoint as well, due to the school's history of racial conflict. Romano was dismissed for lack of "professional judgment" and "inability to see the need for balanced reporting."

The court denied Romano any claim on his own behalf because his expressional rights were not abridged. However, Judge Dearie wrote, "If Harrington's conduct constituted unconstitutional reprisal for the exercise of First Amendment rights, such conduct may chill another adviser's willingness to give student writers the level of constitutional freedom to which they are entitled and may circumscribe the student editors' decisions regarding what to publish because of their concerns of indirect retaliation against their adviser or direct retaliation against a member of the student body." Reported in: *SPLC Report,* Fall 1987.

university

Corvallis, Oregon

On June 16, U.S. District Court Judge Edward Leavy ruled that an Oregon State University policy governing materials in display cases at the student union building "operates to inhibit" the First Amendment freedoms of students. Leavy held that the policy was unconstitutional because, in the absence of any objective criteria, one person would determine what might be offensive to *any* individual or group. "This could potentially result in the bulletin boards being empty, because someone could always find something offensive about any display," he said.

The ruling came in a suit filed by two anti-abortion students whose display of posters with photographic reproductions of aborted fetuses were twice removed by student union officials because they were "offensive." Walt Reeder, director of operations for the Memorial Union, said all display materials must be in "good taste" and not "offensive" and that he had "absolute discretion" to judge which displays were acceptable. Reported in: *New American,* August 17.

church and state

Washington, D.C.

A 1971 law giving the Christian Science Church an extended copyright to its central theological text was declared unconstitutional September 22 by the U.S. Court of Appeals for the District of Columbia. The court said the law giving the church a copyright to all editions of *Science and Health With Key to the Scriptures*, by Mary Baker Eddy, who founded the religion in the 19th century, was constitutional because it "offends the fundamental principles of separation of church and state."

The case stemmed from an attempt by a dissident group of Christian Scientists to publish its own version of the work. The United Christian Scientists filed suit in 1983 after it was forced by the First Church of Christ, Scientist to remove copyrighted material from audio tape cassettes it distributes to its 11,000 members. All editions of the Eddy work, except that printed in 1906, had passed into the public domain when Congress passed the private law in 1971 giving the church an extended copyright to all versions.

The appeals court found that the law "confers upon a religious body an unusual measure of copyright protection by unusual means, and in a fashion that interjects the Federal Government into internal church disputes over the authenticity of religious texts."

"We find the legislative record fraught with expression of an intent to assist achievement of a religious goal," the court said. "When Congress departs from generalized copyright legislation and enacts special copyright protection for a religious entity in order to enhance its sway over the manner of religious worship, it has engaged in "sanctioning official prayers,' a quintessential act of establishment."

"It is not the function of government to promote religious worship, to enable a religious entity to control statements of church doctrine, or to guide a 'confused' public to 'correct' religious authority," the court concluded. Reported in: *New York Times,* September 23.

Chicago, Illinois

The government-approved placement of a nativity scene in Chicago's City Hall unavoidably fostered the inappropriate identification of the city with Christianity and thereby violated the Establishment Clause of the First Amendment, the U.S. Court of Appeals for the Seventh Circuit ruled August 18. In an opinion written by Judge Joel M. Flaum, the court concluded that the message of government endorsement generated by the display was too pervasive to be mitigated by the presence of disclaimers. Judge Frank H. Easterbrook, often mentioned as a possible Reagan appointee to the U.S. Supreme Court, dissented. Reported in: *West's Federal Case News,* August 28.

obscenity

Minneapolis, Minnesota

A Hennepin County District judge ruled that a police seizure of 2,000 pornographic books and magazines from a Minneapolis bookstore in July was illegal, and ordered the vice squad officers who took the materials to return them.

During the July 8 raid on the store, five officers entered the premises without a search warrant and cleaned out several walls and tables of material—about 75 percent of the store's inventory—and issued a citation to the store's clerk for "displaying obscene material without a cover." They contended they were following a city ordinance by seizing only material visible to minors from the street through an open door.

District Judge Patrick Fitzgerald ruled August 26 that the seizure was unconstitutional and barred use of the materials as evidence against the clerk. The city attorney's office had sought to keep a "representative sampling" of the material. He argued that the officers entered the store only beccause the door was open and the material was clearly visible from the street. Reported in: *Minneapolis Star & Tribune,* August 29.

Raleigh, North Carolina

The North Carolina Supreme Court July 28 upheld the state's obscenity law as constitutional, declaring that the laws were not too broad to be invalid. The decision affirmed an earlier ruling by the N.C. Court of Appeals. Like the Appeals Court, the Supreme Court noted that its opinion applied to the law as written and not to individual prosecutions, which could be unconstitutional.

"Fact situations are readily conceivable in which the statutes at issue, if improperly applied, would be unconstitutional," Associate Justice Willis P. Wichard said, writing for the court. "Circumspect application is thus advisable."

The obscenity law, considered one of the toughest in the country, went into effect in 1985. It was designed to make prosecution easier and raised penalties. The law was challenged by about 80 video dealers who contended the law was so vague and broad it endangered free expression. David F. Kirby, who represented the plaintiffs, said an appeal to the U.S. Supreme Court was being considered. Reported in: *Raleigh News & Observer,* July 29.

etc.

Chicago, Illinois

A freedom of speech lawsuit against Cook County Hospital ended September 10 with an out-of-court settlement prohibiting the medical center's officials from preventing employees from expressing opinions to the news media. U.S. District Court Judge Brian Duff approved the settlement on behalf of Dr. Renslow D. Sherer, Jr., who filed the class action suit after being ousted from his post as acting director of AIDS services. The hospital also agreed to reinstate Sherer.

Burton Joseph, Sherer's attorney, said he was "delighted by the decision" because the court emphasized that it would violate employees' constitutional rights to prohibit them from expressing their individual views. Reported in: *Chicago Defender*, September 14.

Louisville, Kentucky

In an interesting case involving conflicting First Amendment rights, the U.S. Court of Appeals for the Sixth Circuit ruled August 26 that a protective order sealing the deposition testimony of an admitted Ku Klux Klan official was valid. The case involved a suit filed against unnamed Klan members by a black couple whose home was twice firebombed after they moved into an exclusively white community.

The Klan official—not a party to the suit—was ordered to produce a membership list. But to protect the right of association of the Klansmen the court conditioned its order with a provision that the list would not be filed with the court clerk and would only be delivered to the plaintiffs' counsel under seal.

At this point, the *Louisville Courier Journal* and *Louisville Times* newspapers filed a motion to obtain the list, arguing that it was part of a court case of great public interest. Writing for the court, however, Judge James L. Ryan, joined by Chief Judge Pierce Lively, ruled that the newspaper's First Amendment right did not outweigh the associational rights of the Klan members and the right of the plaintiffs to seek redress. Reported in: *West's Federal Case News*, September 4.

New York, New York

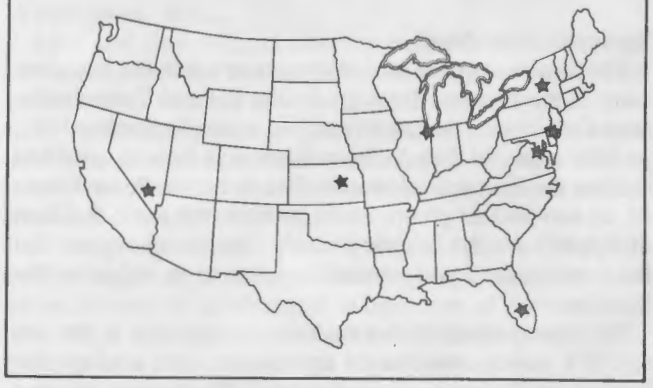
A federal judge ruled August 31 that the government may remove a controversial 73-ton sculpture from a public plaza despite the artist's objection that the action would violate his constitutional rights. Richard Serra, creator of "Tilted Arc," a 120-foot-long wall of rusty steel bisecting Federal Plaza in lower Manhattan, contended that moving the artwork "negates, and therefore destroys, its artistic expression" (see *Newsletter*, September 1987, p. 186).

In a $30 million damage suit against the U.S. General Services Administration (GSA), which commissioned the work, Serra said he designed the sculpture to be "site specific" to Federal Plaza and claimed relocation would violate his rights.

U.S. District Court Judge Milton Pollack said "there is no evidence in the record that GSA's decision to relocate the sculpture was based on the content of its message." In a 40-page opinion, Pollack said Serra's sculpture was the subject of "a considerable number of complaints" beginning almost immediately after its 1981 unveiling.

After three days of public hearings and 4,500 complaints from federal employees and local residents, the GSA decided in 1985 to move "Tilted Arc" to an as-yet unspecified site. "This is not a case where a decision to remove or relocate art was based on its political or other content," Pollack said. He said the agency "was within its authority when it found the sheer size of the sculpture, apart from its message, rendered the plaza physically impractical for use as a site for major events and public gatherings." Reported in: *Washington Post*, September 1.

is it legal?



student press

Chicago, Illinois

A Round Lake High School sophomore filed a lawsuit August 24 charging that school officials violated his rights by suspending him for distributing a religious magazine. Charlie Johns ran into trouble May 1 when he tried to distribute copies of *Caleb—Issues and Answers*, a national Christian fundamentalist monthly, in the lunchroom and school hallways.

His suit contends that Principal James Prault told Johnson that he had not given 24-hour notice prior to passing out the literature. Johnson said he was unaware of such a requirement and when he was again advised that he was in violation on May 5, he refused to tender all copies of the publication to the principal. As a result, Johnson was suspended for four days.

The suit charges that Prault and School Superintendent Clifton Houghton "strenuously objected to the content of *Caleb* and were motivated by a desire to rid the school district" of the publication, distributed by Student Action for Christ, Inc. Johnson was again suspended on May 21 after he returned to school and distributed *Caleb* in "such a fashion so as not to materially disrupt the orderly conduct" of the school, the suit says.

According to Prault, Johnson's record was completely purged of all suspensions after the school board on August 17 enacted new guidelines governing literature distribution. Reported in: *Chicago Sun-Times*, August 25.

Lawrence, Kansas

A University of Kansas journalism student filed a libel suit against a Kansas utility company after the company's attorney accused him of intentionally using misleading and untrue statements in two stories he wrote as a free-lance reporter. The attorney charged, in November, 1986, that Kerry Knudsen "ignored known facts" about the Kansas Gas and Electric Company in a story published in the *Olathe Daily News*. The suit said that, as a result of the company's attacks on his reputation, Knudsen will find it difficult to gain employment as a reporter when he graduates. Reported in: *SPLC Report*, Spring 1987.

Las Vegas, Nevada

Following a federal court decision that high school newspapers in Clark County which accept outside advertising must accept ads from Planned Parenthood of Southern Nevada, the only high school to accept such ads announced that it would no longer do so. Larry Olsen, principal of Ed Clark High School, said the school's decision to ban outside ads from the pages of the *Charger* had nothing to do with the lawsuit filed by Planned Parenthood against the Clark County School District.

Planned Parenthood ads were run in the spring of 1984 at Bonanza, Clark, Eldorado, Western, Basic, and Indian Springs high schools, but several other principals refused to run them. When controversy arose, all schools but Clark dropped the ads.

Negotiations between Planned Parenthood and the district failed to resolve the issue and a lawsuit was filed. U.S. District Court Judge Roger Foley ruled July 23 that Planned Parenthood did have a right to place ads in those papers which accept outside advertising. Foley did not rule that the district must accept the ads, however, emphasizing that this depended on the ads' content. He asked the two sides to reach an agreement on this issue out of court.

The district refused to negotiate. Instead, the school board voted unanimously August 14 to wait for a final ruling by Judge Foley and to appeal if that ruling favors Planned Parenthood. The decision was not expected until late Fall. Reported in: *Las Vegas Review Journal*, July 24, August 11, 14, September 3.

FOIA: new technology

Washington, D.C.

President Reagan's plan to limit foreign access to research data on high temperature superconductors generated by federal laboratories faces strong opposition from many scientists. They say such a move could hamper U.S. progress in a field critically dependent on open international communication.

Scientists who favor the president's proposal, which is designed to prohibit foreigners from obtaining commercially valuable information, contend that the United States would simply be imposing the same restrictions that Japan and other countries have placed for many years on American scientists seeking similar information.

Under Reagan's plan, which is being drafted by the Justice Department, Congress would be sent a legislative proposal to exempt from the Freedom of Information Act research conducted by federal laboratories on high temperature superconductors. Administration officials say the exemption would give federal labs the ability to withhold commercially valuable information that they must now make public to anyone who requests it, including foreign companies.

Supporters of the proposal say the enormous economic rewards expected from the development of the new materials and their importance to national security make it imperative that Congress approve the exemption quickly. Opponents, however, think the limits will do more harm than good. They note that most of the American research groups involved in superconductivity research are made up of foreign graduate students and researchers.

"People are just not getting the message across to this administration," said Phillip W. Anderson, Nobel Prize-winning Professor of Physics at Princeton University. "My own theoretical group consists of an Indian scientist, three scientists from Communist China, two from Canada, one from Ireland, and two Americans," Anderson noted.

"As the act stands now, anyone can get from a government-owned laboratory any information they want on superconductivity," said an official at the White House Office of Science and Technology Policy. "Apparently, there is not a single country where we can do the same. So the effort is to get a little reciprocity."

However, Prof. Robert L. Park of the University of Maryland countered that the development of superconductive materials at higher and higher temperatures has been so rapid precisely because researchers have been able to communicate openly and quickly. "It's hard to imagine what kind of language the Justice Department can come up with to revise the Freedom of Information Act that won't shut down the research in laboratories," Park said. "The government wants to increase the transfer of technology of these materials. But I don't see how this revision could have anything but the opposite effect. It just shuts it off."

Several American researchers recently criticized the administration for specifically excluding foreign scientists from a July conference on the applications of superconductivity, where President Reagan spoke. They said they thought the decision was an insult to their international collaborators.

"You don't get invited to conferences in Japan by having a big conference here and excluding foreigners," said James A. Krumhansl of Cornell Universtiy. "We have more to gain by free exchange than we have to lose." Reported in: *Chronicle of Higher Education,* September 9.

broadcasting

Syracuse, New York

The Syracuse group whose complaint led to the abandonment of the Fairness Doctrine by the Federal Communications Commission August 4 (see *Newsletter,* September 1987, p. 189) appealed that decision three days later in an effort to have the doctrine reinstated. The Syracuse Peace Council, an anti-nuclear group, filed a petition with the U.S. Court of Appeals for the Second Circuit. The group argued that the commission acted beyond its authority in repealing the doctrine.

The appeal contends that the Fairness Doctrine is law, not just FCC policy, and that the commission does not have the authority to declare it unconstitutional. The doctrine required broadcasters to present all sides of significant public issues. The FCC and others argued that the provision restricted the First Amendment rights of broadcasters.

The doctrine has long been a subject of debate, and the question raised by the appeal—whether it is law or commission policy—delayed the FCC's expressed wish to eliminate the rule for some time. The doctrine evolved over the years from commission policy and court rulings, including a Supreme Court validation in 1969. Mention of the doctrine in a 1959 amendment to a federal communications law presented the possibility that it was expressly mandated by Congress and, therefore, beyond repeal by the commission.

The case that finally brought the FCC ruling was a complaint by the Syracuse Peace Council against a television station that had broadcast a paid advertisement supporting nuclear power. The council maintained that the advertisement advocated a point of view in an important matter of public interest and that the fairness doctrine required the station to provide an opportunity to present the other side.

The FCC, which did not rule in favor of a single fairness complaint during the tenure of controversial chair Mark Fowler, ruled that the Fairness Doctrine did apply to the Syracuse case. In making that 1982 decision, the commission created a test case and veered the issue toward the courts. But an opinion in a separate case, issued by Judge Robert Bork of the U.S. Court of Appeals in Washington, held that the Fairness Doctrine was a matter of commission policy, rather than federal law.

Early this year, the same court, hearing the appeal of the broadcaster in the Syracuse case, sent the case back to the FCC, with instructions to decide the fate of the doctrine. That led to the commission's decision to repeal the policy.

The Syracuse group wants the Fairness Doctrine reinstated. So do many in Congress. An attempt to explicitly write the rule into law was passed by both houses this year, but was vetoed by President Reagan in June. Supporters have vowed they would try again. Reported in: *New York Times,* August 11.

foreign agents

Washington, D.C.

After nine years of quiet lobbying and public relations work in Washington, the Palestine Information Office was ordered in September to cease operation and divest itself of all property within thirty days. A State Department representative said the decision was a demonstration of "U.S. concern over terrorism committed and supported by organizations and individuals affiliated with the PLO."

Although the Office is largely financed by the PLO, its staff of eight, all American citizens or legal residents, was never accused of involvement in terrorism or lawbreaking. The office was legally registered with the Justice Department as an agent of a foreign organization.

The closing of the office was in part an attempt by the Reagan administration to kill a bipartisan bill in Congress to close not only the Washington information office but also the PLO Observer Mission at the UN. In late 1986, several Republican members of Congress asked Secretary of State Schultz to close the office. Schultz responded that if the Palestinian group "regularly filed reports with the Department of Justice on its activities as an agent of a foreign organization, complies with all other relevant U.S. laws and is staffed by Americans or legal resident aliens, it is entitled to operate under the protection provided by the First Amendment of the Constitution."

But Congressional pressure continued to grow, and by summer legal offices in both the State and Justice Departments had concluded that under the 1982 Foreign Missions Act, the State Department could change the status of the Washington office from that of a foreign agent to that of a "foreign mission," which could be ordered closed. Moreover, the administration hoped by focusing on the Washington office it could forestall efforts to close the PLO's UN office, a patently illegal move under international law.

Hassan Abdul Rahman, head of the Washington office, said his group would not move out. He said he would seek an injunction if the State Department does not reverse its ruling. "I will continue working as I am working," Rahman said. Reported in: *New York Times,* September 24.

political advertising

Wilmington, Delaware

A coalition of groups opposed to U.S. aid for the Nicaraguan contras may challenge on constitutional grounds a decision by the Delaware Administration for Regional Transit (DART) to ban the groups' ads on city buses. "It is important that we be able to exercise our constitutional right of free expression as any other consumer would," said Sylvia Sherman of the Washington-based Nicaragua Network. "And they are denying us that freedom."

One of the groups, Pacem in Terris, paid a private company $300 in July to place ten signs on DART buses through August. But the ads were later pulled by the authority, which reserves the right to refuse any ad it considers "offensive."

"We were afraid it would give the impression that DART was becoming involved in a major foreign policy issue," DART administrator Robert Taylor explained. "And we were concerned it might result in a decline in our revenue base if we lost riders over it." Taylor said the authority received several telephone complaints. Reported in: *Philadelphia Inquirer,* August 29.

rock music

Jacksonville, Florida

The controversial rock group the Beastie Boys filed a lawsuit in August challenging a Jacksonville ordinance requiring "adult subject matter" on concert tickets as unconstitutional. The Beasties' August 9 concert with the rap group Run D.M.C. at Jacksonville Memorial Stadium sold only 4,800 of a possible 11,600 seats, and the group claimed damages because of the ordinance. A temporary injunction barring Jacksonville from enforcing the measure was obtained just two days before the concert.

City attorney Lee Carlin said the case could be resolved amicably. "We'd be willing to allow the temporary injunction to become permanent—which would be the death knell of the ordinance—if they'd drop their demand for damages," he said. Carlin noted, however, that it would be difficult for the group to prove that "this and this alone was responsible for the lack of attendance."

In the long run, Carlin added, "Jacksonville realizes it may have significant problems with the ordinance. The intent behind it is right, but the execution is lacking." Reported in: *Variety,* September 2.

(FTRF brief . . . from page 232)

sale to minor laws, and display laws. A law forbidding the sale of certain material to minors does not burden adult access to those materials. . . .

. . . Virginia's display statute directly burdens adult access to constitutionally protected speech by making it a criminal offense to display, either to adults or minors, material covered by the statute in any manner "whereby juveniles may examine and peruse" the material. The issue now before the Court is whether the burden this imposes on the First Amendment rights of adults violates the First Amendment. . . .

This Court has long struggled to limit the chilling effects of obscenity laws on protected speech. Regulation of material that is "harmful to minors" poses greater dangers to First Amendment values. Because such regulation is not limited to hard core depictions of specifically defined sexual conduct, it can arguably encompass almost any sexually oriented material, the overwhelming majority of which is constitutionally protected speech. In permitting states to prohibit *sales* to minors of material defined as harmful to them, this Court upheld a statute that had no effect on the First Amendment rights of adults. The statute at issue there permitted booksellers to make judgments about the "harmful" nature of particular works at the *point of sale,* rather than forcing them to make advance determinations about their entire inventory. . . . Virginia's display law imposes immeasurably greater—and constitutionally impermissible—burdens on the First Amendment rights of adults.

Compliance with the Virginia statute, as written, requires that virtually all material discussing or depicting sexuality or sexual conduct be treated as subject to its prohibitions. Even if persons covered by the statute had substantial resources and expertise in child sexuality—which they do not—it would be extraordinarily difficult for them to determine which of the materials in their establishments will be ruled by judges or juries to be "harmful" and therefore covered by the statute. Accordingly, instead of engaging in a laborious effort that would result in only the most uncertain and risky judgments, persons covered by the statute can be expected to avoid this futile undertaking and minimize the risk of prosecution, conviction and punishment by applying the statute's restrictions to most, and in many cases all, speech that includes discussions or depictions of sexuality or sexual conduct. . . .

. . . .Notwithstanding the State's strained argument that there are many ways to comply with this statute, at the very least the statute clearly requires that all material it covers be identified, and an effective barrier be created to guard against the possibility that the material will be "examined" by minors. Whether this barrier takes the form of sealed wrappers on books and magazines, "adults only" sections in bookstores, or some other conspicuous form, the effect is the same: speech covered by the statute must be conspicuously identified as "Sexually Explicit—Harmful to Minors—For Adults Only." Adults who wish to examine or purchase those materials are thereby forced to make their interest in sexually explicit material obvious to other patrons. . . .

The burdens imposed by Virginia's display statute, and similar statutes enacted in other states, are matters of grave concern to the nation's libraries and librarians. On its face, the Virginia statute prohibits only displays for "commercial purposes," and thus does not *directly* regulate display of reading materials in libraries. For several reasons, however, the constitutionality of Virginia's display law is a matter of the utmost concern to librarians.

In contrast to Virginia's law, display laws passed by some other states are not limited to displays for commercial purposes. If the Court holds that Virginia can constitutionally impose criminal penalties on commercial establishments for displaying materials deemed harmful to minors, then states almost certainly may impose the same burdens on public libraries. Indeed, a number of courts have struck down statutory exemptions that protect libraries from the burdens of display laws, holding that such exemptions violate the Equal Protection Clause.

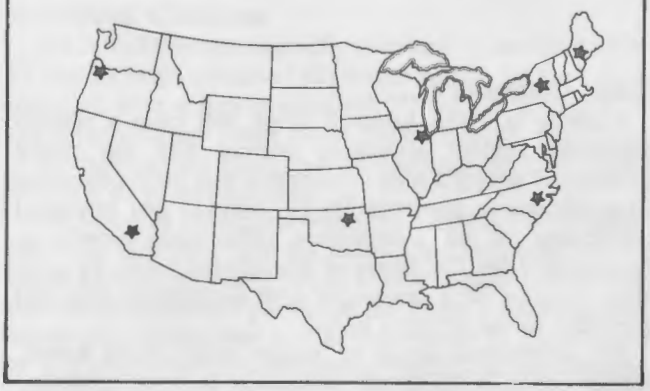
Even in states where libraries are exempted from display statutes, and these exemptions are upheld by the judiciary, display laws will necessarily have an inhibiting effect on libraries. History has taught librarians that when speech activities are not tolerated in private settings, attempts to engage in those same activities in public libraries are likely to generate outrage by vocal segments of the public, resulting in censorship. As non-commercial enterprises that depend on the support of the public, libraries do not have the incentive, the resources, or the inclination to fight prolonged battles against such public pressure, and many will instead modify their behavior to conform with the standards imposed on private enterprises.

Librarians are also well aware that, just as they cannot afford to ignore display statutes, the burdens of compliance with display statutes pose extraordinary difficulties. . . . Requiring libraries to devote a substantial portion of their limited resources to reviewing their entire collections to determine which materials are sexually explicit, and then to determine which materials are sexually explicit, and then to determine which sexually explicit materials are and are not suitable for minors, would be completely antithetical to the purpose of libraries, and would be administratively impossible. . . .□

(Alabama/Tennessee . . . from page 221)

trol of all local school boards," CEE leader Robert Simonds said. "This would allow us to determine all local policy—select good textbooks, good curriculum programs, superintendents, and principals." Reported in: *Atlanta Constitution,* August 25, 27; *Birmingham Post-Herald,* August 27; *Cincinnati Enquirer,* August 25, 31; *Dallas Morning News,* August 25, 27; *Greenville Sun,* August 26; Knoxville Journal, August 25; *Knoxville News-Sentinel,* August 25; *Memphis Commercial-Appeal,* August 25, 26; *Mobile Press,* August 27; *Nashville Tennessean,* August 25; *New York Times,* August 25; *Richmond Times- Dispatch,* September 4; *Washington Post,* August 25.□

success stories



libraries

Eliot, Maine

An objection filed last spring by parents James and Marion Verrill to the novel *Forever,* by Judy Blume, was rejected by the Eliot school board in July. A special committee empaneled to review the complaint concluded that the book should not be removed from the classroom library at Marshwood Junior High School. The committee also recommended that the district develop a policy for selecting instructional and library materials.

The Verrils said they objected to *Forever* for three reasons. First, the book "does not paint a responsible role of parents." Second, its "cast of sex-minded teenagers is not typical of high schoolers today." Third, "the pornographic sexual exploits [in the book] are unsuitable for junior high school role models."

The Verrills said their biggest objection was to *Forever's* graphic sex scenes. "These particularly detailed sexually explicit descriptions can actually be categorized as pornography, according to the standards given by the Attorney General's Commission on Pornography," James Verrill declared.

The couple said they were "dissatisfied with the comprehensiveness" of the review committee's report, but declined to say whether they were considering legal action. "They didn't address the moral issue at all," Mr. Verrill said. "They were really nice to us," added Marion Verrill, but "we never did find out why they all felt [the book] should be kept in school."

Assistant Superintendent Wesley E. Kennedy, who headed the review committee, said "all of the objections of the Verrills were addressed." The committee's decision rested, however, on the determination that "while you have the right to censor material for your child, we do not believe you have that right for other children in the system. . . . We did not want to censor the book for all students." Reported in: *Portland Telegram,* August 2.

Rutherfordton, North Carolina

The Rutherford County School Board voted 5-0 May 5 not to remove *Cabbage Patch Kids—The Just Right Family* from elementary school library shelves. Lynne Tanner, whose husband is a member of the school board and who abstained from voting on the issue, had complained that the book used ungrammatical writing.

"I thought, 'What the heck. Somebody's got to make a stand'," Tanner said. "I'm no book burner. I love books. . . . But I think for the time they're spending children can get much better books to read than this." Tanner cited passages in which a character says, "I want to be a doctor powerful bad," and another in which a character "got tired easy."

Katherine Scruggs, the schools' media coordinator, was among those who recommended keeping the book. "We considered the things she complained about to be colloquialisms," Scruggs said. "We felt the love and caring and thoughtfulness and family values far outweighed anything some people might consider bad grammar." Reported in: *Charlotte Observer,* May 7.

schools

Ithaca, New York

In an out-of-court settlement, Ithaca High School officials agreed to return film that had previously been confiscated from a student photographer. The school also agreed to establish a policy as part of its student handbook concerning the taking of photographs on school grounds.

Michael Heath filed a lawsuit in March, 1986, after Ithaca High principal John Caren confiscated his film. Heath had photographed Caren escorting a student from his office who had been suspended for distributing an underground newspaper.

The new policy says that the school district "recognizes that the taking of photographs is an expressive activity protected by the federal and state constitutions. The policy forbids students from taking photos of people in rest rooms, locker rooms, the nurse's office, or any private office such as the principal's office or any other place where a "reasonable expectation of privacy exists."

Heath's attorney, Elizabeth Bixler, called the policy "a compromise." She said the "hardest part to swallow" was

a section stating that "students are otherwise free to take photographs throughout the Ihaca High School campus so long as they do not substantially interfere with the orderly operation of the school." Still, Bixler noted that, although that passage was open to subjective interpretation, it was consistent with and beholden to the protections granted by the U.S. Supreme Court's landmark decision in the *Tinker* case. Reported in: *SPLC Report,* Spring 1987.

Portland, Oregon

Manchild in the Promised Land, by Claude Brown, will remain in the Parkrose High School curriculum, the school board voted unanimously September 14. Last March, Albert and Joy Jossi, parents of three Parkrose students asked the board to remove the book from the school's curriculum. The book is required for a unit in black studies taught to Parkrose junior and senior honors students. The Jossis contended it was inappropriate because it contained obscenities (see *Newsletter*, September 1987, p. 176).

At the board meeting, however, Joy Jossi suggested another problem when she was told the book gave insight into black culture. "If we want to look at cultures other than our own," she said, "there are others [than black culture] to choose from." Reported in: *Portland Oregonian*, September 15.

student press

Chicago, Illinois

A Chicago student newspaper that was banned by the principal at Lane Tech High School because of neighborhood litter problems will be distributed there after all, school board officials said August 30. The decision followed protests by reporters and editors at *New Expression,* a student produced publication distributed throughout the city.

Despite an announced ban by Lane principal Maude Carson, who cited litter problems created by its free distribution, school board attorneys concluded that the publication could not be legally banned from distribution.

"Preventing distribution of our papers at Lane is absolutely unlawful, and we think the board of education now recognizes that," said Carolyn Hodge-West, executive director of Youth Communications, the paper's publisher. Board representative Robert Saigh agreed. "There can't be a prohibition of distribution of a general interest publication," he said. "I think this is something that can be resolved at the school level." Saigh said the Chicago school board has no written policy on distribution of student publications.

New Expression is a student-run tabloid founded in 1976. It is funded by foundations and media companies and by ad sales. Its circulation at several private schools and all 64 Chicago public high schools has surpassed 100,000. Reported in: *Chicago Tribune,* August 25, 31.

Tulsa, Oklahoma

Students at Tulsa Junior College will have a school-sponsored student newspaper starting with the spring semester. Capping a long controversy that drew comments from Oklahoma governor Henry Bellmon and prompted publication of an independent off-campus paper, on September 9 the TJC Board of Regents approved, by a 5-0 vote, a policy for a newspaper with an editorial page and governed by an advisory board.

The controversy began in January when David Arnett, former editor of the school publication *Horizon*, published letters to the editor critical of administration restrictions on the paper. The administration claimed that *Horizon* was a "laboratory" publication forbidden to print opinion. Arnett, who later started an independent paper, was dismissed, and a month later his successor was also fired (see *Newsletter,* May 1987, p. 99). Publication of *Horizon* was suspended in September, pending the outcome of a study.

In August, Gov. Bellmon had asked for a report on the situation, stating that he was "very concerned about current reports of alleged violations of students' First Amendment rights." Bellmon ended a letter to the TJC board by saying, "if it is not already the case, I am confident that the Board of Regents will desire to establish policies which fully protect TJC students' rights to free speech."

The vote to permit a newspaper came after the regents were presented the findings of an opinion survey showing that nine out of ten students on the campus favored creation of a newspaper. A study committee, composed of Tulsa businessmen and journalists, also provided a list of recommendations, most of which were adopted by the regents.

The new paper will be governed by an advisory board of students and faculty, which will select staff. According to the guidelines adopted by the regents, the paper will include space for editorials, columns, and letters to the editor. "The principle of freedom of the press is recognized as a Constitutional right in the publication of the student newspaper," the new policy declared. "Everyone involved in the publication of the newspaper should understand that this freedom carries with it a responsibility to obey the laws of libel and decency and to uphold the highest standards of journalism."

Arnett, who attended the regents' meeting, said he was delighted with the outcome of the controversy but would continue to publish his own paper independently. "It's a very positive move and a step forward," he said. "But the most important thing is that the students affected change at TJC." Reported in: *Tulsa Tribune,* August 12, 18, 20, September 9, 10; *Tulsa World,* September 10.

record album

Hollywood, California

The Jello Biafra pornography case came to an end August 27 when a judge dismissed all charges against the punk-rock musician after a jury deadlocked 7-5 for his acquittal on obscenity charges. Judge Susan Isacoff said the legal issue in the case had not been resolved, but noted that "it should be resolved in another case."

The arrest of Biafra and others associated with his band, the Dead Kennedys, and his independent Alternative Tentacles Records company, came after a mother complained that her daughter had purchased the group's *Frankenchrist* album only to discover a centerfold poster by Swiss artist H. R. Giger which depicted male genitals. Although charges were dismissed against all defendants except Biafra, whose real name is Eric Boucher, and Alternative Tentacles general manager Michael Bonnano, legal efforts to dismiss the charges as an unconstitutional abridgment of free expression failed (see *Newsletter*, September 1986, p. 158; July 1987, p. 141).

At the trial, assistant city attorney Michael Guarino aggressively sought convictions, claiming the defendants irresponsibly distributed the poster to minors. Defense attorney Richard Burda, however, noted that the album jacket contained a warning sticker that it contained material some might find offensive. He asked the jury to think about "what century we're in. Is this the Dark Ages? Is it the future, the time of the thought police and mind control?"

The jurors said they had split along age lines, with older jurors favoring conviction while younger ones were for acquittal. Reporated in: *Variety*, September 2.

(FBI . . . from page 215)

Betsy Pinover, public relations director of the New York Public Library, said she was unaware of any FBI efforts to contact staff members of her library. But she noted that it was state law and library policy to protect the confidentiality of users. "We're extremely concerned about intellectual freedom and the reader's right to privacy, and are committed to protecting the privacy of our readers," she said.

On July 1, Judith Drescher, then chair of the American Library Association Intellectual Freedom Committee, wrote Acting Director of the FBI John Otto about the program. On July 31, Milt Ahlerich, Acting Assistant Director in charge of the FBI Office of Congressional and Public Affairs, responded. "Because we recognize the threat posed by hostile intelligence officers and their agents in this country," Ahlerich wrote, "foreign counterintelligence is a high priority area for the FBI. We have programs wherein we alert those in certain fields of the possibility of members of hostile countries or their agents attempting to gain access to information that could be potentially harmful to our national security. In this regard, our New York Office has contacted staff members of New York libraries to alert them to this potential danger and to request assistance." Reported in: *New York Times*, September 18. □

ALA Intellectual Freedom Committee advises librarians on FBI "Library Awareness" Program

The Intellectual Freedom Committee of the American Library Association (ALA) has issued an advisory alerting librarians to the "unwarranted government intrusions upon personal privacy" that threaten "the First Amendment right to receive information" which are the result of an ongoing "library awareness" program undertaken by the Federal Bureau of Investigation.

In a statement released October 1, the Intellectual Freedom Committee detailed the information it has on the program and the Committee's response to the FBI's approaches to libraries. The alert read in part:

. . . In response to the *New York Times* article, an official spokesman for the FBI read Anne Heanue (ALA Washington Office) the following "press response." Note that the statement was read—according to the FBI, it is not available from the Bureau in writing.

"The FBI is responsible for countering the intelligence gathering efforts of hostile foreign intelligence services. The damage being done to our country by such foreign intelligence services is substantial. The FBI's foreign counterintelligence investigative efforts encompass a variety of ap-

proaches, all of which are within U.S. Attorney General guidelines and United States laws.

"The FBI has documented instances, for more than a decade. of hostile intelligence officers who have exploited libraries by stealing proprietary, sensitive, and other information and attempting to identify and recruit American and foreign students in American libraries. The FBI therefore, in an effort to thwart this activity is endeavoring, on a limited basis, to educate knowledgeable individuals in specialized libraries to this hostile intelligence threat.

"The FBI has historically depended upon the American public's assistance in carrying out its investigative responsibilities. The FBI has absolutely no interest in interfering with the American public's academic freedoms or First Amendment rights."

The Intellectual Freedom Committee of the American Library Association vigorously protests, on behalf of the more than forty-five thousand personal and institutional members of the Association, this attempted infringement of the right to receive information protected by the First Amendment to the U.S. Constitution and the further attempted violation of the privacy rights of all library patrons.

Since 1984, the current administration has been attempting to limit access to information in commercial databases that bears on sensitive government data. Since 1986, this Administration has been attempting to convince electronic publishers to monitor the people using their systems and limit access to the information in those publishers' databases. Also since 1986, the current Administration has been trying to convince academic libraries to do the same—and to disclose users' names and the subject of their searches to the FBI.

In the Bureau's approaches to libraries, the focus has been on the use of publicly available information by foreign national students. The ostensible reasons put forward by the FBI are "counterintelligence" and "anti-terrorism." Libraries are not, however, extensions of the "long arm of the law" or of the gaze of Big Brother. It is our role to make available and provide access to a diversity of information, not to monitor what use a patron makes of publicly available information. The essence of the principle of intellectual freedom is the unhindered right to impart and to receive information of every and whatever sort and to have protected the privacy of the seeking and use of such information.

The American Library Association has had a "Policy on Confidentiality of Library Records" since 1970. This formal policy was adopted at that time in response to attempts by U.S. Treasury agents to examine circulation records in a number of cities. The "Introduction" to the policy reads equally well in the present context:

> . . . the efforts of the federal government to convert library circulation records into "suspect lists" constitute an unconscionable and unconstitutional invasion of the right of privacy of library patrons and, if permitted to continue, will do irreparable damage to the educational and social value of the libraries of this country.

Since 1970, thirty-six states have enacted "Confidentiality of Library Records" statutes. These statutes have been interpreted by the Intellectual Freedom Committee to encompass database search records.

The Bureau has not asked for information on specific individuals known to be engaged in terrorist activities, nor has it offered any information that links database searches to such activities. The Intellectual Freedom Committee believes that agents of the FBI have been sent out on generalized "fishing expeditions." The U.S. Supreme Court has, on numerous occasions, held unconstitutional such generalized inquiries where they impinge upon the constitutional rights of individuals. It is well-established that foreign nationals residing in the United States enjoy the same First Amendment protections as do citizens of the United States. Just as aliens in this country are equally protected by the First Amendment, they are also protected, as 'persons', by the Due Process Clause of the Fifth Amendment and the Equal Protection Clause of the Fourteenth Amendment.

Such generalized inquiries into database searches and "library use" also chill the First Amendment freedoms of all library and database users. The right to be free from unwarranted government intrusions upon personal privacy is of particular significance when such state action threatens the First Amendment right to receive information.

What's to be done? The Intellectual Freedom Committee, before it decides on further action, must know the extent of this program. It is essential that librarians check with the circulation clerks and other public services staff at their libraries to determine: a) if the FBI has visited; b) what information was requested; c) whether information was given and, if so, what it was.

It is urgent that librarians check their institution's policies on confidentiality of library records and make clear to public services personnel the procedures for handling requests for such information. These steps are of particular importance in public institutions in states with confidentiality statutes.

In addition, librarians may wish to join Joseph Murphy, Chancellor of City University of New York, in calling for the Senate and House intelligence committee to conduct a "thorough investigation of this apparent violation of academic freedom by the FBI." The Committee encourages librarians to write to their Senators and Representatives, or to Senator Paul Simon (Chair, Senate Subcommittee on the Constitution) and Representative Don Edwards (Chair, House Subcommittee on Civil and Constitutional Rights), concerning this FBI program.

Finally, librarians are urged to contact the Office for Intellectual Freedom with any and all information on this, or

similar, approaches by federal agents, and on any institutional actions taken. The Office is collecting the information and coordinating the IFC's response and needs to hear from librarians—by phone or by letter.

Such infringements of the First Amendment can be effectively combatted only if the information is available—and that information can only come from librarians. □

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