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tinkering with *Tinker*

The U.S. Supreme Court ruled 5-3 January 13 that public school officials have broad power to censor school newspapers, plays, and other "school-sponsored expressive activities." In an opinion written by Justice Byron R. White, the Court held that in activities that are "part of the school curriculum" and might seem to carry its imprimatur, officials may bar dissemination of student statements about drugs, sexual activity, pregnancy, birth control, contested political issues and other matters when doing so would serve "any valid educational purpose."

The landmark ruling in *Hazelwood School District* v. *Kuhlmeier,* reversing a federal appellate decision, continued a recent trend in which the Court has taken a narrower view of the Constitutional rights of public school students than many lower courts and others had thought was suggested by its earlier opinions. But the decision did not specifically overturn any Supreme Court precedent, and Justice White said it was consistent with the Court's earlier rulings, including its historic 1969 decision in *Tinker* v. *Des Moines Independent School District,* which declared that students do not "shed their constitutional rights to freedom of expression at the schoolhouse gate."

In his opinion, White, who voted with the majority in *Tinker*, said the earlier decision limited only "educators' ability to silence a student's personal expression that happens to occur on the school premises." It did not afford sweeping protection to speech that occurs in the school curriculum and might seem "to bear the imprimatur of the school." A school board has broad power, he wrote, to "refuse to lend its name and resources to the dissemination of student expression" that it considers inappropriate.

In a strongly worded dissent, Justice William J. Brennan, Jr., joined by Justices Thurgood Marshall and Harry A. Blackmun, criticized the majority for "deviating from precedent" to approve "brutal censorship" and "thought control in the high school." Added Brennan: "The young men and women of Hazelwood East [High School] expected a civics lesson, but not the one the Court teaches them today." Chief Justice William H. Rehnquist and Justices John Paul Stevens, Sandra Day O'Connor and Antonin Scalia joined the majority opinion. (For excerpts from both opinions, see page 51).

The case began in May 1983 when Principal Robert E. Reynolds of Hazelwood (Missouri) East High School deleted two pages from *Spectrum,* a school newspaper published as part of the journalism curriculum, because he considered two articles inappropriate. One article reported interviews with three unnamed but possibly identifiable students about their

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Everett T. Moore 1909-1988

On January 5, 1988, the library profession lost a stalwart and exemplary colleague. Everett T. Moore was, in the words of Dr. Beverly P. Lynch, University Librarian at the University of Illinois Chicago, "the epitome of what we all strive to be as librarians: unassuming, yet exacting; intellectually demanding; precise in his work; both scholarly and humble. The desire to serve others was always before him. Humane and compassionate, he saw the best in each person he worked with or helped and was able to bring out the very best in those people. . . . He respected every colleague, be they supervisor, peer, subordinate. He strove to make their work excellent through his own."

A native son of California, Everett Moore was born in Highland Park, California, in 1909. He earned his B.A. from Occidental in 1931, where he was a fellow student with Lawrence Clark Powell and Ward Ritchie. After earning an M.A. in English from Harvard in 1933, he returned to Los Angeles and taught at Webb School for two years. In 1935, he entered Berkeley's professional library school.

During World War II, Everett Moore served with distinction—rising to the rank of Major in the U.S. Army—as Education Officer in General MacArthur's headquarters in the Southwest Pacific. After the war, Everett returned to the Berkeley campus library as Head of Reference and thus began his distinguished career as a librarian.

He gave devoted service to the profession on both the local and national levels: President of the California Library Association (1964); member of the Council of the American Library Association (1962-1966); Chairman of ALA's Publishing Board (1966-72), and Editor of the *Newsletter on Intellectual Freedom* (1960-61). He was a Visiting Professor at the then new Keio Library School in Tokyo during 1952-53. While there, said Robert Vosper, librarian emeritus of UCLA, "he and his wife, Jean, who also held a visiting appointment at Keio, built up such a following of student and librarian admirers that for years thereafter UCLA became a mecca for travelling Japanese librarians." In 1967-68, he was recalled to Keio under the Fulbright program. He also taught at the University of Washington during the summers of 1957 and 1962.

Elected to the vice-presidency of the Freedom to Read Foundation, Everett Moore served in that capacity from the organization's inception until 1974, generously contributing his time and counsel. In fact, Everett was the lead plaintiff in *Moore* v. *Younger*, which challenged the constitutionality of California's "harmful matter" statute. The suit, filed in May, 1972, contended that librarians cannot be held liable for the dissemination to minors of works which at some later date might be found "harmful"—works which, without doubt, are protected under the First Amendment if circulated among adults. The Foundation chose Everett as the lead plaintiff, following the legal axiom that the most respected individual one can identify be chosen as lead plaintiff. The success of the Foundation's suit was due, in part, to Everett Moore's ability to shape and to eloquently articulate the issue in the case.

In his writings, Everett's commentary was consistently characterized not only by perception, but by compassion—a compassion which nevertheless did not cloud his intellectual judgment. Through his writings, Everett T. Moore chronicled a significant chapter in the history of American freedom. He generated light rather than heat in the intellectual controversies of three decades of American librarianship. Through the *Newsletter on Intellectual Freedom*, which he edited, and in his regular feature on intellectual freedom in the *ALA Bulletin* (now *American Libraries)*, Everett recorded the effects on libraries of the threats of censorship, whether such threats were imposed because of political, religious or moral points of view. He reported honestly and without malice, writing on such varied subjects as the loyalty oath, the *Tropic of Cancer*, racial integration of libraries, and rightist and leftist literature. His writings were scholarly, judicious, and of continuing interest in the world of books and ideas. Everett edited the volume of *Library Trends* devoted to intellectual freedom (1970), and served as the author of the most complete account of the purging of American overseas libraries of controversial books, which was published in the Robert B. Downs Festschrift, *Research Librarianship (1971).*

Less well known to the profession outside of UCLA where he spent most of his library career is Mr. Moore's extraordinary accomplishments as a reference librarian and mentor to others. Everett Moore was, in John Weaver's words "a librarian's librarian."

For future librarians, Everett T. Moore will stand as a model of what a librarian is, what a librarian does, and what a librarian can be. For those of us who knew him and loved him, he is our model. We will miss him for himself. But we will miss him, also, for his friendship, for his courageous leadership, for his dedication, for his inspiration.□

IFC acts on confidentiality, access rights of AIDS victims, Fairness Doctrine

The following is the text of the Intellectual Freedom Committee's report to the ALA Council, delivered January 13, 1988, at the ALA Midwinter Meeting in San Antonio, Texas, by Chair C. James Schmidt. The resolutions and revision of procedure approved by the IFC in San Antonio follow the report.

The period since ALA's 1987 Annual Conference has been eventful for the Intellectual Freedom Committee. Some of the events have been good, others present new challenges.

Let me begin with some very good news. On October 21, 1987, the City Council of the City of Houston voted to exempt the Houston Public Library and the City Zoo from its ordinance prohibiting purchase of many goods and services produced by firms doing business in South Africa or Namibia. The ordinance was amended to exempt procurement of "publications, where the public official responsible for the procurement certifies in writing that such procurements are necessary to provide adequate levels of service to the public." The worthy cause of depriving South Africa of economic support because of its governmental policy of apartheid and a crucial principle of intellectual freedom, thus, have been permitted to co-exist.

The Federal Bureau of Investigation's "Library Awareness Program" is another challenge to intellectual freedom about which the IFC reported to you at the 1987 Annual Conference. At that time, we had received information on the visit of FBI agents to one academic library, seeking information on the use of the library by "foreigners." Since that Conference, this story broke on a national level—on the front page of the *New York Times*—and the Committee has learned of similar visits—over the last several years—to eight academic and three public libraries, one incident dating back ten years.

The IFC has been actively pursuing information about this program. Since Annual Conference, we have requested and received verification of the existence of such a program from the national headquarters of the Bureau. In response to the September 18th, *New York Times* articles, the FBI issued a statement acknowledging and defending this program on the grounds of anti-terrorism and counterintelligence. On October 1, the IFC issued an Advisory Statement on the FBI's program—pointing out this program's violation of ALA's Policy on Confidentiality of Library Records and the potential chilling effect such a program has on the rights of all residents of this country to have access to publicly available information through their libraries. Copies of this advisory were released to the press and were sent to the members of Congress who chair the subcommittees with oversight responsibility for the Bureau. Copies of the advisory were also sent to those persons at the FBI with whom the Association had communicated on this matter.

On December 11, 1987, the new Director of the Bureau responded—again defending the program on counterintelligence grounds. In response to the FBI's verbal statement in September and to the letter received in December from FBI Director Sessions, ALA's Executive Director, Thomas Galvin, has submitted two Freedom of Information Act requests. The FBI acknowledged the first request—but sent no documents. We have not yet had a response to the second request. This attempted infringement of the privacy rights of library users promises to be an ongoing story, and the IFC is actively pursuing avenues to challenge this government policy. I will continue to report developments.

At its Midwinter meetings, the Committee received a report from Jane Cooney, Executive Director of the Canadian Library Association, and from Stephanie Hutcheson of the Toronto Public Library concerning an obscenity bill working its way through the Canadian Parliament. The bill, C 54, would require alleged violators of its pornography provisions to demonstrate their innocence by proving that the materials in question have educational, scientific or artistic purposes. The bill, moreover, provides no defense for disseminating sex-education materials to persons under the age of 18 (see page 65). The Committee has written to the Canadian Library Association's Intellectual Freedom Committee deploring the proposed legislation, applauding that Committee's efforts to exempt libraries from its provisions, and offering our support and any assistance they deem appropriate.

This Canadian legislation is similar in many respects to proposed legislation transmitted on November 10, 1987, to the U.S. Congress by President Reagan. The Committee believes this bill, entitled "The Child Protection and Obscenity Enforcement Act of 1987," has potentially serious implications for the library community. This legislation has not yet been introduced, but as soon as it is, the IFC will secure a copy and have it analyzed by legal counsel for library implications. The Committee will report back to you on this legislation at the 1988 Annual Conference.

In other actions, the Committee revised the Procedures for Implementing Policy on Confidentiality of Library Records. The revision clarified the wording on library records included under confidentiality policies and strengthened the wording on the appropriate response to subpoenae.

The Committee also requested that an interdivisional subcommittee of the youth division IFCs undertake a review of existing practices of applicable ALA policies in regard to access by minors to videocassettes in public libraries.

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FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council, delivered January 11, 1988, at the ALA Midwinter Meeting in San Antonio, Texas, by President Judith Sessions.

Thank you for the opportunity to report to you on the activities of the Freedom to Read Foundation since ALA's last meeting.

As all of you know, we lost the first rounds in the so-called Alabama textbook case [*Smith* v. *Board of Commissioners, Mobile County*] (in which both the Foundation *and* ALA were *amicus curiae)* and in the Tennessee reading-series case [*Mozert* v. *Hawkins County].* The good news is that the initial decisions in these cases—decisions that could have had serious implications for libraries—were both overturned at the federal Courts of Appeal level. The best news is that neither case will be appealed to the U.S. Supreme Court. [In fact, the Tennessee case was appealed and *cert.* denied—see pages 40 and 58.] What this means is that the rulings by two separate U.S. Courts of Appeals stand. Both of these rulings strongly reaffirm the secular purpose of public education—and by implication, the secular purpose of public funding in general. Significantly, according to the Foundation's legal counsel, the ruling in the Alabama case ignored the arguments made by both the defendants and the plaintiffs and, instead, relied on the arguments and legal analysis presented in the Foundation's *amicus* brief.

A Roll of Honor was established by the Board at the 1987 San Francisco Conference. After careful consideration of a number of excellent nominations, the Board of Trustees has named the first two recipients of the Freedom to Read Foundation's Roll of Honor, Everett T. Moore and Sidney Sheldon. The Board is deeply saddened that the award to Everett Moore will be presented posthumously, as Mr. Moore passed away last week. We are, however, particularly proud of these recipients and of the germinal role each has played in the history and development of the Foundation.

In honoring Everett T. Moore, the Board seeks to recall the Foundation's history, and to recognize an early, committed and enduring supporter of the freedom to read. This award allows us to pay our respects to someone who was willing to take on the unbidden role of plaintiff in the first (and, thus far, only) case the Foundation has ever generated on its own. When, in the case of *Moore* v. *Younger* (the 1972 challenge to California's "Harmful Matter" statute), the Board was looking for a "perfect plaintiff," Everett Moore was its unanimous choice. And he was, indeed, the perfect plaintiff—going well beyond the call of duty in presenting the library community's perspective to the courts and to the public. Additionally, Mr. Moore was instrumental in the creation of the FTRF and served as its first Vice President.

Our second recipient, author Sidney Sheldon, made the initial $25,000 contribution to the Foundation's Endowment Fund. This donation was important in its own right and was seminal in generating additional donations to the Endowment. Mr. Sheldon is also an ongoing major supporter of the Foundation in both philosophical commitment and financial help.

The Board of Trustees also acted this fall to join the American Association of University Profesors' *amicus curiae* brief in support of author Margaret Randall's appeal of her deportation order. The District Director of the Immigration and Naturalization Service has ordered Randall's deportation and has denied her application for permanent resident status—solely on the basis of the political content of her writings. Randall is a natural-born citizen of the United States who, allegedly, lost her U.S. citizenship in the 1960's when she took out Mexican citizenship—in order to work in Mexico where she lived with her husband and children. She returned to the United States in 1984, and has since re-married—to an American citizen. Ms. Randall is on the faculty at the University of New Mexico. In October, 1985, an INS District Director, in his consideration of her application for permanent resident status, read five of her books and concluded that criticizing the United States, role in Vietnam and at Kent State while praising certain aspects of Cuban and Nicaraguan life, went "far beyond mere dissent" and justified the denial of her application. We will keep you informed as the case progresses.

Several other cases in which the Foundation is involved are still pending. In *American Booksellers Association* v. *Commonwealth of Virginia*—the challenge of a Virginia statute that prohibits the display of materials deemed harmful to minors, in a manner that allows juveniles to view or peruse them—oral argument was heard by the U.S. Supreme Court on November 4, 1987 and we await a decision. [A decision was released January 26. See page 51.]

The Foundation has been reporting to you on *Bullfrog Films* v. *Wick* for two Midwinter Meetings and one Annual Conference—so far. In October, 1986, a U.S. District Court Judge ruled that the United States Information Agency, in determining which documentary films produced in the U.S. for distribution abroad were to receive "certificates of education character," used guidelines that were vague, unenforceable, and put the agency "in the position of determining what is 'truth' about America, politically or otherwise." The judge, noting that "This, above all else, the First Amendment forbids," enjoined the agency from using those guidelines and directed it to establish regulations in congruence with the Constitution. To update you, in November, 1987, the United States Information Agency, under order of the Court, put into effect, on an interim basis, new regulations for determining certification of educational character for documentary films produced in the U.S. These regulations permit that certification be denied to materials that present a viewpoint in which the facts are distorted or in which the existence of other viewpoints is not acknowledged. They also allow the USIA, under certain conditions, to label as

propaganda films that it does certify. These regulations may not meet the constitutional standards put forth by Judge Tashima, who has held that the government does not have the power to determine what is "accurate," nor to censor what it considers "inaccurate." The Center for Constitutional Rights, which represents the ten filmmakers from four production companies that are the plaintiffs in this case, has said that the new regulations are an improvement but still allow governmental censorship (see page 60). The FTRF Board of Trustees voted to continue its support of the Center for Constitutional Rights in its challenge of the USIA's infringement of First Amendment rights.

Finally, the Board of Trustees voted to authorize a feasibility study for a major fund-raising drive to increase the Foundation's Endowment Fund. The Board has named this fund the Everett T. Moore Memorial Endowment Fund, and contributions from his friends and colleagues in his honor will be welcome.

Your continued support of the Foundation and concern with its activities is very much appreciated. At this point, we are seeing the fruition of several years' work and the culmination of a number of major cases. The Foundation will remain alert to opportunities to challenge infringements of the freedoms to read, view and listen—and report to you on these as they arise.

I would like to personally thank all of you who are currently members of the Freedom to Read Foundation and to invite all of you as leaders in this profession to join us in this important work. Much important work has been done—but more is yet to come.

Thank you.□

"secular humanism" suit ends; Church Hill decision appealed

The Mobile, Alabama, citizens group that charged that textbooks used by local schools unconstitutionally promoted "secular humanism" will not appeal its case to the U.S. Supreme Court, the group confirmed in early December. In August, the U.S. Court of Appeals for the Eleventh Circuit reversed U.S. District Court Judge W. Brevard Hand's order banning 44 textbooks from Alabama public schools and ordered the case dismissed (see *Newsletter,* May 1987, p. 75; September 1987, p. 166; November 1987, p. 217). The deadline for filing an appeal to the Supreme Court was November 24.

Judith C. Whorton, a parent and representative of the plaintiff group, explained, "We have brought to the public's attention the issue of humanism and lack of religion in the schools." She also said her group achieved its objective of convincing the courts "that secular humanism is a religion," a contention that lawyers for the defense and most observers of the case found unconvincing.

Mobile attorney Bob Sherling said the "continuing uncertainty of the composition" of the Supreme Court was another reason the plaintiffs decided against an appeal. Sherling said the trial court determination that secular humanism was a religion had not been reversed, but that the court had simply determined that this religion was not unconstitutionally advanced by the banned books. Sherling charged that the appeals court did not review testimony and exhibits from the Mobile trial, which meant the Supreme Court would have had to make a complete review of all the findings of fact in the case. "This makes it unlikely the Supreme Court would accept this case for a hearing," he said.

Other attorneys agreed it was unlikely the Court would have accepted the case, *Smith* v. *Board of Commissioners,* for review, but argued that this was largely because the appellate opinion by Judge Frank M. Johnson was so tightly written it didn't give opponents a legal wedge.

"I'm glad it's over," commented Alabama School Superintendent Wayne Teague. "I think our system is a model for the country in the way we select textbooks." Teague said Hand's March 4 ruling briefly caused confusion in the schools, but the appeals court quickly stayed the order. "No doubt it had a disruptive effect in the spring when some schools were taking the books off the shelf and putting them back," he said. However, Teague added that he didn't think the suit hurt the state's educational system. "The fact the state School Board appealed and won the decision gave us good publicity," he noted.

Arthur J. Kropp, president of People for the American Way, which financed the defense of the textbooks by a group of parents who intervened in the case when it appeared that state authorities might agree to a settlement, said the case "was unique and eccentric from the beginning" and unlikely to have succeeded in the High Court. He said lawyers for his organization would ask the district court to order the plaintiffs to compensate the defendants for their legal fees.

In the other major school book censorship case of 1987, *Mozert* v. *Hawkins County,* on December 31, attorneys for seven Church Hill, Tennessee, families appealed the unanimous August 24 decision by a panel of the U.S. Court of Appeals for the Sixth Circuit to the High Court. That decision reversed Judge Thomas G. Hull's October 24, 1986, ruling that the Hawkins County Board of Education violated the families' rights by requiring their children to read assigned texts or leave the school (see *Newsletter*, January 1987, p. 1; September 1987, p. 166; November 1987, p. 217).

Judge Hull, who originally dismissed the suit in 1985, ruled that the children involved should be allowed to "opt out" of classes using the disputed textbooks. The three appellate justices who heard the case ruled that the children's religious rights were not violated because they were not compelled to believe what they read. The justices also argued that freedom of religion does not guarantee protection from ex-

posure to alternate beliefs or material offensive to religious beliefs.

Citing a "clash of views and constitutional issues," attorneys for the plaintiffs, Michael Farris and Jordan Lorence, called the appellate decision an "unacceptably narrow view of the free exercise of religion." The attorneys said that while public schools may have a right to teach values, that right should not "include the power to coerce participation by persons possessing sincerely opposed religious beliefs."

In their appeal, the attorneys cited a 1972 Memphis case that allowed pacifists to avoid a Reserve Officers Training Corps class; a 1979 case granting Pentecostal children the right to withdraw from physical education classes to avoid exposure to members of the opposite sex in "immodest attire;" and a 1980 Sioux Falls, South Dakota, case in which Jewish students were exempted from the singing of Christmas carols in their public school classrooms. On February 22, the Court declined to consider the appeal (see page 58). Reported in: *Education Week*, December 9; *Mobile Register*, December 2; *Montgomery Advertiser*, November 26; *Knoxville News-Sentinel*, January 3.□

official secrecy up sharply

Reversing a thirty-year trend, the Reagan administration has engineered an "extraordinary explosion" of government secrecy that has increased the annual volume of classified documents as much as forty percent, according to a report by People for the American Way released December 17. The 142-page report, *Government Secrecy: Decisions Without Democracy*, details changes throughout the federal government, from a quintupling of the Pentagon's budget for secret activities to proposing that a report on geriatric education be reviewed before publication. Most of these developments were previously reported in the American Library Association's Washington Office series "Less Access to Less Information By and About the U.S. Government" (see page 43).

The report recounts how President Reagan issued 280 national security decision directives—laws that are kept secret even from Congress—for a range of activities, including the U.S. arms sales to Iran, the training of Nicaraguan rebels as early as 1981, the creation of counterterrorist hit squads for "pre-emptive strikes" in the Middle East, and the campaign to manipulate the press about American plans for action against Libya.

"Without going through each specific, it's generally true," White House representative B. J. Cooper acknowledged. "We had a concern over the laxity in handling classified materials when the president came into office, and we acted to fix it."

The report described how the campaign for secrecy extended beyond classified, defense and intelligence issues. "On a range of issues, most wholly unrelated to national security, the administration has cast a veil of secrecy over government decision-making and deliberately cut the American people out of the process of governance," commented People for the American Way president Arthur Kropp. According to the report, an opinion poll revealed that a majority of Americans believe "the government is not open enough."

The report also charged that:

- In 1987, the FBI established a "Library Awareness program," in which it asked college and public librarians to create surveillance records on library use by foreigners (see *Newsletter*, November 1987, p. 215).
- The administration is fighting to sharply limit the Freedom of Information Act.
- The administration has required lifetime prepublication review agreements from thousands of employees, including those in 23 agencies not involved in intelligence. When she resigned as U.S. ambassador to the United Nations, Jeane Kirkpatrick refused to sign hers. Congress has asked the president to discontinue the use of the CIA's form elsewhere in the government, but it is still being used.
- Prepublication review has been required or proposed for reports for government agencies including *Study on Changing Economic Conditions of the Cities*, *Workshop for Staff of Geriatric Education Centers*, and *Development of a Screening Test for Photocarcinogenesis on a Molecular Level.*
- The administration has required as many as four million federal employees, including some who don't hold security clearances, to submit to "nondisclosure agreements" prohibiting disclosure of not just classified but "classifiable" information. Reported in: *Wall Street Journal*, December 18; *Washington Post*, December 18.□

free press scorecard

"Losses have been balanced by wins, but in different areas." That was the assessment of Jane Kirtley, the lawyer who heads the Reporters Committee for Freedom of the Press, when asked to review, by *Editor and Publisher* magazine, the legal and legislative record on press freedom for 1987. According to the magazine, the year was a "mixed bag," but "potentially damaging issues loom ahead in the U.S. Supreme Court and Congress." These led at least one Florida newspaper executive to express publicly his fear of "a contraction" of First Amendment rights.

On the other hand, Times Mirror Co. vice president Patrick Butler called 1987 "a pretty good year for the press," saying surveys showed the public was relatively happy with press performance, and there were no legislative moves to limit the Freedom of Information Act, with none anticipated in 1988.

The notion that the press has "won some and lost some" in recent years gained substance in December, when University of Texas Law School professor David A. Anderson reported that his study of 199 Supreme Court media cases

decided in 1985-86 found the media "have not done as well before the Court as the general run of litigants." Anderson said the media were successful in 53% of cases, winning most often on prior restraint, libel, privacy and broadcast regulation. In strict First Amendment cases, however, the media won 64% of cases.

Among the "losses" suffered by the press and press freedom in 1987, according to *Editor and Publisher*, were:

• In the first case of a reporter convicted of insider trading, the Supreme Court upheld the conviction of former *Wall Street Journal* columnist R. Foster Winans, who leaked advance information from his stock market column to brokers. The High Court ruled that Winans misappropriated the *Journal's* property—information—a precedent that was feared could be used against leakers of government information and could limit journalists' ability to get information from sources.

• According to Kirtley, two cases "severely limited" reporters' protections under state shield laws. In two libel cases by businessmen against television stations, Pennsylvania courts held that the state shield law did not protect television outtakes. In New York, the state's highest court ruled that its shield law, believed one of the nation's best, applied only to confidential information (see *Newsletter*, September 1987, p. 185). Both cases, Kirtley said, illustrated that no matter how carefully shield laws are designed, loopholes can be found to restrict reporters' rights to protect sources of information.

• Government information became less free last year, Kirtley told *Editor and Publisher*. Her committee reported 135 actions by the Reagan administration and its supporters to restrict public access to information. Moreover, 1986 amendments to the Freedom of Information Act effectively denied the press access to many government documents, even though the changes were designed to cut fees for the media. Implementation guidelines from the Office of Management and Budget encouraged agencies to be "as restrictive as possible," Kirtley charged, by setting up "roadblocks" for free waivers.

Balancing the bad news was at least one important victory in the U.S. Supreme Court. In October, the Court refused to consider the libel appeal of former Mobil Oil Corp. president William Tavoulareas against the *Washington Post*. The Justices let stand an appellate court ruling that overturned a $2.05 million jury verdict and a previous appeals panel ruling, which had been cited as a precedent in other cases, that a newspaper's reputation for investigative reporting could be used to prove actual malice (see *Newsletter*, January 1988, p. 17; May 1987, p. 93).

Looking ahead to 1988, the gravest threat to press freedom, many First Amendment attorneys contend, awaits decision by the Supreme Court in *Falwell* v. Flynt (see page 51). "We're hanging by our nails on that one," Richard Schmidt, Jr., counsel for the American Society of Newspaper Editors, declared. Press advocates said a ruling in favor of television evangelist Jerry Falwell against *Hustler* magazine publisher Larry Flynt could open the door for plaintiffs to bypass the burdens of proof under libel law and sue for "intentional infliction of emotional distress." Media groups have filed briefs arguing that a *Hustler* parody of Falwell ruled damaging, but not libelous, should be absolutely protected as satiric expression of pure opinion aimed at a public figure.

Among other important cases which may be resolved in 1988, *Editor and Publisher* noted the following:

• In a long-running case involving access to criminal records, a federal appeals panel ruled in April that the Justice Department could not deny access to rap sheets, or criminal histories, compiled from public records (see *Newsletter*, July 1987, p. 141). The government appealed, claiming that large data bases pose "unique privacy concerns." The issue of access to increasingly computerized criminal records is being debated in a number of states, and a "serious move" is underway to seal or limit their availablity to law officers, thereby depriving reporters of a valuable research tool, Kirtley said.

• Another potentially important case to be heard by the Supreme Court could decide whether a newspaper can defy an unconstitutional prior restraint order. The case involves the *Providence* (R.I.) *Journal's* violation of a federal judge's gag order. The paper published a story, based on illegal FBI wiretaps, which a reputed mobster's son claimed violated his privacy. *Journal* editor Charles Hauser was convicted of criminal contempt, but a federal appeals court overturned the conviction, calling the gag order "presumptively unconstitutional prior restraint on pure speech" (see *Newsletter*, January 1986, p. 19; July 1986, p. 134).

• Naval analyst and part-time *Jane's Defense Weekly* correspondent Samuel Loring Morison was convicted of espionage in 1985 for selling *Jane's* three classified photos of a Soviet aircraft carrier. It was the first time the law had been used to convict a government employee of leaking information to the press. Morison appealed last year and news organizations filed briefs on his behalf claiming his conviction would have a chilling effect on news gathering. They argued the law could be used to prosecute people for leaking non-public documents.

• The first case to reach the Supreme Court from the long-simmering dispute over local regulation of newspaper vending machines is expected to be decided before June. In *Lakewood* v. *Plain Dealer*, the Court must determine to what degree a city may regulate the appearance and placement of newsracks (see *Newsletter*, July 1987, p. 140).

Summing up the current situation, Kirtley said the greatest threats to news organizations come from state courts, especially on issues of libel and invasion of privacy. Privacy, she predicted, will become "increasingly more of a problem for the media" as plaintiffs use it to avoid the legal burdens of libel law (see also *Newsletter*, November 1987, p. 222). Reported in: *Editor and Publisher*, January 2.□

less access to less information by and about the U.S. government: a 1987 chronology (June-December)

The following article, part of an ongoing series, was prepared by and is reprinted in condensed form with the permission of the American Library Association Washington Office. A complete unedited set of all nine "Less Access. . ." chronologies may be ordered from the Washington Office at (202) 547-4440.

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

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

Another development, with major implications for public access, is the growing tendency of federal agencies to utilize computer and telecommunications technologies for data collection, storage, retrieval and dissemination. This trend has resulted in the increased emergence of contractual arrangements with commercial firms to disseminate information collected at taxpayer expense, higher user charges for government information, and the proliferation of government information available in electronic format only. While automation clearly offers promises of savings, will public access to government information be further restricted for people who cannot afford computers or pay for computer time?

During 1987, a government policy of secrecy was demonstrated in the Iran-Contra affair and in obligatory employee secrecy agreements. The Federal Bureau of Investigation asked librarians to report on foreigners using certain libraries. At the same time, the federal government is contracting out the operation of more and more of its libraries to foreign-owned private companies.

With access to information a major ALA priority, members should be concerned about this series of actions which creates a climate in which government information activities are suspect. Previous "Less Access. . ." chronologies were compiled in two ALA Washington Office publications covering the period April 1981 to December 1986. The following update continues the chronology published in June 1987.

June—Two scientists hired by the Public Health Service to prepare a report for Congress on lead poisoning in children resigned in protest, contending that PHS plans to delete and dilute critical portions of their work. The scientists said that their draft report, which details the adverse health effects of lead at blood levels common to 17 percent of urban preschool children, suggested the need for more far-reaching and costly remedies than the Administration is willing to consider. They said a condensed version of a draft sent out for review fails to present the national scope of an environmental problem once thought to be confined to poor, inner-city dwellers and to detail the health consequences. ("Authors Protest Report on Lead Poisoning," *The Washington Post*, June 13)

June—Nearly a quarter of the regulations proposed by agencies and departments across the government were changed at the behest of the Office of Management and Budget before they were issued, according to OMB statistics. As a result, OMB influence over government regulation appears to be increasing. In 1981, 87.3 percent of all regulations went through the OMB review process without change. Last year, the figure was 68.3 percent. OMB officials said that a third of the changes are insignificant, a few are last-minute alterations offered by the departments and agencies, and others are statistical abberrations. Some lawmakers argue that OMB's economists, statisticians and lawyers have acquired near-veto power over the scientists, engineers, and technical experts who write regulations in the agencies. They said that public health and safety are eroded when rules are watered down and standards are eased to save money or meet theoretical economic considerations.

The Administration said it has cut back on the rate of new regulations substantially. The number of pages in the *Federal Register*, the official vehicle for new rules, has been reduced from 87,012 in 1980 to 47,418 last year. The number of proposed rules has been cut by 2,000, and the number of final rules by 3,000, according to OMB statistics. ("OMB Cracks Whip on Rule-Making." *The Washington Post*, June 17)

in review

Sex, Schools, and the Law, By Fernand N. Dutile. Charles C. Thomas Pr., 1986, 26.95

Sex, Schools, and the Law is a comprehensive volume especially useful to school board members and educators who are developing curricula for today's schools. According to the author, the book "explores the interaction of three important matters which generate intense public interest: sex, schools and the law." Librarians will appreciate the discussion in chapter 3 which deals entirely with the school library. Attorneys who are working with school districts will find the book useful as a reference source.

Dutile is a professor of law at the Notre Dame Law School. There are six lengthy chapters in the book and each chapter is followed by several pages of footnotes which are very comprehensive. Ten pages of cases and a good index are located at the end of the book. Specific cases as well as related issues are addressed. The six chapter headings are as follows: Sex and the Curriculum; Sex Education: a Special Situation; Sex and the School Library; The Sexual Orientation or Activity of Teachers; The Student's Personal Life; and The Student Press.

A possible weakness is the absence of discussion regarding nonprint media, especially film and video. However, the book is still an excellent resource which is current. Discussions of specific factors considered by the courts in relevant cases and the author's recommendations for school policies are invaluable. Purchase is recommended. *Reviewed by Janis H. Bruwelheide, Assoc. Professor, Department of Education, Montana State University.* □

June—Under rules set to take effect July 1, three major agencies—Defense, General Services Administration and National Aeronautics and Space Administration—propose to divorce themselves from long-standing printing regulations that have buttressed both the Joint Committee on Printing's and the Government Printing Office's controls on government printing. The proposed rules which were published in the March 20 *Federal Register,* pp. 9036-39, would let the individual agencies make many of the decisions the committee and GPO now make. According to congressional sources, if the three agencies are allowed to bypass the committee and GPO, other agencies are likely to follow.

Members of the joint committee demanded that the three agencies drop their plans for new printing rules. But the agencies notified the panel in mid-June that they were proceeding and questioned both the committee's and GPO's ability to stop them. Administration officials contend that OMB, which has trimmed the government's overall printing bills sharply, would continue to exercise control over what the government prints. OMB Watch, a citizen's group that monitors OMB actions, said: "Without some kind of congressional oversight mechanism, OMB's supervisions of executive branch information activities will lead to less information for Congress as well as the public." In a memo this spring, the Congressional Research Service noted that Congress insisted on direct control over printing in 1846 because it believed that was the way to end scandals over printing contracts. Committee powers were broadened in 1895 and have gone without major challenge until a 1983 Supreme Court ruling striking down legislative vetoes. ("Hill Pressed to Ease Grip Over Printing," *The Washington Post,* June 19).

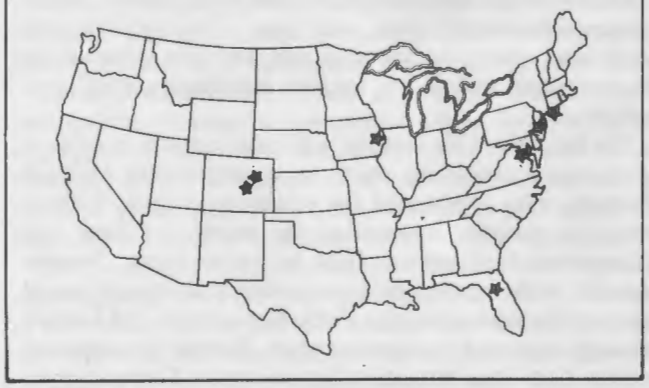
June—The *Federal Statistical Directory,* which is in its second edition as a private-sector publication, now costs 550 percent more than it did when it was last a government document and is no longer available through the Depository Library Program. When the Government Printing Office sold the 1979 edition, the most recent available from the government, it charged $5. The current privatized edition costs $32.50. Although for 45 years the directory helped researchers identify and locate the people and agencies who can provide essential statistical information, OMB scrapped the government book as an unnecessary publication.

July—According to military and congressional sources, senior Pentagon officials, seeking internal approval for a tentative plan to deploy ballistic missile defenses in the mid-1990s, pressured an advisory panel to omit sharp criticism of the plan in a recent key scientific report. A secret report by a Defense Science Board panel concluded that the Pentagon's Strategic Defense Initiative deployment plan was so "sketchy" that neither its price nor its effectiveness could be determined. This criticism and a recommendation that the board withhold deployment-plan approval for a year or two were omitted from a version of the report given to the Defense Acquisition Board, the Pentagon's senior decisions makers on new weapons systems. ("Science Panel's SDI Criticism Omitted From Report." *The Washington Post,* July 9 and "Defense Science Board Report on SDI," *The Washington Post,* July 10.

July—Testifying on behalf of the American Library Association, Dr. Harold B. Shill of West Virginia University, documented that user costs in accessing government databases through private information vendors are often *substantially* higher than those incurred in using databases stored in government computers. Government information repackaged by the private sector is also usually expensive for end users. An appendix attached to his testimony showed that the average cost of government information databases provided through DIALOG by the private sector is $93.26,

(continued on page 72)

censorship dateline



libraries

Jefferson County, Colorado

The Newberry Medal-winning children's book, *The Great Gilly Hopkins,* should be banned from county elementary schools a mother told the county school board November 19. Connie Bousselaire, an employee at the Faith Bible Chapel and the mother of a fourth-grader who checked out the book from a school library, said it was not suitable for elementary school children.

"It seems to me there are twenty or thirty instances of profanity and disrespect in here," Bousselaire said. "Gilly's friends lie and steal, and there are no repercussions. Christians are portrayed as being dumb and stupid. There's two hundred pages of all this going on."

The book was the latest of several school library books and textbooks to be challenged by Jefferson County parents during the past two years because of the way they treat religion and/or the occult. All of the challenges have been turned down (see *Newsletter,* May 1986, p. 82; September 1986, p. 173; November 1986, p. 224; January 1987, p. 10, 29; March 1987, p. 49). Reported in: *Denver Post,* November 18.

Parker, Colorado

Upholding the recommendation of a parent-teacher advisory committee, Douglas County school superintendent Rick O'Connell ordered the book *A Solitary Secret,* by Patricia Hermes, moved from the library at Parker Junior High School to the senior high. The novel deals with the problems of a 14-year-old girl subjected to an incestuous relationship with her father.

The book, purchased after it was named an ALA Best Book for Young Adults in 1985, was challenged by parents Mike and Lynda Hampshire. "I don't think my 12-year-old is ready for this," Ms. Hampshire said. "My daughter has been carefully instructed about incest. I think every child from a young, young age should certainly know what to do in such a case and be able to define what incest or sexual abuse is. That's not my complaint at all. The book gets so lost in the graphic detail of the sex, it loses its point." She said the book failed to make clear that the father's actions were unhealthy and illegal.

The book was reviewed by a Challenged Materials Committee, a group of teachers, administrators, and parents, which found that the book had literary merit but was unsuitable because of its explicit sex scenes. The majority also questioned whether the "novel provided strong enough direction and hope to a young reader."

A committee minority, however, argued against shielding children from information in the book. "If keeping this book on the open shelves would give just one abused child the courage to say 'no,' then we believe that outweighs the risk of the book disturbing children reared in healthier homes," the minority report said.

In February, 1985, school officials banished two books—*Albert Herbert Hawkins and the Space Rocket and Albert Herbert Hawkins: The Naughtiest Boy in the World*—from general circulation in elementary school libraries, placing them on a restricted shelf after a parent complained they taught disobedience and disrespect for authority. The ban was rescinded in September of that year (see *Newsletter,* May 1985, p. 76; September 1985, p. 151; November 1985, p. 203). Reported in: *Rocky Mountain News,* December 19, January 5; *Denver Post,* January 16.

Spring Hill, Florida

West Hernando Middle School principal Dennis McGeehan recommended November 25 that two novels for teenagers be removed from his school's library shelves. The books, which address the issues of sexuality and peer pressure, were reviewed by the school's media advisory commiteee, McGeehan said. The committee determined that *Forever,* by Judy Blume, and *The Chocolate War,* by Robert Cormier, were inappropriate for students in grades six through eight.

"I'm really upset," responded West Hernando media specialist Susan Vaughn. "I think they're both outstanding examples of modern fiction that deal with contemporary problems of young people." Vaughn has been in a long-standing dispute with former principal Dan McIntyre, who is now district director of schools, over his removal in 1986 of an issue of *People* magazine and the book *Bloods: An Oral History of the Vietnam War by Black Veterans,* by Wallace

Terry. Although an arbitrator ruled in September that those materials "shall be returned immediately to the shelves," they were removed again pending a committee review (see *Newsletter*, September 1987, p. 173; January 1988, p. 9). Reported in: *St. Petersburg Times*, November 26.

Des Moines, Iowa

It was a split decision in Des Moines January 13 as a school district committee voted to restrict access to one library book, but spared another. The committee voted 7-3 to allow only teachers to use *Fighters, Refugees, Immigrants: A Tale of the Hmong*, by Mace Goldfarb, in elementary school libraries. No restrictions were adopted for middle and high school students.

Khampheng Manirath, a tutor for refugee students, complained that the book about a doctor's experiences in a Southeast Asian refugee camp could lead students to form a derogatory image of Southeast Asians if they were not mature enough. The book includes pictures of nudity.

The committee unanimously turned down parent Carolyn Atkinson's request that a novel be removed from elementary school libraries because of its sexual content. *Then Again, Maybe I Won't*, by Judy Blume, was ruled appropriate for elementary school students. Atkinson, who had complained after her fourth-grade daughter checked the book out of the Wallace School library, that it was "pretty explicit. I don't think it is necessary," she added. "I feel like I have to protect my daughter as much as possible."

The committee agreed, however, that the book "did realistically deal with problems that age could very well be facing." Reported in: *Des Moines Register*, January 12, 14.

Burlington County, New Jersey

Amy Girl, a horror/science fiction novel by Bari Wood, was removed from the shelves of the Northern Burlington County Regional High School library in early November by order of the district school board. The board took the action after a parent said she found the book offensive, particularly in its descriptions of underage drinking and teenage sex. The book had originally been acquired because no one had screened it, school board member J. M. Cronin said. Reported in: *Bucks County Courier-Times*, November 16.

student press

Northport, New York

A high school superintendent in Northport, Long Island, stopped the distribution of a student publication this winter because he objected to a story he called "obscene." Over 8,000 copies of *Arts Focus*, the student art and literary magazine, had been circulated as a supplement in the local community newspaper. Distribution of an additional 500 copies intended for the district's art and music festival was stopped by the superintendent.

At issue was a short story by student Eric Brenner, which contained the words "dick" and "pee." The story received an A in a creative writing class and was then submitted to the magazine, edited by student and faculty staff, and published.

The day before the festival, a faculty member expressed reservations about the story to superintendent William Brosnan, who confiscated the remaining copies, without notice to students, overriding the faculty advisors and sidestepping the Northport High School principal. Brenner appealed to the school board, requesting that the confiscated copies to be made available in the high school. But a board majority supported the superintendent. Brenner then appealed to New York State Education Commissioner Thomas Sobol, who agreed to hold a hearing. Reported in: *Censorship News*, Winter 1987.

Arlington, Virginia

When the parents and school administrators at Arlington's Yorktown High School saw the 1986 school yearbook, the *Grenadier*, they objected to pictures of students drinking alcohol. The PTA protested—politely, they said—but the students were incensed. As a result, the 1987 *Grenadier* contained over a dozen photographs of students drinking. In addition, there were essays on drinking, including one titled "A Party in Arlington? What?"

Yorktown principal, Mark Frankel, decided to act, banning photos and essays on drinking from the 1988 edition. Frankel also decided to ban a student survey on drug and alcohol use that the student writers and editors had compiled. "It's not like he doesn't know about the First Amendment," said student Sean Roberts. "He just doesn't think it applies."

Actually, according to the U.S. Supreme Court's January decision in *Hazelwood* v. *Kuhlmeier* (see page 35). Frankel's actions may well have been legal. However, their upshot suggested that the distinction drawn by the High Court between censorship of school-sponsored or curricular materials and "personal statements" may not be so easy to enforce and may even, at times, cause administrators more trouble than it prevents.

In response to Frankel's edict, three students, Ed Buckler, Jenny Martinez, and Larry Halff, started a "Free Press" movement in early December. On December 11, their newly formed organization began distributing pamphlets, armbands, and stickers. "There were these guys handling out pamphlets and armbands and I said, 'Hey! Wow! A thinking response to something at Yorktown," Sean Roberts recalled. "So I started wearing an armband and was feeling a little more radical than usual."

Many other students apparently agreed, as all 85 armbands and most of the 140 pamphlets were gone when classes began. While handing out the material before an assembly,

Jenny Martinez was approached by assistant principal Brenda Glen, who told her the armbands were fine, but that distributing pamphlets could get her into trouble. Soon after, Martinez was approached by another assistant principal, George Parker, who confiscated the remaining materials.

During the assembly, Frankel approached Martinez and returned the stickers and pamphlets, asking the Free Press organizers to meet with him later. When they arrived at Frankel's office, the students were informed that, according to school policy, they needed at least 24 hours prior approval from the principal to distribute noncurricular materials.

On December 14, the first school day after the original distribution of the Free Press pamphlets, Larry Halff went to ask Frankel for approval to resume distribution the next day. He was told that because the students had already distributed the pamphlets without going through proper channels, they had lost their right to distribute any more.

When school closed for the holidays the issues raised by the student activists remained unresolved. Frankel maintained his refusal to permit circulation of Free Press pamphlets. He also stood fast in his opposition to the *Grenadier's* drinking and drug use survey.

Free Press is seeking changes in school rules covering distribution of outside materials by students. But if efforts to reach an agreement with the school fail, the group plans to go to court. "We really don't want to create more trouble than we have to," Martinez said. "We would really like a compromise where we get what we want and Mr. Frankel doesn't have to go to court. All we basically want is our right to print what we want to print. We don't want lots of publicity and lawsuits and that sort of thing, but if that's what it takes, that's what we'll do." Reported in: *The City Paper,* January 8.

foreign

Sydney, Australia

Can a jingle for Australia's 1988 bicentennial be harmful? It can when played backward and found to contain hidden satanic messages, according to an evangelical musician in New South Wales, who took his findings to the Australian Broadcasting Tribunal.

Ray Keuning said he heard "Celebration of a Nation" played backward accidentally and that the satanic messages are "as clear as day." He claims that the rather innocuous lyrics of the song sound very different in reverse, including the words "How about it Satan/He is master of our sect/Please stand up, say he's the Lord." (Reportedly another line was "Worship my shebulous," but Keuning said he could not explain it.) Reported in: *Variety,* December 2.

Singapore

The government of Singapore in late December restricted the circulation of one of Asia's most influential publications, the weekly *Far Eastern Economic Review.* As of January 3, the government declared, the periodical could sell only 500 copies each week. The estimated circulation of the magazine in Singapore had been about 10,000. In response, the *Review* suspended its entire distribution in the city-state rather than agreeing to the restrictions.

The government charged that the *Review* "had consistently published distorted articles on Singapore." Specifically, government attorneys demanded a retraction, an apology and unspecified damages for a December 17 article reporting about the detention of 22 alleged Marxists, which they charged was defamatory.

"The article wasn't defamatory, and we aren't apologizing," said Derek Davies, editor of the Hong Kong-based periodical whose total circulation is nearly 75,000. "As the *Review* is prevented from serving all its Singapore readers, it prefers to serve none." Davies said restricted circulation "in effect places the distribution of the publication into the hands of the Singapore authorities, allowing them to pick and choose the institutions or readers which the *Review* reaches. This is unacceptable."

Restriction of the *Review* follows similar moves over the last year by Singapore against *Time* magazine, *The Asian Wall Street Journal,* and *Asiaweek* magazine, under a September, 1986, amendment to the Newspaper and Printing Preses Act. Reported in: *New York Times,* December 28; *Wall Street Journal,* December 30.

Johannesburg, South Africa

An anti-apartheid newspaper is making the first legal challenge to emergency powers that allow the South African government to censor or close for up to three months newspapers it believes are fanning revolution. The *New Nation* said in a front-page article January 14 that it had applied for a court order to declare invalid the powers, issued last August under the 19-month-old national state of emergency. The newspaper is one of six publications threatened with government action. Reported in: *Christian Science Monitor,* January 15.

Moscow, U.S.S.R.

Soviet television broadcast the NBC News interview with Mikhail Gorbachev December 1, but censored Gorbachev's remark that he talks about top government affairs with his wife. The deletion of the brief exchange about Raisa Gorbachev in the hour-long interview suggested that her relatively high profile is a sensitive issue in Soviet society.

Near the end of the interview, Tom Brokaw asked: "We've all noticed the conspicuous presence of Mrs. Gorbachev in your travels. Do you go home in the evening and discuss with her national policies, political difficulties and so on in this country?"

"We discuss everything," Gorbachev responded.

This was followed by a second exchange, deleted from the Soviet television tape:

Brokaw: "Including Soviet affairs at the highest level?"

Gorbachev: "I think that I have answered your question in toto. We discuss everything." There were no other deletions in the Soviet broadcast. Reported in: *Washington Post,* December 2.□

press freedom erodes under Thatcher

The Thatcher government's legal actions against newspapers and broadcasters resulted in a significant erosion of freedom of the press in Britain in 1987, journalists and civil libertarians charged recently.

Throughout the year, the government pursued its efforts to inhibit British publication of and news reporting about *Spycatcher,* an account of misconduct in the British security services by Peter Wright, a former intelligence agent (see *Newsletter,* March 1987, p. 71; November 1987, p. 229; January 1988, p. 6). Late in the year the effort was extended to a second book which also describes the intelligence services as riddled with would-be traitors and homosexuals, *Inside Intelligence,* by Anthony Cavendish, another former agent. The book was privately published after British authorities persuaded a commercial publisher not to bring it out. On January 8, government lawyers asked an Edinburgh court to take punitive action against the *Glasgow Herald* for publishing excerpts from the book. The Scottish paper defied an injunction issued earlier when two national papers, *The Sunday Times* and *The Observer,* attempted to report on the book's contents.

In early December, another court injunction sought by the government barred the BBC from broadcasting any program containing interviews with present or former members of the security and intelligence services. One more injunction was obtained in December barring broadcast by an independent station of a program that was to have presented a dramatic recreation of a court hearing into the murder convictions of six Irishmen in a 1973 bombing. The government successfully convinced the judges that the drama was "likely to undermine public confidence" in the judiciary. In other cases, the government has used the Police and Criminal Evidence Act to look for evidence in the news and photo libraries of newspapers, and turned to another restrictive statute to try to compel a financial reporter to serve as a police informant.

These actions were among nine areas of legal activity directed against the press identified by the Press Council. "With all these, Britain is sinking further into that league of nations where press freedom is barely understood, let alone protected," said Kenneth Morgan, director of the ombudsman group financed by the newspaper industry.

Experts differ on whether the rash of litigation represents a coordinated government effort to control the press. But they agree that the plight of financial journalist Jeremy Warner of *The Independent* illustrates the fragility of press freedom. Warner could become the first British journalist in 25 years to go to jail to protect a source of information if he continues to refuse to tell police how he got information about purported insider trading by civil servants in the Department of Trade and Industry.

Whereas the First Amendment serves as a roadblock to attempts by agencies of government to curb the American press, Britain has no written constitution defining basic rights and restraining the government's power to interfere. In addition, the 1689 Act of Settlement guarantees "parliamentary sovereignty," which has come to mean that the government can lose a case in the courts and, if it has the votes, immediately pass a new law to regain what it has lost.

"It is not insignificant that constitutionally speaking we're subjects here and you're citizens in the United States," said Andreas Whittam Smith, editor of *The Independent.* "Then you have a particularly self-confident, aggressive and even arrogant Prime Minister who has very many virtues, but in this case has become mightily obsessed with the confidentiality of security issues."

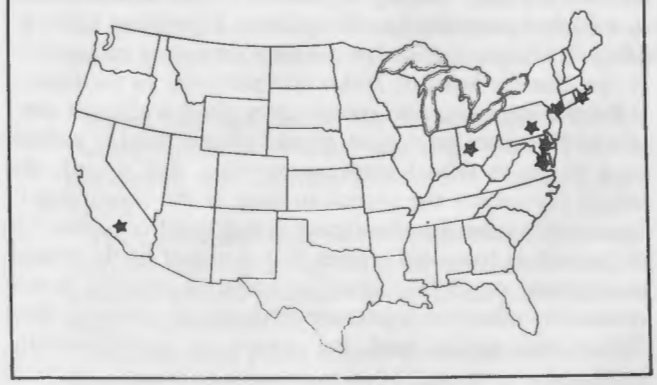
Very early in her administration, Prime Minister Margaret Thatcher condemned investigative reporters as "people who use freedom in order to destroy freedom." A senior official insists that there is no vendetta against the press, but he described Thatcher as commited to enforcing the laws regulating its activities.

When the courts bridled at enforcing the catch-all Official Secrets Act, the government turned to the "law of confidence," a civil statute designed to protect business secrets, to stall journalistic inquiry into MI-5 and MI-6, the security services. The BBC and *The Independent* are each now tied up in litigation with the government on three separate fronts. Reported in: *New York Times,* December 6, 19, January 10.□

cops confuse Picasso with porn

Charges by anti-censorship activists that restrictions on pornographic materials may threaten important works of art and literature were borne out last summer in Orlando, Florida, where police nearly burned an original Picasso print along with a collection of adult films and other confiscated materials. The work, valued between $3,000 and $9,000, depicts a naked woman and a bearded man and is believed to be part of a series of aquatint etchings done by Pablo Picasso in 1966. The etching, which was considered "horrible" and a laughing-stock by evidence room workers, was rescued by City Property Manager Phil Edwards because he liked its frame. Reported in: *Video Insider,* August 10.□

from the bench



U.S. Supreme Court

(from cover page)

pregnancies and experiences with sex and birth control. The other article discussed divorce and included a student's complaints about her father, naming the student. Neither contained graphic accounts of sexual activity.

Student staff members of the newspaper challenged the censorship as a violation of their First Amendment rights of free speech. Their request for an injunction was denied, after a bench trial, in the U.S. District Court for the Eastern District of Missouri. The U.S. Court of Appeals for the Eighth Circuit reversed that decision, however, holding that *Spectrum* was not only "a part of the school adopted curriculum" but also a public forum, because the newspaper was "intended to be and operated as a conduit for student viewpoint" (see *Newsletter,* July 1985, p. 131; November 1986, p. 227; March 1987, p. 57).

The Supreme Court rejected this argument. Citing the familiar rationale that public school officials may restrict student speech in school more than government may restrict the rights of citizens generally, the Court majority added that schools have especially wide latitude to censor student speech in newspapers and other activities that are sponsored and financed by the schools themselves. Justice White emphasized that students writing for *Spectrum* received academic credit, and were edited and graded for their work by a teacher as part of the official journalism curriculum. "The evidence that school officials never intended to designate *Spectrum* as a public forum is overwhelming," he wrote.

The decision thus left open the possibility that unofficial, so-called "underground," student newspapers and even official publications published on an extra-curricular basis or more clearly established as "forums" for student opinion may not be so readily censored. However, the Court decision explicitly included in its purview some activities, such as student theatrical productions, which students and educators have historically labeled "extracurricular." Moreover, according to the Student Press Law Center, at least half of all public high school newspapers in the U.S. are produced through journalism classes.

The ruling also seemed to extend the Court's previous reasoning that a school need not tolerate student speech inconsistent with its "basic educational mission" even though "the government could not censor similar speech outside the school." Principal Reynolds had based his decision to censor the newspaper on relatively narrow grounds—protecting the anonymity of the three unnamed pregnant students and the rights of the father who had not been given a chance to respond to his daughter's critical comments about him. He also believed references to sexual activity and birth control were inappropriate for younger students.

But Justice White's opinion suggested the Court would approve any official censorship of school newspapers that can be related to "legitimate pedagogical concerns," even in the absence of such specific concerns about fairness to particular individuals. "A school must be able to take into account the emotional maturity of the intended audience in determining whether to disseminate student speech on potentially sensitive topics, which might range from the existence of Santa Claus in an elementary school setting to the particulars of teenage sexual activity in a high school setting," White declared.

"A school must also retain the authority to refuse to sponsor student speech that might reasonably be perceived to advocate drug or alcohol abuse, irresponsible sex or conduct otherwise inconsistent with 'the shared values of a civilized social order', the opinion continued. Justice White added that schools could censor speech that might "associate the school with any position other than neutrality on matters of political controversy."

In his dissent, Justice Brennan said the Hazelwood principal and the Court majority "violated the First Amendment's prohibitions against censorship of any student expression that neither disrupts classwork nor invades the rights of others." He argued that the majority opinion abandoned the standards of the *Tinker* decision in order to "erect a taxonomy of school censorship, concluding that *Tinker* applies to one category and not another."

Brennan wrote that the decision "offers no more than an obscure tangle of three excuses to afford educators 'greater control' over school-sponsored speech than the *Tinker* test would permit: the public educator's prerogative to control curriculum; the pedagogical interest in shielding the high school audience from objectionable viewpoints and sensitive

topics; and the school's need to dissociate itself from student expression. None of the excuses, once disentangled, supports the distinction that the Court draws. *Tinker* fully addresses the first concern; the second is illegitimate; and the third is readily achievable through less oppressive means."

Brennan concluded that the decision "denudes high school students of much of the First Amendment protection that *Tinker* itself prescribed," instead of teaching youths "to respect the diversity of ideas that is fundamental to the American system."

Cathy Kuhlmeier, who filed the original suit along with Lee Ann Tippett-West and Leslie Smart, said she was extremely disappointed by the ruling. "I think this decision will turn kids off to journalism," said Kuhlmeier, a senior now majoring in advertising at Southeast Missouri State University. "We were trying to make a change with the school paper and not just write about the school proms, football games and piddly stuff." Her fears were echoed by Andrea Callow, a senior majoring in journalism at the University of Missouri, who was co-author of the censored *Spectrum* articles. "It's going to change student journalism around the country," she predicted.

"This decision cuts the First Amendment legs off the student press," added Paul McMasters, chair of the Freedom of Information Committee of the Society of Professional Journalists, Sigma Delta Chi, who is also deputy editorial director of *USA Today*. But Everette E. Dennis, executive director of the Gannett Center for Media Studies, said the decision's impact was apt to be minimal. "The student press is already very timid," he said. "It was always a captive voice and now is more captive."

The decision was welcomed by many school administrators. Francis Huss, superintendent of the Hazelwood school district, said the decision reaffirms our position that the board of education has authority to establish curricula. The authority of boards of education would have been threatened if this case had been lost."

In a memorandum analyzing the impact of the decision, Freedom to Read Foundation counsel Bruce J. Ennis agreed that the Supreme Court "treated this case as a challenge to a public school's power to control its curriculum. Characterizing the publication of Hazelwood's school newspaper as part of the school's curriculum, rather than finding the newspaper to be a 'public forum,' in which students are free to express their views, the Court's ruling that there was no constitutional violation inevitably followed. The Court placed considerable weight upon the facts that the publication of the newspaper was part of a journalism class, and that the cost of the publication was borne primarily by the school itself. It therefore distinguished *Tinker*, where the expression at issue (wearing a black armband [to protest the Vietnam War]) was personal and not part of the curriculum, and where the message expressed could not be understood to have been promoted by the school merely because the school was required to tolerate the student's symbolic speech.

"When *Hazelwood* is read in conjunction with last term's decision in *Fraser* (finding unprotected certain student speech to a student assembly [see *Newsletter*, September 1986, p. 161]), it is clear that *Tinker* has been narrowed substantially, but that the heart of *Tinker* still survives. In the future, if the challenged student speech takes place within the context of the school curriculum (broadly understood to include such things as school plays, assemblies, and so on), the school can censor the speech so long as the censorship is 'reasonably related to legitimate pedagogical concerns.' If the speech is 'personal' rather than a matter of the school curriculum, or if the school's 'editorial control' is *not* reasonably related to legitimate pedagogical concerns, then *Tinker* still applies and the speech is constitutionally protected.

"The difficulty with this standard (as Justice Brennan's strongly worded dissent points out) is that (1) the line between 'personal' and 'curricular' is not always so clear; and (2) the phrase 'legitimate pedagogical concern' is so broad and vague that nearly any kind of censorship can be justified as 'legitimate' once it has been found to be related to the school's power to control the school curriculum.

"It remains to be seen how this new standard will affect public school libraries," Ennis's memorandum continued. "The growing number of decisions in which the Court has focused on the public school's right to limit speech in order to inculcate certain values and to disparage others . . . poses some threat to the rights of students to have access to library collections that present a broad diversity of views, including views that school authorities disagree with. Moreover, the Court's broad definition of 'curricular' is cold comfort to librarians, who could find the books on their shelves labeled as parts of the school's curriculum, subject to censorship by school authorities bent on inculcating what they decide are commonly shared cultural values.

"On the other hand, in *Pico* the Court distinguished between the 'regime of voluntary inquiry that . . . holds sway' in the library from the 'compulsory environment in the classroom,' and nothing in these more recent decisions directly calls into question this important distinction. And in *Hazelwood* the Court seemed especially concerned with the possibility that the school might be understood to be endorsing the ideas in the school paper. No reasonable person could similarly think that the school endorses all of the ideas contained in all of the books in a school library.

"In sum, the ruling in *Hazelwood* is unsurprising. It is not as narrowly written as we could have hoped, but neither is it so broadly written as to call into question the central holding of *Tinker*. Students retain their right to free speech when they enter the schoolhouse, but they had better watch their tongues when they sit down in the classroom, or otherwise take part in the school's 'curriculum'." Reported in: *New York Times*, January 14.

Hazelwood School District v. Kuhlmeier

The following are excerpts from the majority opinion and dissent in the case of Hazelwood School District *v. Kuhlmeier,* decided by the Supreme Court on January 13.

From the opinion of the Court, delivered by Justice Byron R. White, joined by Chief Justice Rehnquist and Justices Stevens, O'Connor, and Scalia:

The case concerns the extent to which educators may exercise editorial control over the contents of a high school newspaper produced as part of the school's journalism curriculum. . .

Students in the public schools do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker.* They cannot be punished merely for expressing their personal views on the school premises—whether "in the cafeteria, or on the playing field, or on the campus during the authorized hours,"—unless school authorities have reason to believe that such expression will "substantially interfere with the work of the school or impinge upon the rights of other students."

We have nonetheless recognized that the First Amendment rights of students in the public school "are not automatically coextensive with the rights of adults in other settings," *Bethel School District No. 403* v.

(continued on page 55)

From the dissenting opinion by Justice William J. Brennan, Jr., joined by Justices Marshall and Blackmun:

When the young men and women of Hazelwood East High School registered for Journalism II, they expected a civics lesson. *Spectrum,* the newspaper they were to publish, "was not just a class exercise in which students learned to prepare papers and hone writing skills, it was a . . . forum established to give students an opportunity to express their views while gaining an appreciation of their rights and responsibilities under the First Amendment to the United States Constitution. . . . [A]t the beginning of each school year," the student journalists published a Statement of Policy—tacitly approved each year by school authorities—announcing their expectation that "*Spectrum,* as a student-press publication, accepts all rights implied by the First Amendment. . . . Only speech that 'materially and substantially interferes with the requirements of appropriate discipline' can be found unacceptable and therefore prohibited." The school board itself

(continued on page 57)

On January 26, the Supreme Court unanimously deferred ruling on the constitutionality of a 1985 Virginia law restricting display by bookstores of sexually explicit materials deemed "harmful to minors." Noting that the meaning of the law and whether it covered large numbers of books other than "borderline obscenity" were disputed between the state and booksellers and others who had challenged it, the Court said the law's constitutionality could depend on how it was interpreted. It asked the Virginia Supreme Court for an "authoritative" interpretation.

In an opinion written by Justice William J. Brennan, Jr., the Court "certified" two questions to the Virginia Court. It said a lower court decision that struck down the law and barred its enforcement would remain in effect until the case, *Virginia* v. *American Booksellers Association,* was returned to the U.S. Supreme Court.

The first question to the Virginia court concerned the kinds of books and other materials covered by the law, specifically, how it would be applied "in light of juveniles' differing ages and levels of maturity" and whether the phrase "harmful to juveniles" encompassed any of the sixteen books the bookstores and others had said would be affected by it. The second question concerned what kinds of steps the statute required bookstores to take to prevent juveniles from examining the covered materials.

The case began when the ABA filed suit two weeks after the 1985 statute went into effect. Judge Richard L. Williams ruled in favor of the booksellers. "The level of discourse reaching a commercial bookstore cannot be limited to what might be appropriate for an elementary school library," he ruled. A three judge panel of the U.S. Court of Appeals for the Fourth Circuit agreed, and Virginia appealed to the Supreme Court (see *Newsletter,* September 1987, p. 172; January 1988, p. 19). The Freedom to Read Foundation filed an *amicus curiae* brief in the appeal (see *Newsletter,* November 1987, p. 232). Reported in: *New York Times,* January 26.

The Supreme Court took up an important free speech battle between the Rev. Jerry Falwell and the sex magazine *Hustler* December 2, in the liveliest argument the Court has heard in years. Seven of the eight Justices engaged in exchanges with the opposing lawyers over whether the Court should overturn a $200,000 jury award to Falwell for "emotional distress" at a *Hustler* parody which described him and his mother as engaged in a drunken, incestuous encounter

in an outhouse. Although the jury had declared the parody not libelous because it clearly could not be believed, it assessed damages on the grounds that *Hustler* publisher Larry Flynt was liable for "intentional infliction of emotional distress." The award was upheld by the U.S. Court of Appeals for the Fourth Circuit (see *Newsletter*, July 1987, p. 140).

The central legal issue in the case is whether someone who is not libeled can nevertheless recover damages. News media lawyers have warned that if the award to Falwell is upheld, it would establish an exceptionally broad avenue for plaintiffs to sue, even over truthful articles.

"If Jerry Falwell can sue for intentional infliction of emotional distress," Flynt's lawyer, Alan L. Isaacman, told the Court, "then anyone can." He compared *Hustler's* depiction of Falwell to the Doonesbury comic strip portraying Vice President George Bush as a "wimp." Such parodies must be protected, Issaacman argued, "or all we are going to have is bland, milquetoast" speech. The First Amendment gives *Hustler* the right to say "let's deflate this stuffed shirt, let's bring him down to our level," Isaacman argued, to eruptions of laughter from the Justices.

Several Justices suggested they were grappling with a conflict between press freedom and what Justice Antonin Scalia called the concern that "good people should be able to enter public life" without being exposed to wanton abuse in print. "Would George Washington have stood for public office?" Scalia asked, if the law had been such that "you can't protect yourself or redeem your mother" against vicious satire.

Norman Roy Grutman, Falwell's attorney, told the Justices, "Deliberate, malicious character assassination is not protected by the Constitution." He said the "repulsive and loathesome" parody was "aberrational" and not protected by the First Amendment.

"Do you think a vicious cartoon should subject the drawer to liability?" asked Justice Sandra Day O'Connor. "Only if the cartoon is so intolerable that no civilized person should be expected to bear it," Grutman responded. "This court has said that by becoming a public figure one does not abdicate his rights as a human being. This case is not a threat to the press."

A ruling in *Hustler Magazine, Inc.* v. *Rev. Jerry Falwell* was delivered February 24 (see page 58). Reported in: *New York Times*, December 3; *Washington Post*, December 3.

On December 14, the Supreme Court declined to review a lower court decision that a tenured school teacher's First Amendment rights were not violated when she was discharged for screening a film, *Pink Floyd—The Wall*, for her high school class. The school teacher contended that "she believed the movie contained important, socially valuable messages." School officials, however, objected that it promoted values described as immoral, antieducation, antifamily, antijudiciary, and antipolice. They also found the movie inappropriate due to its sexual content, vulgar language, and violence.

Although a federal District Court reinstated the teacher with back pay, the U.S. Court of Appeals for the Sixth Circuit reversed that ruling, citing the Supreme Court's decision in *Bethel School District* v. *Fraser* as justifying limitations on the constitutional right of a teacher "to exercise professional judgment in selecting topics and materials to be used in the course of educational process."

The Supreme Court's refusal to review the appellate decision in *Fowler* v. *Board of Education* established no precedent, except in the Sixth Circuit. But there the decision had been reached on relatively narrow grounds. The teacher had conceded that the film was shown on a non-instructional day and that she had not seen it in advance. Under those circumstances, the Circuit Court held that the teacher did not use the film for "expressive purposes." Whether the teacher's conduct would have been constitutionally protected if the same film had been used for conscious instructional purposes was not decided by the court. Reported in: *Variety*, December 17.

cable TV

Washington, D.C.

On December 11, a federal court threw out, for the second time, a Federal Communications Commission rule that cable television systems must carry the programming of local stations that broadcast over the air. The U.S. Court of Appeals for the District of Columbia ruled that the FCC had given no evidence that, without the rule, cable operators would engage in widespread dumping of broadcasters programming. "Experience belies that assertion," the decision said.

Public broadcasting officials, however, said last March that after the ruling was first struck down in 1985, cable operators had dropped more than 160 public stations and moved 96 to less advantageous positions on the cable dial. The Public Broadcasting Service condemned the court decision.

"The must-carry rules are an important safeguard to assure that the American people have access to the educational and cultural benefits of noncommercial television," PBS President Bruce Christensen said. "The court has now placed in the hands of cable—a monopoly service—the ability to decide when and where those citizens who have supported public television can continue to enjoy its services via cable."

The National Association of Broadcasters also expressed dismay and hinted it was considering an appeal to the U.S. Supreme Court.

The court's action was the latest chapter in a conflict that erupted almost as soon as the cable industry began as a way

to get signals from broadcast stations to homes too far away to receive them over the air. In 1962, the FCC established the must-carry rule on the grounds that it would protect local open air broadcasters from potentially ruinous competition. But cable operators charged that carrying local on-air stations often denied space to more profitable—and sometimes more popular—pay channels. They also complained that the ruling could force them to carry essentially duplicated channels.

In 1985, a panel of the U.S. Court of Appeals for the District of Columbia threw out the must-carry doctrine as a violation of First Amendment rights to free speech for cable companies (see *Newsletter,* September 1985, p. 163). Facing pressure from broadcasters and Congress, however, the FCC voted to enact a revised form of the rule in 1986.

According to the revision, cable operators with 20 channels or fewer would not be required to carry any on-air channels; those with 21 to 26 would have to carry 7; and those with 27 or more would have to carry broadcasters' signals on up to 25 percent of their channels. The rule was to remain in effect for five years, allowing time for the public to become accustomed to an inexpensive device allowing viewers to shift between cable and an antenna.

The court, however, ruled, in a decision written by Chief Judge Patricia M. Wald, that the FCC's assumption that the end of must-carry rules would seriously damage broadcast television was only a "fanciful threat" not based on hard evidence. It also questioned the FCC's contention that American viewers would need five years to realize that they could get more channels by installing the switch. Reported in: *Washington Post,* December 12.

political protest

Providence, Rhode Island

Antinuclear protesters were entitled to a temporary restraining order preventing the Coast Guard from enforcing a "security zone" restriction in the waters around a defense contractor's plant on the day the protestors intended to sail near the plant, U.S. District Court Judge Raymond J. Pettine ruled October 21. The "security zone" would have restricted the protestors' access to 500 yards, while their banners and flags were barely visible to coastal observers at 100 yards. In absence of any evidence that the protestors would attempt destruction or that the 500 yard distance was essential to security, the court ruled that the zone was a constitutionally impermissible restriction on the protestors' speech. Reported in: *West's Federal Case News,* December 4.

publishing

New York, New York

A motion to halt sales of *In the Name of the Father,* by A. J. Quinnell, published in September, was denied by New York Supreme Court Justice Ethel B. Danzig in December. Danzig also denied a countermotion by the publisher, NAL, to dismiss a suit brought against the book by Vatican Archbishop Paul C. Marcinkus.

Marcinkus contends that the novel, which uses his name and background and which portrays him as ordering the assassination of late Soviet leader Yuri Andropov, violates New York State's Civil Rights Law. That law prohibits the use of a person's name without consent for trade or advertising purposes, and the preliminary injunction sought by Marcinkus would have compelled NAL to recall and destroy all copies of the novel within its control as well as any advertising and promotion.

While the full implications of Danzig's ruling were unclear, Edward H. Rosenthal, counsel for the publisher, said, "It suggests that as long as [readers] would recognize a work is fiction, it's OK to use real people in novels." In contrast, Marcinkus's counsel, Alan M. Gelb, said the decision "doesn't uphold anything" regarding the First Amendment. He said Marcinkus "absolutely" would appeal the decision to the New York State Appeal Court. Reported in: *ABA Newswire,* December 21.

church and state

Washington, D.C.

A First Amendment free exercise clause challenge to the District of Columbia's requirement that applicants for driver's licenses provide the District with their Social Security numbers should not have been dismissed, U.S. Circuit Court Judge Ruth Bader Ginsburg ruled December 1. The District did not demonstrate that requiring a religious objector to provide his Social Security number in order to obtain a driver's license was the least restrictive means of achieving the concededly vital public safety objective at stake, Ginsburg said. In dismissing the case, the district court applied an erroneous standard, by which it balanced the objector's interest in freely exercising his rights against the District's safety interests. Reported in: *West's Federal Case News,* December 11.

Honolulu, Hawaii

A Hawaii statute making Good Friday a legal holiday was not unconstitutional, U.S. District Court Judge Alan Cooke Kay ruled November 23. Moreover, collective bargaining agreements between public employees and their employers,

which established Good Friday as a paid leave day, either expressly or through incorporation of the statute did not violate the United States or Hawaii Constitutions.

The court reasoned that making Good Friday a legal holiday was similar in nature to making Christmas and Thanksgiving legal holidays, and was permissible because of the partially secular nature of the observations and because the holidays provided a uniform day of rest and relaxation. Reported in: *West's Federal Case News,* December 18.

religion in school

College Park, Maryland

A federal judge refused December 21 to bar traditional prayers from the University of Maryland's midyear graduation ceremonies, rejecting an atheist student's contention that the prayers violated the First Amendment's separation of church and state. Acting just 18 hours before the commencement exercises, U.S. District Court Judge Norman P. Ramsey said the student, Matthew J. Barry, were not likely suffer "irreparable harm" and suggested he could "stand out in the hall" during the prayers if he finds them objectionable.

"If he's really so upset, he can come late and leave early," Ramsey said in denying Barry's request for a preliminary injunction.

In a combative exchange, American Civil Liberties Union attorney Arthur B. Spitzer argued that such a choice was similar to a public elementary school student leaving the classroom during prayers, an option banned by the U.S. Supreme Court. "The First Amendment simply doesn't allow the government to pray," Spitzer said.

James J. Mingle, an assistant state attorney general representing the university, argued that the prayers were "acknowledgments" rather than "endorsements" of religion and thus permissible under Supreme Court rulings. Also, Mingle said, while courts have drawn strict lines against prayer in elementary schools because of compulsory attendance and peer pressure, a more relaxed standard can be allowed in a university.

Postponing a final decision until after further proceedings, Judge Ramsey said there was an "ocean of controversy" surrounding the prayer issue and he did not want to "rush to judgment" by ruling without extensive inquiry. "This case has not matured . . . with everyone getting a crack at it," he said. Reported in: *Washington Post,* December 22.

Waynesboro, Pennsylvania

The Waynesboro Area School Board decided not to appeal a November 24 federal court ruling involving distribution of religious literature on school property. But the district asked U.S. District Court Judge Sylvia H. Rambo to reconsider her decision that the First Amendment rights of three students were violated when the district barred them from passing out a Christian youth newspaper in 1986.

"The purpose is to attempt to have the judge say that we did not violate their rights," said district solicitor Timothy W. Misner. He said a reconsideration could lead to a reversal of the judge's decision that three Antietam Junior High School students may ask the court to award money to cover their legal fees.

In her opinion, Judge Rambo said the district acted improperly in prohibiting then-seventh-graders Bryan Thompson, March Shunk and Christopher Eakle from distributing copies of *Issues and Answers* inside the school. The case was turned on the issue of free speech and not on that of church/state relations and both sides agreed it would have little, if any, impact on religion inside public schools.

In the wake of the court decision, school officials changed their policy on distributing materials. Reported in: *Hagerstown Herald-Mail,* December 16.

obscenity and pornography

Los Angeles, California

A former traffic officer and call girl who wants to make an explicit movie demonstrating "safe sex" may proceed with a legal challenge to Los Angeles authorities' anti-pornography campaign, a federal appeals court ruled November 17. In a unanimous decision, the U.S. Court of Appeals for the Ninth Circuit reinstated a civil rights suit filed by Norma Jean Almodovar and filmmaker R.N. Bullard seeking to halt the use of pandering laws against makers of adult movies.

Pandering laws, which make it illegal to exchange money for sex, have traditionally been used against pimps. But law enforcement agencies have begun charging makers of X-rated films with the crime, a practice under review by the California Supreme Court in a separate case (see page 64).

"Certainly, the requirement that sex be exchanged for money to constitute prostitution might be limited so as not to include performance before a camera," Judge Dorothy W. Nelson wrote for the appeals court. The decision reversed a U.S. District Court judge's dismissal of Almodovar's suit against Los Angeles police and county prosecutors, but said that hearing of the suit should be delayed until the state courts have decided the other case. Reported in: *Los Angeles Times,* November 20.

Urbana, Ohio

An Ohio appeals court decision affirming that the sale of "soft core" pornography is illegal in Urbana may be the first of its kind in the country, attorneys involved in the case

said. Champaign County Municipal Prosecutor Joseph Palmer said the decision, which upheld a declaratory judgment by Municipal Court Judge Joseph Valore, meant that publications that are "readily on the market in Chicago, New York, or Las Vegas" are nonetheless illegal in Urbana because its community standards differ.

Palmer said it was "the first case in the history of the United States" extending the definition of obscenity, based on community standards, to include so-called soft core or "sophisticate" magazines. In general, hard core publications depict explicit sexual acts, but Palmer said publications that stop short of that—but include scenes of torture, bondage or sado-masochism—are also an affront to community sensibilities. "The standard in Urbana is quite strict," he said. "The community does not want magazines like this sold in the city."

Urbana's City Council enacted an ordinance banning obscene magazines and films in February, 1985, after lobbying from conservative and church leaders. Palmer asked for the declaratory judgment that five "male sophisticate" magazines, including *Oui, Nugget,* and *Velvet,* purchased at the Main News and Smoke Shop, were obscene.

Shop owners Charles Downing and Paul Veneroni asked the Second District Court of Appeals to reconsider its ruling. Failing that, the case probably will be appealed to the Ohio Supreme Court, according to attorney Mike Hemm. If allowed to stand, the ruling would jeopardize previous cases in which other soft core publications, including *Playboy* and *Penthouse,* were held to be constitutionally protected, Hemm said. Reported in: *Dayton Daily News and Journal Herald,* November 23.

Alexandria, Virginia

Adult book store owner Dennis E. Pryba was sentenced December 18 to three years in prison and a fine of $75,000 for his November racketeering convictions stemming from the sale of obscene videotapes and magazines (see *Newsletter,* January 1988, p. 20). Pryba's wife, Barbara, also convicted of racketeering, was given a three-year suspended sentence and a $200,000 fine by U.S. District Judge T. S. Ellis, III, who said he did not want to separate her from her 13-year-old son by sending her to jail.

Imposition of the sentences was postponed pending the couple's appeal of their convictions and the forfeiture of their entire business, including inventories of tapes and magazines not found obscene by a court. Ellis said he took the forfeiture into account when setting sentences. Ellis also sentenced Dennis Pryba to an additional 55 years in prison, all suspended, five years' probation and 300 hours of community service. Barbara Pryba also was sentenced to an additional 34 years in prison, all suspended, three years' probation and 500 hours of community service.

Ellis called the sentences lenient, given that Pryba had "a 23-year-history of selling smut" as evidenced by prior convictions under state laws. "I do not regard pornography as a victimless crime," the judge said. "It is a degrading form of expression."

The Prybas were convicted November 10 on three counts of racketeering and seven counts of interstate transportation of obscene materials after a jury found that several sexually explicit magazines and videotapes sold in their stores were obscene. Soon after, federal marshals began liquidating their confiscated business, putting the proceeds into an escrow account, pending appeal. Ellis denied defense counsels' request to postpone sale of the business until the appeal was heard.

The only items federal marshals will not sell are sexually explicit tapes and magazines. Ellis ordered these goods to be stored because, he said, the government should not sell such materials. Reported in: *Washington Post,* December 19.□

(Hazelwood: majority opinion . . . from page 51)

Fraser, and must be "applied in light of the special characteristics of the school environment." *Tinker.* A school need not tolerate student speech that is inconsistent with its "basic educational mission," *Fraser,* even though the government could not censor similar speech outside the school. Accordingly, we held in *Fraser* that a student could be disciplined for having delivered a speech that was "sexually explicit" but not legally obscene at an official school assembly, because the school was entitled to "disassociate itself" from the speech in a manner that would demonstrate to others that such vulgarity is "wholly inconsistent with the 'fundamental values' of public school education." We thus recognized that "[t]he determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board," rather than with the federal courts. It is in this context that respondents' First Amendment claims must be considered.

We deal first with the question whether *Spectrum* may appropriately be characterized as a forum for public expression. The public schools do not possess all of the attributes of streets, parks, and other traditional public forums that "time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." Hence, school facilities may be deemed to be public forums only if school authorities have "by policy or by practice" opened those facilities "for indiscriminate use by the general public," or by some segment of the public, such as student organizations. If the facilities have instead been reserved for other intended purposes, "communicative or otherwise," then no public forum has been created, and school officials may impose reasonable restrictions on the

speech of students, teachers, and other members of the school community. "The government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse." . . .

School officials did not deviate in practice from their policy that production of *Spectrum* was to be part of the educational curriculum and a "regular classroom activit[y]." . . . The evidence relied upon by the Court of Appeals in finding *Spectrum* to be a public forum is equivocal at best . . . Although the Statement of Policy published in the September 14, 1982, issue of *Spectrum* declared that "*Spectrum*, as a student-press publication, accepts all rights implied by the First Amendment," this statement, understood in the context of the paper's role in the school's curriculum, suggests at most that the administration will not interfere with the students' exercise of those First Amendment rights that attend the publication of a school-sponsored newspaper. It does not reflect an intent to expand those rights by converting a curricular newspaper into a public forum. . . . Accordingly, school officials were entitled to regulate the contents of *Spectrum* in any reasonable manner. It is this standard, rather than our decision in *Tinker*, that governs this case.

The question whether the First Amendment requires a school to tolerate particular student speech—the question that we addressed in *Tinker*—is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The former question addresses educators' ability to silence a student's personal expression that happens to occur on the school premises. The latter question concerns educators' authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school. These activities may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences.

Educators are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school. Hence, a school may in its capacity as publisher of a school newspaper or producer of a school play "disassociate itself," not only from speech that would "substantially interfere with [its] work . . . or impinge upon the rights of other students," but also from speech that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences. A school must be able to set high standards for the student speech that is disseminated under its auspices—standards that may be higher than those demanded by some newspaper publishers or theatrical producers in the "real" world—and may refuse to disseminate student speech that does not meet those standards. In addition, a school must be able to take into account the emotional maturity of the intended audience in determining whether to disseminate student speech on potentially sensitive topics, which might range from the existence of Santa Claus in an elementary school setting to the particulars of teenage sexual activity in a high school setting. A school must also retain the authority to refuse to sponsor student speech that might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with "the shared values of a civilized social order," or to associate the school with any position other than neutrality on matters of political controversy. Otherwise, the schools would be unduly constrained from fulfilling their role as "a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment."

Accordingly, we conclude that the standard articulated in *Tinker* for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression. Instead, we hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.[6]

This standard is consistent with our oft-expressed view that the education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, not of federal judges. It is only when the decision to censor a school-sponsored publication, theatrical production, or other vehicle of student expression has no valid educational purpose that the First Amendment is so "directly and sharply implicate[d]," as to require judicial intervention to protect students' constitutional rights.[7]□

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[6]We reject respondents' suggestion that school officials be permitted to exercise prepublication control over school-sponsored publications only pursuant to specific written regulations. To require such regulations in the context of a curricular activity could unduly constrain the ability of educators to educate. We need not now decide whether such regulations are required before school officials may censor publications not sponsored by the school that students seek to distribute on school grounds.

[7]A number of lower federal courts have similarly recognized that educators' decisions with regard to the content of school-sponsored newspapers, dramatic productions, and other expressive activities are entitled to substantial deference. . . . We need not now decide whether the same degree of deference is appropriate with respect to school-sponsored expressive activities at the college and university level.

lazelwood: dissent . . . from page 51)

affirmatively guaranteed the students of Journalism II an atmosphere conducive to fostering such an appreciation and exercising the full panoply of rights associated with a free student press. "School sponsored student publications," it vowed, "will not restrict free expression or diverse viewpoints within the rules of responsible journalism."

This case arose when the Hazelwood East administration breached its own promise, dashing its students' expectations. . .

In my view the principal broke more than just a promise. He violated the First Amendment's prohibitions against censorship of any student expression that neither disrupts classwork nor invades the rights of others, and against any censorship that is not narrowly tailored to serve its purpose.

Public education serves vital national interests in preparing the Nation's youth for life in our increasingly complex society and for the duties of citizenship in our democratic Republic. The public school conveys to our young the information and tools required not merely to survive in, but to contribute to, civilized society. It also inculcates in tomorrow's leaders the "fundamental values necessary to the maintenance of a democratic political system. . . ." All the while, the public educator nurtures students' social and moral development by transmitting to them an official dogma of " 'community values.' "

The public educator's task is weighty and delicate indeed. It demands particularized and supremely subjective choices among diverse curricula, moral values, and political stances to teach or inculcate in students, and among various methodologies for doing so. Accordingly, we have traditionally reserved the "daily operation of school systems" to the States and their local school boards. We have not, however, hesitated to intervene where their decisions run afoul of the Constitution. . . .

Free student expression undoubtedly sometimes interferes with the effectiveness of the school's pedagogical functions. Some brands of student expression do so by directly preventing the school from pursuing its pedagogical mission: The young polemic who stands on a soapbox during calculus class to deliver an eloquent political diatribe interferes with the legitimate teaching of calculus. And the student who delivers a lewd endorsement of a student-government candidate might so extremely distract an impressionable high school audience as to interfere with the orderly operation of the school. Other student speech, however, frustrates the school's legitimate pedagogical purposes merely by expressing a message that conflicts with the school's, without directly interfering with the school's expression of its message: A student who responds to a political science teacher's question with the retort, "Socialism is good," subverts the school's inculcation of the message that capitalism is better. Even the maverick who sits in class passively sporting a symbol of protest against a government policy, or the gossip who sits in the student commons swapping stories of sexual escapade could readily muddle a clear official message condoning the government policy or condemning teenage sex. Likewise, the student newspaper that, like *Spectrum,* conveys a moral position at odds with the school's official stance might subvert the administration's legitimate inculcation of its own perception of community values.

If mere incompatibility with the school's pedagogical message were a constitutionally sufficient justification for the suppression of a student speech, school officials could censor each of the students or student organizations in the foregoing hypotheticals, converting our public schools into "enclaves of totalitarianism," that "strangle the free mind at its source." The First Amendment permits no such blanket censorship authority. While the "constitutional rights of students in public schools are not automatically coextensive with the rights of adults in other settings," students in public school do not "shed their constitutional rights to fredom of speech or expression at the schoolhouse gate." Just as the public on the street corner must, in the interest of fostering "enlightened opinion," tolerate speech that "tempt[s the listener] to throw [the speaker] off the street," public educators must accommodate some student expression even if it offends them or offers views or values that contradict those the school wishes to inculcate.

In *Tinker*, this Court struck the balance. We held that official censorship of student expression . . . is unconstitutional unless the speech "materially disrupts classwork or involves substantial disorder or invasion of the rights of others. . . . " School officials may not suppress "silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of" the speaker. The "mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint," or an unsavory subject, does not justify official suppression of student speech in the high school.

. . . The Court today casts no doubt on *Tinker's* vitality. Instead it erects a taxonomy of school censorship, concluding that *Tinker* applies to one category and not another. On the one hand is censorship "to silence a student's personal expression that happens to occur on the school premises." On the other hand is censorship of expression that arises in the context of "school-sponsored. . . expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school."

The Court does not, for it cannot, purport to discern from our precedents the distinction it creates. One could, I suppose, readily characterize the Tinkers' symbolic speech as "personal expression that happens to [have] occur[red] on school premises," although *Tinker* did not even hint that the personal nature of the speech was of any (much less dispositive relevance. But that same description could not by any stretch of the imagination fit Fraser's

speech. . . . Yet, from the first sentence of its analysis, *Fraser* faithfully applied *Tinker*.

Nor has this Court ever intimated a distinction between personal and school-sponsored speech in any other context. . . .

Even if we were writing on a clean slate, I would reject the Court's rationale of abandoning *Tinker* in this case. The Court offers no more than an obscure tangle of three excuses to afford educators "greater control" over school-sponsored speech than the *Tinker* test would permit: the public educator's prerogative to control the curriculum; the pedagogical interest in shielding the high school audience from objectionable viewpoints and sensitive topics; and the school's need to dissociate itself from student expression. None of the excuses, once disentangled, supports the distinction that the Court draws. *Tinker* fully addresses the first concern; the second is illegitimate; and the third is readily achievable through less oppressive means.

The Court is certainly correct that the First Amendment permits educators "to assure that participants learn whatever lessons the activity is designed to teach. . . ." That is, however, the essence of the *Tinker* tests, not an excuse to abandon it. . . .

. . . The educator may, under *Tinker,* constitutionally "censor" poor grammar, writing, or research because to reward such expression would "materially disrup[t]" the newspaper's curricular purpose.

The same cannot be said of official censorship designed to shield the *audience* or dissociate the *sponsor* from the expression. Censorship so motivated might well serve . . . some other school purpose. But it in no way furthers the curricular purposes of a student *newspaper,* unless one believes that the purpose of the school newspaper is to teach students that the press ought never report bad news, express unpopular views, or print a thought that might upset its sponsors. . . .

The Court's second excuse for deviating from precedent is the school's interest in shielding an impressionable high school audience from material whose substance is "unsuitable for immature audiences." Specifically, the majority decrees that we must afford educators authority to shield high school students from exposure to "potentially sensitive topics" . . . or unacceptable social viewpoints. . . through school-sponsored student activities.

Tinker teaches us that the state educator's undeniable, and undeniably vital, mandate to inculcate moral and political values is not a general warrant to act as "thought police" stifling discussion of all but state-approved topics and advocacy of all but the official position. . .

The mere fact of school sponsorship does not, as the Court suggests, license such thought control in the high school, whether through school suppression of disfavored viewpoints or through official assessment of topic sensitivity. The former would constitute unabashed and unconstitutional viewpoint discrimination, as well as an impermissible infringement of the students' " 'right to receive information and ideas.' " Just as a school board may not purge its state-funded library of all books that "'offen[d its] social, political and moral tastes,' " school officials may not, out of like motivation, discriminatorily excise objectionable ideas from a student publication. . . .

Official censorship of student speech on the ground that it addresses "potentially sensitive topics" is, for related reasons, equally impermissible. I would not begrudge an educator the authority to limit the substantive scope of a school-sponsored publication to a certain, objectively definable topic, such as literary criticism, school sports, or an overview of the school year. Unlike those determinate limitations, "potential topic sensitivity" is a vaporous nonstandard. . . .

The Court opens its analysis in this case by purporting to reaffirm *Tinker's* time-tested proposition that public school students " 'do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.' " That is an ironic introduction to an opinion that denudes high school students of much of the First Amendment protection that *Tinker* itself prescribed. Instead of "teach[ing] children to respect the diversity of ideas that is fundamental to the American system," and "that our Constitution is a living reality, not parchment preserved under glass," the Court today "teach[es] youth to discount important principles of our government as mere platitudes." The young men and women of Hazelwood East expected a civics lesson, but not the one the Court teaches them today.

I dissent.□

update

• On February 22, the U.S. Supreme Court declined to consider the appeal of the Church Hill fundamentalist families who sought permission for their children to "opt out" of a reading program involving the use of disputed textbooks (see page 40). The denial of *certiorari* in the case of *Mozert* v. *Hawkins County* leaves standing a unanimous August 24 decision by a panel of the U.S. Court of Appeals, which reversed a district court judge's ruling in favor of the parents.

• In a unanimous 8-0 decision, the U.S. Supreme Court ruled February 24 in favor of *Hustler* magazine publisher Larry Flynt's effort to overturn a $200,000 jury award to Rev. Jerry Falwell, who claimed that a parody published in Flynt's publication caused him emotional distress (see page 51). The ruling, written by Chief Justice William Rehnquist, was welcomed by press advocates and widely viewed as a reaffirmation and expansion of First Amendment rights.

• Further details in the May issue of the *Newsletter.*□

is it legal?

McCarran-Walter Act

Washington, D.C.

Congress voted December 16 to revise fundamentally the McCarran-Walter Act of 1952, a law that permitted the exclusion of foreigners on political grounds. The measure, in the form of an amendment to the 1988 State Department authorization bill, was signed by President Reagan.

Under the revision, aliens may no longer be denied entry into the United States on the basis of "past, current, or expected beliefs, statements, or associations." The amendment extends constitutional rights enjoyed by Americans to foreigners, but aliens still may be excluded if they have engaged in terrorism, or clearly threaten national security.

The measure was initiated by Sen. Daniel Patrick Moynihan (Dem.-N.Y.). In the House, one of its chief sponsors was Rep. Barney Frank (Dem.-Mass.). According to a Senate source, conservative Sen. Jesse Helms (Rep.-N. Carolina) agreed not to oppose the revision.

House Judiciary Committee Chair Peter W. Rodino, Jr., (Dem.-N.J.) said he intends to oversee a comprehensive revision of the McCarran-Walter Act early this year. During the early 1950s, the law was a foundation stone of McCarthyism.

"I don't think we have appreciated the hurt this legislation has done the United States over the years," Moynihan said. "It presented us as a fearful and subliterate and oppresive society."

The McCarran-Walter Act was a comprehensive codification of the immigration and naturalization system. Its chief sponsor, Sen. Pat McCarran (Dem.-Nevada), warned against "hard-core, indigestible blocs which have not become integrated into the American way of life, but which, on the contrary, are our deadly enemies." The bill was written without hearings and passed into law over the veto of President Harry S Truman, who said: "Seldom has a bill exhibited the distrust evidenced here for citizens and aliens alike."

"It is the worst law I've ever seen," added Frank. "What Pat [Moynihan] offered goes a long way to curing it. Frank said he hopes to strike down many of the 33 exclusions when revision is taken up in 1988. "Gays are excluded," he said. "And anarchists are excluded so they can't reassassinate [President William] McKinley. There is a lot of other bad stuff in the law. In 1988, we're going to finish the job."

The act has regularly created controversy when immigration authorities have used one of its exclusionary principles to keep prominent cultural and political figures from entering the United States. "From the time it was enacted in the fever of McCarthyism," Moynihan said, "there has been an annual scandal. Some writer, some painter, some minister could not be allowed to enter the United States."

Among some prominent and recent incidents:

- Pierre Trudeau, who became prime minister of Canada, was once denied entry to the United States.
- Dennis Brutus, the South African poet, was denied admittance. So were Gabriel Garcia Marquez, the Nobel laureate author; Graham Greene, the novelist; Dario Fo, the Italian playwright; Carlos Fuentes, the writer and former Mexican ambassador to France; Farley Mowat, the Canadian naturalist author (see *Newsletter*, July 1985, p. 126); and Hortensia Allende, widow of socialist Chilean president Salvador Allende.
- In 1983, Italian General Nino Pasti, a former NATO official and the former vice supreme Allied commander in Europe for nuclear affairs, was denied a visa. He had been an outspoken opponent of U.S. deployment of intermediate-range missiles in Europe.
- In 1986, Patricia Lara, a correspondent for the Colombian newspaper *El Tiempo,* invited by Columbia University to an honors convocation, entered the country on a legal passport and visa, but was jailed and deported under the McCarran-Walter Act. She had written critically about the Reagan administration's policies. No explanation was offered for her deportation (see *Newsletter,* January 1988, p. 26).
- In August, 1986, a U.S. District Court judge cited the act in denying New York-born writer Margaret Randall permanent resident alien status (see *Newsletter,* March 1986, p. 54; November 1986, p. 219). Reported in: *Washington Post,* December 17.

film

Los Angeles, California

Independent film makers have challenged new rules by the United States Information Agency (USIA) that allow the government to label documentary films as propaganda when certifying them for duty-free distribution abroad. The new regulations also require that documentaries submitted for duty-free export status offer a wide range of opinions on controversial topics and present film subjects in a "primarily factual manner."

The new interim rules took effect in December after U.S. District Court Judge A. Wallace Tashima ruled in the case of *Bullfrog Films* v. *Wick* that the agency's previous reviewing standards are unconstitutional (see *Newsletter*, January 1987, p. 19; January 1988, p. 21). Under the old regulations, documentaries could be denied duty-free certification if they might be misinterpreted by foreign audiences "lacking adequate American points of reference," or if their primary purpose was "to advance a particular opinion."

Among the films denied certification were ones depicting drug problems among America's urban youth, an award-winning film about the dangers of uranium mining, and a film the agency said left the impression the United States was the agressor in the war in Nicaragua.

USIA officials say the revised interim regulations avoid the constitutional pitfalls of the regulations ruled unconstitutional by Tashima because they only require that films acknowledge other points of view on controversial issues and that views expressed contain no distortions of fact. The regulations do not necessarily deny certification to films deemed propaganda by the agency, but they allow the government to label as propaganda any material the agency believes is intended to promote a particular political, religious or economic point of view.

According to the latest court challenge, however, labeling films as propaganda would impose indirect censorship on those seeking to distribute their documentaries duty free as educational films in foreign countries. At issue is the way the USIA complies with the 1948 Beirut Agreement among 72 nations that allows documentary film makers to avoid import duties. Documentaries denied educational duty-free certification may still be distributed abroad, but film makers must pay taxes and duties, which are often prohibitive.

Attorneys for the Center for Constitutional Rights argued before Judge Tashima January 4 that labeling the films propaganda would keep them from receiving an educational certification in countries like Canada, which has a policy against certifying propaganda.

"Essentially what they're saying is that unless you put out a view of America that is absolutely Ronald Reagan-rosy clean, they're going to say it's propaganda," said David Cole, representing nine independent film makers denied certification under the old regulations.

Government lawyers countered that the agency was entitled to express its opinion about films it considered propaganda. "Contrary to plaintiffs' argument, the First Amendment does not bar the government from exercising its freedom of speech in the manner authorized by the interim regulations," the government's brief declared. Reported in: *New York Times*, January 6.

broadcasting

Washington, D.C.

Last April's decision by the Federal Communications Commission to rewrite rules on indecency on radio and television (see *Newsletter*, July 1987, p. 143; January 1988, p. 29) is having a major effect on radio and television broadcasters.

The new policy, announced in the context of FCC action on complaints against three broadcast stations, is aimed at suppressing "language or material that depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." Previously, the FCC had banned only the "seven dirty words" made famous by comedian George Carlin, which resulted in the Supreme Court's landmark *FCC* v. *Pacifica Foundation* decision in 1978. Under the new policy, however, the FCC no longer bans only forbidden words. It now threatens to punish stations that broadcast innocent words if the program as a whole is "indecent."

The new policy is being challenged both at the commission and in court. But already station managers are struggling to work within its hazily defined parameters. According to Washington attorney Robert Corn, "Many radio and television stations are simply transforming their Washington counsel into informal censors, asking them if certain programs will pass the FCC's smell test. A manager in one-medium-sized Midwestern market even sought advice from his attorney about whether his announcers could use the word 'damn' on the air."

Broadcasting, a major trade publication, reported that disk jockeys have cleaned up their acts in many major markets. Even New York City's Howard Stern, who prompted one of the FCC's reprimands last spring, reportedly toned down his material on the advice of counsel.

Attempting to probe the limits of the FCC's tolerance, Pacifica station WBAI in New York City sought advance clearance of its annual "Bloomsday" reading from James Joyce's *Ulysses*. In its initial request for a ruling, the station did not reveal the source or identity of the material—it merely highlighted the potentially objectionable words about which it sought an opinion. Commissioner James Quello was widely

quoted as saying he thought the material was indecent, describing Joyce's language as "stuff you deck someone over. I'm amazed it made it as a classic" (see *Newsletter*, September 1987, p. 190).

Embarrassed by the incident, the FCC denied that its new indecency standard could lead to censorship of serious ideas. Yet, clearly, passages of Joyce's work certainly fell within the rather broad definition of indecency propounded by the commission. The FCC thus decided to refuse to make an advance ruling, implying, however, that serious works like *Ulysses* were permissible.

Still, the listener-sponsored station was compelled to expend nearly $100,000 in legal fees, and, more important, the ambiguity of the commission's new interpretation of policy still left the door open for censorship of serious works. In announcing the new approach, the FCC referred to the Justice Department for prosecution a case in which Pacifica affiliate KPFK in Los Angeles aired readings from a play called *Jerker*. The piece is about two AIDS patients who share their sexual fantasies. Although Justice declined to act on the grounds that the old interpretation of indecency—the seven words—still was in effect when the program was broadcast, the action cast a pall over any broadcast treatment of sexuality, no matter how serious.

One writer who successfully waged a landmark First Amendment battle thirty years ago, Allen Ginsberg, reported that radio stations across the country had dropped readings of his work. "Texts that have been played on and off for thirty years are now considered questionable," he said. Managers of at least two radio stations have written Ginsberg to explain that they felt compelled to remove his poems from the air to protect their licenses.

Indeed, a reading of Ginsberg's most celebrated poem, "Howl," which in 1956 was the subject of a major censorship trial in San Francisco—one of the great turning points in the history of free expression in America—was canceled for broadcast on the five station Pacifica network in early January. Instead, the stations and about sixty other outlets carried an interview with Ginsberg called "Why He Can't Broadcast 'Howl'."

"The government now has set out rules which have had an intimidating and chilling effect on broadcasters," Ginsberg said. "It's very similar to what goes on in the Soviet censorship bureaucracy. They use the same sort of language, and have recycled the word 'indecency' because they could never define 'pornography.' But I think it's the last desperate gasp of the Reagan neo-conservatives."

Pacifica has not been the only victim of the new approach. On January 12, the FCC moved to penalize a Kansas City, Missouri, television station, saying it appeared to have violated rules against braodcasting indecent programming at a time when children were likely to be in the viewing audience. The program—the movie *Private Lessons*—was broadcast at 8 p.m. last May 26 on KZKC-TV, Channel 62.

Even where the FCC has not been directly involved, its actions have helped create a new atmosphere. In Miami, a talkshow host agreed in an out of court settlement to allow a panel of arbitrators to monitor his program and determine whether any of his shows are "indecent." If the panel concludes that the shows crossed the line, Miami lawyer John B. Thompson would be paid $5,000. WZTA-FM personality Neil Rogers was embroiled for months in a dispute with Thompson, who urged advertisers to boycott the station.

In Indianapolis, a group called Decency in Broadcasting, an association of "parents, businessmen, teachers, pastors and concerned citizens," filed a complaint with the FCC asking it to revoke the license of radio station WFBQ-FM. Among the station's transgressions: it played the song "Keep It in Your Pants, Jim Bakker." The group mounted an all-out campaign against the station's morning disk jockey team. Newspapers ads have appeared urging listeners to complain. An FCC attorney said he received more complaints against WFBQ than any other station, noting, "In terms of sheer volume, this is the record setter."

The FCC policy is not limited to broadcasting. It already applies to speech transmitted by many different electronic means. For example, the same indecency standard governs all telephone conversations under Communications Act amendments adopted in 1983. Moreover, the commission has already enforced its indecency policy against amateur radio transmissions.

In July, an Ohio citizens' band operator was fined $500 for swearing on the air and barred from transmitting for two years. Employing electronic surveillance, the FCC and local prosecutors compiled evidence sufficient to lodge twenty-four separate counts of radio misuse against Earl Rose, who pleaded guilty to a lesser offense.

As attorney Corn concluded in *The Nation* magazine: "The Rose case erases any doubt about the FCC's resolve to deal harshly with profanity. It also gives ample reason to worry about the future of free speech should the commission later decide to cast a wider net. Nothing in the FCC's arguments confines the commission's policy to broadcasting or even electronic media. If other official bodies ultimately adopt the FCC's expansive legal reasoning on this issue, the same restrictive standard may be applied to all communications." Reported in: *The Nation*, December 5; *New York Times*, January 6, 13; *Variety*, December 9.

Washington, D.C.

Congress seems poised for a new and rancorous debate over whether there should be a ban on ownership of a daily newspaper and a television station in the same city. Bitter disagreement over the Federal Communications Commission's 13-year-old rule banning cross-ownership underlay a recent furor over Congressional passage of a measure that turned the agency's rule into federal law. At the heart of the issue is debate over whether such a ban is essential to assure

diversity of opinion and economic competition in every market.

The question was raised in late December, when Sen. Ernest F. Hollings (Dem.-S.C.) quietly attached legislation to the year-end catchall spending bill forbidding the FCC from changing, relaxing, or extending waivers of the cross-ownership ban. The only waivers in effect applied to Rupert Murdoch, who under the new law must now sell either the *New York Post* or his New York TV station, WNYW, and either the *Boston Herald* or WFXT-TV in Boston.

After the amendment was discovered, Sen. Edward M. Kennedy (Dem.-Mass.) said that he had urged Sen. Hollings to add the measure to the bill. Although the Kennedy-Hollings amendment simply called for the enforcement of an existing FCC rule, critics called the tactic of slipping the measure into an omnibus spending bill without discussion underhanded. Many contended that Kennedy took the action primarily because the Murdoch newspapers have been among his sharpest critics. The *Boston Herald* routinely calls the senator "fat boy" and the "world's oldest juvenile delinquent."

But Kennedy defended the manuever. "The FCC was about to do again what it had already done to the Fairness Doctrine and repeal the basic antitrust rules that prohibited media cross-ownership," he charged. "Right-wing ideology is dictating policy, and deregulation is running amok."

The cross-ownership rule originated in the 1970s, when concentration of ownership became controversial. The FCC, then led by Dean Burch, a conservative Republican appointed by President Nixon, undertook a study of the impact of cross-ownership. Based on that study, in 1975, the agency, then headed by another Nixon appointee, unanimously prohibited formation of new combinations of newspapers and broadcasting stations. The American Newspaper Publishers Association and the National Association of Broadcasters challenged the FCC policy on constitutional grounds, but the rule was upheld by the Supreme Court in 1978.

In that opinion, the Court observed that the regulation was "designed to further the First Amendment goal of achieving the widest possible dissemination of information from diverse and antagonistic sources." The Hollings-Kennedy restriction on extending waivers of the ban could raise a new court issue based on part of the 1978 ruling that noted that the FCC could grant waivers in hardship cases. Those opposed to cross-ownership say that the Court's decision acknowledged that danger to diversity of opinion and competition was very difficult to quantify, and did not require the FCC to demonstrate harm. The FCC should have discretion to decide, the court ruled.

Opponents of the cross-ownership ban say that there is competition and diversity, created by cable TV, multiple radio stations in most areas, and an explosion in print journalism, especially magazines. They point out that many television-newspaper combinations were allowed to continue and had not demonstrated any harm. Moreover, the American Newspaper Publishers Association has argued that the FCC has even damaged diversity in some cases by refusing to allow cross-ownership, which resulted in newspapers going out of business, as in the case of the *Washington Star.*

But defenders of the ban argue that the development of cable television and other new media forms have not eliminated the threat to diversity at the local level that the ban is meant to address. "The newspapers-television combination affords to an individual greater power to influence the economy and government of a community than any one person should have," commented Andrew Jay Schwartzman, executive director of the Media Access Project. Ban supporters have also emphasized that the FCC's recent abolition of the Fairness Doctrine, which mandated that broadcasters give equal time to opposing sides of public issues, increases the importance of prohibiting cross-ownership. Reported in: *New York Times*, January 11; *Washington Times*, January 7.

schools

North Pole, Alaska

High school students in this town named for Santa's mythical home couldn't say "Christmas" last December. At least they couldn't post the word on signs, posters and bulletin boards at school. Principal Terry Marquette imposed the ban after the Fairbanks North Star Borough school district decided the holiday aspect should be stressed. Teachers were told to substitute "Happy Holidays" for "Merry Christmas," and students were encouraged to follow suit.

Marquette and other school officials said they were abiding by laws separating church and state, trying to make sure one religion or belief was not advocated over another. He said the orders prompted many calls from parents and other residents. Student Council members put up an "illegal" poster showing a person hanging from a noose. "But all I said was Merry C_____," the figure said. Reported in: *Washington Post*, December 19.

Louisville, Colorado

Halloween has been banned. The Parents Task Force at Cold Creek Elementary School in Louisville did it. They succeeded in convincing their local school board that the holiday has religious connotations insofar as it promotes devil worship. Louisville school policy states that "a religious view or belief can be recognized or related to a form of worship, is based upon an existing set of tenets, and recognized as a form of deity." The school board found that Halloween met this definition, and to be consistent, banned Halloween activities in the schools. Reported in: *NEA Human and Civil Rights*, December 1987.

Douglas County, Georgia

Despite opposition from some students and parents, the Douglas County Board of Education voted unanimously December 7 to prohibit Douglas teachers from promoting religion. The policy says school employees shall not "conduct religious activities" or attempt to change or disparage the religious views of any student. Board chair John James said the policy was needed to "protect the religious freedom" of students and parents.

"When you have a problem in your system, when the school system is used, it affects everybody," James said, referring to a 1986 legal controversy over pregame prayers at Douglas High School football games. However, some students and teachers objected that the policy would deny students an important form of counseling. "It's really stripping Christian rights and principles in school," said history teacher Vince Vineyard.

The policy, revised three times, was drafted by a group of community members, ministers, and school officials in response to complaints from parents who did not want their children's religious freedom undermined. In September, 1986, U.S. District Court Judge Ernest Tidwell ruled that pregame prayers violated the principle of separation between church and state. The prayers were later resumed under an "equal access plan" and the case is pending in the U.S. Court of Appeals for the Eleventh Circuit. Reported in: *Atlanta Journal,* December 8.

Franklin, Wisconsin

Public school students will not be allowed to use derogatory or obscene words or gestures under a policy adopted December 9 by the Franklin School Board. The policy says in part: "Comments or gestures which are vulgar or obscene, derogatory comments that are racial, sexual, physical or relate to religious belief or moral convictions are not allowed in any aspect of the school program."

School Superintendent H. E. Guzniczak said the policy was a philosophical statement saying the board would not approve of or tolerate abusive behavior. He said each principal would determine punishment for verbal abuse or abusive behavior.

Last September, School Board President Carol K. Oeder said the Franklin board should issue a statement similar to one the Greendale School Board issued shortly after expelling four black students who beat a white student who had been taunting them with racial slurs at Greendale High School last June. The Greendale policy was issued after it was learned that the white student had not been punished because the district had no policy on verbal abuse. Reported in: *Milwaukee Journal,* December 10.

student press

Minneapolis, Minnesota

The *Minnesota Daily* filed a lawsuit against the University of Minnesota January 4 to obtain a report to be used by the National Collegiate Athletic Association (NCAA) in an ongoing investigation of the university's men's athletic program. The University document is believed to contain testimony and findings of an internal investigation into alleged wrongdoings by the men's basketball team.

The *Daily* claims the report is public information, but university officials disupte that, claiming the information is protected by the Minnesota Data Practices Act and other disclosure laws. Reported in: *Minnesota Daily,* January 4.

obscenity and pornography

Los Angeles, California

A coalition of adult film producers and distributors filed suit November 24 against the U.S. Department of Justice, seeking to overturn a wide range of federal anti-obscenity statutes they say "exact too high a price" for delivering sex films to an increasingly accepting American public. In a civil suit filed in U.S. District Court in Los Angeles, the newly formed Adult Video Association sought a declaration that the use of federal racketeering laws and tough new sentencing and bail reform statutes in obscenity prosecutions is unconstitutional.

The lawsuit is aimed at a series of federal criminal statutes directed at the pornography industry—including the federal Racketeer Influenced and Corrupt Organizations Act (RICO), amended in 1984 to allow federal authorities to forfeit the assets of defendants found to have committed two or more obscenity violations and to seek prison terms of up to twenty years against them.

The 100-member association is also targeting new federal sentencing guidelines, which increase the penalties for obscenity violations, and the 1984 Bail Reform Act, under which, they charged, federal prosecutors are seeking to have those charged with obscenity offenses held without bail pending trial.

Because federal laws defining obscenity are so vague—relying on "community standards" and material that would be "patently offensive" to most viewers—adult film distributors and video retailers have no way of knowing

which films might be considered obscene, said John Weston, attorney for the association.

"Because of the utter inability of any nationwide distributor of sexually oriented materials to obtain a pre-distribution determination that any such presumptively protected materials are in fact constitutionally protected, the potential possibility of prosecution under traditional federal obscenity laws is a constant threat to those who attempt to provide the adult public with constitutionally protected sexually oriented videotapes," the association asserts in its suit.

The constant threat of prosecution and its attendant severe criminal penalties "will result in such self-censorship that the American public will no longer be able to purchase or rent any . . . sexually oriented videotapes," the lawsuit said.

The first obscenity prosecution under the RICO statute concluded in November in Alexandria, Virginia, with the conviction of eight operators of neighborhood video stores and the seizure of a warehouse and three vehicles (see page 55 and *Newsletter,* January 1988, p. 20). The association claims the trial set a dangerous precedent by opening the assets of a corner video store to federal seizure.

U.S. Attorney Robert C. Bonner, whose office has prosecuted a variety of obscenity cases, said there is "a significant segment of the public that feels that there ought to be at least some enhanced enforcement of the anti-obscenity statues." With the lawsuit, Bonner said, "it appears that the pornography industry is seeking some special protection from the enforcement of the law that generally is not accorded to other individuals and businesses that engage in federal criminal violations."

Bonner said it was "rather unlikely" that his office would file an action against a mainstream video retailer. But Perry Ross, co-chair of the Adult Video Association, charged that stepped up obscenity enforcement efforts by the Justice Department and some state authorities after release of the Meese Commission report (see *Newsletter,* January 1987, p. 3; January 1988, p. 1) threaten to discourage retail video outlets from carrying even so-called "soft core" films that are not illegal under most definitions of obscenity.

Moreover, Ross remarked, intensified enforcement comes at a time when rentals of adult-oriented videotapes have topped 100 million a year, nearly double the number two years ago. That is an indication, producers say, that sex films are not considered obscene by the public, but are instead widely accepted. "The government says we're an $8 billion business. That's a lot of Americans," Ross said. But he added that production had dropped sharply in the wake of more vigorous enforcement of more restrictive legislation. Reported in: *Los Angeles Times,* November 25.

Los Angeles, California

The Los Angeles City Board of Fire Commissioners favorably considered January 7 a proposal that would ban sexually explicit material at fire stations. While the three members present of the five-member board generally agreed that some sort of ban should be implemented, Commissioner Ann Reiss Lane said, "There is confusion as to the most appropriate way to accomplish this goal."

In 1981, the fire department circulated an administrative bulletin to all fire stations defining sexual harassment and began conducting training seminars. But aside from general rules concerning conduct unbecoming a member of the fire department, there are no written rules concerning sexual harassment or displaying sexually explicit material.

The board's discussion revolved in part around what the language of a policy should be. The proposal under consideration stated that the display of any sexually explicit material—books, magazines, newspapers or videos containing photographs or pictures of sexual organs or sexual acts—is prohibited on all fire department property.

"I would hate to think that [a firefighter] couldn't bring in *Lady Chatterly's Lover* to work," said Commissioner Kenneth Washington. City Fire Chief Donald Manning added that the mannequins used for firefighter training could conceivably be outlawed by the plan. Assistant City Attorney Leslie Brown said the proposed regulation needed work "to make it a little more palatable in terms of the Constitution." Reported in: *Los Angeles Herald-Examiner,* January 8.

San Francisco, California

A sex film maker's challenge to his precedent-setting prosecution on pandering charges got an apparently sympathetic response from the California Supreme Court at a hearing December 10. "A lot of our major first-run films would be prohibited" if paying actors to perform sexual acts for a movie was considered pandering, Justice Edward Panelli told a prosecution lawyer.

When Deputy Attorney General Loren Dana said major studio films would be safe from prosecution because they generally used simulated sexual intercourse, Panelli questioned the legal distinction and a defense lawyer said it was irrelevant. Prostitutes "solicit sex for money," said Dennis Fischer, lawyer for producer Harold Freeman. "A prostitute and a customer must exist . . . and the object of that transaction is sexual gratification. . . . Mr. Freeman paid actors to act. The object was to make a film, not sexual gratification."

Freeman's 1985 conviction on pandering charges, for paying actors and actresses to engage in actual sexual intercourse for the filming of the movie *Caught From Behind, Part II* (see *Newsletter,* July 1985, p. 129) is a test case for Los Angeles County's attempt to use pandering laws against the sex film industry. Rather than trying to prove a film obscene, or reserving prosecution for those who employ minors, the District Attorney's Office is contending that producers are guilty of pandering when they pay actors and actresses to perform actual sexual intercourse on camera.

Freeman's conviction and 90 day jail sentence were upheld by a state appeals court that included Justice John Arguelles, who has since been named to the Supreme Court (see *Newsletter*, March 1987, p. 58). Arguelles voted to uphold the conviction, but dissented from the sentence, saying a prison term was warranted. He did not take part in the Supreme Court hearing.

In defending the conviction, Deputy Attorney General Dana said the constitutional right of free expression would not protect a producer from prosecution for an actual crime, such as murder, committed on stage. But Justice Marcus Kaufman noted that unlike a murder, the acts in Freeman's film "were not independently criminal, other than for the payment of money." Reported in: *Los Angeles Daily News*, December 11; *Variety*, December 16.

Ottawa, Canada

Anti-pornography legislation that is pending before the Canadian Parliament is "puritanical and unrealistic" and poses "potentially serious problems" for academics, researchers, and creative artists, the Canadian Association of University Teachers has declared. The association's associate executive secretary, Victor W. Sim, said the bill contained "ill-judged, naive, and unworkable" definitions that could damage Canadian research and teaching.

The bill would outlaw the publication, possession, and distribution of material that "incites, promotes, encourages, or advocates" certain types of sexual activity, such as those involving children and violent or "degrading" acts, or that visually depict more conventional sexual activity. The measure also would restrict the display and availability of erotica, defined as any visual matter depicting "certain parts of the human body" in a predominantly sexual context.

Sim said the bill would inhibit research on child pornography and might be used to prevent such work as an anthropologist's showing a film on aborignal circumcision rites. He said stage productions of some Greek classics also might be closed if they used student actors who were under 18 or appeared to be.

Alan MacDonald, director of libraries at the University of Calgary, said there was "probably something in every element of our collection that could be considered offensive under this bill's provisions." The Toronto Public Library included Ayn Rand's *The Fountainhead*, Vladimir Nabokov's *Lolita*, and Boccacio's *The Decameron* on a list of books potentially at risk. The library closed most of its branches for one day in December to protest the bill.

The bill was the government's fifth legislative attempt to curb pornography since 1978. Previous legislation was withdrawn or never brought to a vote. Reported in: *Chronicle of Higher Education*, January 13.

Dallas, Texas

Attorneys for an adult bookstore contended in a lawsuit filed in federal court in December that Dallas police unconstitutionally seized more than a thousand of the firm's publications. According to the suit by Paris Adult Bookstore No. II, the police action was part of an "intentional and malicious" attempt at prior restraint and censorship. Three raids were made at the store in November.

More than a dozen adult businesses have joined Paris Bookstore in a lawsuit against a city ordinance enacted in 1986 that limits the location of sexually oriented businesses and requires them to be licensed by the city. Reported in: *Dallas News*, December 16.

"dial-a-porn"

Hayward, California

One day last June, a 12-year-old boy spent two-and-a-half hours calling and listening to sexually explicit messages on telephone "dial-a-porn" services. Two weeks later, he sexually assaulted a 4-year-old girl. In October, the boy's parents and the girl's parents joined in a lawsuit against the telephone company and the providers of the explicit material. The suit argues that the companies' negligence in allowing minors to call for messages caused the incident.

The lawsuit, which seeks $10 million in damages, is being closely watched by prosecutors, pornography opponents, the "dial-a-porn" industry, and telephone companies. With Pacific Bell, California's biggest phone company, as the chief defendant, the case is expected to test the extent to which a phone company is liable for injuries arising from failure to block children's efforts to make such calls.

Pornography opponents hope the case will be the "knockout punch" to minors' access to such "dial-a-porn" messages. "It's going to test the cause and effect theory," said Benjamin W. Bull, national legal counsel for Citizens for Decency Through Law, an anti-obscenity group based in Scottsdale, Arizona, that is financing the suit. The plaintiffs, Ron and Cheryl Thompson of Hayward and Gary and Paulette Callen of Fremont, have promoted their cause in television appearances.

The suit charges Pacific Bell and two providers of sexual phone messages, Olmstead Communication and Telepromo, Inc., with negligence in distributing harmful matter to minors, distributing obscene matter, contributing to the delinquency of minors, and incitement. Phone companies around the nation have argued that while they may find "dial-a-porn" services deplorable, they cannot legally deny them telephone lines.

But a decision in an Arizona case by the U.S. Court of Appeals for the Ninth Circuit, sitting in San Francisco, may

change this view. On September 14, the court upheld Mountain Bell's decision not to provide service to companies offering pornographic messages. The court said Mountain Bell's policy represented a private business decision rather than government action and therefore did not violate the First Amendment.

Lawyers for Carlin Communications, Inc., a New York-based message provider, have petitioned the appeals court for a rehearing of the case. Carlin successfully challenged earlier Federal Communications Commission rules on the services. The FCC's rules now require that "dial-a-porn" services screen out calls by minors by supplying their customers with special access numbers or having them pay by credit card. But the rules apply only to interstate calls. President Reagan has announced proposed legislation to make the use of interstate telephone calls to communicate material indecent to minors a crime punishable by six months in jail and a $50,000 fine.

In late December, the FCC took its first action against "dial-a-porn" operators, moving against two California companies. "This signifies that the commission will enforce the rules it has adopted," said FCC general Counsel Diane Killory.

Some lawyers argue that the Hayward lawsuit will not succeed. They cite an unsuccessful suit that alleged that a sexual assault of a 9-year-old girl in San Francisco in 1974 was "stimulated" by a similar assault in the television movie *Born Innocent*, broadcast four nights earlier. The case was dismissed in 1978 on First Amendment grounds, and the plaintiffs' lawyer acknowledged that he could not prove that the movie constituted incitement to "imminent lawless action."

But the Hayward plaintiffs plan to stress distinctions between broadcasts and the telephone. They argue that the telephone is not subject to the standards followed by television and radio broadcasts on what is suitable for children and that parents cannot monitor children's phone calls as easily as they can television viewing. Reported in: *New York Times*, November 22; *Time*, December 21.

computerized information

Washington, D.C.

As one of its final acts before adjourning, the Senate passed and sent to President Reagan a bill to restore civilian control over the standards for safeguarding information stored in the nation's computers. The Computer Security Act of 1987, a product of extensive bipartisan negotiation and compromise, was approved unanimously by the House in June, shortly after the White House dropped its opposition. The Senate approved it by a unanimous voice vote December 21.

The act repudiates a policy the Reagan administration established by executive order in September, 1984, giving the Defense Department and the National Security Agency authority to set security standards for information contained in federal and private computerized files anywhere in the country. The military's authority extended not only to classified national security information, but also to unclassified information regarded as "sensitive."

Under the Carter administration, the Pentagon had been in charge of standards for safeguarding classified information. The Commerce Department held responsibility for the security of other computerized government information. The Reagan administration said its policy was required by the threat to national security posed by the growth of computerized information services, from which it said sophisticated users could piece together important knowledge even from unclassified material.

The Reagan order set off alarms both in Congress and in industries making heavy use of computers. The alarm grew when Rear Adm. John M. Poindexter, then the President's national security adviser, issued a further order that broadened the definition of "unclassified sensitive" information. The administration rescinded that directive after strong Congressional criticism.

The Computer Security Act places responsibility for the federal government's computer security policy with the National Bureau of Standards, an agency of the Commerce Department. The Defense Department will retain authority only over classified national security information. The law provides no authority for federal agencies to monitor or control the use of unclassified computerized information in the private sector.

Under the act, the National Bureau of Standards is to develop government-wide standards for protecting the security of information in federal computers and to assist the private sector in developing its standards. In addition, the Bureau will develop programs to train computer operators in security techniques.

Sen. Patrick J. Leahy (Dem.-VT), who was one of the act's sponsors, called it "a significant act of Congress that rejects the promulgation of information policy by executive fiat." The law's other principal sponsors were Sen. Lawton Chiles (Dem.-FL); Rep. Jack Brooks (Dem.-TX); and Rep. Dan Glickman (Dem.-KS). Reported in: *New York Times*, December 24.

prisoners' rights

Cambridge, Maryland

The American Civil Liberties Union has asked the U.S. District Court in Baltimore to order Dorchester County jail officials to immediately stop the practice of denying inmates access to magazines and newspapers. "The Supreme Court and the First Amendment are clear on this issue," ACLU Director Stuart Comstock-Gay said. "It's not a question of interpreting the law. The jails simply cannot deny the inmates these publications."

Comstock-Gay said jail officials routinely deny prisoner requests to subscribe to newspapers and magazines, adding that jail officials circulate a single copy of the *Cambridge Daily Banner*, a paperback Bible, and a few romance and western novels. The jail holds about fifty inmates.

Comstock-Gay said the issue surfaced December 11 when ACLU attorneys inspected the facility as part of a class-action suit being brought against living conditions in the institution. During that inspection, the attorneys saw guards confiscate a copy of *Playboy* from an inmate. When prison officials were told such action was clearly unconstitutional, they told the ACLU attorneys they would continue the practice, said Comstock-Gay.

"There is tremendous intransigence at this institution," Comstock-Gay remarked. "We are already having to fight every step of the way in our conditions case, and now this. We intend to make it clear to these people that the Constitution, unpleasant as it may seem to them, does apply to the Dorchester County Jail." Reported in: *Baltimore Sun December 28.*

slander

Calvert City, Kentucky

A New York professor sued by Calvert City after criticizing environmental conditions there has described the litigation as a "crude attempt to suppress information." Calvert City sued Dr. Paul Connett November 24, two days after he spoke there to the Coalition for Health Concerns. The lawsuit alleged that false and malicious remarks by Connett damaged the community. Also named as defendants were Kentucky Educational Television and the University of Kentucky. The lawsuit was withdrawn two weeks later.

In his speech, Connett referred to Calvert City as a "cancer city" and criticized LWD, Inc., a waste disposal company that operates incinerators in the town. He said he based his concerns on government documents and comments from area residents. Reported in: *Paducah Sun-Democrat*, December 6.□

(IFC report . . . from page 38)

The IFC is pleased to report that 52 persons have been chosen—on the basis of applications submitted—to participate in the Intellectual Freedom Leadership Development Institute, to be held May 5-7, 1988, in Chicago. We anticipate an excellent Institute.

A joint publication of the ALA and the American Association of School Administrators, tentatively titled *Censorship and Selection: Issues and Answers*, has been completed and will be available in late February. It is an intellectual freedom manual for school administrators. The Committee is quite pleased with the finished product and we think it will provide much needed assistance to increasingly beleaguered school administrators.

A report from J. Dennis Day, chair of the Special Committee on Freedom and Equality of Access to Information, was received by the IFC. The Intellectual Freedom Committee understands that there are several aspects to the access question, two of which are physical and philosophical. The Committee is cognizant that some physical concerns may not fit within its charge as determined by the ALA Council. The Intellectual Freedom Committee's responsibilities are concerned directly with the First Amendment to the U.S. Constitution and with the *Library Bill of Rights*. The Committee, therefore, asserts that all philosophical aspects of the so-called access question either directly or indirectly relate to its charge. The IFC expresses serious reservations with the proposed addition of yet another Association unit that will serve to further impede progress on identifying access issues and problems and moving toward their solutions. These concerns will be conveyed to the Special Committee on Freedom and Equality of Access to Information.

Actions

The Committee has acted at this Meeting to confront a potential infringement of the right of access to libraries and information—a potential infringement of the access rights of persons with physical or mental impairments and, in particular, those with AIDS or the AIDS virus. To the end of responding immediately to this problem, the IFC has passed and presents to Council for its approval, a resolution affirming that the Library Bill of Rights includes all such persons of all ages. [see "Resolution on Access to the Use of Libraries and Information by Individuals with Physical or Mental Impairment"] The IFC has appointed a subcommittee to draft a new Interpretation of the Library Bill of Rights on health related risks. This Interpretation will be presented for your approval at the 1988 Annual Conference in New Orleans.

In concert with the Legislation Committee, the IFC discussed the failure of the 1987 Congress to include in the FY88 continuing budget resolution a provision enacting into law the Fairness Doctrine and Equal Time Provision which the Federal Communications Commission had on August 4, 1987 announced it would no longer enforce. The IFC recommends that Council approve the attached resolution which has also been approved by the Legislation Committee. [see "ALA Statement on Enactment Into Law of the Fairness Doctrine"]

Finally, the IFC received the news of Everett T. Moore's death with great sadness and awareness of deep loss to the profession and to many of us as individuals. To honor Everett

Moore's memory, the IFC, in cooperation with the Board of Trustees of the Freedom to Read Foundation, have presented a Memorial Resolution to Council for its adoption. [see page 37 and "Resolution in Honor and Memory of Everett T. Moore (1909-1988)]

Concluding Remarks

1988 is an election year, so it is worth noting that most (but not all) of the most recent and severe limitations on access to information have emanated from the federal government. The IFC expects, alas, that we have not seen the last of the FBI's visitations to libraries, and we have just seen the beginning of new federal, as well as state, attempts to halt the distribution and/or sale of allegedly pornographic materials. There is little doubt that the report of the Meese Commission was but a beginning.

The commitment of the American Library Association to the freedoms protected by the First Amendment is clear and unwavering and especially in this election year.□

Resolution on Access to the Use of Libraries and Information by Individuals With Physical or Mental Impairment

Whereas, The *Library Bill of Rights* states that "books and other library resources should be provided for the interests, information and enlightenment of all people of the community the library serves" and "a person's right to use a library should not be denied or abridged . . . "; and

Whereas, Federal and state constitutional and statutory laws forbid public institutions from discriminating against handicapped individuals, i.e., persons who have a physical or mental impairment; and

Whereas, Court opinions have clearly interpreted said laws as proscribing discrimination against persons who have acquired immune deficiency syndrome ("AIDS"), AIDS-related complex ("ARC"), or who test positive for the human immunodeficiency virus ("HIV"); and

Whereas, The American Medical Association and the United States Department of Health and Human Services have opined that while the human immunodeficiency virus that causes AIDS is a contagious disease, it cannot be transmitted by casual contact;

Therefore Be It Resolved,

1. That the *Library Bill of Rights* of the American Library Association, which insures access to library facilities, materials and services by all people of the community includes individuals with physical or mental impairments; and

2. That the American Library Association deplores discrimination against and denial or abridgment of library and information access to persons of all ages who have acquired immune deficiency syndrome ("AIDS"), AIDS-related complex ("ARC") or who test positive for the human immunodeficiency virus ("HIV").

Adopted January 13, 1988, by the ALA Council.□

ALA Statement on Enactment into Law of the Fairness Doctrine

Whereas, The Fairness Doctrine and Equal Time Provisions have protected the First and Fourteenth Amendment rights of the public and were intended to ensure access to information as well as diversity of viewpoints; and

Whereas, The Federal Communications Commission abolished the Fairness Doctrine on August 4, 1987; and

Whereas, The American Library Association has historically supported the Fairness Doctrine; and

Whereas, The Federal Legislative Policy adopted by the ALA Council on July 1, 1987 opposes the "deregulation of the broadcast media and the repeal of the Fairness Doctrine, including the 'equal time' provisions"; and

Whereas, The Congress of the United States has yet to enact the Fairness Doctrine into law;

Therefore Be It Resolved, That the American Library Association urge the United States Congress to immediately enact the Fairness Doctrine into law; and

Be It Further Resolved, That this resolution be forwarded to all of the appropriate bodies.

Adopted January 13, 1988, by the ALA Council.□

Resolution in Honor and Memory of Everett T. Moore (1909-1988)

Whereas, Everett T. Moore did throughout his career vigorously and effectively support libraries and the freedom to read, and

Whereas, Everett T. Moore served with great distinction on the American Library Association's Intellectual Freedom Committee from 1950 through 1966, and

Whereas, Everett T. Moore served as vice-president of the Freedom to Read Foundation from its founding in 1969 through 1974, and

Whereas, Everett T. Moore stood as plaintiff in the landmark case *Moore* v. *Younger,* and

Whereas, Everett T. Moore's contributions to librarianship were many and distinguished, and

Whereas, the ALA Council and the Freedom to Read Foundation Board of Trustees have learned, with great sadness, of the death of Everett T. Moore—an invaluable friend and staunch supporter of intellectual freedom, and

Whereas, the Freedom to Read Foundation Board of Trustees authorized the creation of the Everett T. Moore Memorial Endowment Fund and also by separate action entered the name of Everett T. Moore as the first name on the Freedom to Read Foundation's Roll of Honor,

Now Therefore Be It Resolved, that the ALA Council and the Freedom to Read Foundation Board of Trustees in their official capacities and all Councilors and Board members in their individual capacities, do hereby express to Jean Moore their deepest sympathies and request that they be allowed to share the grief which his loss causes.

Adopted by the Freedom to Read Foundation Board of Trustees, January 8, 1988
Adopted by the ALA Council, January 13, 1988.□

Suggested Procedures for Implementing "Policy on Confidentiality of Library Records"

When drafting local policies, libraries should consult with their legal counsel to insure these policies are based upon and consistent with applicable federal, state, and local law concerning the confidentiality of library records, the disclosure of public records, and the protection of individual privacy.

Suggested procedures include the following:

1. The library staff member receiving the request to examine or obtain information relating to circulation or other records identifying the names of library users, will immediately refer the person making the request to the responsible officer of the institution, who shall explain the confidentiality policy.
2. The director, upon receipt of such process, order, or subpoena, shall consult with the appropriate legal officer assigned to the institution to determine if such process, order, or subpoena is in good form and if there is a showinig of good cause for its issuance.
3. If the process, order, or subpoena is not in proper form or if good cause has not been shown, insistence shall be made that such defects be cured before any records are released. (The legal process requiring the production of circulation or other library records shall ordinarily be in the form of subpoena "*duces tecum*" [bring your records] requiring the responsible officer to attend court or the taking of his/her disposition and may require him/her to bring along certain designated circulation or other specified records.)
4. Any threats or unauthorized demands (i.e., those not supported by a process, order, or subpoena) concerning circulation and other records identifying the names of library users shall be reported to the legal officer of the institution.
5. Any problems relating to the privacy of circulation and other records identifying the names of library users which are not provided for above shall be referred to the responsible officer.

Adopted by the ALA Intellectual Freedom Committee, January 9, 1983; revised January 11, 1988.□

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kudos

Some well-deserved recognition:

• The Miami-Dade Public Library System was honored at a Bill of Rights dinner December 12. The Miami chapter of the American Civil Liberties Union presented Acts of Courage Awards to the library board and the Friends of the Miami-Dade Public Library, Inc., for their courageous stand against censorship. In June, the library resisted efforts to ban two controversial movies, *La Cage Aux Folles* and *Last Tango in Paris,* which were screened at the library as part of a program on the history of film censorship. The showings were coordinated with display of the *Censorship and Libraries* exhibit, sponsored by the American Library Association (see *Newsletter,* September 1987, p. 193).

• Gene Lanier, professor of library science at North Carolina State University and member of the ALA Intellectual Freedom Committee, received the Robert B. Downs Intellectual Freedom Award for 1987 from the University of Illinois and Greenwood Press at the ALA Midwinter Meeting in San Antonio, January 9.

• The 1987 North Carolina Library Association and Social Issues Resources Series, Inc. (SIRS) Intellectual Freedom Award was presented October 29 to Dale E. Gaddis and Betty S. Clark, director and associate director of the Durham County Public Library. Gaddis and Clark were chosen for their dedication to intellectual freedom and for their courage in their defense, with the support of their Board of Trustees, of the library's exhibits during Gay Pride Week 1986.

• The 1987 Educational Media Association of New Jersey and SIRS Intellectual Freedom Award was presented November 1 to Barbara Guenther and Ruth Rechter, teachers at Middletown High School North, for the team taught (in cooperation with school librarians, Jane Frye and Nina Kunzle) Civics-English class which provided students an opportunity to question, analyze, debate, judge and explore conflicting viewpoints.□

PMRC at it again

In an apparent effort to neutralize some of its most outspoken critics, the Parents Music Resource Center asked Recording Industry Association of America (RIAA) head Jay Berman to "talk" with "industry personnel" who had made "outrageous and erroneous statements" about the PMRC's efforts against so-called "porn rock." In a December 14 letter, the group called on Berman to discuss PMRC concerns with New York-based rock publicist Howard Bloom, who cosponsored a full-page ad in a major music trade paper criticizing the group's efforts as an "attack on freedom."

PMRC was formed two years ago by a group of politically well-placed "Washington wives," including Tipper Gore, wife of Democratic presidential aspirant Sen. Albert Gore, Jr., (Dem.-Tenn.). The group negotiated a labeling agreement with the RIAA in 1985 whereby the record companies agreed to place warning stickers on records they deemed objectionable. The agreement, as well as PMRC's overall campaign, has been fraught with controversy (see *Newsletter*, July 1985, p. 138; September 1985, p. 183; November 1985, p. 189; January 1986, p. 3; July 1986, p. 116; March 1987, p. 44; September 1987, p. 192; January 1988, p. 8).

"We need your help in promoting this agreement as a positive public service and not a continuing controversy," the letter said. "We feel it would be helpful if you could talk to Howard Bloom and others [who] are perpetuating these misconceptions so that we can all move forward."

The anti-PMRC ad, sponsored by Music in Action, warned that the PMRC may cause "more trouble than you think," and linked the group to a series of controversial anti-rock incidents, such as the Los Angeles prosecution of punk rocker Jello Biafra for distributing his "obscene" *Frankenchrist* album (see *Newsletter*, September 1986, p. 158; July 1987, p. 141; November 1987, p. 241), and the arrest of a store clerk in Florida for selling an "obscene" rap record to a minor (see *Newsletter*, September 1987, p. 178).

The ad also drew a parallel between the PMRC's activities and a 1921 anti-smut campaign that "crippled the film industry . . . and led to the creation of the Hayes Office, which censored films for more than 40 years."

"We had a First Amendment then, too," the ad commented.

Bloom was unavailable for comment on the letter, but his wife Linda Bloom told reporters that PMRC was "pushing for censorship. We're sorry they don't understand that. They really do want to stop forms of music that offend them." She added that the letter itself "strikes me as a form of censorship. They're doing it very gently, but they're asking the industry to shut Howard up."

Punk-rocker Biafra, whose band the Dead Kennedys disbanded because of pressure brought on by its unsuccessful obscenity prosecution, also criticized the PMRC for "going behind the backs of the press and public to try and coerce the RIAA to muzzle anyone. . . who criticizes or exposes the PMRC's goals."

"Here they are whining about being tired of the charge that they're pushing censorship," Biafra said, "yet they're trying to use the industry to shut their own people up. How dumb do they think people are?"

The singer added that the Dead Kennedys' *In God We Trust, Inc.* album was banned from chain stores owned by Trans World Music (including the Peaches and Record Town chains) *because* song lyrics were printed on the album jacket. PMRC has frequently called upon record companies to place either warning stickers or lyrics on explicit records as a way of addressing their concerns without formal censorship. Reported in: *Variety*, December 23.□

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success stories

library

Fairbanks, Alaska

The Sisters Impossible, by James David Landis, should remain in Fairbanks school libraries, a review committee concluded November 24. The book—a ballet novel for fourth- through seventh-graders—was challenged by Shirley Stevenson, the mother of a third-grader at Pennell Elementary School on Eielson Air Force Base. Stevenson objected to some of the language in the book and to a scene in which aspiring young ballerinas danced naked in a dressing room before class.

The committee of three parents, two teachers and a principal recommended unanimously that the book remain on the shelves. "I believe the positive aspects of the book far outweigh the few sections that may offend some readers," said parent Johnny Oliver. "I also believe in the need for free choice."

Stevenson's objections to language centered on the use of the words "fart" and "bullshit," each of which occurs once, as well as the word "hell," which appears seven times. "Children this age don't need encouragement to use language or ideas brought out in this book," Stevenson wrote in her complaint. "If in fact the school libraries are filled with such material, perhaps the school district should improve the screening of our children's reading material," she told the review committee.

Former school board member Barbara Tabbert, who testified before the committee, said, "I do not want other parents deciding for me what is appropriate for my child to read and what is not appropriate for my child to read. I think that is the parent's obligation and the parent's business."

In 1985, the school board in Sallisaw, Oklahoma, decided to ban *The Sisters Impossible* after parents complained. An opposing group of parents, supported by the Freedom to Read Foundation, sued to reverse the ban. The board eventually agreed out of court to put the book back on the shelves and paid the parents' group for its attorney fees. Reported in: *Fairbanks Daily News-Miner,* November 25.

university

Cambridge, Massachusetts

In 1986, the Massachusetts Institute of Technology (MIT) set up an Ad Hoc Pornography Screening Committee composed of faculty, students and staff. The group's task was not to abolish the showing of X-rated or explicit films, but to establish a system of prior review to determine when and where such movies would be allowed. As part of its work, the committee devised a complicated definition of pornography. Those films which fit the definition, it was decided, could not be shown at certain times of the academic year or in certain places. Nor could they be screened without giving six weeks' advance notice.

Last February, Adam Dershowitz, nephew of Harvard law professor and civil liberties writer Alan Dershowitz, showed the film *Deep Throat* to an audience of 80 without prior approval and under conditions proscribed by the committee. James R. Tewhey, associate dean of the Office of the Dean for Student Affairs, filed a complaint. A hearing was scheduled, and Dershowitz asked that the press be admitted. The request was denied, but the campus paper, *The Tech,* covered the story in considerable detail, noting editorially that "any screening restrictions would compromise freedom of speech."

At the hearing, Professor Dershowitz testified as an expert witness that "any decent student would be opposed to this patently absurd and unconstitutional policy." He also made a telling legal point: Although MIT is a private institution, the Massachusetts Civil Rights Act prevents private as well as public colleges and universities from abridging the constitutional rights of students. Alan Dershowitz also cited a court decision some years earlier, when a district attorney moved against a Harvard student for showing *Deep Throat* on campus. The judge said the film was constitutionally protected.

In November, Adam Dershowitz received the verdict of the Committee on Discipline. The committee found that "the Policy Statement on Sexually Explicit Films constitutes an excessive restraint on freedom of expression at MIT. This freedom is fundamental to the broader principle of academic freedom and cannot be unduly abridged by administrative action. The Policy is, therefore, inappropriate for MIT . . . by unanimous vote, the committee thereby dismisses the charges against you." Reported in: *Washington Post,* December 19.□

(less access . . . from page 44)

while databases provided directly to DIALOG by the collecting agencies costs $45.70 per connect hour. Privatization more than doubles the cost to end users. (Hearings on Scientific and Technical Information: Policy and Organization in the Federal Government (HR 2159 and HR 1615), House Committee on Science, Space, and Technology, Subcommittee on Science, Research and Technology, 100th Congress, 1st Session, July 14 and 15, 1987)

July—In an opinion piece in *The Chronicle of Higher Education*, Gerhard L. Weinberg argued that the only realistic solution to the practical problems of declassifying the enormous volume of records generated by the modern state is to set up a system of automatic declassification which in this country would be done by amending the Federal Records Act. Under such a system, every document that is classified would have a declassification schedule, including dates. No further review of the document would be needed unless the declassification were to be either speeded up or postponed. Weinberg said that the United States at one time led the way among nations in making its records openly and promptly accessible to its citizens on the assumption that in a democracy the government's records are the public's records. "Republican and Democratic Administrations alike worked toward reasserting the principle that the people should have access to the records of their government, and instituted practical administrative and budgetary procedures to accomplish that end. The declassification process was dramatically and emphatically reversed on August 1, 1982, when a new executive order on security classification took effect." ("With Secret Records Growing Some 7 Million Pages a Year, We Desperately Need an Automatic Declassification System," *The Chronicle Of Higher Education*, July 15)

July—OMB asked the Census Bureau to eliminate about half the proposed questions on the 1988 Decennial Census Dress Rehearsal for the 1990 Census, roughly 30 questions, including all questions about housing value and rents, population mobilitly, energy, unemployment and fertility. "OMB is coming in and taking the guts out of a lot of [the Census]," said Randy Arndt of the National League of Cities. "This would have a devastating effect on the ability of local governments to measure and evaluate trends." But OMB cites the Paperwork Reduction Act of 1980, which gives it authority over all forms people have to answer for the government. ("Census Questions in Question." *USA Today*, July 30)

August—The Joint Economic Committee, chaired by Sen. Paul Sarbanes (D-MD), held a hearing on August 7 to examine the potential effects of the OMB proposal to eliminate or shift questions in the Census dress rehearsal. Two panels representing users were unanimous in criticizing the OMB. Rachel Van Wingen, government documents librarian at Georgetown University, representing ALA, concluded: "Wise policy decisions are difficult to make in the face of uncertainty; they're impossible to make in the dark. There's no reason to be in the dark. The Bureau of the Census exists with a mandate to collect statistices in the national interest." ("OMB 'Unable to Approve' Dress Rehearsal, Proposes Alterations," *News from COPAFS*, August-September 1987)

August—The Reagan Administration published a definition of "classifiable" in the August 11 *Federal Register*, p. 29793, to clarify a controversial secrecy pledge required of civilian and military personnel with access to classified information. The secrecy agreement, which already has been signed by an estimated two million persons in 67 agencies since the Administration began using it in January, has been criticized by members of Congress and some government employees who believe it is intended to stifle the flow of information from the executive branch. The form requires the employee to pledge not to disclose either "classified" or "classifiable" information. Sen. Charles E. Grassley (R-IA) said that the term "classifiable" could "mean anything. It will have a chilling effect on those working for government who will not disclose anything for fear that at a later date it might turn out to have been classified." At the center of the row is form SF 189, which springs from a controversial National Security Decision Directive issued by the Reagan Administration in 1983 that authorized polygraph testing and required prepublication reviews. ("Secrecy-Vow Change to be Aired," *The Washington Post*, August 11 and "Taking the Pledge," *The Washington Post*, August 28)

August—The Air Force, bucking Administration policy, for more than a year has required all its employees—including thousands with no access to secrets—to sign a controversial new security pledge. The Air Force obtained 750,000 signatures between July 1986 and June 1987 of which at least 150,000 apparently came from employees without security clearances. A Reagan Administration regulation forbids agencies to solicit signatures from employees who do not have security clearances, and therefore have no access to classified data. The Administration recently announced it would halt the withdrawal of security clearances from employees refusing to sign the form pending the outcome of a lawsuit challenging the pledge. However, agencies are to continue requesting employees to sign the form. ("Air Force Oversteps Security Policy," *The Washington Post*, August 24)

August—Pentagon budget cutters have decided to stop publishing the *Defense Management Journal,* the scholarly award-winning magazine that covered subjects from computers to managing sick leave. Defense considers the publication too costly. ("Thrift Savings Plan Grows," *The Washington Post,* August 13.

August—In the last few years, as computers have become ever more sophisticated and numerous, federal officials have become increasingly concerned about unclassified data. They fear that foreign citizens might harm national security by extracting valuable scientific and technical information from the huge volume of unclassified material accessible in computers. In a 1984 directive, President Reagan likened information to a mosaic, saying that bits of unclassified data, innocuous in isolation, "can reveal highly classified and other sensitive information when taken in aggregate." The government, the directive said, shall encourage, advise and, where appropriate, assist the private sector to protect "sensitive non-Government information, the loss of which could adversely affect the national security."

September—The American Federation of Government Employees filed suit against the government on September 1 charging that mandatory secrecy pledges violate employees' constitutional rights. The lawsuit asks the court to declare the pledges illegal and to rescind the secrecy agreements signed by more than two million federal employees. The union argues that the restrictions interfere with employees' freedom of speech and that they will inhibit employees who want to blow the whistle on fraud, waste and abuse in government. Two types of secrecy pledges are at issue.

The more common pledge, which applies to 3½ to 4 million government employees and contractors with access to classified information, requires those workers to promise not to disclose classified or "classifiable" information. That pledge, SF189, is overseen by the Information Security Oversight Office, a part of the General Services Administration. The second pledge, which applies only to employees with the highest-level clearances, those covering Sensitive Compartmented Information—requires such workers to sign a lifetime pledge stating that they will obtain approval from government censors for any book, speech or publication, including fictionalized accounts, dealing with classified material. That pledge applies to about 150,000 current workers with SCI clearances and is overseen by the Central Intelligence Agency. ("Secrecy Pledges Challenged Openly," *The Washington Post,* September 2)

September—Army Lt. General William E. Odom, director of the National Security Agency, the nation's most secret spy agency, said the federal government should prosecute news organizations that publish sensitive information. He said news leaks in the last several years have crippled U.S. intelligence-gathering capabilities in some parts of the world. Odom also criticized the Reagan Administration for its torrent of leaks and some U.S. officials for failing to have the "appropriate level of paranoia" about Soviet espionage efforts. He singled out James Bamford's 1982 book on the National Security Agency, *The Puzzle Palace,* for having "done more damage to us than almost anything I can think of." Odom believes Bamford and others publishing such material should be prosecuted under a 1950 law barring disclosure of U.S. "communication intelligence activities," but acknowledged that government officials who tell reporters about sensitive intelligence findings are just as guilty as those who publish them. ("Chief of Spy Agency Criticizes News Leaks," *Chicago Tribune,* September 3)

September—OMB ended weeks of dispute with the Census Bureau by ordering it to drop three of about 70 questions the bureau had proposed for the next census, and to use seven others only on a "long form" that goes to a limited sample of houses. The three deleted questions involved fuels and household utilities. The seven permitted only on the long form involve housing. The OMB approved all proposed questions on fertility, transportation and labor market participation. OMB had received hundreds of letters which said that detailed information about local neighborhoods is vital in planning local transportation, housing and labor services, and is available only from the full decennial census. ("OMB Orders Several Questions Cut From Census," *The Washington Post,* September 17)

September—Agents of the Federal Bureau of Investigation have asked librarians in New York City to watch for and report on library users who might be diplomats of hostile powers recruiting intelligence agents or gathering information potentially harmful to United States security. The initiative upset library officials, who fear intrusions into the privacy and academic freedom of library users and who object to what they called an effort to turn librarians into government informers. FBI officials acknowledged that staff at fewer than 20 libraries, most of them academic rather than public, had been asked to cooperate with agents in a Library Awareness Program that is part of a national counterintelligence effort. ("Libraries Are Asked By F.B.I. to Report on Foreign Agents." *The New York Times,* September 18) (Note: ALA's Intellectual Freedom Committee protested "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" in an Extraordinary Memorandum from ALA's Office for Intellectual Freedom, October 1987. See *Newsletter,* November 1987, p. 215).

September—Vietnam veteran Mike Rego has been trying for five years to learn more about an experimental drug he was treated with at a Veterans Administration hospital. He wonders whether it may have been a factor in his contraction of a fatal and incurable disease. But information about the drug, 6-aminonicotinamide, or 6-AN is scarce. No one, including the doctor who treated Rego with 6-AN, the Canadian manufacturer, the distributor and the Food and Drug Administration, which approved the drug for experimental use, will share their knowledge of 6-AN and its possible side effects. Hoping to learn whether other patients treated with 6-AN later contracted Lou Gehrig's disease, Rego asked the FDA for information. It was then, he claims, that he learned 6-AN was approved only for experimental use—and that, to protect the manufacturer's trade secrets, the FDA cannot release information on the drug. "I cannot respond to your request for information on the investigational uses" of 6-AN, associate FDA commissioner Jack Martin wrote to Rego, "since any acknowledgement . . . would constitute disclosure of confidential commercial information." ("Drug Data Is Denied to Incurably Ill Man," *The Washington Post,* September 24)

September—The number of publications issued each year by the new Commission on Civil Rights has declined significantly compared to the number issued by the old commission. The largest decline was in state advisory committee reports. The committees also produce documents called briefing memoranda—informal, unpublished, internal documents that describe for the commissioners the results of local community forums. These forums enable the advisory committees to identify and share with the commission how community leaders perceive local civil rights problems. The chairman of the commission believes that a count of publications was an adequate measure of assessing effectiveness of the old and new commissions. The commission is an advisory body and the issuance of publications is the primary means by which it presents the results of its work to the public. ("U.S. Commission on Civil Rights: Commission Publications During Fiscal Years 1978-1986," GAO/GDD-87-117BR, September 25)

October—The Reagan Administration engaged in illegal "covert propaganda activities" designed to influence the news media and the public to support its Central American policies, according to a report by the General Accounting Office released on October 4. The report said the State Department's Office of Public Diplomacy for Latin America and the Caribbean had violated a congressional ban on the use of taxpayers' money for unauthorized publicity and propaganda purposes in 1985. Rep. Dante Fascell (D-FL), chairman of the House Foreign Affairs Committee, said, "It makes me wonder what else is still being hidden from Congress and the American people." ("GAO Accuses Administration of Illegal Latin Propaganda," *The Washington Post,* October 5)

October—Testifying before a House subcommittee, Sen. Charles Grassley (R-IA), said: "We in Congress must ask ourselves this question: Is SF-189 a legitimate attempt to prevent disclosures of classified information, or is the Administration over-reaching its authority, seeking to gag public servants, in order to prevent embarrassing disclosures of waste and abuse?" His answer: "My personal involvement and dealings with executive branch officials on this matter indicate to me an attempt on their part to go way beyond the legitimate protection of classified information. Their intent, in my view, is to place a blanket of silence over *all* information generated by the government. It is a broad grab for power by any standard, and it begs to be addressed immediately by Congress." (Hearings on Standard Form 189, House Committee on Post Office and Civil Service, Subcommittee on Human Resources, 100th Congress, 1st Session, October 15, 1987)

October—The contents of the still-classified National Security Decision Directive 192, signed by President Reagan in August 1985, concerning the "Star Wars" Strategic Defense Initiative were revealed in a book scheduled for release in November 1987. The book, *The Arms Control Delusion* by Sen. Malcolm Wallop (R-WY) and Angelo Codeville, was given official advance clearance by the CIA. Columnist Jack Anderson commented: "Either the agency's reviewers overlooked the sensitive quotes, didn't realize how sensitive they were or knowingly approved the book's ad hoc declassification of a presidential document." ("Conservatives' Book Escapes Censor," *The Washington Post,* October 26)

October—The Secretary of Defense issued policy and precedural guidance in the October 30 *Federal Register*, pp. 41707-10, for considering national security in the dissemination of Department of Defense-sponsored scientific and technical information at meetings, whether such meetings are conducted by the U.S. government or private organizations.

November—The Supreme Court rescued the Internal Revenue Service from a sea of paperwork by making it easier for the IRS to withhold information sought under the Freedom of Information Act. The court ruled, 6 to 0, that the IRS may refuse to disclose certain records even if it were possible to delete everything linking those records to individual taxpayers. "This ruling means the [IRS] can turn down just about any FOIA request," said Paul B. Stephan III, a University of Virginia law professor who studied the case which involved the Church of Scientology in a dispute with the IRS. ("Court Eases Way for IRS to Withhold Information," *The Washington Post,* November 11)

November—In an extraordinary secret order, President Reagan declared that if Congress failed to provide satisfactory funding and support for his Strategic Defense Initiative, he would abandon the traditional interpretation of the U.S.-Soviet Antiballistic Missile Treaty, which has been accepted by every president since the treaty was signed in 1972. The secret document—which Members of Congress were never meant to see—was National Security Decision Directive 192 signed in August 1985. The directive laid the theoretical groundwork for reinterpreting the ABM Treaty. From there, it was but a step to Reagan's order in December 1986 to proceed with the Zenith Star laser program. ("And Then There Was Zenith Star," *The Washington Post,* November 15)

November—During Senate debate (November 12, *Congressional Record,* p. S16219), Sen. Alphonse D'Amato (R-NY) said that "a good name of OMB would be 'the Office of Disinformation.' " He accused OMB of "twisting the figures when they see fit, cutting the programs thay may disagree with, shirking their responsibilities by failing to communicate forthrightly with the committees and the Members attempting to work something out, but really looking to see how they can sabotage those programs they are opposed to—the ideologs, OMB. They are not elected to run the country." Sen. D'Amato made his remarks during debate on a major housing bill. ("Senate Nears Vote on a Housing Bill; Reagan Vows Veto," *The New York Times,* November 16)

December—Jane E. Kirtley, executive director of the Reporters Committee for Freedom of the Press, and Paul K. McMasters, chairman of the freedom of information committee of the Society of Professional Journalists, Sigma Delta Chi, testifying before the House Committee on Government Operations, Subcommittee on Information, Justice and Agriculture, accused the Justice Department of refusing to enforce the Freedom of Information Act. Kirtley and McMasters urged Congress to create an independent agency to resolve disputes over access to government files. Kirtley said the obstacles faced by reporters in obtaining government information had increased because of the Reagan Administration's "general proclivity toward secrecy" and the lack of an effective enforcement agency. Rep. Glenn English (D-OK), subcommittee chair, agreed: "Justice seems to be doing all they can to undermine the intent of the Freedom of Information Act." ("2 Say Officials Withhold Data," *The New York Times,* December 2)

December—Although more than a quarter of all government publications have bitten the dust since the Reagan Administration took office, the surviving 12,000 are fodder for continuing controversy over whether the campaign has gone far enough or too far, whether it has gone after the fattest targets or whether it has mowed down some useful consumer publications while leaving the more ideologically oriented publications intact. An article by Judith Havemann presented a case study of one of the most controversial remaining publications, *Management,* a slick, glossy publication of the Office of Personnel Management. Alan K. Campbell, the founder of *Management,* describes the publication, conceived as an academic journal for government executives, as today "a little heavy on the ideology." But Herb Berkowitz, public relations director of the Heritage Foundation, said that *Management* is "probably the best publication put out by the government." Asked whether it should exist, he said he would be "happy to see them do away with every taxpayer-supported publication."

Management sells 25,003 copies at a bulk rate, has 2,600 subscribers at $13 a year, goes to 819 libraries, and is given away to 4,000 reporters and others by OPM. When Reagan cracked down on government printing, OPM Director Constance J. Horner was required to justify *Management's* existence every year to OMB. She had to "certify in writing that it is necessary in the transaction of public business required by law of the department, office or establishment." The critics of *Management* said its very existence shows how political the process is. ("Management Magazine: House Organ With a 'Spin,' " *The Washington Post,* December 2)

December—A secret appendix to the arms treaty signed by President Reagan and Soviet leader Mikhail Gorbachev reveals that the United States has deployed dozens more medium-range nuclear missiles in Europe than it has previously acknowledged, U.S. officials said. The 114-page treaty appendix, which the Reagan Administration decided to withhold from the public without offering an explanation, also revelas that the Soviets currently have 15 percent fewer medium-range missiles than the Administration has publicly stated in recent weeks. The government's decision not to release the document was made at the request of Pentagon officials who argued that the disclosure could invite terrorist attacks on the U.S. military bases it identifies, according to senior U.S. officials. But other U.S. officials, including Secretary of State George P. Schultz and the chief U.S. negotiator of the INF pact, Maynard W. Glitman, have argued that the terrorist threat is minimal because U.S. nuclear warheads are not typically stored with the weapons deployment sites listed. Shultz and Glitman have protested the Administration's decision, which was also opposed by the Soviets. Gennadi Gerasimov, chief spokesman of the Soviet foreign ministry, said he plans to publish the document in a Ministry of Foreign Affairs bulletin that he edits. ("U.S. Deployed More Missiles Than Disclosed," *"The Washington Post,* December 10)

December—Public Printer Ralph Kennickell, in a December 10 letter to Joint Committee on Printing Chair Rep. Frank Annunzio (D-IL), says he will "seek proposals from interested vendors in the information services industry . . . for dissemination of government publications to depository

libraries. . . at little or no cost to the government possibly because of the development or enhancement of the vendor's commercial interests." GPO would "supply the successful information service provider with government publication data tapes, at no charge, for loading onto its own computers. The information would be retrievable on-line from terminals in a test group of depository libraries, where information searches would be conducted for citizens without charge." The number of online access hours available to test libraries would be limited. An RFP would be announced by February 1, 1988. Kennickell's letter indicates that because "it appears that Congress will be denying our request for an additional $800,000" for pilot projects, he is seeking to use existing resources to comply with the JCP's desire to test electronic formats in depository libraries. The letter did not address potential changes in the nature of the Depository Library Program and possible proprietary control of government information by the private-sector vendor.

December—People for the American Way assailed the Reagan Administration for an "obsession with secrecy" and said an opinion poll shows that a majority of Americans believe "the government is not open enough." In a 142-page report, *Government Secrecy; Decisions Without Democracy,* the Administration is criticized for issuing more than 280 "secret laws," increasing the Pentagon's "black budget" for secret projects to at least $22 billion, binding millions of federal employees to secrecy contracts and reversing a 30-year trend toward fewer classified documents (see page 41). The group denounced the "extraordinary power" of OMB and decried its authority to decide which government publications are released, to set up information-collection policies for all federal agencies and to rewrite federal regulations. ("Administration Accused of Secrecy Obsession," *The Washington Post,* December 18)

December—According to a GAO report to be published on December 21, the veil of secrecy surrounding trading in the Treasury and agency securities market should be lifted. Although the Treasury securities market is the most active in the world, with more than $100 billion of trades a day, there is no central exchange where prices and trades are listed as in the stock market. Instead, trading is handled through brokers acting as middlemen between major banks and securities firms. Individual investors, pension funds and insurance companies that are customers of the banks and securities dealers have only partial knowledge about the wholesale prices of government securities. While the Treasury and Federal Reserve endorsed the GAO report, the Securities and Exchange Commission said the conclusions were too cautious.

Richard G. Ketchum, director of the division of market regulation at the SEC, said a specific deadline should be established for broadening access to price information. He noted that established customers of the brokers already have full access to price and trading information and may not find it in their best interests to make that information available to their trading competitors and customers. He recalled that in the stock market, the SEC had to invoke its authority to force securities dealers to publish the price quotes and trade information on over-the-counter stocks. If brokers do not move to broaden trading access within two years, the SEC said the issue ought to be taken up by regulators or Congress. ("Data Urged on Trading Securities," *The New York Times,* December 21)

December—Congress, making good on earlier warnings, ordered the Administration to stop asking government workers to sign controversial secrecy pledges governing classified information. Congress attached a rider to the continuing resolution providing funding for fiscal year 1988 which bars any department from spending money to implement or enforce what are known as Standard Form 189 and Standard Form 4193. The prohibition is good throughout fiscal 1988, which ends next September 30, "and should force the administration to come up here and work something out with us if they want to continue using such pledges," a House staff official said. House officials said the congressional directive probably would not affect enforcement actions involving the SF4193 prepublication pledge. ("Congress Restricts Use of Secrecy Pledges," *The Washington Post,* December 24)

December—The Information Security Oversight Office which oversees the implementation of SF 189, "Classified Information Nondisclosure Agreement." further clarified the term "classifiable information" in the December 21 *Federal Register,* p. 48367. The revised definition states: "Classifiable information" does not refer to currently unclassified information that may be subject to possible classification at some future date, but is not currently in the process of a classification determination."

December—Reportedly neither the United States Information Agency nor the educational film industry is happy with the interim regulations published by USIA in the November 16 *Federal Register,* pp. 43753-57 (correction 12/11 *FR*, p. 47029) which are titled: "Propaganda as Educational and Cultural Material; World-Wide Free Flow (Export-Import) of Audio-Visual Materials." USIA will accept comments on the notice until January 15, 1988. With the interim rules in place, USIA has begun to review 3,590 films, maps, charts and other audio-visual materials it accumulated during more than a year of inaction since a Los Angeles federal judge ruled that USIA exceeded its authority and acted like a censor in deciding what materials to recommend for duty-free status under the Beirut Agreement of 1948. In November the filmmakers returned to court, charging that USIA again was attempting to play censor (see page 60). ("Reviewing USIA's Role as Reviewer," *The Washington Post,* December 30)□

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