newsletter on intellectual freedom

IFC ALA

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

ISSN 0028-9485

July 1989 ☐ Volume XXXVIII ☐ No. 4

"most censored" stories of 1988

The failure of America's national news media to fully investigate and report the political background of George Bush during the political campaign topped the list of 25 overlooked issues of 1988, according to a national panel of media experts. Richard H. Meeker, national president of the Association of Alternative Newsweeklies and publisher of *Willamette Week*, in Portland, Oregon, charged that if the average American voter had read the alternative press's coverage of the campaign in 1988, George Bush would not have been elected president.

The second most under-covered story of the year, cited by *Project Censored*, revealed how the U.S. Environmental Protection Agency covered-up pollution stories; the third ranked story told of the risk of a nuclear disaster with the space shuttle. Now in its 13th year, *Project Censored*, a national media research effort conducted annually at Sonoma State University, California, locates stories about significant issues which are not widely publicized by the national news media.

Following are the top ten under-reported news stories of 1988 as announced by project director Carl Jensen, professor of Communication Studies at Sonoma State University:

1. *George Bush's "Dirty Big Secrets."* America's alternative press reported more than ten stories exposing questionable activities by George Bush dating from his reported role as a CIA "asset" in 1963 to his campaign's connection with a network of anti-Semites with Nazi and fascist affiliations in 1988. Observers say that just some of those stories might have made a difference in the 1988 election if the nation's "establishment" press had reported them with the same intensity that the alternative press did.

2. *How the EPA Pollutes the News.* Reports of improvement in environmental pollution levels in 1988 were a deliberate attempt by the Reagan administration's Environmental Protection Agency to mislead and pacify the public, according to a former EPA press officer. Also revealed was an administration policy which invited corporate executives to the White House to discuss revisions in pending EPA regulations in an effort to reduce costs to industry.

3. *Risk of a Nuclear Disaster with the Space Shuttle.* Despite serious concerns of experts in the field of radioactivity, the National Aeronautics and Space Administration still plans to launch the Project Galileo shuttle flight in October, 1989. The shuttle will carry nearly 50 pounds of radioactive plutonium, which would be enough to kill every person on earth if it were dispersed equally worldwide.

(continued on page 149)

Published by the ALA Intellectual Freedom Committee, C. James Schmidt, Chairperson.

in this issue

targets of the censor

books

periodicals

(continued on page 126)

(ISSN 0028-9485)

Newsletter on Intellectual Freedom is published bimonthly (Jan., March, May, July, Sept., Nov.) by the American Library Association, 50 E. Huron St., Chicago, Illinois 60611. Subscriptions: $25 per year (includes annual Index) from Subscription Department, American Library Association. Editorial mail should be addressed to the Office for Intellectual Freedom, 50 E. Huron St., Chicago, Illinois 60611. Second class postage paid at Chicago, Illinois and at additional mailing offices. POSTMASTER: Send address changes to Newsletter on Intellectual Freedom, 50 E. Huron St., Chicago, Illinois 60611.

FBI may release some "library awareness" files

The Federal Bureau of Investigation agreed in April to consider making public thousands of pages of secret documents about its efforts to find spies among library users, acknowledging for the first time that the controversial search was conducted across the nation, according to a stipulation order issued May 1 in U.S. District Court.

Initially, the FBI maintained there were fewer than one hundred pages of documents in bureau files that could be released to the public on its "library awareness program," which it said involved only 21 libraries in New York state. But under the court order, the bureau agreed to begin processing more than 3,000 pages of documents related to libraries in at least thirteen states, according to Scott Armstrong, executive director of the National Security Archives.

The archive is a Washington, D.C., research organization in whose name a Freedom of Information Act lawsuit, funded by the People for the American Way, was filed last year.

The FBI also acknowledged in the order that its agents had searched FBI files for possible information on the nation's librarians or library organizations. "That means more than 300 librarians were the subject of a file search," Armstrong said.

The FBI declined to comment on the order from U.S. District Court Judge Louis F. Oberdorfer.

In testimony before Congress and in meetings with the American Library Association's Intellectual Freedom Committee, FBI Director William Sessions and other FBI officials had defended the "library awareness program" as a response to a massive, decades-long effort by Soviet agents to ferret out sensitive information from libraries. Sessions testified that the FBI program had focused on 21 specialized libraries, mostly around New York City (see *Newsletter*, November 1987, p. 215, 241; May 1988, p. 79; July 1988, p. 113; September 1988, p. 143, 145-147; November 1988, p. 191; January 1989, p. 1; March 1989, p. 35, 62-65).

But a list attached to Oberdorfer's order showed that the FBI had visited more than a dozen other libraries from Princeton University to UCLA, including George Mason University and the University of Maryland. Some of these visits had been acknowledged by the FBI in a December, 1988, communication to Rep. Don Edwards (see *Newsletter*, March 1989, p. 64).

"The bureau has been going into libraries asking very searching questions about what people with foreign-sounding names or accents have been going into libraries to read or look at. It's a fishing expedition for foreign counter-intelligence," said Quinlan J. Shea, Jr., special counsel to the archive.

"Why should anybody else be able to find out what books you're checking out and what you're studying?" Shea continued. "That's a very private matter and it should be." The lawsuit accused the FBI of deliberately withholding information about the "library awareness program." Reported in: *Washington Post*, May 2. □

campus racism poses First Amendment dilemma

In an effort to curb an alarming growth in the number of racial incidents and to promote tolerance on campus, a growing number of universities and colleges have taken steps to restrict forms of expression considered offensive. Opponents have charged, however, that no matter how well-intended, these restrictions threaten to infringe on the freedom of intellectual discourse that is at the heart of the educational mission.

The debate has been particularly acute at Stanford University, where calls for a ban on "harassment by vilification" reached a peak last fall after two drunken freshmen turned a symphony recruiting poster into a blackface caricature of Beethoven and posted it near a black student's room. The ensuing outrage led to the students' eviction from their dormitories. The incident also spurred efforts to amend the university's basic student code of conduct and threw Stanford into a wrenching debate over the limits to free expression.

The University of Michigan in Ann Arbor and Emory University in Atlanta also passed anti-harassment policies. And in early April, in an 8-7 vote, regents at the University of Wisconsin at Madison took the first step toward enacting an anti-harassment policy.

The University of Massachusetts at Amherst, where racial tension erupted in a brawl two years ago that injured ten students, is "actively considering" a similar move, said a university official.

"You have to set up something that tells students what the limits are, what they can do and what they can't," said Canetta Ivy, a Stanford junior. "We don't put as many restrictions on freedom of speech as we should."

"What we are proposing is not completely in line with the First Amendment," Ivy added. "I'm not sure it should be. We at Stanford are trying to set a standard different from what society at large is trying to accomplish."

At both Stanford and Wisconsin, the proposed policies were written to address racist, sexist and anti-gay epithets, jokes and other kinds of harassment that occur in small group settings, when one student intends to make others uncomfortable. But opponents argue that efforts to outlaw ugly remarks will inevitably endanger the right to express uncomfortable ideas.

"For the colleges not to deal with the racial prejudice on campus is an abdication of their responsibility in a free society," said Ira Glasser, executive director of the American Civil Liberties Union. "They've got to address those things, but not this way, both because it doesn't work and because it's incompatible with freedom of speech and religion."

"When you pass a rule which represses speech, you are avoiding dealing with the underlying problem and you're passing a rule whose sweep is going to be broader than the things you're trying to contain," Glasser added.

At Emory, President James T. Laney issued a statement broadening the school's prohibition of sexual harassment to include "all kinds of discriminatory harassment — by race, color, national origin, religion, sex, sexual orientation, age, handicap or veteran's status." The guidelines appear to follow federal ones prohibiting sexual harassment.

In April, 1988, the Michigan regents issued an advisory warning that discriminatory harassment could result in sanctions. A university report indicated that since September about 100 complaints had been filed.

At Stanford, the draft originally proposed and then withdrawn by the Student Conduct Legislative Council prohibited personal attacks characterized by "obscenities, epithets and other forms of expression that by accepted community standards degrade, victimize, stigmatize or pejoratively characterize them on the basis of personal, intellectual or cultural diversity."

The draft was criticized by both the university's general counsel, John Schwartz, and Gerald Gunther, a professor of constitutional law. "The refusal to oppress offensive speech is one of the most difficult obligations the free speech principle imposes on all of us," Gunther wrote in a letter to the council. "Yet it is also one of the First Amendment's greatest glories, and indeed it is a central test of a community's commitment to free speech."

"More speech, not less, is the proper cure for offensive speech unless and until the controversial speech runs into such narrow constraints as the barrier to incitement to immediate illegal action," he wrote.

A new draft of the proposal, published April 19, made intent to hurt or harass an essential component of any offense, requiring that remarks be "directly addressed" to the people involved and stating that the offense "must be expressed in words, pictures or symbols that are commonly understood to convey, in a direct and visceral way, hatred or contempt for human beings of the sex, race, color, handicap, religion, sexual orientation or national and ethnic origin in question."

If the proposed Stanford policy is incorporated into the code of student conduct, violators could be subject to the code's existing range of penalties. The proposal must still go through a complex ratification process, however, including approval by university president Donald Kennedy.

While private universities like Stanford have greater leeway in regulating student conduct, public universities are legally required to keep their policies in accordance with federal law, including the First Amendment. Intent to harass and "create a hostile atmosphere" for someone or some definable group is also key to the draft policy at Wisconsin, which must still go through a review process in the state legislature and another regents' vote before becoming official.

State Senator D. Spencer Coggs (Dem.-Milwaukee) has introduced legislation in the Wisconsin House of Representatives requiring regents to prohibit "racist or discriminatory comments, epithets or other expressive behavior, uttered to an individual." The legislation, approved unanimously in the House, was expected to meet opposition in the state Senate. Reported in: *New York Times*, April 25. □

sponsors boycott TV after viewer complaints

A wave of advertiser defections from prime-time network programs swept through the television industry this spring, and industry executives attribute it primarily to viewer objections to alleged sexual themes and explicit language in programming. Unlike previous movements led by religious and educational groups, the new protests appear to be from viewers acting independently.

In response to letters from angry TV viewers, such major advertisers as Coca-Cola, McDonald's, Chrysler, General Mills, Campbell Soup, Ralston-Purina and Sears all announced cancellations of commercials in television programs because of material cited as offensive in viewer complaints.

Attention was originally focused on the phenomenon in February when a Bloomfield Hills, Michigan, woman with influential connections in state Republican politics convinced several of the country's largest advertisers to withdraw support from the Fox Network's popular series *Married . . . With Children* (see *Newsletter*, May 1989, p. 82).

In mid-April, Ralston-Purina, General Mills and Domino's Pizza pulled their ads from NBC's long-running comedy show *Saturday Night Live* after complaints about the repetitive use in one sketch of the word "penis." Domino's action was announced not by the company but by the American Family Association, a Tupelo, Mississippi, group headed by the Rev. Donald E. Wildmon that has long been in the forefront of efforts to pressure television broadcasters to "clean up."

Wildmon noted that in addition to the actions by Domino's, Ralston-Purina and General Mills, the Mennen Company had pulled its advertising from ABC's short-lived medical series *Heartbeat* after an episode in which a prostitute had an abortion. However, the Gay and Lesbian Alliance Against Defamation asserted that Mennen had "bowed to pressure from Christian fundamentalist groups" and ended its advertising on *Heartbeat* because the series included a lesbian nurse.

Another NBC series, *Nightingales*, has been the subject of protests by nursing groups, who claim the series portrays their profession in an unflattering and demeaning manner. In response, Chrysler and Sears withdrew advertising from the program. A Sears representative said the show was "not suitable for family viewing." Chrysler said it was withdrawing its advertising "based on response we got from viewers, which was obviously negative."

Television and advertising executives agreed that the sponsor defections seemed to reflect important changes in audience tastes. "The mood is different," said one advertising executive. "Now it seems there are people even within the advertising business, people who don't like the pressure groups, who are tending to agree with some of the protests."

Kathryn C. Montgomery, who teaches film and television at UCLA and is the author of *Target: Prime Time*, a history of anti-TV campaigns, argues that corporate takeovers of all three major networks in the past five years created a climate in which a new protest movement could flourish.

"The reason the standards and practices divisions were working in the first place is because they were actively managing the advocacy groups," she said. "Then the ownership changed, the staffs were cut back and all that institutional memory was lost. Of course, the advertisers still have that institutional memory."

At the same time, Montgomery explained, broadcasters took advantage of more freedom allowed by the deregulatory policies of the Reagan administration. "The deregulation created a sort of 'anything goes' era in television," she said.

But if the advertiser revolt is partly a response to the networks' relaxation of standards, the new mood still threatens censorship of material because of its point of view. In May, NBC found it difficult to attract advertisers to sponsor its made-for-TV movie, *Roe vs. Wade*. Some major advertising agencies said they would not "touch" the program, a serious dramatization of the events leading to the U.S. Supreme Court's landmark 1973 decision legalizing abortion, due to its controversial subject matter.

NBC President Robert Wright took the unusual step of writing to hundreds of clients, urging them to sponsor the show. Wright's letter followed another communication by the Rev. Wildmon to some 500 advertisers, urging them to stay out of the program. Wildmon's letter reportedly took the form of a warning: Sponsors will be eligible for a year-long boycott planned by Christian Leaders for Responsible TV (CLear-TV), with which Wildmon's American Family Association is affiliated.

In his letter, Wright told sponsors that "your company probably received form letters warning of boycott possibilities should you advertise in shows which these groups disapprove. You should be concerned as we are about this trend." Few, if any, sponsors changed their minds as a result of the letter, sources said.

In April, Wildmon, who twice before unsuccessfully tried to lead boycotts of programs he called morally offensive, announced a month-long monitoring period of network prime time TV, to coincide with the May ratings "sweeps." The one company most involved in sponsoring shows with "gratuitous" sex and violence would be singled out for a full year boycott, he said.

Although NBC did succeed in selling *Roe vs. Wade*, it was believed the network lost up to $1 million dollars on the show due to drastically reduced pricing. While an unknown number of advertisers pulled their spots, the movie ended up with about thirty separate brand advertisers, some virtually unknown to network broadcasting.

With the exception of two General Foods spots, missing from the program were most of the major sponsors who typically buy time on the Monday movie broadcast, including Kelloggs, Johnson & Johnson, Procter & Gamble, and others.

NBC executives said their position with respect to *Roe vs. Wade* was especially frustrating, since they believed the show was of the highest quality and of considerable public importance. By contrast, in early May, ABC was forced to cancel two special presentations, *Scandals II* and *Crimes of Passion II* because the shows, perceived as sexually exploitive and violent, could not attract advertisers.

According to Fred Pierce, former chair of ABC, "Advertisers absolutely do have a responsibility" to support programs like *Roe vs. Wade*. "Everyone is concerned that there isn't enough programming of originality on the air." With ad boycotts, Pierce charged, "you just get homogenized programming."

Some advertisers agreed. "The main concern [of advertisers] is to have a good environment to attract consumers," said Steve Leff, vice chair of Backer Spielvogel Bates. "To the extent that means the networks have behaved responsibly then yes: advertisers do have a responsibility [to support programs like *Roe*]. Sometimes you have to stand up and be counted."

But others said the issue was money. "If the brand is hurt as a result of being in that program, then it's foolish to keep the brand in that program," said Joe Ostrow a corporate media director. "You walk a thin line between freedom of expression and pulling out of the show."

"It's like anything else," said another advertising executive. "The network has to find a happy medium between what the audience wants and what advertisers want. That's what they're getting paid for."

But, as the entertainment industry weekly *Variety* noted "the 'happy medium' is what the networks are typically attacked for becoming: a 'vast wasteland' that revels in exploitation." Reported in: *New York Times*, April 12, 24, 28; *Boston Herald*, March 26; *Variety*, May 10-16, May 17-23. □

fifty years of *Wrath*

Librarian Gretchen Knief could not believe it. On her first day back from vacation she received a copy of a resolution passed by the Kern County Board of Supervisors that morning. In a 4-1 vote the Bakersfield, California, board had banned John Steinbeck's novel *The Grapes of Wrath* from library shelves. The charges against the book: that it was obscene and portrayed farmers and agribusinessmen unfavorably.

It was August 21, 1939. *The Wizard of Oz* was enchanting audiences and Hitler was preparing to invade Poland. And in April, Viking Publishing, direct ancestor of the company that brought out Salman Rushdie's *The Satanic Verses*, published what would become one of the most popular — and most censored — American classics. Now, a half century after its publication, *The Grapes of Wrath* continues to inspire controversy. Widely used in high school literature classes, it continues to appear regularly in these pages as a target of censorship, deemed obscene and even Communistic by some critics.

Though its critical reception was initially mixed, the book was an immediate best seller. By August, it was in its seventh printing and by year's end 430,000 copies of the social protest novel had been sold, "a phenomenal number for those times," according to Paul Slovak, director of publicity for Viking Penguin. As with Rushdie's book, sales were stimulated by controversy. Newspapers, legislatures, farmers, and even some migrant workers, whose suffering and quiet heroism is celebrated in the book's pages, heaped outrage on the book and on its then 37-year-old author.

On August 18, the Kansas City, Missouri, Board of Education became the first in what would become a long list of school boards to ban the book as obscene. Others offended by Steinbeck's work included the board of directors of the East St. Louis library, which ordered three copies of *The Grapes of Wrath* burned on the courthouse steps. In Buffalo, New York, the librarian refused to purchase copies for that library. The chaplain on the U.S.S. Tennessee removed it from the ship's library, even though fifty men were on a waiting list to read it.

Kern County, located at the heart of the California agricultural region about which Steinbeck wrote, was also at the center of the controversy. The Kansas City action prompted a telegram of praise from the Associated Farmers of Kern County, led by its president, Wofford B. Camp, a prominent rancher, who called the novel "propaganda of the vilest sort." A few days later, Camp and two other men ceremoniously burned a copy of the book, an act immortalized in a photograph in *Look* magazine.

The county board's resolution to ban the novel was the first time in the library's 28 years that a book had been removed from the shelves. A professional librarian for 18 years, Gretchen Knief had taken command of the system in 1937. At the time of the ban, she had 60 copies of the book in circulation, with a list of 112 waiting to read it.

The ban had been engineered by Supervisor Stanley Abel, then 47, who had already served for 23 years in office. In May, 1922, when Abel was chair of the Kern County board, he and one of his brothers, a powerful Bakersfield attorney, were named in a list of more than 350 area residents who belonged to the Ku Klux Klan. Besides Abel, the list included the police chief, several judges, sheriffs, firemen, and the superintendent of the county courthouse.

Abel immediately declared that despite a grand jury probe of its activities, he was proud to be a Klansman, and castigated law enforcement officials for being ineffective against "boys and girls of the community debauched by lawless aliens who curse the constitution and defy our laws."

"I know nothing of any lawless act committed by the Klan or any of its members," he said. "I make no apology for the Klan. It needs none."

Abel's brother kept a low profile during the KKK affair and later became general counsel for the Associated Farmers, a group organized in 1933 to pass anti-picketing regulations as a way to stop farm workers' strikes and unionizing.

Knief knew Stanley Abel's reputation and his connections and she quickly confronted him about the resolution. After all, she pointed out, there hadn't even been a complaint about the book. At first denying his involvement, Abel then acknowledged that he had asked the secretary of the Kern County Chamber of Commerce — who would later produce a short film, *Plums of Plenty*, to refute *The Grapes of Wrath* — to draft the resolution.

That night, Knief went home and wrote an impassioned letter to the county supervisors, calling on them to rescind the ban. "It's such a vicious thing to begin," she said. "Besides, banning books is so utterly hopeless and futile. Ideas don't die because a book is forbidden reading. If Steinbeck has written truth, that truth will survive. If he is merely being sensational and lascivious, if all the 'little' words are really no more than fly specks on a large painting, then the book will soon be forgotten."

The appeal was in vain. A daylong, emotionally charged, packed meeting held in the courthouse a week later, at which the American Civil Liberties Union and others — including Stanley Abel's other brother — protested the supervisors' resolution, failed to make a difference. Before the meeting farmworker organizers picketed the courthouse to denounce the ban. Several San Joaquin Valley newspapers editorialized against it. Fresno author William Saroyan came to Steinbeck's defense.

All without effect. Bowing to the resolution, Knief reluctantly ordered copies of *The Grapes of Wrath* pulled from library shelves. She offered to lend the copies to other libraries around California and twenty snapped up the books. When, ten months later, Abel learned of this he became enraged, ordering the 37-year-old librarian to get the copies back.

Kern County's ban on *The Grapes of Wrath* was lifted on January 27, 1941, by a newly seated Board of Supervisors. The previous November, Stanley Abel had been defeated in a bid for a seventh consecutive term on the board. It was an elated and relieved Gretchen Knief who returned the book to the shelves. Two years later, she resigned as county librarian to head the library system of the state of Washington. In 1945, she moved to Alabama to live with her husband, a farmer, and to continue her career as a librarian and library consultant. Now 87, she lives in a nursing home near Daphne, Alabama.

The Grapes of Wrath, for which Steinbeck won the Pulitzer

Prize in 1940, has been translated into more than 25 languages. Approximately 14 million copies have been sold world-wide since it was first published 50 years ago. In 1962, John Steinbeck became one of only six Americans to win the Nobel Prize for Literature. He died in 1968. Reported in: *Bakersfield Californian*, April 23. □

Gablers still at work

Though they haven't "knocked off" a textbook in years and don't receive the media attention they once did, conservative textbook critics Mel and Norma Gabler haven't lost enthusiasm for their crusade to purge textbooks of obscenities and of alleged liberal, secular humanist, and feminist biases.

"I'm just as enthusiastic as I was 28 years ago," said Norma, now 65 years old. "Each year we are getting better and better at what we are doing."

Mel, who underwent open heart surgery in January, added: "My doctor said my heart is good for another forty years and, as long as it's still beating, I'm going to be doing this."

At one time, the Longview, Texas, couple were considered the most powerful critics of public school textbooks in America. With Norma's biting wit and natural flair for media attention and Mel's line-by-line analysis of selected textbook passages, they, perhaps more than any other concerned parent, group, or organization, influenced the quality of textbooks used in schools in Texas and many other parts of the country.

Through testimony before the textbook adoption committee and the Texas Board of Education, they persuaded state education officials to reject hundreds of books and adopt certain standards for those they did accept.

Their newsletter and book selection guide, sent to the boards of every Texas school district and to more than 13,000 individuals and organizations, further influenced textbook choices made on the local level. In the late 1970s and early 1980s, the couple also spread their influence nationwide, speaking to and helping to organize conservative watchdog groups. Their power in Texas also indirectly influenced textbook content elsewhere, as publishers adapted their products to Texas requirements.

The Gablers began their work after their eldest son came home from school asking questions about a textbook. Their influence increased in 1972 after Norma objected to a proposed fifth grade history book that contained several pages on actress Marilyn Monroe.

"There was less reference to George Washington and none at all to Martha Washington," she said. "I just simply read from the section on Marilyn Monroe and then asked them if Marilyn Monroe was going to be mother of our country from now on. The reporters jumped on that and the story went around the world."

In their heyday, the Gablers got the Texas school board to ban the use of profanity or any photo or graphic that might cause embarrassment to students. They also won a disclaimer that evolution could be taught only as a theory, and the inclusion of books on intensive phonics in reading programs.

But as their notoriety rose, so did the number of other voices speaking at textbook hearings. "Our general disagreement with them has been that they want content that is only reflective of their political and religious viewpoints," said Michael Hudson, Texas director of People for the American Way, and one of the Gablers' most outspoken critics before the school board.

"Since 1983, they have not succeeded in knocking one book off the adoptions list nor change any content," Hudson added. "Prior to 1982, they would get a lot of press, but they don't any more."

Hudson and others attribute the decline in the Gablers' influence to the mobilization of groups like People for the American Way and to reforms in the Texas educational system that lessened political influences on the composition of the school board and on the textbook selection process.

But Mel Gabler has a somewhat different explanation, noting that now he, not Norma, leads their fight. "She used to go down there [to testify] all the time," he said. "Now that I'm retired I go, but I'm not as flamboyant as she is. So I don't get the attention she did." Reported in: *Houston Post*, April 16. □

FBI plotted against '68 film

The FBI plotted "counterintelligence measures" against a feature film produced and directed in 1968 by Jules Dassin, according to documents released under the Freedom of Information Act. The film, *Uptight*, was a remake of John Ford's 1935 classic, *The Imposter*. Employing a predominantly black cast, the Dassin film explored the controversial subject of black militancy.

A 1968 memo from the FBI's Cleveland bureau said "the Cleveland office strongly recommends" that certain unspecified information about Dassin be given to "friendly news media," and "this appears to be an excellent opportunity to take counterintelligence measures against this picture."

Several other memos on the subject sent to FBI director J. Edgar Hoover mentioned the subject of the FBI's investigation as "COMINFIL Motion Picture Industry." COMINFIL is apparently a reference to suspected "Communist infiltration" of the film industry. Dassin, producer and director of *Never On Sunday* and *The Naked City*, was blacklisted in the 1950s after directors Edward Dmytryk and Frank Tuttle told the House Un-American Activities Committee that he was a Communist. Dassin acknowledged that he was a party member in the late 1930s, but said he left the party in 1939. Following his blacklisting, Dassin left the United States. He is married to actress Melina Mercouri, Greece's Minister of Culture. Reported in: *Variety*, May 17-23. □

in review

Battle of the Books: Literary Censorship in the Public Schools, 1950-1985. By Lee Burress. The Scarecrow Press, 1989.

Battle of the Books, by Lee Burress, makes clear that the defense of intellectual freedom is not always a theoretical, abstract discussion, but at times a political struggle of intense emotion and occasional violence. The book's frontispiece shows citizens of Warsaw, Indiana, burning copies of the textbook, *Values Clarification*. The date was 1977. Confining his discussion to the censorship of literature in public schools from 1950 to 1985, Burress describes myriad episodes in virtually all parts of the country against a diverse array of titles.

Burress's own commitment to intellectual freedom is active and long-standing. In the early 1950s, he opposed legislation recommended by the Gathings Committee on which his Congressman from Kansas served. To counter the threat posed by the growing popularity of paperback books, the committee proposed the creation of a federal censorship board that would screen books passing across state lines and levy fines against those violating its decisions. Burress notes that while the bill was defeated, the committee's report "laid out the agenda for the attack on books and other materials in the public libraries and schools during the postwar decades."

Burress's subsequent experience combatting censorship greatly enriches this book. A professor of English, Burress has been active in the National Council of Teachers of English and co-authored, with Edward Jenkinson, *The Student's Right to Know*. Since 1963, he has conducted six surveys on censorship problems in public schools, and his findings provide much of the basis for this work.

The text of *Battle of the Books* is arranged topically rather than chronologically. Burress uses an incident in Montello, Wisconsin, in the early 1980s, as a case study illustrating the issues that frequently arise in challenges to books in public schools. First attacking books by Judy Blume and *The Magician* by Sol Stein, Montello citizens then challenged 33 other titles, including works by F. Scott Fitzgerald, James Baldwin, and Hal Borland. The controversy expanded to local radio shows, and the town's school board election, gaining national television coverage and prompting fears that a local vigilante group might intervene. A selection review procedure already in place finally returned all but three volumes to the open shelves. Burress shows that this and other well-publicized incidents are not isolated events but only the most visible of numerous other challenges to books in public school curricula and libraries.

Using survey data, Burress identifies a variety of sources of censorship pressure, most often involving parents and community groups concerned with realistic literature of the 20th century. He also discusses ways in which societal changes have influenced the rise of censorship. He points out that library staff members and teachers themselves often question the suitability of a particular volume, and that publishers also play a role. In the Montello incident, for example, Burress reports that the publisher of *The Magician* did not join the defense of the book, although the author offered to send a paperback copy to every household in the school district. Burress reports that publishers delete passages or alter text in works by Shakespeare and other library greats, for fear of corrupting youth or dampening sales. Such changes are often made without informing potential buyers or readers. Yet Burress is even-handed in his criticism. He comments on censorship by the left, including challenges to *Huckleberry Finn* by black parents, and expresses concern that librarians have not selected works published by the religious right for their collections.

Only Burress's chapter on Secular Humanism is a disappointment, although his argument is interesting and persuasive. Humanism, he says, is not atheistic as its critics charge, but derives in fact from the Judeo-Christian tradition. His discussion, however, is far too long and philosophical and somehow out of sync with his earlier chapters.

The book includes two appendices. The first lists objectionable titles reported in Burress's own 1982 survey. The second lists approximately 700 titles reported in 17 surveys conducted by various researchers and groups, including Burress, from 1965 to 1985. Since these surveys differed in purpose and methodology, Burress's consolidation gives only the briefest information. Arranged by title, the listing covers nearly 150 pages. This is a typical entry: "Title: *Yearbook: A Novel*, D. Marlow, 1977; Objector: parent; Objection: sexual content; Results: material removed from library; Place: NY; Source, date of objection, 1 [Burress survey 1982]; Legal case, if any: none." Compared to Burress's detailed case studies, this is dry indeed. The list of titles is interesting, but begs for more.

Burress includes a lengthy and helpful bibliography and a detailed index. His sources are well-documented in footnotes, although occasionally he misses. Which issue of the 1902 *Harper's Bazaar* featured the article, "What Should Girls Read?" by William Dean Howells, mentioned twice?. What is the citation to Judge Curtis Bok's decision in *Pennsylvania* v. *Five Book Sellers* (1913)? The reader is referred to publications of the National Coalition Against Censorship and People for the American Way for information on legal cases involving books listed in the appendices. Burress's work would have been even better if it had included that information.

Overall, Burress's work is a substantial contribution to our understanding of the immediacy and complexity of censorship issues. Richly detailed and ably written, *Battle of the Books* should be seriously considered by both public and academic libraries and should be on reading lists for teachers, librarians, administrators, and citizens concerned with public

schools.—*Reviewed by Jean L. Preer, Assistant Professor, School of Library and Information Science, The Catholic University of America.* □

more on *Satanic Verses*

The controversy over Salman Rushdie's novel, *The Satanic Verses*, which many followers of Islam find offensive (see *Newsletter*, May 1989, p. 69) continued this spring, as Iran's Ayatollah Ruhollah Khomeini refused to withdraw his death sentence on the embattled author. As the *Newsletter* went to press, Rushdie remained in hiding.

In Wichita, Kansas, 33 Moslems appealed to the Wichita Public Library to ban the book. The request was the first formal challenge to the Rushdie novel at any American library. On April 18, 30 protesters attended a meeting of the library board calling for the book's removal. A police officer and the library's regular security guard were on hand.

The ten-member library board voted unanimously to appoint a committee of three librarians to review the book in accordance with library policies and procedures. Richard Rademacher, Wichita's director of libraries, said the book would be reviewed as a work of fiction and not as a religious book.

At Southern Illinois University at Carbondale, a student government proposal to ban *The Satanic Verses* from the campus's Morris Library was soundly defeated March 22 by student senators who objected to censorship.

"If we banned that book, we'd have to start banning a lot of other books because they are offensive to other people," said student Sen. Rod Hughes. "This is the United States, and in the United States we don't have censorship."

Eshmael Zumira, a senator who sponsored the resolution, said more than 2,000 students and 11 student organizations favored removing the book. A Palestinian sociology major, Zumira said the university should help foster a positive environment for all students, and the presence of the book was offensive.

"I would compare it to a person who buys the book and has a roommate who is a Moslem," he said. "If you respect his feelings, you would not buy the book."

Meanwhile, in the Islamic world *The Satanic Verses* continued to provoke violent responses. On March 28, a bomb exploded near a British cultural center in Islamabad, Pakistan, hours after British Foreign Secretary Geoffrey Howe arrived to discuss the controversy. There were no injuries and no one claimed responsibility, but the bombing appeared to be linked to continuing anti-British demonstrations over the novel. A month before, an explosion at a British Council Library in Karachi, Pakistan's largest city, killed a Pakistani guard.

Howe's arrival in Pakistan was accompanied by a ban on public gatherings of more than five people. The diplomat's motorcade was protected by some 2,000 police. "If our government had allowed the demonstration, Howe would have felt the depth of our feeling," said Mustaza Pooya, a member of the conservative Islamic Democratic Alliance.

Pooya was among a delegation of fundamentalist religious leaders and right-wing Pakistani politicians allowed to present a four-page memorandum to the foreign secretary criticizing Britain for protecting Rushdie.

Seven people died and more than 100 were injured in Islamabad February 12 when demonstrators battled police outside an American cultural center to protest publication of *The Satanic Verses* in the U.S. Prime Minister Benazir Bhutto charged that her political opponents were manipulating the anti-Rushdie movement to discredit her reformist government.

In England, a play about the controversy by two supporters of Rushdie opened a nine-day run April 19 at London's Royal Court Theater. "England, where we boast of 'free speech,' seems to have decided to let Salman Rushdie rot, and to forget him," the playwright Howard Brenton wrote in a foreword to the play that he and Tariq Ali wrote in support of the beleaguered author.

"I felt we ought to do something in support of him," explained Ali, a friend of Rushdie and like him, a product of Islamic culture who emigrated to England. "In the United States, they've had public readings of his work. In this country, all there was was a sort of photo opportunity, a few writers delivering a letter to Mrs. Thatcher on his behalf."

Ali said he wanted to call the 45 minute play *A Mullah's Night Out*, but at the request of the theater management settled for *Iranian Nights*. Brenton called the play a "pinprick," but its witty, if unsubtle, lampooning of Rushdie; Viking Penguin, his publisher; and Khomeini, were well-received.

"And what was the blasphemy?" asks the Caliph in the beginning of the play. "No one knows," responds Scheherezade. "It was a book that nobody could read."

The core of the play is what Brenton called "the cultural crisis within the Islamic community," the collision of an ancient Eastern faith with the secular values of the modern Western world.

"We're pretty critical of the liberals in this country who've been running for cover and desperately trying to appease the supposedly outraged feelings of the Islamic faithful," Ali said. His message is that Islam has a tolerant, richly human side that the fundamentalist clerics, in the west and Iran, have obscured for reasons that have nothing to do with religion.

On the day before the play opened, Prime Minister Thatcher made her first public comment on the Rushdie affair since Iran broke diplomatic relations with Britain over it in March. She told an East-West forum that she had rejected calls to censor "a book like the one written by Mr. Rushdie which broke none of our laws. This must never be an area where the government has discretion," she said. "It must always act within the law."

Finally, support for Rushdie came from the Soviet Union, where on April 4 prominent writers organizing a chapter of PEN, the international writers organization, made their first

official statement a condemnation of the death sentence on the British novelist. At the same time, the writers said they were "strongly denouncing the humiliation and insulting of any religion." Reported in: *Wichita Eagle-Beacon*, April 11, 19; *Carbondale Southern Illinoisan*, March 24; *Chicago Tribune*, March 28; *New York Times*, April 5, 20. □

Vatican condemns pornography, violence; endorses censorship

The Vatican condemned the spread of pornography and violence in popular culture, declaring in a major report released May 16 that those who make and distribute "these noxious products" are guilty of "a serious moral evil." In the document, the first it has devoted exclusively to the issue, the Pontifical Commission for Social Communications called for tougher anti-pornography laws and strongly suggested that it approves of consumer boycotts against companies that produce and finance offending books, videocassettes and television programs.

The report said that pornography and portrayals of violence were widening problems that used to be mainly confined to wealthy countries but had begun "to corrupt moral values in developing nations."

There are those, the report said, who insist that the phenomenon must be tolerated in the name of freedom of expression, but it described that attitude as resulting from "faulty libertarian arguments." To the contrary, it said, pornography humiliates women, victimizes children and "immature" adults, and, in extreme cases, incites and serves as "a kind of accomplice" to child molesters, rapists, and murderers.

"Pornography and sadistic violence debase sexuality, corrode human relationships, exploit individuals, especially women and young people, undermine marriage and family life, foster antisocial behavior and weaken the moral fiber of society itself," said the document, *Pornography and Violence in the Communications Media: A Pastoral Response.*

Although not a papal encyclical, the Vatican report carries significant moral weight for Roman Catholics and is likely to influence others.

The document spoke about pornography and violence in broad terms, and did not name countries or mention specific films, magazines, television programs, or recordings that it considered unacceptable. But the president of the Pontifical Commission, Archbishop John P. Foley of Philadelphia, cited certain types of so-called kung fu movies and television soap operas as especially offensive.

"Some soap operas are becoming more and more explicit all the time," and "glamorize" marital infidelity and premarital sex, the Archbishop told reporters. As for kung fu films, he said, some are "disgusting" and "give people terrible ideas."

The report did not offer guidelines on how to differentiate pornography from art. Instead, it defined pornography broadly as "a violation, through the use of audiovisual techniques, of the right to privacy of the human body in its male or female nature, a violation which reduces the human person and human body to an anonymous object of misuse for the purpose of gratifying concupiscence."

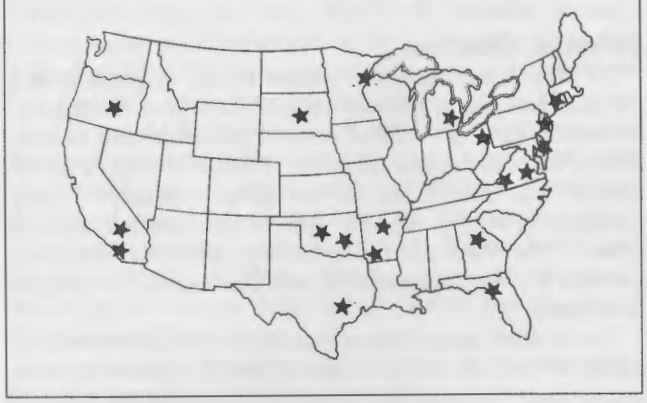
In the Vatican's view, the problem would best be addressed by "effective self-control" in the form of ethics codes for television and advertising companies. Guidance from parents, educators, and church groups is also important, the report said. But it also emphasized that tough anti-pornography laws should be enacted where they are lacking and that "action should also be taken on the regional, continental and world levels to control this insidious traffic."

As for individuals, the report said, they "should make their views known to producers, commercial interests and public authorities." Talking with reporters, Archbishop Foley left little doubt that consumer boycotts against advertisers and television networks would be acceptable.

"If freedom of speech exists, then the individuals who receive the pictures or words in their homes also have freedom of speech in which they can make their attitudes known to those who produce or make possible the production of such programs," he said. "It's their right to do so, and if they feel that certain things are damaging to their children, then perhaps it is even their duty to do so." Reported in: *New York Times*, May 17. □

(targets. . .from page 118)

censorship dateline



libraries

Berryville, Arkansas

A decision by a book review committee to retain a challenged work was ignored by Berryville school officials, who claimed that the committee had failed in its assigned task. According to Superintendent Richard Paul, last November a teacher, Darrell Stidham, requested a review of *Cujo*, by Stephen King, which was available to students through the Berryville High School library. Stidham objected to the book after he found one of his students reading it.

"It's page after page of garbage," the teacher said. "It's just not suitable for that age group. My personal opinion is that it's not fit for anyone to read."

The book was removed from the shelves, but because the school librarian responded that any attempt to remove the book was censorship, Paul than formed a review committee of four teachers and a parent. On January 10, the committee recommended that the book be retained. The recommendation was ignored and in April the book remained off the shelves pending preparation of new guidelines for review.

"We wanted the committee to look at the book on the basis of grade level appropriateness. The committee looked at the book from a censorship standpoint and recommended the book remain on the shelf," Paul said. "Some people think we're on a censorship kick up here. We don't want censorship necessarily, but we also don't want unacceptable reading material in the hands of seventh and eighth graders."

Paul said he rejected the committee ruling because he had asked it "to develop a policy of book checkouts for the younger children" and not principally to review the King book. But one teacher, who declined to be identified because she feared her job might be endangered, said, "We were asked specifically to review the King book and decide whether it should be in the library. We decided censoring one book would still be censorship and it would be censorship if we put it on a 'restricted' bookshelf."

Rudy Darling, the parent member of the committee, also said he thought a review of *Cujo* was the group's assigned task. He said the committee's written recommendation to retain the King title was based on board policies.

Paul said his problem with the book stemmed from a "concern that there may be books purchased that haven't been properly screened and may not be quality reading for either junior or senior high students."

"Our library is used by students in seventh through twelfth grades," he said. "I don't blame the committee for its recommendation. We just felt the real purpose of the committee was to look at the book from a grade level appropriateness standpoint. That's what was important." Reported in: *Berryville Star-Progress*, April 27; *Arkansas Gazette*, April 21.

New Fairfield, Connecticut

A group of New Fairfield residents called in May for a ban on a book of children's verse that they called "repulsive" and against the country's "moral fiber." In response, on May 18, the board of education set up a committee to study whether the book should be taken from the shelves of the Consolidated School library.

The controversy began when Carrie-Ann DelGigante became upset because her first-grade daughter was read the book, *Rolling Harvey Down the Hill*, by a substitute teacher. Besides banning the book, DelGigante asked the district to set up a committee to review all the books that come into the school.

"If she [the school librarian] needs help in reviewing, let us help her," DelGigante said. "When I saw the book I was dumbfounded. I couldn't say a word. I was so upset inside."

The book depicts a schoolyard bully who fights, cheats and ties his friends up while pulling down their pants. He and his friends, waving sticks, chase neighborhood girls. This type of behavior should not be portrayed to young children, DelGigante said. She claimed the book is demeaning to women and implies that physical abuse is acceptable.

"Maybe back in 1980 [when the book was published] this was acceptable behavior," she said. "We've come a long way now. It's not acceptable now. Kids can get the wrong ideas from this."

"This is appalling," said Arlene Parille, who also joined the effort to get the book banned. "The book to me is clearly against our moral fiber and what we tried to achieve in this country. That book does not depict what we're trying to achieve. It shows children that you can cheat and get away with it. I'm a concerned individual who is upset because things like this go on in our school," she said. "The book is very repulsive." Reported in: *Danbury News-Tribune*, May 19.

Chatsworth, Georgia

A book of poetry was removed from the Murray County High School library April 10 after objections were raised by a parent to some of its contents. "It was really gutter stuff," said Superintendent Doug Griffin. "It was deviant. It embarrassed me to think about it." Griffin said he and Board of Education members Chuck Richards and Don Phillips and other administration staff had reviewed the book before it was pulled.

Griffin declined to give the title of the book or its author. Richards said the volume was a collection of poetry by one writer, written from 1947 to the 1980s, a description which would fit a volume of *Collected Poetry* by Allen Ginsberg.

"There was some good poetry in the book," Griffin acknowledged. But of the poems that were challenged, he said, "I didn't find anybody who didn't think it was gutter." The current school policy gives the principal and librarian authority to remove books from the shelves. An appeal can be made to the superintendent and the board. Reported in: *Dalton Citizen-News*, April 14.

Coventry, Ohio

A group of parents who believe their grade-school children were given access to "unacceptable" books paid a surprise visit to the Summit County Public Libraries Bookmobile at Lakeview Elementary School in April. The parents were allowed to board the portable library to look at any books they might find questionable.

"We're not asking them to ban any books. We're not interested in book-burning," said parent Michelle Atkins. Atkins had become upset when her third-grade child brought home the book *Occult Vision — A Mystical Gaze into the Future* from the Bookmobile. Last year, Atkins' son brought home another book, *The Illustrated Guide to the Supernatural*, which she said contained a picture of a man and woman engaged in sexual intercourse.

Steven Hawk, director of the Summit County Public Libraries, said he was aware of the Coventry parents' complaints, but planned no action. "We have an open policy that the Bookmobile is a total representation of the books we stock at our branch libraries," he said.

"Our board of trustees has adopted a policy which opposes separation of books. We have over 5,000 books on each of our two Bookmobiles and the Bookmobiles make an equal amount of stops at the schools and at various locations throughout the communities," Hawk added. He would not say that every book was appropriate for young children, but he said it was the parent's job to decide which books their children could or couldn't read.

Coventry Superintendent James Gides said he understood the parents' concern but added that "we have to be real careful with any form of censorship. We gave the parents the opportunity to go in the Bookmobile with their own children so they could decide for themselves. What we don't want is one parent or a small group of parents deciding what is appropriate for all the children." Reported in: *Portage Herald*, April 20.

Cleveland, Oklahoma

On May 3, the Cleveland school board, responding to a parental complaint, ordered its middle school librarian to remove *Servants of the Devil*, a history of witchcraft; *Curses, Hexes, and Spells*; and all other "similar" books from the shelves and give them to the school system's library coordinator, who is also the wife of the superintendent of schools. The board contended that witchcraft is a "religion" and that the First Amendment bars the teaching of religion in schools.

The decision ignored the recommendation of a review committee to keep the books in the school libraries with some restrictions. The board also voted to discontinue the district's materials selection and review policy and to place responsibility for the selection and review of library materials solely in the hands of the superintendent and the library coordinator. Reported by: People for the American Way.

St. Paul, Oregon

If Beale Street Could Talk, a 1974 novel by noted black author James Baldwin, was removed from the high school library March 27 by the local school board at St. Paul, 30 miles southeast of Portland. The decision was prompted by a parent's complaint that the book contains obscene language and explicit descriptions of sexual activity.

The board ordered the book removed, after eleven years on library shelves, following a recommendation by a review committee of two teachers, an administrator, a librarian and two parents that students obtain parental permission before being allowed to check it out.

Board member Jerry Smith said the board saw no sense in setting up a restricted shelf for only one book. "We decided it would be better just to remove it from the library," he said.

"The explicitness of the book overrules its being a good piece of literature," Smith added. "If one parent allows their child to check this book out, it can be passed around. This all started with children who hadn't checked it out being shown the book by other kids."

Kathy Leasure, the parent who first complained about the book, said, "It wasn't just explicit sex I objected to, but the extreme obscene language, racism, and the offensive nature it had toward religion." Reported in: *Woodburn Independent*, March 1; *Salem Statesman-Journal*, March 31; *Portland Oregonian*, April 3.

Ponce, Puerto Rico

Invitations to Puerto Rican librarians for a recent book fair in Ponce specified that books by authors of "dubious moral quality," including local authors such as Luis Rafael Sanchez and Colombian Nobel Prize winner Gabriel Garcia Marquez, would not be allowed. Although the mid-April Library Week book fair was held at the Ponce campus of the University of

Puerto Rico, university officials said they were unaware invitations banned the display of certain books.

The invitations said only books of "positive literary, artistic, moral and ideological quality" should be displayed at the exposition. Books on art, cooking, gardening, children and medicine were deemed acceptable. Librarians were asked to avoid bringing books on religion, psychology, and philosophy. "A guideline that could help you in selecting books would be to avoid authors of dubious moral and ideological quality," the invitations said. Among the authors specifically banned were the Puerto Ricans Jose Luis Gonzalez, Maria Arrillaga, Rosario Ferre, and Sanchez. Others included Jorge Luis Borges, Pablo Neruda, Isabel Allende, and Victor Hugo.

Only two book distributors participated in the exposition. Reported in: *San Juan Star*, May 14.

schools

Conway, Arkansas

For years, teacher Jim Owen used William Manchester's 1974 history of contemporary America, *The Glory and the Dream*, in his history classes at Conway High School. But early this year complaints arose as parents photocopied and distributed what they considered "unacceptable" material from the book, including a reference to Marilyn Monroe as "busty."

The book was given to an evaluation committee and on May 9, the Conway School Board agreed to what seemed a compromise solution. They decided that although the book itself could not be used in class, the chapters needed by Owen — which did not include the "busty" reference — could be photocopied and distributed to students. But a hitch soon developed.

Someone at a local newspaper saw fit to call the book's publisher and copyright holder, Little, Brown, to report the decision and got a stern warning that the proposed solution would violate copyright regulations. The board then adopted a new policy: the books, already owned by the school district, could be distributed at the beginning of the class period, but had to be collected by the teacher at the end. Reported in: *Arkansas Gazette*, May 9, 12, 13.

Putnam City, Oklahoma

On March 15, the Putnam City Public School Board voted 3-2 to forbid further use of the book *Pumsy*, a story of a fictional dragon, by elementary school counselors. The book had been challenged by a parent who said *Pumsy* propagated the principles of "secular humanism" and "new age religion" and that its use would "drive a wedge between children and parents." The Putnam City Association of Classroom Teachers protested the decision. Reported by: People for the American Way.

Hot Springs, South Dakota

A small group of parents approached Hot Springs Elementary School principal Dean Cook in March to object to the use of *A Light in the Attic*, by Shel Silverstein, in several elementary classes. Although the parents stressed that they did not object to the book's presence in the school library, they did claim that poems in it that were being read aloud were unsuitable for classroom teaching.

"We believe our professional staff has had in depth training regarding children's literature. We feel confident with their judgment in incorporating various modes of literature into the curriculum. Teachers provide opportunities to study these issues," Cook later commented.

The complaint was referred to a committee composed of Cook, another administrator, a teacher, a librarian, and a parent. The committee recommended that teachers be permitted to continue using the books. The parents then appealed the decision, which will be reviewed by another committee and, if necessary, by the board of education.

According to parent Debbie Spencer, the complainants found not only the book objectionable but also the following statement from the district's selection and review policy: "The principles of the freedom to read and of the professional responsibility of the staff must be defended, rather than the materials."

"We really are concerned that the parents need to know what materials are being used at the school and take an interest in it," Spencer said. "These books contain several poems in which we seriously question the author's intent." Reported in: *Hot Springs Star*, March 21.

student press

Pasadena, California

Parents of journalism students at Marshall Fundamental School admonished Principal Joseph Caldera on March 6 for overreacting when he decided to censor the school's newspaper. Standing in his office with former journalism adviser Mary Ellen MacArthur, Caldera met with nine parents who expressed concern about their children's rights as students.

The controversy surfaced when MacArthur resigned after Caldera told her he would have to give prior approval to future issues of the newspaper because he deemed a story written by a black student in the February 24 edition racist. In response, the approximately 25 students who work on the paper, the *Eagle's Eye*, said they would refuse to produce any further issues.

MacArthur, chair of the school's English Department and a member of the district's English curriculum committee, said she also would resign from the faculty at the end of the school year.

Caldera would not name the specific stories to which he objected, but said he had received enough complaints from

parents and other members of the community about articles in the last two issues to prompt him to take the action.

"I'm confused," said senior student Michael Comas, author of the controversial article. "It never crossed my mind that it was racist. I just feel bad about Ms. MacArthur leaving. I know I'm not the cause, but I feel bad. I wish it hadn't been my story."

Comas' story was a fantasy piece in which he explained to MacArthur why he was late to class. Using black colloquialisms and deliberate misspellings for pronunciation emphasis, he described being kidnapped by a space ship that took him to Africa.

"I read it, and I didn't think it was racist," said Scott Sudduth, president of the youth chapter of the Altadena NAACP." If the principal can censor us, we'll all have the same voice, we'll all be molded to one shape, like tacos at Del Taco."

Matt Luecke, the paper's editor-in-chief and Marshall's student body president, said Caldera told him he also objected to two opinion pieces questioning why students must say the Pledge of Allegiance.

The journalism students, a nearly equal mix of whites, blacks, Hispanics, and Asians, sided with MacArthur, citing her journalism degree from Stanford and noting the relative inexperience of Caldera, in his first year as principal. About a hundred non-journalism students attempted to walk out of the school in support of MacArthur, but journalism students stopped them. The students were in turn supported by their parents, who met with Caldera to urge an amicable resolution of the controversy.

"My daughter feels that she is not respected now, and in my culture that is the worst that can happen," said Antonia Darder, who is Hispanic. "The kids see a contradiction in how it is was handled. There is a real tension about it."

Caldera told the parents that in an effort to resolve the matter, he had met with MacArthur and Saul Glickman, president of the United Teachers of Pasadena, and that he and a district official would meet with MacArthur again. Caldera agreed to the parents' request to have one of them act as a representative at that meeting. They chose Marcia Luecke, an attorney and the mother of the *Eagle's Eye* editor-in-chief. Reported in: *Pasadena Star News*, March 2, 7.

Manassas, Virginia

Articles on abortion, earlier banned from the student newspaper at Stonewall Jackson High School, appeared in the April 1 issue in versions changed to be more relevant to students, Principal Michael Campbell reported. The stories were pulled from the February issue of the *Jackson Journal* amid cries of censorship from writer Kristin Young. But Campbell said the stories "were not germane to what we do here."

The articles were finally permitted to run after material was added about the state-mandated sex education curriculum and what it does with the issue of abortion. Specifically added to the articles were interviews with school district health and physical education officials. "We wanted to get it as much as possible on the school level," Campbell said.

Young said that in preparing her original stories she was unable to find officials to interview, and wound up interviewing fellow students. Young said she still disagreed with Campbell's stand in February which she called censorship. "But I can understand his concerns," she said. "He did allow us to print the story" with the added material, she noted. Reported in: *Manassas Journal Messenger*, April 21.

colleges and universities

Annapolis, Maryland

The Superintendent of the U.S. Naval Academy barred distribution of a satirical student magazine featuring a centerfold photograph of a woman midshipman lounging in a swimsuit because the publication could be offensive to some students, academy officials said April 12. The 5,000 copies of the April edition of the student magazine, designed as a parody of *Playboy* and dubbed *Playmid*, were ordered destroyed by the superintendent, Rear Adm. Virgil L. Hill.

Although the magazine, *The Log*, contained no nude photographs or sexually explicit articles, Hill ordered the ban because he "felt the concept of the magazine was inappropriate," according to an academy officer. The order came amid growing Navy concern over the sensitivities of women midshipmen, who make up ten percent of the Naval Academy. The student editors and faculty adviser of the magazine were "counseled" as a result of the publication, but were not given formal reprimands or punishment.

"We're here training to uphold democratic principles, yet we aren't even allowed to see the magazine before this decision is made," said one male midshipman. But others, who have complained previously about biting satire or smaller pictures of scantily clad women published frequently in the magazine, supported the decision. Some students and faculty said the magazine had previously drawn criticism from blacks and women. Reported in: *Washington Post*, April 13.

St. Cloud, Minnesota

A year-long conflict between a women's campus organization at St. Cloud State University and the Atwood Student Center administration resulted in a ban on sales of *Playboy, Penthouse*, and *Playgirl* at the Student Center and the campus bookstore. Although the Student Center Council voted to continue sale of the three magazines, a late January sit-in persuaded the council to ban the magazines.

The protest was staged by the on-campus Women's Equality Group and a community group called Women for Social Justice. Shortly after the council announced its decision, Dick Ward, owner and manager of the campus bookstore, agreed to stop selling the magazines. "I decided not to sell them in

the store to be in harmony with the university," Ward said. "That doesn't mean I agree with the decision, or that I am against the content of those publications. Two months from now somebody else will complain, and the magazines will be back on campus." Reported in: *NACS Weekly Bulletin*, February 10.

San Antonio, Texas

Seventeen years after its controversial release, the film *Last Tango in Paris* caused a stir at San Antonio College, where administration officials were fending off charges of censorship after canceling a March screening.

"It's just plain censorship," said John Onderdonk, faculty adviser to the SAC Film Society. Censorship and sexual content were not the problems, college officials countered. They said the issue was student conduct.

Kathy Armstrong, director of student activities, said she canceled the movie after film society students circumvented administration procedure when they ordered it without her approval. "This is not a censorship issue," Armstrong said. "They [the students] violated a policy regarding the decision-making process." Armstrong also canceled the remaining two movies in the society's film series, *Walkabout* and *Easy Rider*.

"We're not here to run Disney movies," commented Onderdonk, a learning resources professor. "All movies are controversial to a degree. . . . A film society brings unusual, provocative films to campus. That's part of what a film society does." Reported in: *San Antonio Light*, April 5.

Lynchburg, Virginia

Christian Harper, a student at Liberty University, thought he'd have a little fun with the latest fundraising order from Liberty's chancellor, the Rev. Jerry Falwell. So Harper and Michael Allen, hosts of a campus radio show, took aim at a Falwell edict requiring all university employees to donate ten percent of their income to the church-owned university or to be fired.

Then, in the same half-hour, they satirized a current popular rap song by describing unnatural sexual activities of a dog and a cat. For their finale, they described a worship service at a fictional church where believers got drunk at communion.

Two weeks later, Harper and Allen, both seniors, were expelled, three weeks before they were to graduate, for using obscene language, a violation of the school's strict code of conduct.

"There has been a great outcry and many complaints from our student body," said Vernon Brewer, Liberty's vice president for student development. "The tape was more than tasteless. It was obscene and pornographic. There were sexual innuendoes and foul language throughout."

Brewer said he talked with Falwell about the case before a review committee met and voted for expulsion. He denied that the tithing parody had anything to do with the school's decision.

"Frequently, the campus newspaper and radio station criticize the administration for what they consider censorship" said Mark DeMoss, a Falwell representative. "The school, not the students, is the publisher and retains the right to full control. We make rules; we set the standards."

The Harper and Allen show is prerecorded. In the past, the students said, their tape had been screened and occasionally they were asked to delete offensive material. But the show at issue was not screened, for reasons that remained unclear. Brewer said steps were taken to ensure that doesn't happen again. Reported in: *Washington Post*, April 14.

bookstores

Los Angeles, California

Libros Revolucion, a left-wing bookstore that opened in a Latino neighborhood of Los Angeles in 1988, has reportedly been the object of ongoing harassment from unidentified right-wing groups and the Los Angeles police department, according to bookstore staff and a firm hired by the local ACLU. Staffers at the store have repeatedly had their cars broken into, although nothing of value was stolen; racist and anti-communist slogans have been scrawled across signs in front of the store; and persistent police surveillance has resulted in incidents of hostile confrontation with police officers, according to store manager Lucas Martinez. More than a hundred members of the bookselling and publishing industry across the country have signed a statement protesting the harassment.

The ACLU took up the case and requested that David Lynn, of the Police Misconduct Referral Service, conduct an investigation into the incidents. Lynn's organization is a non-profit Los Angeles company certified by the California State Bar Association to handle police abuse cases. "I have no doubt they're under surveillance," Lynn said. "It's just a question of who is doing it. It seems to be either the LAPD or ultra-right wing Latin American groups, or a combination."

In response to the harassment, Liberation Distributors of Chicago circulated a statement to the bookselling community. Vermont bookseller Ed Morrow, who signed the statement, said, "Freedom of expression applies to everything, whether we happen to agree with it or not. All books have a right to be exposed to those who may want to buy them, and that includes all sorts of ideas — many of which may be anathema to each of us." David Unowsky of The Hungry Mind in St. Paul, Minnesota, pointed out this was not an isolated case. "Radical, gay, and New Age bookstores are harassed all the time," he said. Reported in: *ABA Newswire*, May 8.

broadcasting

New York, New York

Two New York City affiliates of the Public Broadcasting Service (PBS) have become involved in a dispute between

a documentary film maker and PBS over a film about the plight of the Palestinians. The film, *Days of Rage: The Young Palestinians*, reports the uprisings in the Israeli-occupied West Bank and the Gaza Strip from the Palestinian perspective.

In late April, Chloe Aaron, vice president for television at WNYC, said that she would not broadcast the film under any circumstances, asserting that it was biased. However, WNET, the other New York PBS affiliate, agreed to broadcast the film, but sought and won from PBS an agreement to delay it from June to September to provide more time to arrange a panel discussion.

Jo Franklin-Trout, producer and director of the film, charged that PBS and WNYC had yielded to "actual or perceived pressure" from viewers in delaying the documentary. She said she feared the film might never be shown. PBS executives denied the allegation. "We don't feel there's anything in the program that's not going to be relevant and timely in September," said a PBS official.

In her comment on the show, Aaron called *Days of Rage* "one-sided. It makes no mention of how the Jews got to Israel, no mention of the Holocaust, no mention of how the Palestinians treated the Jews nor how Arabs treated the Palestinians. It's a pure propaganda piece that I'd compare to Leni Riefenstahl's *Triumph of the Will*."

Franklin-Trout acknowledged that her film had a point of view, but not to the exclusion of others. "We believe there should not be separate standards for separate groups of people," she said. "If the anticipation was that the Jewish community in America would be offended, that's a demeaning attitude; they've been the most stalwart defenders of freedom of expression." Reported in: *New York Times*, May 2.

advertising

Hollywood, California

Pressured by consumers and religious groups, Pepsico, Inc., decided in April to shelve a $10 million commercial featuring pop singer Madonna because of confusion between the ad and the singer's controversial music video to the song "Like a Prayer."

The ad, which was preceded by a Pepsi publicity blitz, aired only once — on March 2 — and was seen by an estimated 250 million people. "We have not aired the Madonna ad since it first aired," said a Pepsico representative. "When the video debuted March 3, we realized there would be potential for confusion. That confusion we anticipated came about and continues, so we will not be showing the commercial."

The video, airing on MTV cable channel, shows the singer kissing a saint and receiving Christ-like wounds in her hands.

Catholic Bishop Rene Gracida of Texas and the American Family Association, led by the Rev. Donald Wildmon, called the video offensive. They asked consumers not to patronize Pepsico, which makes Pepsi soft drinks and Frito-Lay snacks and owns the Taco Bell, Pizza Hut and Kentucky Fried Chicken restaurants. Gracida halted his boycott call after meeting with company officials. Wildmon said he too agreed to cancel boycott plans because Pepsi officials told him they would pull the ad. However, the company representative said the decision was arrived at "independently of Rev. Donald Wildmon." Reported in: *USA Today*, April 4; *Variety*, April 12-18.

film

Tallahassee, Florida

A small group of fundamentalist demonstrators, evicted from Tallahassee Mall, called April 7 for a consumer boycott of mall merchants to protest the film *The Last Temptation of Christ*. Mall security guards told about thirty pickets they could not carry their signs inside the mall, where a theater was showing the movie.

"I intend to boycott not only the theaters, not only Universal Studios films, but anyone else that it will have an impact," said Pastor Tim Lindsay of Riverside Baptist Church. Leaning on a sign that said "Jesus Loves You. Please Don't Tell Lies About Him," Lindsay said he had not seen the film but knew of its contents through publicity.

"I have not seen the movie, but I've seen part of the script. It's a lie, any way you color it," Lindsay said. "I would not want to ban it by law, I would rather see enough people stand up, to the point that such a movie is never made again." Reported in: *Tallahassee Democrat*, April 8.

Detroit, Michigan

Blockbuster Video, the country's second-largest video store chain with 666 outlets nationwide, will not carry Martin Scorsese's controversial movie, *The Last Temptation of Christ*, when the videocassette is released June 29. Blockbuster executives announced in May. Blockbuster's midwest marketing director, Mark Hayden, said the decision was made after executives received complaints about the film from company shareholders, employees, and customers.

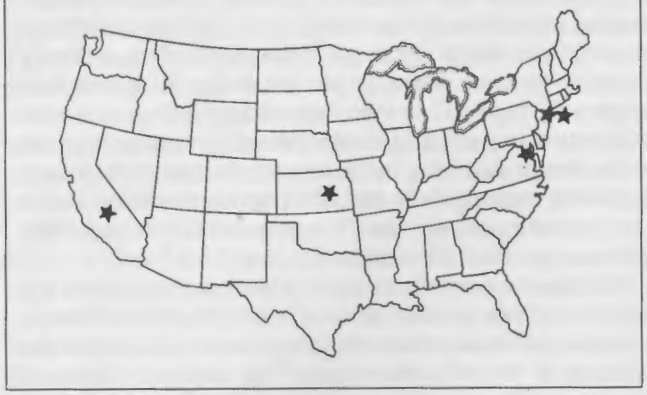
"This movie was enough of an insult to our senses that we chose not to carry it," Hayden said. "We think there are insulting implications."

Blockbuster Entertainment Corp. representative Ron Castell commented, "We're familiar with the movie, we have seen it. But after much discussion, it was decided not to acquire this movie at this time. We're making no attempt to characterize the movie. We simply made a decision not to carry it. We make decisions like that on movies all the time."

Blockbuster has built its reputation, however, on the extremely wide variety and number of titles it stocks, including virtually every major motion picture produced in the United States. Reported in: *Variety*, May 17-23.

(continued on page 141)

from the bench



U.S. Supreme Court

Overruling part of a fifteen-year-old precedent, the Supreme Court in two May 15 decisions gave prison officials greater flexibility in censoring publications that prisoners may receive.

One case, *Thornburgh* v. *Abbott*, resolved a sixteen-year-old lawsuit involving Federal Bureau of Prisons restrictions on books and articles inmates may receive from the "outside." The suit, brought by inmate and author Jack Abbott and others, challenged the regulations and the bureau's ban on 46 publications. Abbott, author of *In the Belly of the Beast*, said the censorship violated prisoners' First Amendment rights.

A district court ruled that authorities had broad discretion to censor, but in 1987, the U.S. Court of Appeals for the District of Columbia Circuit declared the regulations invalid under narrower guidelines established by a 1974 high court decision.

Justice Harry A. Blackmun wrote for the majority in a 6-3 decision reversing the appeals court. Blackmun's opinion, giving prison authorities greater leeway, cited a 1987 ruling that censorship is permitted if it is "reasonably related to legitimate penological interests." Blackmun said federal inmates may receive publications without prior approval but that wardens may censor certain publications that they feel are "detrimental to the security . . . of the institution."

In its 1974 ruling in *Procunier* v. *Martinez*, which invalidated regulations permitting California prison officials to censor inmates' outgoing mail, the high court said regulations impinging on prisoners' First Amendment rights had to further "an important or substantial governmental interest" and could be no broader "than is necessary or essential" to protect that interest. Applying that test, which is known in constitutional terms as "heightened scrutiny," the appeals court found the federal regulations challenged by Abbott invalid.

But Blackmun said the *Procunier* standard did not apply to publications received by inmates because it focused on "outgoing correspondence that . . . cannot reasonably be expected to present a danger to the community inside the prison." But incoming magazines or articles could circulate within the institution, he said, "with the concomitant potential for coordinated disruptive conduct."

Justice Blackmun noted that the federal regulations did not permit the automatic exclusion of any publication. Rather, the warden is required to make an "individualized determination" of any publication that the prison staff believes should be excluded. Both the publisher and the inmate who was to have received the publication are to be advised in writing of the reasons for the exclusion, and both may appeal through a formal appeal process.

"There is little doubt that the kind of censorship just described would raise grave First Amendment concerns outside the prison context," Blackmun said. But he said the Supreme Court had long recognized that protecting prison security is "central to all other corrections goals," adding: "In the volatile prison environment, it is essential that prison officials be given broad discretion to prevent such disorder."

While upholding the regulations as constitutional, the court sent the case back to the appeals court to enable the plaintiffs to try to show that the 46 specific exclusions challenged in the suit were improper even under the newly established and more relaxed "reasonableness" standard of review. Among the rejected publications were issues of such magazines dealing with prison concerns as *Labyrinth*, *Torch* and *The Call*. The issues contained articles that were highly critical of medical care or other practices at particular prisons.

Blackmun's opinion was joined by Chief Justice William H. Rehnquist, and Justices Byron R. White, Sandra Day O'Connor, Antonin Scalia, and Anthony M. Kennedy. Justice John Paul Stevens filed a dissenting opinion that was joined by Justices William J. Brennan, Jr., and Thurgood Marshall.

The dissenters said the majority had "upset precedent in a headlong rush to strip inmates of all but a vestige of free communication with the world beyond the prison gate." They said the "reasonableness" standard offered only "feeble protection" of First Amendment rights.

In a second prison case, *Kentucky* v. *Thompson*, decided the same day, Blackmun said state officials did not violate two prisoners' constitutional rights to a hearing before barring visits by their mothers. Prison authorities said the ban followed the mothers' alleged involvement with smuggling contraband into the prison. The inmates claimed that the wording of Kentucky visitation regulations gave them a constitutional right to such a hearing. Justice Marshall, joined by Justices Brennan and Stevens, dissented from the ruling, saying that agreeing with the prisoners "would merely afford prisoners rudimentary procedural safeguards against retaliatory or arbitrary denials of visits." Reported in: *Washington Post*, May 16; *New York Times*, May 16.

A Dallas ordinance that restricts admission to certain dance

ALA/FTRF amicus brief in *Webster*

The following are excerpts from the amicus curiae *brief filed April 30 on behalf of the American Library Association and the Freedom to Read Foundation in the abortion rights case of* Webster *v.* Reproductive Health Services.

The second principle of the *Library Bill of Rights*, adopted by the ALA Council and subscribed to by both *amici*, is pertinent to the statute at issue:

> Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.

This principle is directly transgressed by Missouri's ban on encouraging or counseling a woman to have an abortion, insofar as it applies to libraries receiving or expending public funds. The ban will remove from circulation many materials concerning abortion solely because a majority of the state legislature wishes to deny access to ideas based upon viewpoint. Application of the statutory ban beyond the library to other state employees or recipients of state funds—such as doctors or psychologists—is of substantial concern to *amici* as well; such restrictions pose a similar threat to the marketplace of ideas guaranteed by the First Amendment. . .

Libraries are essential to the intellectual, cultural, and educational welfare of the Nation precisely because they make available to the public the full spectrum of information and opinion without censorship based upon authors' views. Libraries *per se* do not express opinions, but they do, without favoritism, make available books, magazines, and other materials that express opinions, often in very strong terms. Thus, even absent a statute such as section 188.205, a library would not "counsel" a woman to have an abortion or to take any other course of action. But if asked by a pregnant woman wanting information about abortion, the options available to her, or places where she might obtain an abortion, a library would provide her the materials she seeks. Such materials might well "counsel" or even "encourage" a woman to have an abortion in particular circumstances (or counsel against or discourage abortion). In this respect, the role of the library is directly comparable to that of a physician or other health care provider, among whose responsibilities is providing information about all medical choices.

Fulfillment of this function by libraries is crucial to the flourishing "marketplace of ideas" celebrated in this Court's fundamental First Amendment jurisprudence. But despite the tradition of "freewheeling inquiry" in America's libraries, libraries occupy a perilous niche in our society: most of our libraries are publicly funded institutions subject to state control not only through the police power but also through the power of the purse. If not insulated by the First Amendment from viewpoint-biased manipulation of public funds, as well as from viewpoint-censorship administered in the more traditional form of regulations and criminal laws, the precious tradition of free inquiry and discovery safeguarded and promoted by America's libraries will become a thing of the past.

To be sure, the State seeks to assure this Court that the statute at issue "does not prohibit the use of public funds to provide information regarding abortions or to inform a woman of the options she may have to cope with an unwanted

(continued on page 145)

---

halls to persons between the ages of 14 and 18 and limits the hours of operation of those halls does not infringe on the First Amendment right of association, the Supreme Court ruled April 3. Although the opportunities for minors to dance with adults might be described as "associational" in common speech, they do not involve the sort of expressional association that the First Amendment has been held to protect, Chief Justice Rehnquist wrote in an opinion joined by Justices Brennan, White, Marshall, O'Connor, Scalia and Kennedy. Justice Stevens filed a concurring opinion in the case, *City of Dallas* v. *Stanglin*, in which Justice Blackmun joined.

In upholding the ordinance, Rehnquist said that teenagers who congregate at the dance hall are not members of any organized association. Moreover, he stressed that a rational relationship existed between the age restriction and the city's interest in promoting the welfare of teenagers. Reported in: *West's Federal Case News*, April 14.

The Supreme Court April 18 vacated a lower federal court's ruling that Congress acted without constitutional authority two years earlier when it tried to block a Reagan administration program concerned with disclosure of government information. The program required federal employees to sign pledges not to disclose classified or "classifiable" information.

In 1987, Congress expressed its disapproval of the secrecy program by forbidding the executive branch from spending any money to carry it out. U.S. District Court Judge Oliver Gasch declared that action unconstitutional on the ground that it impermissibly restricted the president's powers in the area of national security and foreign relations (see *Newsletter*, September 1988, p. 163).

In a unanimous, unsigned opinion, the justices took no position on the constitutional issue. Rather, the opinion said, the case should be sent back to Judge Gasch for further proceedings to determine if there is still a dispute between the government and federal employees' unions that brought the lawsuit challenging the secrecy program.

Since the case began, the secrecy agreements to which the employees and Congress objected have been modified. The forms now define nondisclosable information more precisely, and no longer use the term "classifiable," to which the employees had objected as too vague.

The Supreme Court had agreed to hear the case, *American Foreign Service Assoc.* v. *Garfinkel*, last October (see *Newsletter*, January 1989, p. 18), and it had been expected to produce a significant ruling on the separation of powers. The court's disposition of the case, which wipes the constitutional ruling off the books, was a victory for the federal employees. In its opinion, the court was obliquely but unmistakably critical of Gasch for having issued a constitutional ruling that was not clearly essential to resolve the dispute before him. Reported in: *New York Times*, April 19.

On March 29, the Supreme Court ruled that the state of Illinois violated the free exercise clause of the First Amendment when it denied unemployment compensation benefits to a worker who refused a position because the job would have required him to work on Sunday. The state claimed that the man's refusal was not based on the tenets or dogma of an established religious sect. But Justice Byron White wrote in *Frazee* v. *Illinois Dept. of Employment* that it was necessary for the worker to be responding to the commands of a particular religious organization for his beliefs to be "rooted" in religion. Reported in: *West's Federal Case News*, April 7.

In another free exercise case, the justices agreed March 20 to decide whether the Constitution permits prosecution of those who use illegal drugs as part of religious ceremonies. The Oregon case grew out of a dispute over unemployment benefits for two male adherents of an American Indian religion that makes ritual use of peyote, a hallucinogenic drug. The Oregon Supreme Court ruled that denial of unemployment benefits to the men on the ground that their own "misconduct" in using peyote led to their dismissals was unconstitutional. Reported in: *New York Times*, March 21.

On March 21, the Supreme Court heard arguments in a case that will determine the constitutionality of a Florida law barring the media from publishing or broadcasting the name of a sexual assault victim. The law was challenged by the *Florida Star*, a Jacksonville newspaper. Reported in: *Florida Star*, April 1.

On April 26, the Supreme Court heard oral arguments in the case of *Webster* v. *Reproductive Health Services*, a major abortion rights case concerning a Missouri law that makes it illegal for health professionals receiving state funds to "encourage" or "counsel" a woman considering an abortion. The Bush administration has asked the court to use the opportunity presented by *Webster* to reverse its landmark 1973 decision in *Roe* v. *Wade*, which legalized abortion in the first trimester of pregnancy.

A record number of *amicus* briefs were filed in the case — 78, beating the previous high by 20 — including a brief filed by the American Library Association and the Freedom to Read Foundation. That brief argues that the Missouri law endangers libraries since materials about abortion in publicly financed libraries could be construed as "counseling" abortion, thus placing librarians at risk of prosecution for circulating such material. (Excerpts from the ALA/FTRF brief in this important case appear on page 134). Reported in: *Washington Post*, May 1.

child pornography

Washington, D.C.

A U.S. District Court Judge on May 16 struck down key provisions of the 1988 Child Protection and Obscenity Enforcement Act, ruling that the record-keeping requirements of the law designed to thwart sellers and producers of child pornography violated the First Amendment rights of film producers, photographers, writers, booksellers, and librarians.

Judge George H. Revercomb voided the sections of the act that required publishers to investigate and keep records of the names, ages and addresses of models used in depictions of sexual activity or "lascivious exhibition of the genitals." He also declared unconstitutional provisions that authorized the seizure of material alleged to be child pornography prior to a determination that the material was actually illegal.

The ruling in *American Library Association* v. *Thornburgh* came in response to a suit brought by the American Library Association (ALA), the Freedom to Read Foundation, and seven trade associations. The plaintiffs did not challenge aspects of the law that related directly to child pornography, but did charge that the law would inhibit the dissemination of non-obscene books and magazines protected by the First Amendment without having the slightest effect on the criminal activity it was meant to control.

"This is an important First Amendment victory," said Judith F. Krug, executive director of the Freedom to Read Foundation and Director of ALA's Office for Intellectual Freedom. "We abhor child pornography, but the provisions of this law fell hardest on non-obscene constitutionally protected materials. Librarians were concerned about loaning books on sexuality to adults. We were also worried about art and photography books involving nudity."

The law required producers of material with depictions of sexual activity or lascivious exhibition of the genitals produced after February 6, 1978, to investigate and determine the names, ages, and addresses of models appearing in any magazine, book or film to prove that everyone depicted in the nude was over 18. Producers were required to personally check the identification of every model and to keep a record of the information. The law also required producers to print a notice stating where these records were held. The record-keeping requirement was to take effect the day after Revercomb's decision.

In the absence of such a notice, the law authorized the courts to place on the defendants in child pornography cases the burden of proving that the models depicted in the material were not under 18. The plaintiffs argued that this provision would make producers and distributors reluctant to deal with any material involving nudity, including First Amendment protected works.

Revercomb, who was appointed to the federal bench by former President Reagan, agreed that requiring every

American Library Association v. Thornburgh

The following are excerpts from the May 16 opinion by U.S. District Court Judge George H. Revercomb in the case of American Library Association *v.* Thornburgh, *declaring unconstitutional key provisions of the 1988 Child Protection and Obscenity Enforcement Act.*

There are few stronger contrasts in the law than the differences in the legal treatment of nude images. If the model in an image is at least 18 years old, the producers and distributors are protected by the full range of rights under the First Amendment, unless the image falls into the narrow category of "obscenity." By contrast, if the model has *not* reached the age of eighteen, producers and distributors of the image are subject to criminal punishment. With child pornography, this legal contrast is heightened by the fact that, to paraphrase the late Mr. Justice Stewart, one cannot always tell it when one sees it.

The distinction in the law exists because of the conflict between two fairly unrelated notions of individual rights. The First Amendment's rights to free speech and free press generally ensure that no citizen will be censured merely because of what he says or puts on paper or film. This right reflects the ideal that no one's

(continued on page 147)

"producer" in the chain of production — from photographers to film processors to publishers — to determine the age of the models involved would discourage the creation of legitimate works. He also cast doubt on whether the record-keeping requirements would accomplish their aim of suppressing child pornography.

"The record-keeping requirements apparently would do more to infringe, hinder, and in some cases effectively prohibit the production and distribution of protected First Amendment 'erotic' material than it would to stop the creation and dissemination of child pornography," Revercomb concluded. (For excerpts from the decision see above).

In addition to the record-keeping provision, Revercomb struck down the provision of the law that authorized civil and criminal forfeiture prior to an adversary hearing of material alleged to be child pornography as well as any property used to facilitate the sale of such material. Revercomb also modified a provision of the law that authorized the forfeiture of child pornography, obscene material, the facilities used to manufacture or sell this material, the profits earned from the sale of the material and everything purchased with those profits. The law had held that such forfeitures, including books and other First Amendment protected materials, could be ordered as a punishment for a single violation of the federal obscenity law banning the receipt or sale of two or more copies of an obscene work shipped in interstate commerce. Revercomb ruled that such sweeping forfeitures would only be constitutional when they are applied to cases in which a pattern of criminal activity is established, as under the Racketeer Influenced and Corrupt Organizations (RICO) laws.

The Child Protection and Obscenity Enforcement Act of 1988 was approved by Congress last October and signed into law by President Reagan in November. Its provisions were drawn from recommendations of the Attorney General's Commission on Pornography (the "Meese Commission"), which issued its report in 1986.

The ALA lawsuit was filed on March 14 and Revercomb heard oral argument on April 25. Besides the ALA, the plaintiffs were the American Society of Magazine Editors; ASMP—the American Society of Magazine Photographers, Inc.; the Council for Periodical Distributors Associations, Inc.; the International Periodical Distributors Association, Inc.; the Magazine Publishers of America and the Satellite Broadcasting and Communications Association of America. The American Booksellers Association was also a plaintiff for the purpose of challenging the forfeiture section of the law that applied to the assets of businesses convicted of selling obscene material. Reported in: *Washington Post*, May 17; *Wall Street Journal*, May 18.

judicial secrecy

Washington, D.C.

In a highly unusual move, Judge Douglas H. Ginsburg of the U.S. Court of Appeals for the District of Columbia Circuit, deleted 12 of 18 pages of the publicly released text of his dissenting opinion in a case decided April 14, saying his reasoning had to be kept secret because it was based on classified information. Justice Department lawyers were permitted to see the full Ginsburg opinion, but lawyers for the plaintiff in the case, *In Re: United States of America*, were not.

Ginsburg was nominated to the Supreme Court in 1987 by President Reagan, but the nomination was withdrawn after disclosures that he had smoked marijuana while a professor at Harvard Law School.

The decision came in a lawsuit accusing the FBI, as part of its Cointelpro domestic surveillance program during the 1950s and 1960s, of engaging in illegal activity designed to discredit a New York man who was a member of the Communist Party. The government, invoking the state secrets privilege, asked the court to take the unusual step of ordering the lower court to dismiss the suit without hearing the case.

Senior Judge Max Rosenn, in an opinion joined by Judge

Abner J. Mikva, refused, saying an FBI affidavit submitted under seal did not convince the court "that evidence of the government's activities of 20 to 30 years ago will result in the disclosure of state secrets today."

In his dissent, Ginsburg warned that the lower court ignored the government's "legitimate and compelling interest in preventing disclosure of exceedingly sensitive national security information." Although he agreed that the entire case should not be dismissed, Ginsburg said the trial judge should be ordered not to permit discovery in the case.

"Unfortunately," Ginsburg wrote, "I am unable to fully explain my disagreement with the court . . . without discussing in some detail the contents of the classified affidavit . . . and thus the bulk of this opinion will be available only to a limited readership." He said he hoped the opinion "will serve to persuade the [full appeals court] or, failing that, the Supreme Court, of the error of today's decision." The next 12 pages were marked "[text deleted]" and several sentences in the remaining five pages were also excised.

Kate Martin, director of the American Civil Liberties Union's National Security Litigation Project, called the secret opinion "totally improper," likening it to Star Chamber proceedings of the past in England. "It's bad enough to have secret evidence," Martin said, noting that plaintiff lawyers were barred from seeing the FBI affidavit. "His dissent is an effort to write secret law" and is "totally inconsistent with our democratic form of government."

Bruce Fein, a conservative legal scholar associated with the Heritage Foundation, called the deletion "most extraordinary," adding, "It's very disturbing if you have secret law that's known only to the judge or the government because you could imagine a future case when the government cites the opinion but the opponent doesn't know what's in it." Reported in: *Washington Post*, April 18.

copyright

New York, New York

The right of historians and biographers to reprint letters, diaries and other unpublished primary source material has been challenged in a copyright infringement decision by the U.S. Court of Appeals for the Second Circuit. The court's language, similar to that in a 1987 decision by the same court prohibiting the publication of a biography of author J.D. Salinger that quoted from unpublished letters, sent tremors through the publishing industry and among scholars and First Amendment lawyers.

The December 19 decision escaped much notice because it upheld on a technicality a publisher's right to print an unflattering book about L. Ron Hubbard, the founder of the Church of Scientology. A Danish corporation related to the church had sought to bar the book, *Bare-Faced Messiah: The True Story of L. Ron Hubbard*, by Russell Miller, on the ground that the use of Hubbard's letters constituted a copyright infringement.

In a unanimous ruling by a three-judge panel, the appellate court upheld a lower court's refusal to enjoin the book's publisher, Henry Holt & Co. But it did so on the narrow ground that the plaintiffs had filed the suit too late.

Moreover, in an opinion signed by two of the judges, the court declared: "The District Court denied an injunction for several reasons, one being the existence of special circumstances in which free speech interests were said to outweigh the interests of the copyright owner. We are not persuaded, however, that an First Amendment concerns not accommodated by the Copyright Act are implicated in that action."

The opinion, by Judges Roger J. Miner and Frank X. Altimari, added: "An author's expression of an idea, as distinguished from the idea itself, is not considered subject to the public's 'right to know.'"

In ruling on the case at the district court level last August, Judge Pierre N. Laval also refused to issue a injunction against publication, but in doing so he said the courts should consider the free speech rights of an author as well as the copyright interests of the plaintiff, especially if the material that is quoted is essential to demonstrate the point of a criticism.

In a separate opinion, Chief Judge James L. Oakes of the Second Circuit concurred in the decision not to issue an injunction, but sided with Judge Laval and disagreed sharply with Judges Miner and Altimari. Oakes noted that their opinion "tends to cast in concrete" the language that Miner previously had used in deciding the Salinger case.

In October, 1987, after months of appeals, the U.S. Supreme Court let stand the Second Circuit decision barring Random House from publishing the Salinger biography by Ian Hamilton unless brief quotations and paraphrases of Salinger's letters were deleted.

The appeals court ruled that the letters, which had been donated to libraries and were open to perusal by scholars, still belonged to the writer. While the Salinger and Hubbard materials were similar, the uses to which that were put were substantially different. The Salinger letters were used to enliven the text, while the Hubbard letters were used to show how his private character was at odds with his public character. Reported in: *New York Times*, April 28.

student press

Lawrence, Kansas

A U.S. District Court judge on March 30 blocked Haskell Indian Junior College officials from censoring the school's student newspaper or publishing it without approval of the paper's student managing editor and its sponsoring organization. The temporary restraining order issued by Judge Richard Rogers came in response to a lawsuit filed by the ACLU on behalf of the Indian Leader Association and seven student reporters for the *Indian Leader* student newspaper.

The *Indian Leader* had not been published since October, after it carried a controversial article about Gerald Gipp, suspended president of the two-year federal college for American Indians. The students' attorney, Dario Robertson, said financing for the paper was frozen after the article appeared. Gipp is under investigation for various ethics violations.

"Since the administration has some sort of heavy-handed approach, they think they can bully students and prevent them from speaking out," Robertson said. "It's like every time you uncover a rock there is an abuse."

Robertson said the Haskell administration had tried to put out the newspaper without allowing its managing editor, Marcel Stevens, the opportunity to edit it. But James Hills, the newspaper's faculty adviser, said allegations of censorship and administrative control of the paper were "totally false and ridiculous."

Gordon Risk, president of the ACLU of Kansas, said his group became involved when it thought that Haskell students were being prevented from producing a student newspaper. "Our hope would be that the students would be reinstated to their editorial function and put out a real student newspaper," he said. Reported in: *Kansas City Times*, March 31.

public transit

Washington, D.C.

Regulations requiring permits for protesters and others planning "free speech activities" in the subway or on other Washington Metro transit properties are unconstitutional, a federal judge ruled May 18. The regulations "impose too great a burden on an individual seeking spontaneously or otherwise to express his or her First Amendment rights," U.S. District Court Judge Stanley Sporkin said. The ruling came in a lawsuit brought by two homeless groups and by the Gray Panthers and activists arrested while protesting around the Farragut West Metro stop.

In his opinion, Judge Sporkin noted that the regulations require anyone who wants to engage in "free speech activity" on Metro property to go to Metro's main office during business hours to get a permit. Metro defined such activity as "the organized exercise of rights and privileges which deal with political, religious or social matters and are non-commercial."

The judge said there is a presumption in the law against restrictions on First Amendment activities in public places. Such restrictions normally must be linked to safety concerns in order to be constitutional, he said.

Sporkin wrote that the limits on where and when permits could be obtained created a "built-in delay mechanism'" that could hamper would-be protesters' "immediate response to late-breaking events." Reported in: *Washington Times*, May 19.

zoning

Islip, New York

New York State's highest court May 11 narrowly upheld the right of municipalities to enact zoning laws that force bookstores and theaters that sell sexually explicit material to move out of downtown shopping areas and into less-visited neighborhoods, like industrial districts.

In a 4-3 decision, the Court of Appeals upheld an Islip, Long Island, ordinance that effectively requires such merchants to move into industrial areas. A bookstore that had fought the ordinance for four years claimed it was an inappropriate use of zoning regulations that infringed on First Amendment protections. Lawyers on both sides of the case and civil liberties groups said the ruling was the first by the court to give local governments the explicit power to compel such businesses to move.

Civil liberties groups criticized the ruling. Norman Siegel, executive director of the New York Civil Liberties Union, said the decision ran "the risk of reducing the volume and the free flow of ideas. The decision could create second-class citizenship for books just because the government doesn't like what's between the covers."

"Manifestly, the zoning regulations are less restrictive than banning adult uses altogether, and more compatible with free speech values than a licensing scheme which arguably could present opportunities for the improper exercise of discretion," Judge Richard D. Simons wrote in the opinion. Judge Simons said the ordinance did "not restrict in any significant way those wishing to acquire adult books from doing so."

Chief Judge Sol Wachtler and Judges Joseph W. Bellacosa and Stewart F. Hancock, Jr., concurred, and Judges Fritz W. Alexander, Judith S. Kaye and Vito J. Titone dissented.

Judge Kaye said Islip did not apply a "least restrictive means" test to show there were no other measures available that would have a less detrimental effect on freedom of expression. "Here, the Town didn't simply fail to meet this burden," she wrote. "It didn't even try." Reported in: *New York Times*, May 12.

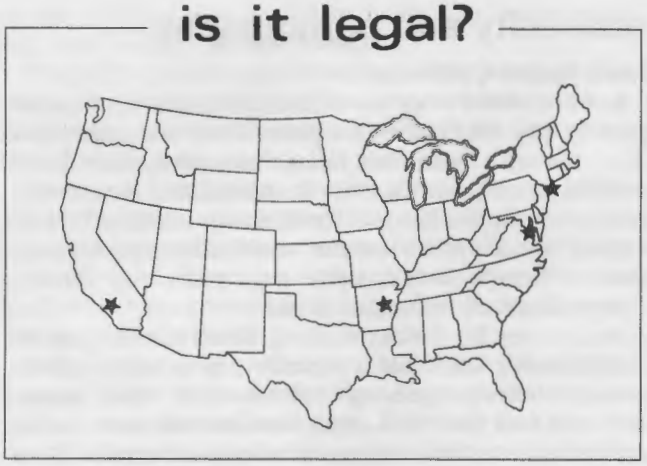
political endorsements

San Francisco, California

That portion of the California Constitution which prohibits political parties and their central committees from endorsing, supporting, or opposing candidates in local, school, and judicial elections violates the First and Fourteenth Amendments to the U.S. Constitution, U.S. District Court Judge Alfonso J. Zirpoli ruled April 27.

The possibility that a judge or local school official will appear beholden to particular interests, and the possibility that the public will be unduly influenced by the particular endorsement, Zirpoli wrote in *Geary* v. *Renne*, are both risks inherent in a system that calls upon judges and officials to run for office. Reported in: *West's Federal Case News*, April 14. □

is it legal?



broadcasting

Washington, D.C.

A bill that would let the television industry set voluntary guidelines to curb violence and drug use on the home screen was approved by the Senate Judiciary Committee April 13. The ACLU immediately challenged its constitutionality.

The bill, sponsored by Sen. Paul Simon (Dem.-Ill.), would grant a three-year exemption from federal antitrust laws to the television industry — including networks, affiliates, local stations, the cable industry and producers. The exemption would allow industry representatives to develop guidelines for voluntary self-regulation of violence on television by conferring together, which would otherwise be illegal.

"There's nothing voluntary about guidelines which emerge from a regulated industry after being instructed on the kinds of programs members of Congress don't like," said ACLU legislative counsel Barry Lynn. "The hearing record of the past two Congresses is filled with evidence of precisely what programs and images the supporters of this measure want off the air, including professional wrestling, *Miami Vice*, and Saturday children's cartoons."

Simon and Sen. Strom Thurmond (Rep.-S.C.), cosponsor of the bill, pointed to numerous studies linking television violence to childrens' behavior. "Individuals may differ on the extent of the link, but very few, if any, disagree that there is some kind of causal connection," Thurmond said.

The committee approved an amendment offered by Sens. Howell Heflin (Dem.-Ala.) and Herbert Kohl (Dem.-Wisc.) asking the television industry to draw up standards on the portrayal of drug use as well. The Senate has passed similar legislation twice before, but the bills have never passed the House. Reported in: *Washington Times*, April 14.

Washington, D.C.

Two U.S. Senators who say they are fed up with negative political campaigns introduced legislation May 16 that would require federally licensed radio and television stations to only accept negative advertising in which a candidate personally refers to an opponent. If another person or voice-over announcer makes charges against the opponent, then the station would be required to provide response time to the person attacked free of charge.

The bill's sponsors, Sens. Ernest Hollings (Dem.-S.C.) and John C. Danforth (Rep.-Mo.), said they were aware that the proposal raised First Amendment concerns. The senators released a four-year-old legal opinion by a group of communications lawyers, including Newton N. Minow, former chair of the Federal Communications Commission. The opinion conceded that "the bill is necessarily in a 'gray area' " where its constitutionality will ultimately have to be decided by the Supreme Court. But the lawyers noted that the courts had held that it was constitutional for Congress to require stations to provide free response time under various circumstances.

The two Senators introduced the bill once before, in 1985, but it died in committee. "The voter deserves a clear and direct discussion," Hollings said. "It should not occur through surrogates who have no real responsibility."

"If a candidate wants to sling mud at his opponent," Danforth added, "the public should be able to see the candidate's dirty hands."

Roger Ailes, the Republican political consultant who masterminded highly effective attacks on Michael Dukakis in George Bush's presidential campaign, said the bill violates the First Amendment. "If we're going to start with censorship in this country," he said, "we ought to start with child pornography and political commercials ought to be far down the list." Reported in: *New York Times*, May 17.

survey research

Washington, D.C.

The most extensive survey ever developed on Americans' sexual behaviors, which was to have begun in March, was placed on hold indefinitely while a review was carried out by the Department of Health and Human Services. Whether the survey eventually is allowed to be carried out — and in what form — is being viewed by some of its supporters as a litmus test for how firmly the Department Secretary, Louis W. Sullivan, will defend the integrity of basic social science research.

"They've taken what should be simply a scientific issue and made it a moral and political issue," said Marshall Becker, a professor of health behavior at the University of Michigan School of Public Health. The survey's foes, led by Rep. William Dannemeyer (Rep.-Calif.), hope to narrow its scope, if not kill it entirely.

At the center of the controversy is what was designed to be the first representative poll of the hows and whys of American sexual behavior. The major impetus for the survey came from a desire to gauge more accurately the extent of behavior that can transmit the AIDS virus. The original draft of the survey included questions running the gamut of human sexuality.

The National Institute of Child Health and Human Development awarded a contract to the National Opinion Research Center, affiliated with the University of Chicago, to oversee a pilot survey of about 2,300 people, with the main survey eventually meant to query 20,000 people. But because the arrangement was a federal contract and not a research grant, the questionnaire came under the purview of the Office of Management and Budget (OMB).

After a review, OMB Director Richard G. Darman sent a letter early in April to Dr. Sullivan stating that "while we have the authority to attempt to make the burden of associated paperwork reasonable . . . the larger issues are beyond our authority." But Darman advised Sullivan to reconsider the project.

Writing that he did not "question the legitimacy of the federal government's support for public health research," Darman noted that "as important as it is, that is a considerably narrower subject than the more general subject of sexual mores, preferences and behavior patterns in American society." In response, Sullivan said that first his staff and then he would review the survey.

Rep. Dannemeyer has proposed his own study that would include an examination of sex education programs across the country, crime rates, and rates of sexually transmitted diseases, to ascertain why people do or do not engage in behavior that the Representative finds aberrant.

While the institute-sponsored survey's questions about anal and oral sex and masturbation have attracted the most objections, Paul Mero of Rep. Dannemeyer's staff said that "there is no revision that could be made that could make the survey acceptable." Mero said that because the proposed survey asks only what people do and not why, "implicit in the findings will be that because there are so many people who do this, it can't be wrong, so why do we have a law against it?"

"How does a survey of behaviors justify those behaviors?" Prof. Becker asked. As social scientists, "we are being asked to design interventions to get individuals to change risky behaviors. To design effective interventions, you have to know what people are doing, how often, and what the behaviors mean to them. We have to stop designing education programs without information from the real world. The bottom line is, there is a feeling in some portions of our society that knowledge of sexual matters is dirty knowledge." Reported in: *Chronicle of Higher Education*, May 3.

obscenity and pornography

Long Beach, California

In a pivotal test of the use of zoning regulations to control pornography, the California Supreme Court was asked April 11 to overturn a lower court ruling that government officials contend severely inhibits cities from regulating the showing of sexually explicit movies. The decision, issued in 1981 by a state Court of Appeal, held that municipalities may bar adult theaters from a certain locale only when they show a "preponderance" of X-rated films.

An attorney for the city of Long Beach told the justices that the ruling had made it virtually impossible to enforce zoning ordinances regulating adult theaters. If theater owners can show such films 50% of the time and still evade zoning ordinances, such laws become meaningless, he said. "Porn zoning in California is dead under [the ruling]," Deputy City Prosecutor Gerry L. Ensley noted. He urged the court to allow cities to act against theater owners for only a single showing of a sexually explicit movie.

Newly appointed Justice Joyce L. Kennard, sitting on the court for the first time, asked the attorney how a single such showing could adversely affect a community. "This kind of material, ipso facto, attracts crime, blight and juvenile delinquency," Ensley replied. "We're not banning such theaters, we're restricting their location."

Stanley Fleishman of Los Angeles, attorney for the theater owners in the 12-year-old battle over a Long Beach ordinance prohibiting adult theaters within 1,000 feet of a public school or religious institution and 500 feet of a residental area, urged the court to uphold the 1981 ruling or, better yet, strike down the zoning scheme itself as a violation of free speech under the California Constitution.

"It's an end run — an unconstitutional attempt to achieve indirectly what the city can't do directly," Fleishman said. "The U.S. Supreme Court has approved [porn zoning], but that doesn't mean *you* have to under the state Constitution."

At the hearing, several justices raised the possibility of seeking a middle ground in defining adult theaters that would enable cities to regulate those that "customarily" or "ordinarily" show X-rated films. But Ensley replied that such a standard could be attacked as too vague, and stood by his plea for the single-showing definition.

"Are you saying that if a theater decides to show a sex movie once a year, on Halloween, that that is a blight on the neighborhood?" asked an incredulous Justice Stanley Mosk. Reported in: *Los Angeles Times*, April 12.

New York, New York

Two feminists who regularly protest hard core pornography at various locations around New York were arrested January 16, charged with violating one of the anti-pornography statutes they want to see more strictly enforced. At an April 16 court hearing, Page Mellish and Dolores Voughan, members of Feminists Fighting Porn-

ography, asked a judge to declare the state law under which they were arrested unconstitutional.

"People protesting experiments on animals put up graphic posters showing animals being cut up; but when my clients show posters of women being tortured for profit, they get arrested," defense attorney Ronald Kuby said.

The women were arrested on misdemeanor charges of third-degree obscenity and public display of sexual materials because they placed on tables samples of the publications they found offensive. They also displayed an enlargement of an illustration from a pornographic magazine depicting a woman with electrodes attached to her breasts.

Kuby said the case was the first challenge to the constitutionality of the public display law. Although the law was enacted more than a decade ago, according to Kuby, his clients' arrests marked the first prosecutions in Manhattan. "Those who wish to put an end to such materials would do far better to go after the pornographers," he said. Kuby also maintained that his clients didn't violate the state obscenity law because their display didn't appeal to "prurient interests," as stated in the law.

Speaking to reporters at a support demonstration outside the courthouse, Mellish charged that her prosecution was a glaring example of hypocrisy in a city wherein "a multi-million dollar porn industry thrives under the noses of an inept and indifferent criminal justice system," Reported in: *New York Newsday*, April 18; *New York City Tribune*, April 18.

religion in schools

Blytheville, Arkansas

Daily Bible readings, for years part of the routine at Blytheville High School, won't be stopped by the threat of a lawsuit by the American Civil Liberties Union, school officials said March 16. The practice of reading Bible verses with school announcements over the school intercom has been going on for at least seventeen years, said acting high school principal Bruce Young.

The ACLU was contacted by an area resident who complained about the practice, and the organization said it might file a suit to stop the unconstitutional mixing of state and religion. Jay Jacobson, director of the Arkansas ACLU, said Bible reading in public school is a violation of the First Amendment and was deemed such in a 1973 case involving the Cross County School District, also in Arkansas.

In that case, U.S. District Judge Oren Harris said that readings of Bible verses and recitation of the Lord's Prayer over a school intercom system amounted to using tax-supported schools to aid religious practices. Reported in: *Memphis Commercial-Appeal*, March 17. □

(censorship dateline. . .from page 132)

foreign

Beijing, China

With some shouts of "Punish China's Salman Rushdie," thousands of Moslems in China have taken to the streets in at least three cities to protest a book written by two Chinese authors that, the protesters charge, insults Islam. More than a thousand people, including Moslem students, held a demonstration outside the main Beijing mosque May 12 to condemn the book, *Sexual Customs*, which has been banned by city authorities.

Several days earlier, Communist Party leaders in northwestern Gansu province, which has one of China's largest Moslem populations, also banned the book and ordered it destroyed after provincial Islamic leaders expressed outrage over its publication.

The book, which purports to describe sexual practices throughout the world, says that Moslem mosques represent sexual images, that Moslems engage in deviant sexual practices, including bestiality, and that the Koran promises worthy Moslem males young virgins as a reward when they go to Heaven.

The decision to ban the book came just before Iranian President Seyyed Ali Khameini met with Chinese leaders in Beijing. At a press conference, Khameini reasserted the February death sentence by the Ayatollah Ruhollah Khomeini on Rushdie for writing *The Satanic Verses*. He did not comment on the Chinese book. A report from a Chinese source that a Moslem leader in Ningxia autonomous region ordered the assassination of the book's two authors could not be confirmed.

The book's publisher, Shanghai Cultural Publishers, said it had only lent its name to a printer in Shanxi province to allow publication of the book. The book is one of many paperbacks on sex that have been published in China after many years in which such topics were taboo. It first went on sale in Beijing in March.

The book was not the first publication banned because it was alleged to be insulting to a Chinese minority. Two years ago, a book alleged to insult Tibetans was ordered banned. In 1983, a Shanghai newspaper apologized for ridiculing Moslem rules against eating pork. Reported in: *Washington Post*, May 13.

St. George's, Grenada

On April 11, the government of Prime Minister Herbert Blaize declared 86 books officially banned from Grenada. The majority of the banned titles are published by Pathfinder Press of New York. The action formalized a number of recent seizures of Pathfinder book shipments by Grenadian officials.

Last October, Grenada customs officials seized a shipment of books from a Pathfinder representative. At that time, Grenada police commissioner Cosmun Raymond said the books were being checked against "a list of banned books" (see *Newsletter*, March 1989, p. 49).

On March 8, another four boxes of Pathfinder literature, as well as a box carried by Pathfinder director and journalist Steve Clark, were confiscated. Also seized was a personal copy of Graham Greene's novel *Our Man in Havana*, which was said to be "restricted." Clark and other members of an American contingent in Grenada to attend a left-wing political conference were asked to leave the country.

A U.S. government source said the seizures were "obviously lawful and clearly within the purview of the Grenadian constitution. There is freedom of the press in Grenada, but the government has the wherewithal to allow books into the country as it sees fit. This was also explained to Mr. Clark several times."

The confiscations prompted protests from the PEN American Center, the Committee to Protect Journalists, several members of the U.S. Congress, and more than 84 representatives of publishers, distributors and academic institutions in Europe, Africa, the Caribbean and Latin America.

Among the books confiscated were *The Struggle is My Life*, by Nelson Mandela; *Maurice Bishop Speaks: The Grenada Revolution, 1979-83; Nothing Can Stop the Course of History: An Interview with Fidel Castro;* and *Malcolm X Speaks*. Among the additional titles banned on April 11 were *The Communist Manifesto*, by Karl Marx and Frederick Engels; *Socialism: Utopian and Scientific* and *Origin of the Family, Private Property, and the State*, by Engels; *Che Guevara Speaks; Cuba for Beginners*, by Rius; *The History of the Russian Revolution*, by Leon Trotsky; and several pamphlets by V.I. Lenin, including *Imperialism: The Highest Stage of Capitalism* and *State and Revolution*. Reported in: *Publishers Weekly*, April 7; Pathfinder Press press release and communication, May 8.

Nairobi, Kenya

The Kenyan government on April 21 banned an aggressive business magazine that for two years broke an unwritten rule of journalism in Africa. It published detailed articles about alleged corruption and mismanagement at high levels in the Kenyan government. The weekly *Financial Review*, with a circulation of about 15,000, named officials allegedly involved in illegal or unethical business practices.

The banning order came three days after Attorney General Matthew Muli criticized the magazine for "carrying mischievous stories implying that the government has taken over and nationalized" the property of Kenya's wheat millers. Muli demanded an "unconditional" retraction and apology. Government protests did not, however, dispute the facts reported by the *Financial Review*.

Owner-editor Peter Kareithi purchased the *Review* in 1986. "We must have known from the beginning what was going to happen," he told an interviewer, "but we were encouraged by government statements about the responsible exercise of freedom of the press. We wanted to demonstrate that it was possible for a Kenyan-owned publication to take bold steps. We wanted to encourage other Kenyans."

"The past year has literally been a nightmare for me and my staff," Kareithi continued. "When we sat to discuss a cover story, most of our discussions were not about how to get information, but rather how to report it objectively and honestly without getting in trouble." Reported in: *Washington Post*, April 26; *New York Times*, May 10.

Jerusalem, Israel

A Holocaust survivor's Hebrew translation of Adolf Hitler's infamous *Mein Kampf* touched off a controversy in Israel in March. Author Dan Yaron argued that a Hebrew edition of the book would help educate young Israelis about the evils of Nazism. Other Holocaust survivors said it should never appear on Israeli bookshelves. Yaron said he was having difficulty finding a publisher. Reported in: *Minneapolis Star Tribune*, March 23.

Managua, Nicaragua

President Daniel Ortega Saavedra on April 22 signed into law a measure easing restrictions on the press. He described the new law as one of the most progressive in Latin America, but some opposition figures called it inadequate.

Under the law, the government can no longer require news organizations to submit copies of articles to the censor before publication. It also abolished indefinite closures of print and broadcast outlets, although suspensions of up to four days continue to be permitted.

The law also provides penalties for disseminating information considered contrary to the interests of the state, for altering government news releases, communiques and other statements, and for the "transmission, diffusion, publication or projection of injurious, defamatory or false information."

Erick Ramirez, president of the opposition Social Christian Party, said the law "buries whatever vestige of press freedom exists in Nicaragua." He said the law failed to authorize private television stations. Instead it "guarantees equal access to social and political groups" on government television. The Association of Independent Journalists of Nicaragua also criticized the new law. Reported in: *New York Times*, April 25. □

success stories

libraries

Clearwater, Florida

School board members voted unanimously June 8 not to remove from the Clearwater High School library a novel by Stephen King that a parent had labeled obscene. Board members said that although they did not personally care for King's *The Shining*, parents should decide for themselves if the book is suitable for their children.

The Shining "has a message that needs to be explored and compared and hopefully rejected," said board chair Ron Walker. "I have books in my library by and about Adolf Hitler. Part of an education is exploring ideas."

James W. Jackson III, a Clearwater dentist, had asked the board to remove the book, which his 14-year-old son had checked out of the library, after he read portions of it. Jackson passed a copy of the book to board members with passages marked that he deemed offensive.

Jackson described himself as "a man of God ordained with authority and responsibility. I have delegated some of that responsibility and authority to the Pinellas County School System, which has made this book available. I'm not happy about that." Jackson asked board members to "stand up for righteousness" and remove the book. Reported in: *St. Petersburg Times*, June 9.

Hays, Kansas

The Hays Public Library Board on May 8 turned down a request from a campus evangelist to remove an award-winning children's book from the shelves. In a written complaint filed last October, Steven LeClerc asked the board to remove *The Headless Cupid*, by Zilpha Keatley Snyder, from the children's section of the library.

LeClerc wrote, "There are no redeeming features about this book. At the end it implies that a person can step into and out of witchcraft at will. This is not so. The book ends with witchcraft being real, which it is, but implies that it is not evil." In the complaint LeClerc concluded, "This book should be destroyed."

After hearing LeClerc warn that the book could lead young readers to embrace Satanism, the seven-member board voted unanimously to keep the book on the shelves. Previously, a committee of Hays Unified School District 489 had reviewed the book and recommended its retention in school libraries. Reported in: *Hays Daily News*, May 10.

Conway, South Carolina

A controversy over the removal of sexually oriented books from Horry County School District middle school libraries ended after three days when school district officials decided to put the books back in circulation. The controversy began January 23 when Superintendent John Dawsey approved a recommendation to remove some books dealing with abortion and homosexuality from the shelves. Among the titles removed were *Homosexuality in America*, *The Abortion Controversy in America*, *Kids Having Kids*, *Who They Are: The Right-to-Lifers*, and *What Teenagers Should Know About Homosexuality and the AIDS Crisis*.

Dawsey said he acted because a 1988 state health education law prohibited the books. The law forbids teachers from discussing abortion services or from referring to homosexuality, except when it pertains to sexually transmitted diseases such as AIDS. Teachers violating the law are subject to dismissal. Dawsey said he feared that school librarians could lose their jobs if the books remained on the shelves.

"This is not intended as a censorship move, but to protect our teachers from liability," said Laura Blanchard, coordinator of library and media services. "We are hoping we either will receive instruction from the state that libraries are not included in the law, or that somebody will challenge the decision in court."

That did not prove necessary, however. After the removals, an attorney advised the district that the Legislature did not intend the law to apply to books on abortion and homosexuality. Dawsey then announced that the books would be returned to the libraries.

"I think the Legislature never intended that it be interpreted in the way it's being interpreted in this district," attorney Bruce Davis told the Horry County School Board January 26. "When the Legislature enacted this statute I do not think it intended — and I do not think that any court would find that it intended — that a school district purge from its libraries all books which make some reference to the subject of abortion."

Davis did tell the board, however, that the law would probably prohibit circulation in school of a pamphlet from Planned Parenthood that gave advice about abortion services and where they could be obtained.

The short-lived order to remove books exempted fiction, newspapers and magazines, dictionaries, encyclopedias, indexes and instructional videos. According to associate superintendent for instruction James P. Mahaffey, "Only four books in our largest high school were in the least bit questionable." Reported in: *Charlotte Observer*, January 24, 25; *Horry Independent*, February 1; *Spartanburg Herald-Journal*, January 27.

schools

Tuscaloosa, Alabama

Despite objections from several county residents, the Tuscaloosa County School Board declined March 27 to supersede the authority of Northside High School faculty and administrators and remove John Steinbeck's *Of Mice and Men* from the school's recommended reading list. The board heard arguments for and against the book's removal before deciding to concur with the recommendation of a Northside review committee.

The controversy began when an eleventh-grade girl who was assigned the novel complained to her father, Barry Bowen, about profanity in the book. Bowen called the school and talked to Northside Principal James Elliot, filing a formal complaint in February. Elliot named a five-member committee to review the book. The committee voted unanimously to recommend its retention on the reading list.

That was when Bowen, supported by the Rev. Danny Lovett of the Open Door Baptist Church, appealed to the board. "This book has profane use of God's name," Lovett said. "Fifty-eight times some reference to God is used in a profane manner. We want to work with the school board, not against it in removing these books from the curriculum," the minister continued. "This is the first one that has been brought to my attention. We want books like this off the endorsed and recommended reading list in our public schools. We are teaching our kids double standards."

"If we cannot teach God in the schools, we should not slander God in the schools," added Bowen. "We're talking about moral decency."

According to the committee report, "Steinbeck's works were not meant to comfort or entertain. His works are realistic, serious, and objective. His works were intended to show that all men are human beings and possess the same feelings and emotions, regardless of race, creed, color, or social class."

Frankie Thomas, a retired librarian who served for 35 years in the Tuscaloosa County schools and at the University of Alabama, was one board member who supported the novel. "The book is a classic and a masterpiece. Its reputation speaks for itself," she said. Board members Gene Hill and Manly Neighbors agreed. "The books stay on the shelves," said Hill. "As far as I am concerned, we don't have to make a voting decision, the decision has already been made." Reported in: *Tuscaloosa News*, March 26, 27, 28; *Crimson White*, March 29.

Monroe, Michigan

The Monroe Public Schools Board of Education voted 7-0 March 21 to allow Kurt Vonnegut's *Slaughterhouse Five* to remain as required reading in a course on the modern novel offered to high school juniors and seniors. A week before, parent Jo Ann Green told the board that she objected to the book's language and to the way women are portrayed in its pages. She added that the book was inappropriate for any class or age group.

"Many similes or metaphors are used to describe things or events," she wrote in her complaint, "but they are generally stated in sexual terms. . . . Or the language is just plain offensive. Any claim to be using this language for emphasizing is invalidated by its frequent use. I feel the book is degrading to life, sex, women and men, and above all God," she wrote.

The book is one of five novels read in the class. The other four are *Catcher in the Rye*, by J.D. Salinger; *The Old Man and the Sea*, by Ernest Hemingway; *All Quiet on the Western Front*, by Erich Maria Remarque; and *As I Lay Dying*, by William Faulkner.

After Green filed her complaint, a review committee decided to recommend to the board that the book stay in the curriculum. Susan Leibold, one of the parents on the committee, defended the book. "The man writes and is able to make a point very quickly," she said. Added librarian Gail Price, another committee member: "You can be horrified at the language, but I don't think it's pornographic or obscene."

In accepting the review committee's recommendation, the board agreed that students don't have to read the book if they or their parents find it objectionable. The board also agreed to include a statement in the course description that some readings include language that some may find objectionable and that alternate reading assignments will be available to those who request them. The optional assignments will be available to students in all courses. Deputy Superintendent William Smith said the decision to offer alternative readings when requested simply reconfirmed past policy. Reported in: *Monroe Evening News*, March 15, 22.

---

three new confidentiality statutes

In the first half of 1989, Arkansas, New Mexico, and Vermont joined the list of states that have passed legislation protecting the confidentiality of library circulation records. This brings the number of states with such statutes to 41. In addition, confidentiality is also protected by statute in the District of Columbia. The nine remaining states without confidentiality legislation are: Hawaii, Idaho, Kentucky, Mississippi, New Hampshire, Ohio, Texas, Utah, and West Virginia. □

Northport, New York

In a ruling with broad implications for school districts in New York, the State Education Commissioner on April 5 ordered the distribution of a student-written publication that was withdrawn last year by a Long Island board of education. The case — an appeal by a former student of the Northport-East Northport Union Free School District — had drawn wide attention (see *Newsletter* March 1988, p. 46; July 1988, p.115). It was the first student press censorship challenge in New York following the U.S. Supreme Court's controversial decision in the *Hazelwood* case.

In his ruling, Education Commissioner Thomas Sobol said that school districts could adopt censorship standards less stringent than those approved by the Supreme Court. "The existence of a power does not itself compel the exercise of that power," Sobol said.

Ruling on an appeal filed by Eric Brenner, a student who wrote an article for *Arts Focus*, a Northport High School publication, Sobol said the school district had not followed its own regulations when it ordered that 500 copies of the magazine not be distributed at a district-sponsored arts and music festival. Sobol ordered that the magazine be distributed at the school within ten days of receipt of his order.

Since his decision was based on the district's own policy, Sobol said, "it is unnecessary to address the constitutional questions." But Alan H. Levine, a Manhattan attorney who filed *amicus* briefs for the New York Library Association, the New York Civil Liberties Union, and the PEN American Center, said the ruling represented a First Amendment victory for the students. "He recognized the issue is still open in any state that chooses to leave it open," Levine said.

Under the policies adopted by the Northport district, materials written by and approved by students for publication were permitted as long "as they do not physically interfere with the orderly and efficient operation of the schools nor the health and safety of the students and staff."

Brenner's article, "The Depths," a parody of the Beatles' song "Yellow Submarine," received a high grade when submitted as part of a creative writing course. But Superintendent William J. Brosnan deemed its distribution in *Arts Focus* inappropriate owing to a line about a man who couldn't urinate. Sobol said the district's arguments were "without merit" because it had violated its own standards giving students "broader free speech protection than those" established as minimal by the Supreme Court. Reported in: *New York Times*, April 6.

legislation

Butte and Missoula, Montana

An ad hoc group of booksellers organized by Mark Watkins, co-owner of Freddy's Feed and Read of Missoula, and Melinda Quivik, owner of Butte Booksellers in Butte, stopped the state legislature from passing one censorship bill and successfully gutted another.

"We showed them that language such as 'sexual excitement' is far too broad in defining obscenity," Watkins said. "A lot of legislators agreed that this language was laughable." Working with attorney/lobbyist Mark Staples, the booksellers also persuaded the legislature that proposed obscenity penalties would be "draconian."

A second bill opposed by the booksellers dealt with minors' access and was passed on April 18. However, Watkins reported, "the changes we won make the law meaningless." In its final form, the legislators even deleted the language "harmful to minors" in defining offensive material. In addition, Watkins said, the law now states that material that is acceptable for older minors is also acceptable for younger minors. Reported in: *ABA Newswire*, May 8. □

(ALA/FTRF brief. . .from page 134)

pregnancy." But this is cold comfort indeed. *First*, as discussed *infra*, if, as Appellant contends, the State can prohibit doctors and mental health counselors in public health programs from expressing a point of view favoring abortion—despite the tradition in these professions and such programs of unfettered expression of professional judgment in the patient's best interest—there is no reason to believe the State could not prohibit libraries dependent on public funding from making those same views available in literature maintained on library shelves.

Second, even if no viewpoint-restrictive statute *directly* applies to the role of information-provider fulfilled by libraries, the very presence of a state policy actively hostile to one set of views on this controversial subject will silently deter libraries from making such views available. Libraries have no stake in the abortion controversy and have no position as to how it should be resolved. But in the presence of a high-profile state policy barring public employees from expressing pro-abortion views, libraries may well err on the side of caution and be forced to act as self-censors of their acquisitions and collections.

Third, as the Court of Appeals correctly observed, the statute, even as read by attorneys and judges, is vague in the extreme. As construed by libraries (and no doubt by other publicly funded institutions) its proscription will inevitably be applied to prohibit the use of public funds to provide information *about* abortion as well as information advocating abortion. Indeed, such a construction would not be unreasonable. Given the vague language of the statute and the variety of interpretations to which it may be subjected (as well as the difficulty of distinguishing information from advocacy in many cases), it is safe to predict that if left unchecked, the statute will engender widespread censorship of information and opinion. It is also certain that this censorship would compromise the traditional functions of libraries as well as other public institutions, and significantly diminish

the quality of information available on the subject of abortion, not only to a pregnant woman struggling to decide whether to terminate her pregnancy, but to all Americans.

Above all else, the First Amendment forbids government from discriminating against persons exercising First Amendment rights because it disagrees with their point of view. "Viewpoint discrimination" is prohibited even in areas where government otherwise enjoys significant latitude to regulate speech, such as the use by *private* speakers of public property or public funds. The Missouri statute at issue discriminates based upon viewpoint against speech favoring abortion in both contexts, and therefore violates the First Amendment.

The statute also imposes a viewpoint-based restriction on expenditure of public funds by *public* institutions and employees. Government has an interest, in certain circumstances, in communicating values or ideas to which it subscribes, and there are no doubt circumstances in which government may impose viewpoint restrictions on the speech of its employees or programs—such as, for example, where the *purpose* of the program is to communicate the views of government on particular subjects. But a viewpoint restriction is particularly dangerous and clearly unjustifiable when it is *not* reasonable in light of the purpose of the government program. Viewpoint restrictions on publicly supported libraries or universities are not reasonable in light of the purposes of these institutions— which have long been bastions of free thought and exploration—and they therefore violate the First Amendment. Similarly, viewpoint restrictions on doctors, nurses, and psychologists employed by the State in public health programs are inconsistent with the purpose of those programs, which is to enable persons of limited means to obtain the benefit of the training and judgment of health care professionals. To restrict the ability of such professionals to communicate their views as to the appropriate course of treatment violates the First Amendment rights of those professionals and their patients. A contrary holding would undermine the independence of all public institutions that historically provide opinion and information free from official orthodoxy.

The vagueness of the statutory ban on "counseling" will chill an undue amount of constitutionally protected speech in libraries and other institutions that receive state funds. As repositories of a wide variety of diverse information from different points of view, libraries do not discriminate in their acquisition or dissemination of information based on the author's viewpoint. Under the statute, the mere provision of information on abortion may reasonably be construed to be within the vague, broad term "counseling" and thus may be prohibited. As a result, information about abortion, whether neutral, pro, con, physiological, medical, historical, etc., may be suppressed as a defensive reaction to the statute's threat of de-funding. A statute creating such a profound chilling effect transgresses the bounds of the First Amendment. . . .

In *Pico*, this Court considered the application of the viewpoint-neutrality principle in the context of a public school library. In public schools, perhaps uniquely among governmental institutions in the United States, the inculcation of values is an express and legitimate purpose. The Justices disagreed about the *application* of the viewpoint-neutrality principle to the facts of *Pico*, but at least *eight* Justices recognized that the First Amendment is infringed if officials remove books from a public high school library based upon the officials' disagreement with the ideas expressed in those books. Many lower courts, both before and after *Pico*, have also held that viewpoint discrimination has no place in public school libraries. This is entirely appropriate; the school library must complete the student's education by supplementing with a variety of viewpoints the more directed curriculum designed by local educators.

Because the viewpoint-neutrality principle governs even in *school* library cases where, in curriculum choices, government has a legitimate value-inculcative function to perform, the ban on viewpoint-based discrimination applies a *fortiori* to *public* libraries or private libraries receiving public funds. Such libraries, in contrast to the school setting, are unambiguously places for "freewheeling inquiry." The various opinions in *Pico* therefore foreclose any possible argument that the Missouri statute is constitutional as applied to publicly supported libraries. Governmental viewpoint censorship of library collections or of assistance provided by libraries to library users—whether to suppress pro-abortion literature, anti-abortion literature, or any other literature based upon the views of its authors—is unconstitutional, and is not less so because government accomplishes the result through a funding cut-off rather than a criminal prohibition.

The law as applied to public and publicly supported libraries is unconstitutional for a second reason as well. They are quintessentially government forums. Through libraries, government funds help certain private citizens— authors— to communicate with others—library users. Libraries, and all other means of communication afforded by government to private speakers, are controlled by a set of rules developed in a long line of cases, rules that (at a minimum) plainly prohibit exclusions that are in reality efforts "to suppress expression merely because public officials oppose the speakers' view." Thus, Missouri's viewpoint-based restrictions on the use of public funds are unconstitutional as applied to libraries and any other institution through which state funds facilitate communication by private speakers. . . .

It is clear, in sum, that government may not single out one viewpoint for disfavor in administering subsidies, any more than it may do so in a "nonpublic forum." Missouri's viewpoint-based restriction on subsidies to private organizations—whether they are libraries, health clinics, or other entities—is plainly unconstitutional. . . .

Obviously, the State may not be permitted to define the "purpose" of a program or the "function" of an employee

in such a way as to pervert the customary functions of the program or employee at issue. The State should not be permitted to define the purpose of a library or university, for example, as disseminating only speech of one particular viewpoint. Nor should a State be permitted to define a public health doctor's role as advocating one particular view to his or her patient, regardless of his or her professional opinion. To permit such *ad hoc* redefinition would be to validate *any* restraint, however pernicious to the marketplace of ideas. It is against the tradition of free discourse in library or university, or, in the health care context, the tradition of professional advice in the patient's interest unfettered by external orthodoxy, that any state viewpoint restraint must be measured. Only in this way can institutions essential to the marketplace of ideas remain free from subversion through manipulation of government funds.

The "abortion question" is one of the most divisive moral and theological issues of our day. But if Missouri chooses to offer its less affluent citizens free or subsidized access to health care professionals, it may not force those professionals to censor their professional opinions to accommodate the non-health-related "policy choices" made by a majority of the state legislature. Because this statute does just that, it unconstitutionally restricts public health professionals' First Amendment rights to express their professional opinion to their patients, and violates those patients' rights to receive medical or other health-care advice free from extraneous state-imposed viewpoint-bias.

If this Court holds otherwise, and indicates that States enjoy *carte blanche* to use their purse strings to forbid the expression of particular views even if the prohibition is not consistent with the essential purpose of the program or institution at issue, a serious blow will be struck not only at the freedom of public health doctors, psychologists, and their patients, but also at the freedom of all Americans to obtain uncensored opinion and information from their libraries. As noted, libraries, like health care professionals, must rely upon their mission as an unfettered source of information and opinion as their shield against financially imposed state censorship. . . .

The Court of Appeals correctly observed that the statute's inherent vagueness will chill a quantity of speech far greater than the "advocacy" the State claims it wishes to censor. Many public employees understandably are extremely sensitive to threats to their job security or the security of the funding for their program. The same is true of recipients of state largess. The disjunctive phrase "encouraging or counseling," contained in the statute, thus will suggest to state functionaries the need to self-censor "counseling" that does *not* encourage abortion, but merely provides information *about* abortion to women considering whether to have one. As the Court of Appeals observed, such a broad construction is necessary in order to prevent the words "or counseling" from becoming surplussage. Thus, if the statute is upheld, it would not be unreasonable for libraries to construe it as affecting the kind of information about abortion they may acquire and disseminate. The vagueness of the statute and its potential chilling effect therefore independently render the statute unconstitutional. □

(ALA v. Thornburgh. . .from page 136)

expression should be curtailed unless it potentially harms another, and is subject only to narrow exceptions such as slander, libel, and obscenity, the expressions in which extend beyond the speaker and harm others. On the other hand, the proscriptions on child pornography are based on the notion that persons under 18 are presumed not to be mature enough to decide whether to participate in pornography; instead, the government wisely decides for them that such participation is unhealthy.

Each side in this case argues that the legal contrast in the treatment of nude images justifies its position. The government argues that precisely because it is often so difficult to determine whether a model is under 18 years old, it is necessary to place requirements on all nude imagery, including ones protected by the First Amendment. The plaintiffs argue that the courts must be extra vigilant in ensuring that efforts to ferret out child pornography are not cast so broadly that they improperly and unnecessarily burden protected material.

It is also worth noting at the outset that this is not a typical pornography case, in which the task is to determine where the line is to be drawn between protected First Amendment material and that which may be prohibited. Here, it is clear that much material that is protected by the First Amendment will be subject to the record-keeping requirements; the question is whether the strong public policy against child pornography justifies the burden on protected material. Finally, this case, unlike many pornography suits, does not involve the questions of local morality or federalism — the law at issue here is a national statute, with equal standards imposed from big cities to rural counties.

Although this Court is sensitive to interfering with the vigorous investigation of and prosecution of child pornography, it concludes that the record-keeping requirements at issue here excessively burden the First Amendment material and infringe too deeply onto First Amendment rights. . . .

The key in determining the constitutionality of a law that "spills over" from a legitimate governmental interest — such as the effort against child pornography — onto protected material is whether the legislation is "narrowly drawn" to avoid as much interference with protected material as possible while furthering the legitimate governmental interest.

Courts must be especially vigilant in scrutinizing broad legislative efforts that clearly burden protected First Amendment material in the name of attacking things not constitutionally protected. . . .Vigilance in this area is appropriate both because of the requirements of strict scrutiny and narrow tailoring and because courts must protect against legislatures that would enact laws that are intended to infringe on protected speech but that are cloaked in terms of an effort against non-protected material.

There has not been a significant amount of case law on this subject, perhaps because legislatures are rightly aware of the dangers of passing such "spillover" legislation. For example, it seems clear that it would be unconstitutional to enact a law that required a novelist and publisher to prove, through documentation of when and where the author came up with the idea for the story, that the book does not infringe on anyone's copyright. Nor would it be appear to be constitutional to require that all newspaper articles that criticize governmental officials include in the middle of each article a list of the sources for the story, their addresses, and phone numbers, in a purported attempt to protect against defamation. . . .

Reviewing the record-keeping requirements of 18 U.S.C. § 2257, the Court concludes that they are unconstitutional because they both (1) burden too heavily and infringe too deeply on the right to produce First Amendment protected material and (2) have not been narrowly tailored to fit the legitimate governmental interest of stopping child pornography.

To say that the record-keeping requirements are onerous is to understate the point. They are not "incidental" burdens; they are direct burdens imposed on much material that is clearly protected by the First Amendment. What makes the requirements extraordinarily burdensome is the remarkable breadth of who must fulfill the record-keeping requirements and how much effort many "producers" would have to take to meet the legal requirements. The result of the requirement that each producer along the stream of commerce must *personally* contact the model or performer and *personally* ascertain the model's or performer's age, current name, maiden name, professional name, and other information will undoubtedly be the effective prohibition of the distribution of much First Amendment protected material. . . .To take one example, a film distributor who makes copies of films for distribution would be faced with the often-insurmountable task of having to track down personally any performer in a "lascivious" scene, *even if* the original producer of the film provided the distributor with his own documentation of the age of every performer.

Moreover, the Act applies to all depictions made since early 1978 and applies even to images made overseas, where a large percentage of "lascivious" images are created. To require a publisher or producer to travel to Europe or Asia to track down every "lascivious" model or performer shown in a book, magazine, or film originally created a decade earlier is overly burdensome.

The Court also concludes that the record-keeping provisions do not fulfill the First Amendment requirement they be narrowly tailored to meet the needs of child-pornography prosecution. The bulk of the record-keeping under the Act would be imposed on "producers" along the stream of commerce that would otherwise would not have direct contact with models and performers. A more sensible and narrowly tailored legislative effort might focus on the original photographers, who could be required to document the performer's age and then pass that information along the stream of commerce. Such a system that focused on those that have direct contact with the models and performers could be equally — and perhaps more effective — in ferreting out child pornography, while at the same time not placing unconstitutional burdens on the producers, publishers, and distributors of the First Amendment protected material.

Finally, the Court concludes that the record-keeping requirements are not focused narrowly and precisely on helping eliminate the evil of child pornography. Indeed, it is conceivable that these requirements would do as much to hinder protected material as they would to halt child pornography.

First, there is *no* direct sanction for failure to keep or complete the records. Indeed, the information collected by a producer *cannot* "be used, directly or indirectly, as evidence against any person with respect to any violation of the law." It is true that failure to complete the records might lead to a criminal presumption that the performer is under age. However, there can be no sanction if the material is completed and maintained. While a distributor of child pornography would probably think twice about keeping accurate records that certain performers are under 18 years old, this fact in its records *cannot* be admitted as evidence against him. Indeed, prosecutors would have the added burden of proving that its evidence was not tainted by information gleaned from records. Moreover, it appears that if a producer lies about the age of the performer, the prosecutor would be unable to take advantage of the presumption unless the prosecutor independently ascertains that the performer was under 18 — in which case the records are unnecessary. Indeed, if the producer lies about whether he contacted the performer at all, the prosecution could not take advantage of the presumption unless it somehow could *prove* that the producer lied about contacting the performer. This difficult task appears to be roughly comparable to the task of proving the age of the performer — the difficulty of which presumably was the incentive behind the whole idea for the new law.

Second, it is not true that "mainstream" producers, such as those represented by the plaintiffs, would be free to ignore the record-keeping requirements if they were *sure* that they do not produce child pornography. Because the statute clearly states that all producers "shall" compile the records, the Court must assume that law-abiding producers will comply with it — either by trying to fulfill the requirements or by suppressing the material. The Court cannot make the law

"constitutional" by assuming that producers will violate the requirements of the statute. Moreover, the surmise that prosecutors may be "unlikely" to prosecute mainstream publishers — a prosecution that would come with a presumption that performers are under 18 if the records are not complete — is of little comfort to producers.

Third, the law would not solve the problem that much of child pornography arises from the underground and black markets. While the Court will not accept the plaintiff's invitation to conclude that "mainstream" producers do not create child pornography, it is clear that a successful effort against child pornography must be cognizant of the fact that much child pornography is not created through above-board production means. The fact that the statute in question here does not address this problem does not of course make it unconstitutional; the fact does, however, add to the conclusion that the law is not narrowly and precisely tailored to meet a compelling governmental need.

Finally, the record-keeping requirements would do little to alleviate the problems associated with the incentive of both producers of pornography involving minors and performers under the age of 18 — such as teenage prostitutes and runaways — to falsify the age of the performers through false identification and other means. The requirements do nothing to stop publishers and film producers from being fooled by false identification or even from participating in the falsification. Again, the law would put as much, if not more, of a burden on reputable producers of adult images than on the child pornography industry.

The Court concludes therefore, that in addition to being overly burdensome on protected material, the record-keeping requirements are not saved by being tailored precisely to the harm of child pornography. Rather, the record-keeping requirements apparently would do more to infringe, hinder, and in some cases effectively prohibit the production and distribution of protected First Amendment "erotic" material than it would to stop the creation and dissemination of child pornography.

In sum, the Court concludes that the record-keeping provisions of 18 U.S.C. § 2257 are unconstitutional under the First Amendment because they infringe too deeply on First Amendment protected material, do not "incidentally" affect protected material, and are not tailored narrowly enough to pass constitutional scrutiny. Accordingly, the Court grants the plaintiffs' motions for an injunction and for summary judgment on this issue, declares 18 U.S.C. § 2257 to be unconstitutional, and enjoins the defendants from enforcing its provisions. □

(most censored. . .from page 117)

4. *The Dangers of Food Irradiation.* While scientific research warns of potential dangers from consuming irradiated foods, and despite at least one serious contaminating accident at a food irradiation plant in 1988, the U.S. Department of Energy (DOE) still plans to set up 1000 food irradiation facilities around the country within the next ten years. Large amounts of radioactive waste, which currently pose a critical disposal problem for the DOE, will be used to process the food.

5. *Acid Rain — One of America's Biggest Killers.* Acid rain, once considered to be a threat only to crops, trees, and fish, is now reported to be a significant threat to human health and lives. The U.S. Office of Technology Assessment (OTA), an advisory body to Congress, rated acid rain much more dangerous in 1988 than it was in 1984 when the OTA estimated the annual American death toll due to acid rain at 50,000 to 200,000. In 1986, the Brookhaven National Laboratory of New York estimated that acid rain annually kills 50,000 Americans plus 5,000 to 11,000 Canadians.

6. *America's Secret Police Network.* The Law Enforcement Intelligence Unit (LEIU) is a super-secretive national, private intelligence agency which links the intelligence squads of almost every major police force in the United States and Canada. The LEIU is a private organization not subject to freedom-of-information laws nor answerable to any public authority. In the past, the LEIU has been charged with wiretapping, breaking and entering, and spying to gather information for its files.

7. *Children are Dying to Pay the Third World Debt.* "The State of the World's Children," a UNICEF report issued in 1988, revealed that more than half a million children died in 16 developing nations last year because their debt-burdened governments cut back on social spending in order to repay debts to bankers in industrialized nations, including the United States. Altogether, UNICEF estimates that some 900 million people, mostly women and children, are now suffering because of those debts.

8. *The Specter of a Constitutional Convention.* Special interest groups, led by the conservative National Taxpayers Union, are pushing for a constitutional convention to amend the Constitution to provide for a balanced budget, voluntary prayer in school, and restrictions on abortions. The Constitution requires approval by two-thirds (34) of the states to hold such a convention; as of late 1988, 32 states have voted for the convention — just two states short of an event that could change the political system we have had for the past 200 years.

9. *U.S. Violates International Rule of Law.* The United States may have to pay billions of dollars in reparations to Nicaragua as a result of the Reagan administration's support of the *contra* war effort. The International Court of Justice found the U.S. guilty of "training, arming, equipping, finan-

cing and supplying the *contra* forces" in violation of our international law obligation "not to intervene in the affairs of another state."

10. *The Abuse of America's Incarcerated Children.* An average of 2.5 million children of both sexes between the ages of 5 and 19 years are incarcerated in America's juvenile detention facilities on any given day. Of that number, more than 1.2 million are sexually abused by their peers while nearly 150,000 more are being abused by their state-employed counselors and staff members. The tragedy doesn't always end with the release of the children in detention. Charles Manson and Gary Gilmore were once incarcerated children.

The other 15 under-reported stories of 1988 were: The Hidden Costs of Oil to America's Consumers; U.S./Mexican Plants Turn the Border into a Toxic Wasteland; Germ Warfare Toxins Sent Through the U.S. Mail; Reagan's "Secret Laws" and "White Propaganda;" The Untold Story of What's Happening in Guatemala; America's Coastal Resources are in Critical Danger; Sweden Sets International Example by Eliminating All Nuclear Power; American Parents are Committing Their Children to Adolescent Mental Institutions; Abusing Hispanic Women is Routine at U.S./Mexican Border; Punishing the Unborn for the "Sins" of the Mother; *The New York Times*: America's Pro-nuke Newspaper of Record; Evangelists Hunt Down Last of Paraguayan Indians; Reagan Used Secret Gallup Polls for Propaganda; The Drug Warlord of Burma Wants to Make a Deal; Alaska Runs a State-sanctioned Poaching Monopoly.

The panel of judges who selected the top ten stories were: Dr. Donna Allen, president, Women's Institute for Freedom of the Press; Ben Bagdikian, professor, Graduate School of Journalism, University of California, Berkeley; Noam Chomsky, professor, Linguistics and Philosophy, Massachusetts Institute of Technology; George Gerbner, professor, Annenberg School of Communications, University of Pennsylvania; Nicholas Johnson, professor, College of Law, University of Iowa; Charles L. Klotzer, editor and publisher, *St. Louis Journalism Review*; Rhoda H. Karpatkin, executive director, Consumer's Union; Brad Knickerbocker, editorial page editor, *The Christian Science Monitor*; Judith Krug, director, Office for Intellectual Freedom, American Library Association; Bill Moyers, executive editor, *Public Affairs Television*; Jack L. Nelson, professor, Graduate School of Education, Rutgers University; Herbert I. Schiller, professor, Department of Communication, University of California, San Diego; Sheila Rabb Weidenfeld, president, D.C. Productions.

Jensen, who created *Project Censored* in 1976, said "If the media had spent less time analyzing its own election polls and more time probing George Bush's political background, the public would have been far better informed when it went to the polls last November. The readers of *Willamette Week* in Portland, Oregon, know more about what kind of person George Bush really is than do the readers of *The New York Times*."

Anyone interested in nominating a 1989 story for next year's project can send a copy of the story to Carl Jensen, *Project Censored*, Sonoma State University, Rohnert Park, CA 94928. □

intellectual freedom bibliography

Compiled by Anne E. Levinson, Assistant Director, Office for Intellectual Freedom

Ahmed, T. "A Literary Black Hole of Calcutta." *Times Higher Education Supplement*, vol. 851, February 14, 1989, p. 11.

Amiel, B. "Separating the Man from the Cause" [Rushdie]. *Maclean's*, vol. 102, March 13, 1989, p. 9.

"A Mutiny at Stars and Stripes." *U.S. News and World Report*, vol. 106, March 6, 1989. p. 15.

Atlas, J. "Thatcher Puts a Lid On." *The New York Times Magazine*, March 5, 1989, p. 36.

Bagdikian, Ben H. "The Lords of the Global Village." *The Nation*, vol. 248, no. 23, June 12, 1989, p. 805.

Blum, D.E. "At Catholic U., Mood is Uncertain and Subdued After Embattled Priest Loses Lawsuit." *Chronicle of Higher Education*, vol. 35, March 29, 1989, p. A14.

Booth, William. "Fang Lizhi: Speaking Out for Human Rights." *Science*, vol. 244, no. 4903, April 28, 1989, p. 417.

Bosmajian, Haig A. *The Freedom to Read: Books, Films and Plays.* Neal Schuman, 1987.

_____. *Freedom of Expression*, Neal Schuman, 1988.

_____. *Academic Freedom*, Neal Schuman, 1988.

_____. *The Freedom to Publish*, Neal Schuman, 1989.

Burress, Lee. *The Battle of the Books: Literary Censorship in the Public Schools, 1950-1985.* Scarecrow Press, Metuchen. N.J., 1989.

Charles, S. "Have Christian Books Been Censored?" *Publishers Weekly*, vol. 235, March 3, 1989, p. 58.

"Chaos, 1989," Editorial. *The Nation*, vol. 248, no. 22, June 5, 1989, p. 759.

"The China Syndrome." *The New Republic*, vol. 200, no. 20, May 15, 1989, p. 7.

Conable, Gordon M. "Does the *Library Bill of Rights* Apply to Videocassettes?" *ALKI* [Washington State Library Association Journal], vol. 5, no. 1, March 1989, p. 5.

Cose, Ellis. *The Press.* William Morrow, 1989.

Coughlin, Ellen R. "Religion Scholars Mine Popular Music for Intimations of the Divine." *The Chronicle of Higher Education.* vol. 35, no. 32, p. A4.

Cox, C. "A Junior Version of Censorship." *Times Educational Supplement*, vol. 3792, March 3, 1989, p. A19.

Crawford, Rosemary Sannini. "Free Speech and Jealous Mistresses: The Court and the First Amendment." *Enquiry* [University of Delaware], vol. 9, no. 3, Spring 1989, p. 2.

Crozier, B. "Islamic Wasteland." *The National Review*, vol. 41, March 24, 1989, p. 17.

Dickson, David. "'L'Affaire Pasteur' Prompts Canadian Outcry." *Science*, vol. 244, no. 4902, April 21, 1989, p. 280.

Dubro, Alec. "L'Affaire du Rushdie." *Zeta Magazine*, May 1989, p. 52.

Fields, H. "High Court Bars Pretrial RICO Seizure of Books." *Publishers Weekly*, vol. 235, March 10, 1989, p. 19.

Flannery, Gregory. "Eavesdropping Left and Right: An Earful in Cincinnati." *The Nation*, vol. 248, no. 15, April 17, 1989, p. 516.

Fotheringham, A. "Ducking the Rushdie Challenge." *Maclean's* vol. 102. March 6, 1989, p. 64.

Friedman, M. "Her Majesty's Censors." *The Progressive*, vol. 53, February 3, 1989, p. 30.

Glazer, Myron Perez and Penina Migdal. *The Whistleblowers.* Basic Books, New York, 1989.

Goodrich, Chris. "Chain Reaction." *The Nation*, vol. 248, no. 17, May 1, 1989, p. 596.

Harmon, Charles. "Age Labels Unsuitable for YAs." *School Library Journal*, vol. 35, no. 8, April 1989, p. 49.

Havel, Vaclav. "A Statement to the Court." *New York Review of Books*, vol. 36, no. 7, April 27, 1989, p. 41.

Hawkins, Gordon and Franklin E. Zimring. *Pornography in a Free Society.* Cambridge University Press, New York, 1988.

Herman, Edward S. and Noam Chomsky. *Manufacturing Consent: The Political Economy of the Mass Media.* Pantheon, 1989.

Hertzberg, H. "Secular Sermon." *The New Republic*, vol. 200, March 20, 1989, p. 4.

Johnson, Cameron A. "Are Videos Different?" *ALKI*, [The Washington State Library Association Journal] vol. 5, no. 1, March 1989, p. 9.

Jorstad, E. "All About What Johnny Can't Read, and Who Says He Can't." *Curriculum Review*, vol. 28, January 1989, p. 4.

Kerr, David A. "*The Satanic Verses* and Beyond." *The Christian Century*, vol. 106, no. 11, April 15, 1989, p. 354.

Kuipers, Dean. "The Silencing of 'Radio Sarah.'" *The Nation*, vol. 248, no. 16, April 24, 1989, p. 559.

Laber, Jeri. "Fighting Back in Prague." *New York Review of Books*, vol. 36, no. 7, April 27, 1989, p. 39.

Leo, J. "In Search of the Middle Ground." *U.S. News and World Report*, vol. 106, March 6, 1989, p. 30.

McCarthy, M.M. "Curriculum Censorship: Values in Conflict." *Educational Horizons*, vol. 67, Fall-Winter 1989, p. 26.

Peretz, M. "Embroiled Salman." *The New Republic*, vol. 200, March 20, 1989, p. 50.

Phillps, A. "Deadly Defiance." *Maclean's*, vol. 102, March 6, 1989, p. 18.

"Salman Rushdie: A Collage of Comment." *New Perspectives Quarterly*, vol. 6, no. 1, Spring, 1989, p. 48.

Schreier, Naomi. "Sticks and Stones and Names Hurt." *Chicago Artists' Coalition News*, vol. 15, no. 5, May 1989, p. 8.

Schwartz, Herman. "Fueling Demands for Czech Reform." *The Nation*, vol. 248, no. 19, May 15, 1989, p. 660.

Sheldon, Garrett Ward. "Those Dogmatic Debates Between Right and Left Ignore Academe's Tradition of Intellectual Liberty." *The Chronicle of Higher Education*, vol. 35, no. 33, April 26, 1989, p. B1.

Steinbeck, John. *Working Days: The Journals of "The Grapes of Wrath".* Edited by Robert DeMott. Viking, New York, 1988.

Timmerman, John H. *"The Grapes of Wrath* Fifty Years Later." *The Christian Century*, vol. 106, no. 11, April 5, 1989, p. 341.

"Two Cheers for Blasphemy." *The New Republic*, vol. 200, March 13, 1989, p. 7.

Stone, Debbie. "Dartmouth v. Freedom of Speech." *Conservative Digest*, vol. 15, no. 3, May/June 1989, p. 24.

Wall, James M. "Trying on a Different Perspective." *The Christian Century*, vol. 106, no. 11, April 15, 1989, p. 339.

"Words for Salman Rushdie." *The New York Times Book Review*, vol. 94, March 12, 1989, p. 1. □

NEWSLETTER ON INTELLECTUAL FREEDOM
50 East Huron Street • Chicago, Illinois 606011