newsletter on intellectual freedom

IFC ALA

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IFC in the nineties

The following is the text of the Intellectual Freedom Committee's report to the ALA Council, delivered January 10, 1990, at the ALA Midwinter Meeting in Chicago by Chair Gordon Conable. The resolutions and documents approved by the IFC and Council begin on page 39 and continue on page 72.

The work of the Intellectual Freedom Committee is rapidly changing from past years. Former committees have developed and elaborated a coherent body of policy for the Association and its members. The Committee's agenda, however, is no longer focused as much on specific censorship incidents and the development of continuing education efforts as it has been in the past.

While we have not turned away from these efforts, an explosion is occurring in the complexity and diversity of intellectual freedom issues which directly involve librarians. Many of these issues are being defined in the legal, political, and social environments in ways which tend to submerge their First Amendment implications. To cite one important example, as commercial interests influence the development of federal policy concerning the dissemination of government information in electronic formats, librarians, the primary voice for non-commercial and citizen interests, are being isolated and outgunned by the sheer weight of the corporate entities with stakes in these areas.

The challenge of framing policy considerations in a manner that highlights the public interest in access to public information is difficult but essential. To the extent that the issues are defined in terms of technical data processing considerations or contractual technicalities, we are at risk of losing our battles before they are joined.

These are not sexy issues like the FBI Library Awareness Program, but they are ultimately policy concerns of greater lasting significance to libraries. If carefully managed, the attention we garner from effectively utilizing the FBI issue, for example, is a major means available to us to strengthen our credibility, and enhance the power that we bring to bear on issues like the Paperwork Reduction Act.

Our consistency of vision, credibility, effectiveness, and precision are the strongest weapons we have. We must conserve and develop these resources. This has three major implications for the Association and the Intellectual Freedom Committee:

1) We need to greatly strengthen our resources in data-gathering and research analysis to assist high-level policy development on a basis which is no longer primarily driven by the need to react to specific incidents and events.

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Published by the ALA Intellectual Freedom Committee, Gordon M. Conable, Chairperson.

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Views of contributors to the **Newsletter on Intellectual Freedom** are not necessarily those of the editors, the Intellectual Freedom Committee, or the American Library Association.

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ALA Council approves revised interpretations of Library Bill of Rights

At its January 1990 Midwinter Meeting the ALA Council approved revisions of four "Interpretations" of the Library Bill of Rights *submitted by the Intellectual Freedom Committee. The revised interpretations are: "Access to Resources and Services in the School Library Media Program," "Challenged Materials," "Diversity in Collection Development," and "Expurgation of Library Materials." The following are the full texts of the revised interpretations.*

Access to Resources and Services in the School Library Media Program

An Interpretation of the *Library Bill of Rights*

The school library media program plays a unique role in promoting intellectual freedom. It serves as a point of voluntary access to information and ideas and as a learning laboratory for students as they acquire critical thinking and problem solving skills needed in a pluralistic society. Although the educational level and program of the school necessarily shapes the resources and services of a school library media program, the principles of the *Library Bill of Rights* apply equally to all libraries, including school library media programs.

School library media professionals assume a leadership role in promoting the principles of intellectual freedom within the school by providing resources and services that create and sustain an atmosphere of free inquiry. School library media professionals work closely with teachers to integrate instructional activities in classroom units designed to equip students to locate, evaluate, and use a broad range of ideas effectively. Through resources, programming, and educational processes, students and teachers experience the free and robust debate characteristic of a democratic society.

School-library media professionals cooperate with other individuals in building collections of resoures appropriate lto the developmental and maturity levels of students. These collections provide resources which support the curriculum and are consistent with the philosophy, goals, and objectives of the school district. Resources in school library media collections represent diverse points of view and current as well as historical issues.

While English is, by history and tradition, the customary language of the United States, the languages in use in any given community may vary. Schools serving communities in which other languages are used make efforts to accommodate the needs of students for whom English is a second language. To support these efforts, and to ensure equal access to resources and services, the school library media program provides resources which reflect the linguistic pluralism of the community.

Members of the school community involved in the collection development process employ educational criteria to select resources unfettered by their personal, political, social, or religious views. Students and educators served by the school library media program have access to resources and services free of constraints resulting from personal, partisan, or doctrinal disapproval. School library media professionals resist efforts by individuals to define what is appropriate for all students or teachers to read, view, or hear.

Major barriers between students and resources include: imposing age or grade level restrictions on the use of resources, limiting the use of interlibrary loan and access to electronic information, charging fees for information in specific formats, requiring permissions from parents or teachers, establishing restricted shelves or closed collections, and labeling. Policies, procedures, and rules related to the use of resources and services support free and open access to information.

The school board adopts policies that guarantee students access to a broad range of ideas. These include policies on collection development and procedures for the review of resources about which concerns have been raised. Such policies, developed by persons in the school community, provide for a timely and fair hearing and assure that procedures are applied equitably to all expressions of concern. School library media professionals implement district policies and procedures in the school.

Adopted July 2, 1986; amended January 10, 1990, by the ALA Council.

Diversity in Collection Development

An Interpretation of the *Library Bill of Rights*

Throughout history, the focus of censorship has fluctuated from generation to generation. Books and other materials have not been selected or have been removed from library collections for many reasons, among which are prejudicial language and ideas, political content, economic theory, social philosophies, religious beliefs, sexual forms of expression, and other topics of a potentially controversial nature.

Some examples of censorship may include removing or not selecting materials because they are considered by some as racist or sexist; not purchasing conservative religious materials; not selecting materials about or by minorities because it is thought these groups or interests are not represented in a community; or not providing information on or materials from non-mainstream political entities.

Librarians may seek to increase user awareness of materials on various social concerns by many means, including, but not limited to, issuing bibliographies and presenting exhibits and programs.

Librarians have a professional responsibility to be inclusive, not exclusive, in collection development and in the provision of interlibrary loan. Access to all materials legally obtainable should be assured to the user, and policies should not unjustly exclude materials even if they are offensive to the librarian or the user. Collection development should reflect the philosophy inherent in Article 2 of the *Library Bill of Rights:* '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.'' A balanced collection reflects a diversity of materials, not an equality of numbers. Collection development responsibilities include selecting materials in the languages in common use in the community which the library serves. Collection development and the selection of materials should be done according to professional standards and established selection and review procedures.

There are many complex facets to any issue, and variations of context in which issues may be expressed, discussed, or interpreted. Librarians have a professional responsibility to be fair, just, and equitable and to give all library users equal protection in guarding against violation of the library patron's right to read, view, or listen to materials and resources protected by the First Amendment, no matter what the viewpoint of the author, creator, or selector. Librarians have an obligation to protect library collections from removal of materials based on personal bias or prejudice, and to select and support the access to materials on all subjects that meet, as closely as possible, the needs and interests of all persons in the community which the library serves. This includes materials that reflect political, economic, religious, social, minority, and sexual issues.

Intellectual freedom, the essence of equitable library services, provides for free access to all expressions of ideas through which any and all sides of a question, cause, or movement may be explored. Toleration is meaningless without tolerance for what some may consider detestable. Librarians cannot justly permit their own preferences to limit their degree of tolerance in collection development, because freedom is indivisible.

Adopted July 14, 1982; amended January 10, 1990, by the ALA Council.

Challenged Materials

An Interpretation of the *Library Bill of Rights*

The American Library Association declares as a matter of firm principle that it is the responsibility of every library to have a clearly defined materials selection policy in written form which reflects the *Library Bill of Rights*, and which is approved by the appropriate governing authority.

Challenged materials which meet the criteria for selection in the materials selection policy of the library should not be removed under any legal or extra-legal pressure. The *Library Bill of Rights* states in Article 1 that ''Materials should not be excluded because of the origin, background, or views of those contributing to their creation,'' and in Article 2, that ''Materials should not be proscribed or removed because of partisan or doctrinal disapproval.'' Freedom of expression is protected by the Constitution of the United States, but constitutionally protected expression is often separated from unprotected expression only by a dim and uncertain line. The Constitution requires a procedure designed to focus searchingly on challenged expression before it can be suppressed. An adversary hearing is a part of this procedure.

Therefore, any attempt, be it legal or extra-legal, to regulate or suppress materials in libraries must be closely scrutinized to the end that protected expression is not abridged.

Adopted June 25, 1971; amended July 1, 1981; amended January 10, 1990, by the ALA Council.

Expurgation of Library Materials

An Interpretation of the *Library Bill of Rights*

Expurgating library materials is a violation of the *Library Bill of Rights*. Expurgation as defined by this interpretation includes any deletion, excision, alteration, editing, or obliteration of any part(s) of books or other library resources by the library, its agent, or its parent institution (if any). By such expurgation, the library is in effect denying access to the complete work and the entire spectrum of ideas that the work intended to express. Such action stands in violation of Articles 1, 2, and 3 of the *Library Bill of Rights*, which state that ''Materials should not be excluded because of the origin, background, or views of those contributing to their creation,'' that ''Materials should not be proscribed or removed because of partisan or doctrinal disapproval,'' and that ''Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.'

The act of expurgation has serious implications. It involves a determination that it is necessary to restrict access to the complete work. This is censorship. When a work is expurgated, under the assumption that certain portions of that work would be harmful to minors, the situation is no less serious.

Expurgation of any books or other library resources imposes a restriction, without regard to the rights and desires of all library users, by limiting access to ideas and information.

Further, expurgation without written permission from the holder of the copyright on the material may violate the copyright provisions of the United States Code.

Adopted February 2, 1973; amended July 1, 1981; amended January 10, 1990, by the ALA Council.

FTRF report to ALA council

The following is the text of the Freedom to Read Foundation's report to the ALA Council, delivered January 8, 1990, at the ALA Midwinter Meeting in Chicago, by President Robert S. Peck.

As president of the Freedom to Read Foundation, it is my pleasure to report to Council on the activities of the Foundation since we celebrated our twentieth anniversary at the 1989 Annual Conference in Dallas.

The Foundation discussed the present status of *ALA v. Thornburgh*, the lawsuit challenging the constitutionality of the Child Protection and Obscenity Enforcement Act of 1988. After success at the District Court level in May, 1989, by ALA, the Foundation and its media organization co-plaintiffs, the government filed a notice of appeal in July, 1989. The briefing schedule at the Court of Appeals has yet to be set. Meantime, Senator DeConcini has reintroduced portions of the recordkeeping provisions of the act which previously were held unconstitutional. It appears unlikely that Congress will move on these bills prior to the resolution of the appeal.

At the 1989 Midwinter Conference the Freedom to Read Foundation Board authorized the Foundation to become a named plaintiff in this lawsuit and asked ALA to join it, pending review of the draft complaint. The Foundation contributed $10,000 toward the prosecution of this lawsuit on or about the date it was filed.

To date, the trial level litigation has cost $172,689 in legal fees and disbursements. It is estimated that costs through the court of appeals level will be another $45,000 to $65,000 in fees and $2,500 to $4,000 in disbursements. $155,000 has been collected and paid out: $143,000 to legal counsel (Jenner & Block) and $11,802 to the public relations firm (Daniel J. Edelman) which guided the public relations efforts when the suit was filed. As of November 30, $29,689 was owed legal counsel.

This important litigation will forever be referred to by its shorthand citation, *ALA v. Thornburgh*. As lead plaintiff, ALA will always be associated with this crucial case.

This case should stand as a lasting tribute to the importance of the American Library Association in protecting free expression and the effectiveness of action coordinated between the Foundation and ALA.

With regard to the FBI's Library Awareness Program, as you are aware and will hear in more detail from Gordon Conable, Chair of the Intellectual Freedom Committee, the FBI released the third and final batch of documents pursuant to the American Library Association's Freedom of Information Act requests. An administrative appeal of the withheld and redacted documents was filed on December 4, 1989. The Foundation is considering the present situation carefully, particularly with regard to documents which suggest that individuals who objected to or resisted the Library Awareness Program were themselves investigated. The Foundation is exploring means by which to gain additional information on those background checks.

The United States Court of Appeals for the Fourth Circuit rendered its long-awaited opinion in *ABA v. Virginia*, the case challenging the constitutionality of the Virginia harmful to minors display statute. The Court held that since the Supreme Court of the state of Virginia interpreted the statute very narrowly, the application of the statute to booksellers and others would not be unconstitutional. The chilling effect of the statute has been effectively destroyed by the narrowing construction applied in these decisions. The sole remaining problem of the case to be decided is a dispute regarding attorneys' fees.

The Foundation Board expressed its concern regarding a proposed Executive Order which would ban *Playboy* from military exchange posts. The Foundation is pleased to work with the Intellectual Freedom Committee in responding to this threat to the freedom to read of military personnel. In response to my letter of concern to White House Chief of Staff John Sununu, I have received an explanation of the current policies and practices from the Defense Department regarding so-called "adult" magazines on military bases. The response indicates that the Department is satisfied with the current state of the law.

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freedom to view

The following is the text of the revised version of the Freedom to View *statement, endorsed by the ALA Council at its Midwinter Meeting, January 10, 1990.*

The Freedom to to View, along with the freedom to speak, to hear, and to read, is protected by the First Amendment to the Constitution of the United States. In a free society, there is no place for censorship of any medium of expression. Therefore these principles are affirmed:

1. To provide the broadest possible access to film, video, and other audiovisual materials because they are a means for the communication of ideas. Liberty of circulation is essential to insure the constitutional guarantee of freedom of expression.

2. To protect the confidentiality of all individuals and institutions using film, video, and other audiovisual materials.

3. To provide film, video, and other audiovisual materials which represent a diversity of views and expression. Selection of a work does not constitute or imply agreement with or approval of the content.

4. To provide a diversity of viewpoints without the constraint of labeling or prejudging film, video and other audiovisual materials on the basis of the moral, religious, or political beliefs of the producer or filmmaker or on the basis of controversial content.

5. To contest vigorously, by all lawful means, every encroachment upon the public's freedom to view. □

A large portion of the Foundation Board's time at this Midwinter Meeting was spent in committee meetings directed toward carrying on the business of the Foundation and considering ways to expand its membership. Committees which met and reported to the Freedom to Read Foundation Board included: the Nominating Committee, responsible for preparing the slate for the 1990 election; the Membership and Promotion Committee, responsible for developing mechanisms to increase membership and identify ways to expedite their accomplishment; the Finance and Fundraising Committee, which monitors finances and identifies means other than membership to raise funds; the Roll of Honor Committee, which selects appropriate Roll of Honor awardee candidates; and the new Advisory Committee, which will be convened to develop recommendations to secure major contributors and donors and develop appropriate means by which to recognize and recruit such donors.

I would particularly like to mention the work of the Colloquium Committee. The Freedom to Read Foundation Board has rededicated itself to holding a colloquium to plan litigation strategy for the nineties. During its meeting, the Colloquium Committee considered possible dates and drafted proposals for potential funding agencies.

Thus, much of the effort of the Foundation at this Midwinter Meeting has been directed toward strengthening the Foundation's resources, looking toward the next twenty years of service to the library profession in defense of the freedom to read. As we approach the Bicentennial of the Bill of Rights, the Foundation looks forward to participating in activities in celebration of that milestone, to expanding its membership and promoting its activities, and especially toward holding a litigation strategy planning colloquium for the 1990s. □

censorship called 'serious threat' to North Carolina schools

"Censorship in North Carolina schools is flourishing," according to a report released December 26 by People for the American Way in North Carolina. The report was based on a mail survey of the state's teachers and a series of personal interviews. "Teachers in North Carolina are engaged in a silent and all too lonely battle — a battle that could have grave implications for the future of our public schools," said Cathy Stuart, Executive Director of People for the American Way in North Carolina.

Among the report's findings:

• More than a quarter of the teachers responding to the survey indicated that they faced a censorship challenge within the last few years.

• The two most attacked books in North Carolina are John Steinbeck's *Of Mice and Men*, which was challenged ten times, and *Catcher in the Rye*, by J.D. Salinger, which was challenged seven times. Mark Twain's *Adventures of Huckleberry Finn* was attacked six times and the fourth most challenged book was *The Bible*, which was subjected to censorship attempts four times.

• The single most frequent objection to textbooks and novels reported in the survey was to the treatment of religion in these materials. Similarly, 36 percent of reported challenges to classroom discussion related to teaching about religion.

• The problem is not restricted to any region of the state. Teachers in 51 of the 74 counties represented in the survey reported censorship activity. Wake County had the most incidents with 12, Guilford County reported 11 incidents, Gaston County 8, and Union County 7.

• In 32 percent of the reported challenges, the censors were successful in removing or restricting the challenged materials.

• Although state law requires every school district to develop a policy for dealing with censorship challenges, only 30 percent of those responding to the survey were familiar with their school's policy regarding challenges to instructional or library materials.

• Twenty-nine percent of the teachers responding to the survey said they did not "have sufficient freedom of expression in the schools." An additional six percent said that only in certain subject areas did they have freedom to speak and discuss in the classroom. Sixteen percent cited fears of negative impact on job security and promotion as the limitation on their freedom of expression. "I would feel more at ease if I knew that I couldn't be fired for expressing an opinion about some controversial topic," said one Mecklenburg County teacher.

• Many teachers expressed dissatisfaction with their schools' treatment of controversial issues and only 14 percent expressed satisfaction with the textbooks available to them. Among the issues teachers cited as inadequately covered were health and lifestyle issues, including drug and alcohol abuse, sex education, and discussions of AIDS (24 percent); politics, the Bill of Rights, the Constitution (20 percent); and nuclear war and the Vietnam War (14 percent).

"Teachers have less and less opportunity, given North Carolina's restrictive and constrictive and otherwise unpleasant Basic Education Plan, to introduce controversial material into their classrooms," commented one Watauga County teacher. "We all censor ourselves in some ways," added a teacher from Gaston County. "I think most teachers would say they *do* have sufficient freedom of expression, but that may be because of reluctance to address controversial issues."

"Clearly teachers need more support from school administrators, and from the state education establishment," said Stuart. "A majority of teachers don't even know of the existence of procedures for dealing with censorship attacks."

The study was based on the response of 253 teachers in 74 counties to a statewide mail-in survey. Followup interviews were conducted with 36 teachers from 27 counties. □

report from the FOIA front

The following is the edited text of a report prepared by the Society of Professional Journalists, Sigma Delta Chi, on use by journalists of the Freedom of Information Act. The study, released on December 8, was based on questionnaires sent to nearly 500 journalists, interviews with journalist and non-journalist users of FOIA, and interviews with federal employees charged with handling FOIA requests.

Among the study's principal findings:

1) Federal agencies consistently violate the ten-day response time required by the law; some requesters have waited years for a response;

2) Information is withheld, not because the law exempts it, but because it might embarrass government officials;

3) Those charged with handling FOIA requests are often improperly or inadequately trained.

The report was proposed and supervised by Bruce Sanford, First Amendment counsel to the society, and was written by Douglas Lee, an associate of Sanford's. It is followed by two appendixes: "Non-Journalist Users of FOIA," prepared by Peter Levin, a Philadelphia attorney and a member of the Society's National FOI Committee, and "The View of Access Professionals," by Dick Kleeman, director of the Society's First Amendment Center.

Federal agencies' failure to comply with the Freedom of Information Act ("FOIA" or "Act") is denying vital information to the American public, thwarting the will of Congress and forcing journalists and other FOIA users to devise alternative ways to gain access to government records.

Those were among the findings of a nationwide study conducted by The Society of Professional Journalists to determine how journalists use the FOIA and how federal agencies handle FOIA requests.

The Society's study made several significant findings:

- Journalists' principal complaint about the FOIA continues to be the lengthy delays in receiving information.
- Causes for the delays are multifold, but include a desire by some agencies to withhold information to protect government officials from political embarrassment and accountability.
- Agency responses to the same or similar requests often vary, both among and within agencies.
- FOIA requesters have been forced to develop new strategies for cutting through the bureaucratic delays.

In the study, the Society conducted in-depth interviews with 30 journalists across the nation, sent out questionnaires to 476 other journalists, interviewed non-journalist users of the Act and solicited the views of access professionals charged with implementing the Act.

Together, the responses to these inquiries create a graphic mosaic of agencies routinely violating the FOIA, robbing the public of needed information and jeopardizing good government.

Journalists' principal complaint about the FOIA continues to be the lengthy delays in obtaining information. While the Act requires that all non-exempt information be released within 10 business days after receipt of the request, most FOIA users do not receive the requested records for months, or even years. Of the FOIA users completing the questionnaire, 53 percent reported that it took the agency more than 30 days to respond to the user's most recent request. Eighty-nine percent said that they would use the FOIA more often if requests were granted more quickly.

"I often call the Freedom of Information Act the 'Freedom to Delay Act,'" said Eric Nalder, who heads *The Seattle Times'* investigative team. "Using the Act often means that the government will take longer to send the information."

Lloyd Pritchett, a military affairs reporter at *The Sun* in Bremerton, Wash., agrees. "It's hellacious," he said. Pritchett filed an FOIA request with the Department of Energy in July 1988 and he is still waiting to receive the documents. "The lady I talked to at the office said to me, 'You think you have it bad. One person has been waiting since 1983.'"

Karl Grossman, editor of the Island Closeup News Service in Sag Harbor, N.Y., has experienced a similar delay in obtaining records from the National Aeronautics and Space Administration.

Grossman made his FOIA request on February 7, 1987, seeking information about the possibility and consequences of a space probe accident that would release plutonium into the atmosphere. On June 19, 1987, NASA advised him that, "It is taking us longer than 10 working days to respond to the FOIA request received in this office. Please be assured that your request will be answered in turn."

Almost two years later, Grossman's "turn" still had not come. On April 19, 1989, the agency apologized for the long delay and asked whether he still was interested in the information. As of June 1989, however, Grossman had not received the requested documents.

Causes for the inordinate delays are multifold, journalists say. Included among them:

- loopholes in the Act;
- a desire by some agencies to protect government officials from political embarrassment and accountability;
- inadequate training of FOI officers; and
- a "first-in, first-out" system that contributes to agency backlogs.

"The trouble with the FOIA is that it has too many loopholes," Pritchett said. "These loopholes can be used to delay your request forever or to deny your requests."

Lauren Cowen, an investigative reporter formerly on the staff of Portland's *Oregonian*, agrees. "I think the FOIA is simply a delaying tactic. Federal agencies have too much discretion and use it to siphon information. [Agency officials] act as editors, trying to make judgments about information

you are seeking. They have no right to make news judgments for us. That's our job."

Agencies also at times withhold information to protect officials from political embarrassment and accountability. In one instance, *The Fresno Bee* and a private individual asked for the same information from the Department of Defense. The newspaper, through the FOIA, received a copy of the document from which much of the information had been deleted. The private individual received the same document from a U.S. Senator's office, except that her copy was not edited.

"I was amazed at what was deleted from the document that was sent to us," said Royal Calkins, an investigative reporter at the *Bee*. "I compared the two, and what they blacked out clearly didn't fit any of the FOIA exemptions. It was clear that the agency was trying to protect itself from political embarrassment."

In another example of agency foot-dragging, the Department of Energy used an outrageous fee demand and other stalling tactics to attempt to prevent the release of potentially embarrassing information.

In October 1988, Joan Lowy, the *Rocky Mountain News* reporter in Washington, D.C., filed an FOIA request with the DOE, seeking travel vouchers submitted by former Secretary John Herrington. In her request, she asked for a fee waiver. DOE initially responded that the request was too broad and that it would cost the *Rocky Mountain News* $1,000,000 for DOE to fill the request. Her request for a fee waiver was being denied, she was told, because the same information had been released to another news organization. When she asked DOE to identify that news organization, she was told that the information actually had not been released, but simply had been requested by the other organization.

Lowy contacted DOE about every six weeks to monitor the status of her request. Whenever she called, she was told the agency "was working on it." She finally received the information, approximately 1/2" worth of documents, on July 10, 1989, but only after her legal counsel called DOE. Lowy then learned that DOE had compiled the information two months earlier for the other news organization, but had failed to advise her when the documents were available. DOE could not explain the additional two-month delay.

Another cause of delay, some journalists say, is inadequate training of FOI officers, which encourages officers to withhold as much information as possible.

"[FOI officers] operate in a climate of bureaucratic secrecy that encourages narrow, crimped interpretations of a law Congress repeatedly emphasizes should be broadly construed," said David Morrissey, an *Albuquerque Journal* reporter who has used the FOIA extensively. During an Alicia Patterson fellowship in 1988, Morrissey researched and wrote exclusively on the FOIA.

Morrissey said one example of poor training is the 47-minute film, "Information Security Briefing," which is prepared by the Information Security Oversight Office and is used widely to train FOI officers and others who will handle classified or restricted information.

"It warns that leaks may be just as damaging to our national security as outright espionage, and leakers should expect to be treated accordingly," Morrissey said. "The training film fails to mention that overclassification and the secrecy it engenders are also harmful. Overclassifications also hide error and misjudgment and restrict congressional access to vital information."

Another cause of delays, Morrissey said, is the "first-in, first-out" system used by many agencies. Under this system, a new request, no matter how specific or how easily it could be handled, is placed at the bottom of the pile.

Agencies traditionally have blamed delays on an overwhelming backlog of requests, but on at least one occasion such a claim was found to be meritless.

In December 1987, Conroy Chino, a reporter at KOAT-TV in Albuquerque, filed an FOIA request with the Federal Bureau of Investigation's Albuquerque office, seeking information on an investigation of six groups. An FBI official wrote Chino that, because of a large volume of requests, he should expect a lengthy delay before the agency could respond.

In April 1988, the official told Chino that the office had located the information and would provide it to him shortly. In January 1989, still not having received the information, Chino filed an FOIA request to determine the extent of the FBI's backlog.

He learned that the "backlog" was only 35 requests.

Some agencies contribute to their own workload, said Matthew Kennedy, assistant to the editor of *The Pittsburgh Press*. According to Kennedy, many agencies now require the filing of an FOIA request before they will respond to routine news inquiries on contracts and other matters.

To date, courts have been reluctant to force agencies to comply with the 10-day response requirement. Most courts are satisfied if the agency can show that "exceptional circumstances exist and that the agency is exercising due diligence in responding to the request." At the same time, courts have been generous in finding that agencies are acting with due diligence. However, a district court in San Francisco recently held that a "normal, predictable" backlog could not constitute "exceptional circumstances" and that the agency must comply with the letter of the law unless it could demonstrate that "it has unsuccessfully sought more resources from Congress or attempted to redirect its existing resources." While it is too early to evaluate the effect of this court's ruling, it may be evidence that the courts, as well as journalists, are becoming increasingly frustrated by the delays that prevent FOIA from working as its drafters intended.

(continued on page 63)

censorship dateline

libraries

Sacramento, California

Trustees of the San Juan Unified School District voted 4-1 in January to place *Sports Illustrated*'s February, 1989, special 25th Anniversary Swimsuit issue on reserve — and behind the counter — in school libraries. Students who want to see it must sign a formal request and parents can ask that their children not be allowed to do so, the board said.

The action was spurred by anti-pornography crusader David Woodell, who sought a stronger policy of requiring parent permission slips for any student who wanted to look at the publication. A review committee concluded that although the issue had no sports coverage, it had "value in terms of art, photography and fashion history" and should not be removed from libraries, but should be placed on the reserve list. Reported in: *Los Angeles Times*, January 18.

Tallahassee, Florida

John Kelly conceded the nude picture in his display of sixteen photographs at the Leon County Public Library might upset some people, so he gave the library permission to remove it if it caused any trouble. But when library officials asked him to remove four other photos, he was surprised. "Censorship," said Kelly. "That's all it is."

The four photos in question comprised a series entitled "Two Women I, II, III, IV." Each black and white picture featured two women's faces in close-up. The women are very close to each other, their faces inches away. According to library director Sandra Wilson, the photos were the target of three complaints concerning the "intimacy and provocative nature" of the women in them. Kelly's photographs had been on display for more than a month when Wilson asked him to remove the nude and the "Two Women" series.

Kelly responded to Wilson's request to remove the photographs by pulling all of his work from the library. "I'm supposed to take down a picture because of what someone's reading into it, something that's in their head and isn't even in the picture," Kelly said. "I'm taking them down in protest for the right of the artist to exhibit his work."

The issue was clouded, Wilson confessed, because the library does not have an exhibits policy. "With three complaints, in the absence of a policy, we thought we should pull them," she said. "Reading something from a library collection is a matter of choice," Wilson explained. "But a display is something you're forcing on people and you have to take community standards into consideration." Previously, patrons had complained about a bulletin board display by a local Peace Coalition, called politically partisan, and about a display for Halloween, charged with promoting Satanism. Both displays were withdrawn.

As Kelly piled his framed pictures onto a cart and wheeled it out of the library, he hung a note in place of the photos. It read: "Exhibit canceled due to censorship." Reported in: *Tallahassee Democrat*, December 19.

schools

Montgomery, Alabama

On December 14, the Alabama State Board of Education called on the state Textbook Committee to reconsider a biology book that teaches a theory called "intelligent design" alongside evolution. Some conservative groups want the book approved for use in public schools, but scientific organizations have criticized it, charging that "intelligent design" is fig-leafed creationism.

Last October, the 23-member committee ruled that *Of Pandas and People: The Central Question of Biological Origins* is too narrow to serve as a biology text. But state board member Victor Poole sought to override the committee's actions and have the book added to the approved list. State Superintendent Wayne Teague said the board can't legally approve a book not on the recommended list. The board then ruled the Textbook Committee should reevaluate the book. Reported in: *Birmingham News*, December 15.

Pine Bluff, Arkansas

On December 11, Watson Chapel School Board members stood by their November decision to keep John Steinbeck's *Of Mice and Men* out of English teachers' classrooms. Confronted by a group opposed to the removal of the novel, the board again upheld Superintendent Charles Danny Knight's administrative directive to take the book out of classrooms because of complaints about profanity in its pages.

The November vote was unanimous for removing the book. It came after about 400 parents signed petitions asking the board to reinstate the book banned by Knight.

The decision barring the book from classroom teaching was first made in 1987 after years of complaints from parents, the superintendent said. His original directive had not been understood, however, and, Knight declared, some teachers had continued to use the book, assigning another book to students who objected. Proponents of the book pointed out that the 1987 committee that reviewed the book gave it an "overall rating of 97% as being an average to excellent book for students to read." They said the original decision only meant that students could not be assigned the book without being given the opportunity to choose an alternative reading (see *Newsletter*, January 1990, p. 10).

William Buckholz, a member of the group protesting the decision, reminded board members that the administration had based its decision on a 1987 committee report, which, Buckholz said, showed overwhelming support for the book.

"This is your administration's very own committee and they found nothing objectionable," he said. "I'm totally mystified how you could vote the way you did. I would appreciate an explanation." Assistant Superintendent Ed Harris responded, however, that although members of the committee themselves did not find the language objectionable, they understood how some people could be offended by it.

"The board responded at the last meeting when we adopted the policy," board member Jim Johnson told the group. "We've read your statements about litigation." The group has consulted with the ACLU about the possibility of filing a lawsuit against the removal.

"I stand by my decision," added board member Maxine Nelson. Reported in: *Pine Bluff Commercial*, November 14, 16, 19, December 12; *Arkansas Democrat*, November 14, 16, 19, December 12.

Whittier, California

The East Whittier School District removed a series of elementary school reading texts because parents complained that some of the stories were evil and morbid. Meeting in closed session November 25, the school board decided the publisher, Holt Rinehart and Winston of Canada, breached its contract by delivering books different than those the district thought it had ordered. The district hired a lawyer to demand $160,000 from the publisher.

The books are part of the "Impressions" series of readers for third through sixth grades. The district reviewed the Canadian version of the texts, but was sent a new American version, which includes stories and illustrations that are not in the Canadian version. Parents complained that several stories in the readers can spur interest in devil worship and witchcraft.

"I'm a teacher and a parent," said Olivia Ramirez, who attended the meeting, "and I'd like to see the series banned. Stories like that are frightening for children. They have a hard time separating imagination from reality." The American version of the series also spurred controversy in Coeur d'Alene, Idaho, where a group of ministers opposed both versions, and in Oak Harbor, Washington, where the Canadian version was challenged and retained (see page 47).

Some teachers complained that removal of the books left the district stranded midway through a semester with no budget for replacements. "Now we don't have a text, and there's no money for new books," said John Fulford, president of the East Whittier Teachers' Association. "Pulling the textbooks messes up every teacher's curriculum, and it will keep us dangling in the wind next year. This will take years to settle. They should have just left us alone to do our jobs." Reported in: *Long Beach Press-Telegram*, November 30.

Coeur d'Alene, Idaho

The Coeur d'Alene school board voted December 19 to exchange the American version of a controversial textbook series for the Canadian editions that had been approved last spring by educators. "The idea of censorship is so frightening to me," Superintendent Merlin Ludwig said after the vote. "Once we get to a point where we start pulling library books or textbooks I think we're defeating this country's democracy. The freedom of this country, the democracy of this country is to expose people to various points of view."

The board based its decision on the recommendation of a review committee appointed November 8 after the "Impressions" reading series was removed from all Coeur d'Alene elementary schools pending review. "Concerns were coming to me through the grapevine, but no formal complaint had been made," district assistant superintendent Gayle Crane explained at the time.

One selection that caused controversy was in the third-grade reader. "A Wart Snake in a Fig Tree," by George Mendoza, parodies "The Twelve Days of Christmas." "I could only read two or three pages of it," said parent Kris Newby. "I thought it was terrible. To change a nice poem into something ghastly, scary, crude, well, I don't see any reason it should be in the book."

Parents also complained about selections in the fifth grade book, including:

- "The Lake," by Roger McGough, a poem about vicious pigs who live at the bottom of a polluted lake and have "acquired a taste for flesh;"
- "He's Behind Yer," by Roger McGough, a ten-line poem about a monster who uses his teeth to rip the head of an unsuspecting victim while onlooking children scream for more;
- "The Girl Who Married a Ghost," retold by Edward S. Curtis, about an Indian girl who marries a dead man and lives in the Land of the Ghost People;
- "Beauty and the Beast," retold by Eva Martin. In this version, giants kick and beat a prince to unconsciousness and fling him into a pit lined with knives and razors where he's cut into a thousand pieces. Parents also complained about the three nights Beauty spends in bed with the prince before they are married.

Crane said she had ordered the new American version of the reading series after the publisher assured her that the only difference in the two texts was spelling. But the American version includes about 22 literary selections, including the works cited above, and 30 illustrations that weren't in the Canadian version previewed by the district. "I was just stunned at some of the selections," said teacher Patti Perry, who helped choose the "Impressions" series and then served on the review committee. "I knew we hadn't looked at these. They're very unusual and, I think, inappropriate." The review committee recommendation came on a vote of 11-2.

The board decision did not satisfy members of a local ministers' group, however. They said the Canadian version of the "Impressions" series was also offensive. Responding to the board vote, the ministers began circulating a petition against the books. "We need to say to the school board, 'There are more people than you realize concerned about this,'" said Ron Hunter, pastor of the Church of the Nazarene.

The ministers charged that the reading series advocates witchcraft, which they contend is a religion, and that the books raise moral and grammatical questions. "One selection starts, 'Me and my brother, we,'" Hunter said. "That's objectionable on a pure grammar basis."

"If the school board would just listen to its constituency, that's the way to do it," Hunter said. "We'll present to the board members the broad base of concern and appeal to them to reconsider their decision. It doesn't make sense to upset the citizenry." The "Impressions" series was also challenged recently in Oak Harbor, Washington, which eventually decided to keep the Canadian version of the books purchased two years ago, and in Whittier California (see page 46). Reported in: *Coeur D'Alene Press*, November 14; *Spokane Spokesman-Review*, November 19, December 20; *Idaho State Journal*, January 3.

Indianapolis, Indiana

A popular rap singer who intended to bring an anti-drug message to North Central High School students November 27 was turned away by school officials who feared he would be a bad role model. Principal Charles Roach canceled a convocation planned by Indiana Black Expo because he said there was too much controversy associated with the singer's nationally known group, Public Enemy.

Roach said his decision was based on the controversy surrounding allegedly anti-Semitic lyrics in the group's songs and on the group's generally anti-authority reputation. "This was not going to be a positive thing at all," he said. "I am not going to force my students to sit through a convocation with a group that has such a controversy associated with it."

Flavor Flav, a member of Public Enemy, was scheduled to speak to the students. Another group member, Professor Griff, has made anti-Semitic remarks, but he was not scheduled to appear at the convocation.

After Roach said he didn't want Flav to speak, Indiana Black Expo officials offered to have another rapper, Doug E. Fresh, of New York, take his place. But Roach said he didn't want to replace Public Enemy at the last minute and he didn't have enough time to find out if Fresh would be acceptable.

Attorney and parent David Shaheed said he objected to the cancellation because it was discriminatory and a violation of free speech. "On the face of it, it looks discriminatory to me," said Shaheed, who organized the convocation. "Every time there is an issue that comes up that affects Afro-Americans, he [Roach] has a process by which he ends up saying 'no.'" Reported in: *Indianapolis Star*, November 28.

Jeffersonville, Indiana

Faye Thomas was helping her 11-year-old son look for his sweatshirt when she found an anti-drug booklet containing pictures of babies with birth defects. The cover of the booklet, *Drug Abuse Tragedies Observed by Orthopedic Surgeon*, showed an infant suffering from hydrocephalus. Other pictures showed deformed hands and fused fingers.

The booklet touched off an argument between Thomas and Greater County School Corporation officials about what kind of information schools can pass out without parental consent. As a result, parents will be notified about materials used in the schools' anti-drug program that might be disturbing to some students.

"I don't think it was correct for them to pass out something this graphic without asking parents for their permission first," Thomas said. "I'm concerned about how far the school corporation can go in determining what my children can see. I'm sure those pictures were upsetting to my son because he hid it."

"I don't think the material is shocking," countered Milton Clayton, director of student services for the school corporation. "The material tells the students that drug abuse could possibly, but not always, cause birth defects, and it gives them some examples in pictures. I think we need to be honest with the kids and show them what can happen." Reported in: *Louisville Courier-Journal*, December 3.

Cedar Falls, Iowa

The parents of a fourth-grader at Orchard Hill Elementary School told the Cedar Falls Board of Education that an award-winning book should be removed from the assignment list in a reading class because it contains "offensive" material. Jim and Carol Eagan said December 11 that "two swear words and one vulgarity" contained in *On My Honor*, by Marion Dane Barber, make the book unsuitable for classroom instruction.

"We're not seeking that the book be censored," but that it no longer be part of reading assignments, Carol Eagan told the board. "Is the book good if it undermines a parent's value system?"

The book was a 1986 Newbery Honor title. It is a tale of two preadolescent boys who, despite being warned and after promising their parents they wouldn't go near the water, enter a swimming race in a treacherous river. One boy drowns, leaving his friend locked in a moral struggle. The protagonist uses the words "frigging" and "damn" in the 90-page book, and a minor character uses the word "hell." Reported in: *Waterloo Courier*, December 12.

New Richmond, Ohio

Because parents found such words as "bastard," "goddamn," and "hell" objectionable, the New Richmond Board of Education removed a 1974 Newbery Honor Book from the curriculum of fifth grade classes.

The controversy began when a parent complained that *My Brother Sam is Dead*, by James Lincoln Collier and Christopher Collier, contained profane language. About twenty others objected to the book at the September board meeting; some of their children refused to read the book or discuss it in class. School Board President Frederick Heflin said when the board heard from no supporters of the book, it decided in October that it did not represent "acceptable ethical standards for fifth graders."

Fifth grade teacher Beth Mueller said, however, that she had expressed her support of the book through her principal, as she'd been instructed, but board members said they did not hear about any pro-book sentiments. The novel is a realistic treatment of the revolutionary war. The board voted to replace it with what had previously been used to cover the same period, a 1944 Newbery Medal Book, *Johnny Tremain*, by Esther Forbes.

"I find what the school board did offensive," lawyer and parent John Woliver told a public forum called by the YWCA to discuss the decision. "It censored a book. There's no other way to call it."

"Is the next step going to be that they want me to take the book from the library?" asked Pierce Elementary School librarian Alverdia Lyons, who had recommended *My Brother Sam is Dead* to teachers. "That frightens me." Lyons also said she thought *Johnny Tremain* long, dry, boring, and difficult for fifth graders.

But parent Juanita Murphy called *My Brother Sam is Dead* inappropriate for fifth graders. She described it as sacrilegious and said she had problems with its detailed descriptions of violence. Reported in: *American Libraries*, December 1989; *Cincinnati Enquirer*, November 17.

student press

San Jose, California

A disagreement between Ohlone College student leaders and the college's newspaper staff took an unusual twist in late November when stacks of newspapers containing a controversial article about a student government fee proposal disappeared from distribution boxes. Hundreds of newspapers were found November 29 in trash bins around campus and apparently also in the student government offices.

At issues was a article that said the student government planned to change an optional student services fee to a mandatory one in order to raise more funds. Student leaders said the article made it appear the extra money would benefit only student government. Reported in: *San Jose Mercury-News*, December 4.

Holmdel, New Jersey

The editors of the high school newspaper, *The Sting*, wanted to distribute a special edition concerning birth control and protection against sexually transmitted diseases, but Superintendent Timothy Brennan intervened and prevented the issue from being printed and delivered to students. "He thought it would be damaging," editor Craig La Cava said. "The educators thought that the freshmen and sophomores should not be allowed to read it."

Newspaper adviser Dorothy Wright also thought the issue was too explicit. As a result of the controversy, however, she resigned, after working with the paper for many years.

The 16-page issue taught students how to have safe, responsible sex, according to La Cava and co-editor Liwnag Querijero. It was necessary, they said, because sex education is minimal at Holmdel High School. "Pregnancy and abortion in this school are common," La Cava said. "The parents don't know about this."

The articles were on sex education, sexually transmitted diseases, and use of condoms. "We had carefully written a disclaimer that stressed we don't condone sex by teenagers," La Cava stressed. He said he showed the articles to Wright, who directed him to Principal Richard White.

According to La Cava, Wright informed the editors that there would be "a problem with the parents. But he told us, 'We support freedom of the press at this school. You can go ahead, but I advise you not to.'"

"I had no problems with the article that was critical of the sex education program," the principal explained. "I waited until the last minute to stop the edition because I wanted them to see for themselves what the ramifications would be of what they were doing. They are very responsible, mature individuals who saw a problem and tried to find a solution."

La Cava said Brennan read the articles and, about two hours before the editors brought the paper to the printer, "Brennan said we can't print the paper and gave us alternatives. We didn't follow his instructions and went to the printer anyway." The printer then received a letter from Brennan threatening legal action if the proofs weren't turned over. They were. Reported in: *Newark Star-Ledger*, December 23; *Keyport Independent*, December 27.

Milwaukee, Wisconsin

Marquette University's assertion of control over advertising in the school newspaper raised fears in November that students may lose some of their editorial authority. On November 13, the university administration fired a university staff member and suspended from the *Marquette Tribune* two students involved in the publication of a pro-choice abortion advertisement.

"I'm concerned now that maybe we're back in the Dark Ages down here, that we'll be scared to take some risks," said Kim Doyle, editor-in-chief of the *Marquette Journal* magazine. Both periodicals are published by the university, which dictates advertising policy.

We have to be really careful that this doesn't go into any form of editorial control," said student journalist James Fitzhenry. Journalism department Chair William J. Thorn agreed: "I think the journalism faculty is probably as concerned or more concerned than they [the students] are," he said.

Sharon Murphy, dean of the College of Communication, Journalism and Performing Arts, stressed "that there is a difference between editorial policy and advertising policy. This has to be viewed as an advertising decision," she said. "It does not reflect on news and editorial."

The advertisement in question ran November 9 and caused problems in student newspapers at several Catholic institutions (see *Newsletter*, January 1990, p. 12). Contrary to university policy, the ad ran without prior review by administrators, Murphy said.

Fired in the controversy was Judy Riedl, a Marquette employee who served as the *Tribune*'s business manager. Two students, *Tribune* editor Greg Myers and advertising director Brian Kristofek, were suspended from the paper for the rest of the semester. Reported in: *Milwaukee Sentinel*, November 15.

speaker

Hartford, Connecticut

Several hundred people who had gathered for a lecture by a controversial black Muslim leader waited outdoors for hours December 6 while Trinity College officials and the sponsors of the program argued over bodyguards for the speaker. The dispute over the speech by Conrad Muhammad, executive director of the National Black Student Unity Congress, who is associated with Muslim leader Louis Farrakhan, was resolved nearly two hours after the scheduled start of the speech when Muhammad agreed that five of his twenty-five bodyguards could accompany him into the auditorium.

Trinity College President Tom Gerety said he was concerned that allowing all of the speaker's guards inside would give his entourage control of security. The speech was the second time within two weeks that a Muslim speaker was brought to campus by a student group. Some students who attended the first lecture complained that they had been harassed by bodyguards who searched them and attempted to intimidate them when they protested what they considered the anti-Semitic nature of the speaker's message.

The campus had been divided over whether the talk by Conrad Muhammad should be allowed to take place and, fearing violence, the college had restricted attendance only to Trinity students, faculty, and staff. "There are people who think speakers like this shouldn't be allowed on campus and others who believe it's a free speech issue," said freshman Jennie Baker. "Everybody's arguing, everybody's fighting, but nobody's discussing how to fight racism on campus."

After the earlier speech by Don Mohammed, Farrakhan's Northeast representative, a student and a faculty member filed complaints under the college's racial harassment policy. The policy, adopted last fall, states that "racial harassment encompasses a range of hostile behaviors motivated by an intention on the part of the harasser to make another feel unwelcome or inferior on the basis of race." The policy lists epithets, insensitive comments, hostile messages, pranks or graffiti as examples of harassing behavior.

"I am saying that . . . I was made to feel inferior on the basis that I am Jewish," said Andrew Snyder, a political science student who distributed protest fliers at the lecture and filed a complaint.

Gerety said he would ask the campus Racial Harassment Grievance Committee to investigate the complaints. But he said he would not ban future appearances by members of Farrakhan's Nation of Islam or any other controversial group. "Because we uphold the principle of free speech, we will not engage in prior clearance of the content of addresses and discussion at the college sponsored by students and student groups," he wrote in a memo to the campus community. "Nevertheless it must be made clear that we at Trinity College condemn anti-Semitism as we condemn all forms of prejudice." Reported in: *Hartford Courant*, November 29, December 6, 7.

recordings

Los Angeles, California

Rock composer Frank Zappa in January strongly condemned attempts by Jewish leaders to discourage CBS Records from distributing a new record they view as anti-Semitic. Zappa, who has strongly opposed efforts to regulate controversial music, described complaints about CBS's distribution of "Welcome to the Terror Dome," by Public Enemy, as an attempt at censorship. "If you keep the product from reaching the marketplace, that is censorship," he said.

Zappa rejected the contention by some Jewish leaders that groups such as Public Enemy were free to turn to smaller distributors if corporations like CBS were discouraged from handling their material. Except in rare cases, he argued,

major media outlets should be available to any artist with a message that will sell. And exceptions should never result from external pressure.

"In today's marketplace, there are so many pressure groups who have decided they cannot stand to see or hear what someone else has to say. The result could be real censorship," Zappa said.

Abraham Cooper, associate dean of the Simon Wiesenthal Center in Los Angeles, who has been a vocal critic of Public Enemy and of other groups whose lyrics are racist or misogynist, rejected the censorship charge. "The music industry has a wonderful escape clause that no one else does," he said. "They produce records and the radio plays them. They don't have to worry about any of the issues. Then, when we complain, they have a response formula set: censorship, First Amendment rights, no comment."

Noting that Jewish groups were not calling for a boycott of the records, Cooper said: "I'm not mainly concentrating on the performers. You want to follow the money. . . If racism works for leading white and black groups, there will be plenty of copycatting."

In a letter to CBS Records President Walter Yetnikoff, Cooper criticized the general phenomenon of racism in popular entertainment and scored the Public Enemy record. Calling for a meeting with CBS executives on the issue, he wrote: "Let's make sure that no one in the music society benefits from the marketing of racism."

In a letter of its own to CBS, the Anti-Defamation League of B'nai B'rith said, "We are troubled that CBS plans to facilitate the distribution of the [recording's] anti-Semitic sentiments. . . thus lending your considerable resources and prestige to the group's bigotry." CBS declined to comment on either letter.

But Zappa dismissed as naive notions of pop music's power to influence attitudes. "The main purpose of rock and roll is to make people dance," he said. "Beyond that, it affects the way young people dress and wear their hair. . . Don't go scrounging after the rock and rollers. It's like chasing after gnats. Go where the action is," he said.

Asked about his own opinion of the Public Enemy record, Zappa replied, "If a guy is saying that, he has a right to say it. And we have a right to say he's an asshole for doing it."

Zappa acknowledged that racism, anti-Semitism, and misogyny had increased in recent years and that reflections of these trends could be found in popular music. "But it's not because of us," he said. "It seems to me the tactic is not smart. The targets are not well chosen. . . . If you take this issue versus the rest of what is wrong with the United States, this is less than a tempest in a teapot." Reported in: *Washington Jewish Week*, January 11.

computer bulletin board

San Jose, California

Angry computer users have accused the Prodigy electronic "bulletin board" of censorship after it eliminated one of its services that had spawned an ongoing debate between homosexuals and Christian fundamentalists. Some users also claim that Prodigy, owned jointly by IBM and Sears, covered up its plans to eliminate the bulletin board for nearly three days, quashing attempts by any of the service's 250,000 subscribers who tried to publicly discuss the matter online.

A company representative denied the allegations, however, and said the elimination of the bulletin board on December 6 was "a business decision" reached because low usage didn't justify expenses.

The eliminated bulletin board was called Health Spa. It catered to topics like fitness, nutrition and mental health. During the last months of 1989, users said, the mental health segment of the board had become a source of casual and professional advice. They said it also had generated heated debate between homosexuals and religious fundamentalists opposed to homosexuality.

On December 1, Prodigy officials posted a message announcing that Health Spa would be terminated on December 11. Within a few hours, however, the message was removed, and users who inquired further were told the message had been posted erroneously. Attempts to post public messages about the incident were rejected until December 4 when Prodigy general news manager Fran Stern announced the board would be terminated in two days owing to low usage.

Users contacted by the *San Jose Mercury-News* said they were convinced the real reason the board was killed was pressure brought on Prodigy by Christian fundamentalists, who had long argued with gays and their sympathizers on the board, and from advertisers, who are responsible for the bulk of Prodigy's profits.

"I think it's pressure from the advertisers. Prodigy is not as concerned about its user base as it is about its advertiser base," said Mike Slavin, a Prodigy user in Detroit.

Users said Prodigy ignored repeated requests that a separate bulletin board be set up for the discussion of homosexuality and religion, which they acknowledge was crowding out messages concerning mental health issues. Some also contended that the demise of Health Spa was just the latest example of heavy-handed censoring of public messages by Prodigy officials. "Out of nine messages I sent one night, seven came back rejected," said Andrys Basten, a user from Berkeley. A public message from a *Mercury-News* reporter asking for user comment on the Health Spa termination was rejected without being posted. Reported in: *San Jose Mercury-News*, December 10.

government censorship

Washington, D.C.

A congressional panel charged December 10 that the federal government has failed to report evidence of the relative safety of abortions. A report released by a House committee also claimed the federal Center for Disease Control has censored research on abortion, and urged the Department of Health and Human Services to assure that public health research is not affected by political judgments.

"Antiabortion politics have interfered with scientific evidence and research plans when decisions have been made by officials in the Department of Health and Human Services," said Rep. Ted Weiss (D-NY), chair of the Subcommittee on Human Resources and Intergovernmental Relations of the House Government Operations Committee. "That interference creates barriers to women's health care in ways that are unacceptable." Reported in: *Minneapolis Star & Tribune*, December 11.

art

Weymouth, Massachusetts

Artist Lisbeth Koopman-Wyman draws nudes. Last December, she submitted five slides of her drawings to the Weymouth Arts Council in hopes she would be selected to exhibit in a local art show. "I picked out some pretty chaste pictures," she said.

Not chaste enough. Although for the first two years of the Weymouth show she had been invited to exhibit without applying, now, for the first time, a jury — composed of three artists and six non-artists — requested slides. "I was told that when my slides went up on the screen, the reaction was something else," the artist reported. "People were uncomfortable with the nudity. They didn't want to take the heat for having nudes in their show. It was censorship."

Judy Byrne, chair of the arts council, denied that nudity was the reason Koopman-Wyman was turned down. "The work didn't appeal to me because there was no particular distinction between the background and the person," said Byrne, a nurse. Reported in: *Boston Globe*, January 10.

foreign

Calcutta, India

The Indian government has withdrawn permission for the filming of the book *The City of Joy*, by Dominique Lapierre, on the ground that it would show Calcutta in too negative a light. The film was to be directed by Roland Joffe, who also made *The Killing Fields* and *The Mission*.

The unexpected decision by the new government that came to power in December pledging freedom of expression and a more open society was announced by the Minister of Information and Broadcasting, Parvathaneni Upendra, as Calcutta was preparing to open an international film festival.

Upendra acknowledged that he was acting at the request of the state government of West Bengal and its chief minister, Jyoti Basu, a leading Indian Communist and a supporter of the new government in New Delhi. The move apparently reflected Bengali sensitivities more than political attitudes, however.

"Most of the people have never heard of *The City of Joy*," explained writer Supreo Bonnerjee, who is a program director for the U.S. Information Service in Calcutta. "But when they hear that Calcutta may be shown in a bad way, they are ready to believe it."

The decision provoked criticism in the Indian press which had been looking forward to more relaxed atmosphere under new Prime Minister V.P. Singh. The *Hindustan Times* recalled in an editorial that India's first Prime Minister, Jawaharlal Nehru, had said Calcutta was a "city of nightmares" and that his grandson, Mr. Gandhi, the former Prime Minister, had described it as "dying."

"Are such perceptions of two Prime Ministers spanning three generations in India less damaging than the view of a foreign writer?," the editorial asked. "Respect for individual views is as much a part of democracy as the right to information. Hypersensitivity and overreaction are not healthy traits." Reported in: *New York Times*, January 1.

Jerusalem, Israel

Hamlet is unsuitable reading matter for Palestinian security prisoners at the Ketziot detention camp in the Israeli Negev, according to the military censors. So is *Constitutional Law of the State of Israel*. These were among the books sent to prisoners which have been confiscated. Other banned works included Jack London's *The Sea Wolf; Cancer Ward*, by Alexander Solzhenitsyn; *Lord of the Rings*, by J.R.R. Tolkien; and a tourist guide to West Germany.

The confiscated books were all brought to the prison by Tamar Peleg, a lawyer with the Association for Civil Rights in Israel. Late last summer, Peleg sent a book to a prisoner being held under administrative detention, meaning that no formal charges were ever filed against him. The book was *Here and There in Israel*, by Amos Oz, an internationally known Israeli writer. The book was returned to Peleg with a note saying the camp security officer found it unsuitable.

When Peleg visited the prison, two parcels of books she had sent in July and September were returned to her. All were in English except the book on Israeli law. Peleg laughed at the suggestion that *Hamlet* had been banned because its theme might encourage Palestinian aspirations to political independence. "That would be giving them [the censors] too much credit," she said. Reported in: *Denver Intermountain Jewish News*, November 17; *New York Daily News*, November 26. □

from the bench

U.S. Supreme Court

The U.S. Supreme Court ruled January 9 that a city ordinance regulating sexually oriented businesses must contain certain procedural safeguards in order to pass constitutional muster. In an opinion by Justice Sandra Day O'Connor, the court ruled 6-3 that the licensing and inspection scheme adopted by the Dallas City Council in 1986 imposed a prior restraint on businesses' rights to deal with sexually explicit matters because it did not mandate that the required fire and safety inspections for obtaining a license be performed within a set period of time or provide for swift court review if licenses were denied.

At the same time, the high court upheld the city's treatment of motels that rent rooms for less than ten hours as sexually oriented businesses subject to regulation. It rejected the motel owners' contention that the regulation placed unconstitutional burdens on their operations as well as on their customers' freedom of association.

The Dallas law regulates so-called adult bookstores and movie theaters, as well as some businesses that do not enjoy First Amendment protections, such as escort agencies and nude model studios.

"The license for a First Amendment-protected business must be issued within a reasonable period of time," O'Connor wrote, "because undue delay results in the unconstitutional suppression of protected speech." With one exception, the ruling adopted the procedural safeguards first announced by the court in a 1965 decision invalidating a state film censorship scheme. Unlike the censorship scheme, however, the Dallas ordinance did not base its licensing decision on the content of particular adult materials or activities promoted by the businesses. For this reason, the high court concluded that the adult businesses had the burden of going to court and challenging a license denial.

"Like a censorship system, a licensing scheme creates the possibility that constitutionally protected speech will be suppressed where there are inadequate procedural safeguards to ensure prompt issuance of the license," O'Connor said in an opinion, *FW/PBS Inc.* v. *Dallas*, which was joined by Justices John Paul Stevens and Anthony M. Kennedy.

Justices William J. Brennan Jr., Thurgood Marshall and Harry A. Blackmun also joined the opinion, but argued that O'Connor should have gone further and imposed the third part of the censorship test requiring the city to go to court to prove its case whenever it seeks to deny a license.

Chief Justice William H. Rehnquist and Justices Byron R. White and Antonin Scalia dissented. Scalia went so far as to say that although communities may not ban individual books or movies unless they are obscene, they may prohibit sexually oriented businesses altogether.

"It is necessary, to be sure of protecting valuable speech," Scalia said, "that we compel all communities to tolerate individual works that have only marginal communicative content beyond raw sexual appeal; it is not necessary that we compel them to tolerate businesses that hold themselves forth as specializing in such material." Reported in: *Washington Post*, January 10; *Chicago Tribune*, January 10.

The Supreme Court ruled January 9 that colleges and universities enjoy no special privilege to withhold confidential information from federal officials investigating employment discrimination against faculty members who have been tenure. The unanimous decision provided a powerful tool to women and minorities seeking damages from universities accused of bias. But some First Amendment advocates said the ruling promoted a cramped view of the university's traditional place as a free speech citadel unencumbered by most government intrusion.

A number of leading universities had petitioned the court to rule the other way. They supported the University of Pennsylvania, which brought the case, in saying that to release confidential reviews for tenure decisions would inhibit candor, reduce the quality of the reviews, reduce the quality of the faculty, and ultimately diminish academic freedom by stultifying intellectual exchange.

But Justice Harry A. Blackmun, writing for the court, said academic freedom is compromised only when government tries to influence the content of speech at a university, not when its actions might affect quality of scholarship.

"In essence," he wrote, "petitioner asks us to recognize an expanded right of academic freedom to protect confidential peer review materials from disclosure. Although we are sensitive to the effects that content-neutral government action may have on speech . . . and believe that burdens that are less than direct may sometimes pose First Amendment concerns . . . we think the First Amendment cannot be extended to embrace petitioner's claim."

The American Association of University Professors said that the court "seriously erred in its decision" and

complained that the justices had misunderstood the costs and gains of their ruling.

The case, *University of Pennsylvania* v. *Equal Employment Opportunity Commission*, involved Rosalie Tung, who was denied tenure at the Wharton School of Business. She filed suit with the EEOC charging that the denial was the result of race and gender discrimination. She said that her department chair had sexually harassed her and that when she turned him away, he submitted an unfavorable evaluation of her.

In its investigation, the EEOC issued a subpoena to the university for Tung's tenure review file and the tenure files of five male faculty members who Tung said were treated more favorably than she. The university refused, citing academic freedom, and the EEOC went to court, where it prevailed both at the federal district and appellate levels.

The university argued that confidential peer review is central to the proper functioning of universities, which, it added, are special because they are "centers of learning, innovation and discovery." It based its argument on Supreme Court statements stressing the importance of academic freedom and especially on one made by Justice Felix Frankfurter in a 1957 case that a university possesses, under the First Amendment, the right "to determine for itself on academic grounds who may teach."

As the university said in its brief, "In making tenure decisions, therefore, a university is doing nothing less than shaping its own identity." It said that if peer reviews are in danger of losing their confidential quality, there will develop a "chilling effect" and tenure committees will no longer rely on them for candor, hurting the free interchange of ideas.

The court rejected those arguments, saying that its tradition of protecting university speech relied on the impact of the speech's content. Wrote Blackmun: "The costs associated with racial and sexual discrimination in institutions of higher learning are very substantial. Few would deny that ferreting out this kind of invidious discrimination is a great if not compelling governmental interest." Reported in: *Boston Globe*, January 10.

In a decision that substantially narrowed the Freedom of Information Act, the Supreme Court ruled December 11 that the government may keep secret the information it gathers during routine business if the information later becomes part of a criminal investigation. Previously, government audits and routine reports had to be disclosed upon request. But after the 6-3 ruling, these reports and documents will be off limits to disclosure as soon as a federal prosecutor or investigator displays interest in them.

The court majority, saying it sought a "workable balance" between the interest in public disclosure and the needs of prosecutors, came down squarely on the side of prosecutors. The three dissenters, Justices Antonin Scalia, John Paul Stevens, and Thurgood Marshall, who joined Scalia's opinion, complained that the majority had rewritten the disclosure law in the process.

The FOIA allows the government to withhold "records or information compiled for law enforcement purposes." Writing for the court, Justice Harry A. Blackmun said the word "compiled" did not necessarily mean "originally compiled," but could mean compiled at any time. By that definition, material originally compiled for a different purpose became subject to the disclosure exemption if it later became part of a law enforcement operation.

Though long a critic of the FOIA, Justice Scalia said the language of the law does not permit the government to keep secret routinely compiled information "which it later shuffles into a law enforcement file." Reported in: *Los Angeles Times*, December 12.

Rejecting free speech arguments, the Supreme Court ruled January 22 that a group of criminal defense lawyers in Washington violated federal antitrust law six years ago when they refused to accept more cases representing indigent defendants until the local government raised their pay.

The two-week strike by the Superior Court Trial Lawyers Association accomplished its goal, raising lawyers fees from $30 an hour to $35 an hour. But it also attracted the attention of the Federal Trade Commission, which accused the organization and its officers of conspiring to fix prices and restrain trade. Under the Sherman Antitrust Act, such a conspiracy is an automatic violation, regardless of motive or effect on the marketplace. The commission prohibited the lawyers' group from conducting another boycott.

The U.S. Court of Appeals for the District of Columbia overturned the commission, declaring that the strike was a form of political expression protected by the First Amendment. The appeals court said that while the Constitution did not give the lawyers immunity under the antitrust laws, the usual rules of automatic liability did not apply. Instead, the appeals court said, the trade commission first had to prove that the lawyers' group had significant market power before it could find them guilty of price-fixing.

Voting 6-3, the Supreme Court overturned that decision. The high court said the First Amendment elements of the lawyers' action did not entitle them to any special consideration under the antitrust laws. Writing for the majority, Justice John Paul Stevens said that while "reasonable lawyers may differ about the wisdom of this enforcement proceeding," nonetheless the "social justifications" for the lawyers' action "do not make it any less unlawful."

"Every concerted refusal to do business with a potential customer or supplier has an expressive component," Stevens wrote. He said a rule requiring special treatment for economic boycotts of that type "would create a gaping hole in the fabric" of the antitrust laws.

The majority opinion, *Federal Trade Commission* v. *Superior Court Trial Lawyers*, was joined by Chief Justice William H. Rehnquist and Justices Byron R. White, Sandra Day O'Connor, Antonin Scalia, and Anthony M. Kennedy.

Justices William J. Brennan, Thurgood Marshall, and Harry A. Blackmun, while joining portions of the majority opinion, dissented from the majority's conclusion that the First Amendment entitled the lawyers to no special treatment. Justice Brennan said the majority decision was "insensitive to the venerable tradition of expressive boycotts as an important means of political communication."

Citing the American colonists' protests against the Stamp Act, as well as the civil rights boycott of the segregated buses in Montgomery, Alabama, Brennan said such actions "have played a central role in our nation's political discourse."

In his majority opinion, Stevens noted that in 1982 the court found that the First Amendment shielded black residents of Claiborne County, Mississippi, from liability for a boycott of white merchants. He said the difference was that while the black citizens were seeking "only the equal respect and equal treatment to which they were constitutionally entitled," the lawyers were seeking economic advantage. Reported in: *New York Times*, January 23.

In a potentially important libel case, the Supreme Court agreed January 22 to decide how lower courts should distinguish between an expression of opinion and a statement of asserted fact.

The line between the two has been an important and disputed aspect of libel law at least since 1974, when the court said in *Gertz* v. *Welch* that "under the First Amendment, there is no such thing as a false idea."

The court agreed to hear an appeal by a former high school wrestling coach whose libel case against a small Ohio newspaper, *Milkovich* v. *Lorain Journal*, was dismissed by the Ohio courts. The newspaper reported the coach "lied" under oath at a court hearing. The state courts found that this was a constitutionally protected expression of opinion. Reported in: *New York Times, January 23.*

libraries

Alexandria, Virginia

On December 29, a federal judge ordered the city of Alexandria to allow a resident to assemble a month-long antiabortion display in a branch of the city library system. U.S. District Court Judge T.S. Ellis, III, saying his decision "recognizes the high values this society places on free speech," granted the temporary injunction sought by Mark Egger, an antiabortion activist whose "Life Is Precious" display was exhibited at two other branches last fall.

Egger had reserved display space at the Barrett branch for January, but was told in October that for a six-month period beginning November 1 no privately sponsored displays would be allowed while the city's library board debated a new policy governing exhibits (see *Newsletter*, January 1990, p. 10.).

Suggesting that the city library system may want "to stick to shells and Boy Scouts" in future exhibits, Ellis said that the library staff can place a sign beside Egger's exhibit indicating that the display does not represent the city's viewpoint. The federal judge also said the staff may assemble a display offering the abortion rights side of the issue, and that, as a matter of free speech principles, Egger "ought to be willing and eager to share the forum."

According to Egger's complaint, he was told by a library board member that "it was his display and complaints about it that prompted the library board to deny further access to the display cases on controversial subjects."

But city attorney Philip G. Sunderland argued that the moratorium "was not a response to shut down anyone's viewpoint." He said the board first sought to clarify its policy after receiving complaints about a gay pride exhibit shown last June in all three library branches.

Sunderland said that the policy governing library display cases was originally intended to allow the public, on a first-come, first-served basis, to use library materials for educational or recreational displays. "Only on three occasions was there a display that went beyond arts and crafts," he said.

After a ten-hour trial January 4, attorneys for Egger and the city agreed that Egger could show his display if he agreed to drop his lawsuit. The agreement provided that after the display was over, the display cases would be closed to the public for at least six months, and perhaps indefinitely, depending on the library board's ability to work out a new policy. Reported in: *Washington Post*, December 29; *Alexandria Journal*, January 5.

schools

Atlanta, Georgia

The Atlanta school system's policy governing participation in a "career day" program for students, which effectively barred a peace advocacy organization from participating along with military recruiters, is viewpoint-based discrimination that violates the First Amendment, the U.S. Court of Appeals for the Eleventh Circuit declared November 21.

The school board's career day regulations require participants to have "direct knowledge" of the career opportunities about which they speak. A person is deemed to have "direct knowledge" if the person possesses information that will be useful to students and has "some present affiliation or authority with the career field." The regulations also prohibit participants from criticizing the opportunities presented by others.

The court said these regulations were unreasonable restrictions on the peace group's access to career day. It said the school board cannot allow speakers to point out the advantages of a particular career but ban any speaker who seeks to cite the disadvantages of that career. Once the school board determines that certain speech is appropriate for students,

it may not discriminate between speakers who will speak on the topic merely because it disagrees with their views. Reported in: *U.S. Law Week*, December 12.

student press

Long Island, New York

Although school administrators' right to exercise control over the content of student newspapers was greatly enhanced by the U.S. Supreme Court's decision in *Hazelwood School District* v. *Kuhlmeier*, the U.S. District Court for the Eastern District of New York on November 29 refused to give school officials a carte blanche in this area. In *Romano* v. *Harrington*, the court held that *Hazelwood* does not give school officials editorial control over a school newspaper that is produced as an extracurricular activity for which students do not receive course credit.

A tenured English teacher was fired from his position as faculty adviser to the school newspaper following its publication of a student-written article opposed to creation of a federal holiday in honor of Martin Luther King, Jr. He brought a civil rights action against the district, claiming that his firing violated the First Amendment.

In *Hazelwood*, the Supreme Court held that school officials do not violate the First Amendment by exercising editorial control over the content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical objectives. The newspaper in *Hazelwood* was both school-sponsored and an integral part of the course curriculum.

By contrast, the newspaper in this case was an extracurricular activity. Students publish the newspaper in addition to carrying a full courseload. They receive guidance, but not formal classroom instruction, from a faculty adviser. The court said these distinctions took the case out of the purview of *Hazelwood*.

"The school officials argue that the concept of curriculum for First Amendment purposes should not be limited to classroom endeavors *per se*," the decision said, "but should include the many extracurricular or cocurricular activities, such as student publications, through which the school furthers its educational mission. They also contend that the important fact in *Hazelwood* was the school board's sponsorship of the newspaper, not the paper's link to the classroom. . . .

"Because educators may limit student expression in the name of pedagogy, courts must avoid enlarging the venues within which that rationale may legitimately obtain without a clear and precise directive," the opinion said. Reported in: *U.S. Law Week*, December 19.

church and state

Gravette, Arkansas

U.S. District Court Judge Morris S. Arnold ruled November 3 that Bible story time in the Gravette public schools is unconstitutional. The judge declared that the classes, a fifty year tradition, are "clearly Christian and therefore sectarian in nature." The parents of a Gravette child had sought to eliminate the sessions. The judge had previously enjoined the district from holding the storytime, pending his ruling.

In an effort to save the practice, the Gravette school board had earlier agreed to schedule the classes off-campus and to allow student attendance on a voluntary basis only if parents sign permission slips relieving the district of any responsibility. The district also vowed to appeal the ruling with independent funds donated for that purpose. Reported in: *Gravette News Herald*, November 8.

Ottawa, Illinois; Delaware County, Ohio; Burlington, Vermont

In December, a series of court rulings barred display on public grounds of religious symbols associated with Christmas or Chanukah. In Chicago, U.S. District Court Judge Milton Shadur said the display of sixteen 9-foot tall paintings of scenes from the life of Jesus Christ in a park near downtown Ottawa was an unconstitutional endorsement of the Christian faith. He ordered city officials to remove the paintings and banned their future display in the park.

In the county of Delaware, Ohio, a nativity scene displayed on the county courthouse lawn during the Christmas holiday was ruled December 5 to have violated the First Amendment's Establishment Clause. U.S. District Court Judge James L. Graham said the predominantly religious significance of the nativity scene was not combined with a secular symbol of the holiday in such a way as to communicate pluralism and cultural diversity.

The display of a sixteen foot Jewish menorah on public property closely associated with the seat of city government in Burlington, Vermont, was ruled to violate the Establishment Clause. Judge Wilfred Feinberg of the U.S. Court of Appeals for the Second Circuit ruled December 12 that an identifying sign on the display facing only one of the streets bordering the park did not sufficiently indicate that the thrust of the display was secular rather than religious. Reported in: *Chicago Tribune*, December 5; *West's Federal Case News*, December 29.

harassment

Albany, New York

New York State's highest court struck down a major provision of the state's harassment statute December 19, ruling

that abusive and obscene language represented a constitutionally protected form of free speech. The case involved a dispute in which a woman in a town near the Canadian border called a neighbor a bitch and her son a dog and then threatened to beat them. The woman was convicted of harassment, but the Court of Appeals overturned that ruling, saying that she could not be convicted on the basis of her words alone.

Under the provision found unconstitutional, lawyers said, thousands of people have been convicted of misdemeanors and fined for using words to harass others, including law enforcement officers. The ruling made it clear that such conduct could no longer be used as the basis for prosecution. Nearly all states have anti-harassment statutes similar in intent to New York's, although they are worded differently.

"Speech is often 'abusive' — even vulgar, derisive, and provocative — and yet it is still protected under the state and Federal constitutional guarantees unless it is much more than that," wrote Judge Stewart F. Hancock, Jr., for the court. "Unless speech represents a clear and present danger of some serious substantive evil, it may neither be forbidden nor penalized."

The U.S. Supreme Court has not addressed the issue of whether words by themselves, unless proven to represent a direct threat to safety, can constitute harassment. The high court has struck down such statutes on the grounds of vague language. For instance, a 1972 Georgia law that had outlawed "opprobrious words or abusive language tending to cause a breach of the peace" was overturned for being overly broad.

The New York decision was hailed by civil liberties groups as an important expansion of the protection of speech and also by some advocates for the homeless. The advocates had argued that the statute was so broad that police officers were able to use it when they could think of no other pretext for removing someone from a public place. The statute prohibited obscene gestures, as well as obscene or abusive language, but did not define the words in the context of determining whether the law had been broken.

In an unusual action, Chief Judge Sol Wachtler wrote an opinion in which he concurred with the specific decision to void the conviction, but criticized his colleagues for overturning the entire provision. Judge Joseph W. Bellacosa agreed with him, meaning that the court ruled 7-0 to overturn the ruling by a lower court, but 5-2 to overthrow the statute.

The majority opinion, joined by Judges Fritz W. Alexander II, Judith S. Kaye, Richard D. Simons, and Vito J. Titone, said the statute's provision had to be overturned because it "prohibits a substantial amount of constitutionally protected expression and because its continued existence presents a significant risk of prosecution for the mere exercise of free speech."

The provision that was overturned said that a person was guilty of harassment when "with intent to harass, annoy or alarm another person" the speaker publicly used "abusive or obscene language" or made "an obscene gesture." The court let stand a separate part of the statute, which says that a person can be convicted of harassing if the person "strikes, shoves, kicks or otherwise subjects him to physical contact or attempts or threatens to do the same." Reported in: *New York Times*, December 20.

publishing

New York, New York

New York's "Son of Sam" law, which provides that any share a criminal might otherwise have in proceeds from a book or other presentation about his crime must be placed into an escrow account for the benefit of any victims of the crime, does not violate the First Amendment. That was the decision of the U.S. District Court for the Southern District of New York October 24. The ruling came in a challenge by Simon and Schuster, publisher of *Wiseguy: Life in a Mafia Family*, an account of the life of criminal-turned-informer Henry Hill.

The statute was enacted in 1977 in response to public outrage provoked by the sale by David Berkowitz, the "Son of Sam" serial killer, of the exclusive rights to the story concerning his crimes. Twenty-nine other states have since enacted similar laws.

The publisher argued that the statute establishes impermissible content- and speaker-based restrictions on free speech and forces editors to engage in self-censorship, and that it cannot survive strict scrutiny under the First Amendment.

The court first disagreed that "strict scrutiny" was the appropriate level of analysis. Although the statute does act as a "procedural hurdle" to publishing a criminal's story, it does not reach protected expressive activity; rather its impact is on the non-expressive act of receiving a profit. Reported in: *U.S. Law Week*, November 21.

abortion rights

New York, New York

Federal regulations banning federally funded family planning clinics from offering abortion counseling and referral services do not impermissibly burden a woman's privacy right to an abortion or violate the clinics' First Amendment rights, the U.S. Court of Appeals for the Second Circuit held November 1. The First Circuit Court ruled to contrary several months earlier.

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is it legal?

access to information

Washington, D.C.

In a nondescript building in Washington, Federal Maritime Commission clerks manually insert changes in 800,000 pages of shipping rates in 5,000 green binders each year. By 1991, these records will be computerized and made instantly available to anybody who wants them. The transformation of the commission's records exemplifies a process that will become increasingly common as the government moves toward "paperless" agencies by the year 2000.

But as records move from paper to microchip, widespread confusion prevails as to whether they should be made easily accessible to the public, in what form and at what cost, and whether the government should release the information itself or turn it over to the private sector.

"The laws and policies that spell out citizen access rights to government information in the age of electronic government are woefully out of date," the ACLU has said.

This year, Congress will take up legislation to update the government's "information dissemination policy." The bill is called the Paperwork Reduction Act, and, in addition to continuing a longstanding effort to cut down on the forms the government requires citizens to fill out, it seeks to commit federal agencies to a policy of openness and disclosure when it comes to government information. For the first time, a bipartisan House bill links the word "electronic" to its information policy language, telling the government to release "to the greatest extent practicable," information maintained on computers in "usable electronic formats."

The Reagan administration's Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB) required that federal agencies place "maximum feasible reliance on the private sector for dissemination of [information] products and services." That policy has been modified in favor of public access under President Bush, but Congress has not been satisfied.

"We want to bring organization to dissemination anarchy," said Rep. Robert E. Wise, Jr. (D-WV), whose Subcommittee on Government Information, Justice and Agriculture worked out the information dissemination language in legislation introduced in the House. No longer, under the bill, would a government agency have to step aside if a private firm was interested in selling its information. Instead, federal agencies would have to consider whether an equivalent product or service was available and "reasonably achieves the dissemination objectives of the agency product or service" the agency was about to offer.

Rep. Frank Horton (R-NY), ranking minority member on the Government Operations Committee, predicted that the paperwork bill would sail through the House. It has the support of most industry and public interest groups. It does not, however, have the support of the American Library Association (see page 70).

ALA opposes the Wise provisions because they would place too much control over information policy in the hands of the OMB. Under the bill, the OMB director would be required to "guide" agency information policy, following the guidelines laid out in the law.

"As librarians, we know that information is power and if this goes through it will give OMB a lot of power over information," said Anne Heanue of the ALA Washington Office.

"We have seen OMB in operation," added Patricia Schuman, chair of the ALA Legislation Committee. Its role would have a "chilling effect" on agencies releasing information. Reported in: *Washington Post*, December 7.

schools

Burnsville, Minnesota

A Burnsville High School student launched a First Amendment battle in December when he refused to turn inside-out a Budweiser T-shirt that had been outlawed at the school earlier last year. Alex Trevino refused to comply with a school policy forbidding clothing that displays alcohol- or tobacco-related messages.

A member of the student council since eighth grade, Trevino cited his First Amendment rights December 19 in a meeting with associate principal Judy Hornbacher. "Courts have consistently upheld the prerogative of school administrators to make judgments about how they want their schools to operate," Hornbacher told him.

"It was tense and I was scared," Trevino said. "But I made it clear to her that I wasn't doing this to be rebellious. I'm doing it to prove a point. I told her that when she writes out my suspension notice, my lawyer will be present."

Loren Siegel, an attorney for the ACLU in New York, said the school's position "is a blatant First Amendment violation." She said the restrictive measures are consistent with a "dangerous trend" nation-wide among public school administrators who seem to be curtailing some established freedoms guaranteed by the First Amendment.

"From our point of view, this is definitely protected activity," Siegel said. "Kids have the right to wear these kinds of shirts unless it can be demonstrated that the wearing of them interferes with the educational process. Usually, that's difficult for school administrators to show."

Principal Howard Hall, who initiated the policy, disagreed. "If it's illegal for students to purchase cigarettes and alcohol, then why permit students to wear T-shirts that promote it?" he said.

Trevino was supported by student council president Shannon Gramse and by Heidi Anderson, editor of the school newspaper. The three students said they support a school that is free of alcohol, tobacco, and drugs, but not at the expense of personal freedoms. "We should not have to leave our constitutional rights at the doorstep of the school," Gramse said.

Hall and Hornbacher said they didn't know what they will do if Trevino does not yield. "Our school district attorneys have advised us that they think we could make a strong case," Hall said. "But just because the attorney says that doesn't mean a judge would go that way. I don't know what we would do if someone says we're going into court over this." Reported in: *St. Paul Pioneer Press*, December 21.

Durham, North Carolina

The principal of Chewning Junior High School said November 13 that students will be allowed to wear Confederate battle flags to class nearly two years after an incident in which fourteen students were suspended for displaying the banner. The decision by Principal Isaac A. Thomas was the result of a settlement of lawsuits filed by the parents of four of the students, who had claimed they had been denied their First Amendment right to free speech.

The decision delighted officials of the North Carolina Civil Liberties Union, who praised efforts at Chewning to educate students about freedom of speech. Under terms of the settlement reached last August, Chewning students were required to attend an assembly on freedom of speech in September, led by the NCCLU's legal director. Students also studied the Constitution in classes. That education helped students to understand the rights and responsibilities that come with free speech, Thomas said. After the assemblies, the settlement called for him to evaluate whether to continue the ban. Reported in: *Raleigh Times*, November 14.

evolution and creation

Sacramento, California

As the first step in a legal campaign to invalidate new textbook guidelines governing the teaching of evolution (see *Newsletter*, January 1990, p. 28), conservative religious groups announced December 14 that they will challenge the procedures used to adopt the new policies. The Rev. Louis Sheldon, chair of the Anaheim-based Traditional Values Coalition, said his group would ask the office of administrative law to determine that the guidelines are in fact a state "regulation" that should have been adopted according to strict procedures.

By seeking an opinion from the office of administrative law, Sheldon said he hoped to gain ammunition for further legal action against State Superintendent of Public Instruction Bill Honig and the State Board of Education. The administrative law office can only issue advisory opinions, but these are often given great weight in lawsuits.

Sheldon said his ultimate goal is to wrest away from the state some of the authority it has over textbooks and return it to local school districts. He said he thought his group would be more successful in persuading local officials that teachers should be allowed to present alternative views, such as creationism.

"It's the first effort in attempting to offer school districts, teachers and students the right to have freedom and flexibility in presenting alternative theories to the origins of life," he said.

Honig, who pushed for the adoption of the guidelines by the board as part of his effort to make California students more "scientifically literate," predicted the latest challenge from the religious groups would be rejected. He said the guidelines are a "general philosophy" stating how science would be taught in California and could not be considered a regulation.

"The framework [guidelines] is not legally vulnerable to this attack," he said. "I think what they [religious groups] will do is look for all the potentials and try and get as much attention as they can and try and use whatever procedures are around, but this one is not a threatening attack."

Honig said the state board clearly has the constitutional authority to adopt textbooks. And its decision to approve the textbook guidelines was made after lengthy public hearings and public meetings, he said. Reported in: *Los Angeles Times*, December 15.

university

Winston-Salem, North Carolina

Students at Wake Forest University agreed that Timothy Bell acted heroically last June when he carried videotape of the Chinese government's military suppression of demonstrations in Tienanmen Square out of China. But they disagreed

over whether Bell violated Wake Forest's honor code and whether he should be punished for it. Bell was in China with a study tour of Wake Forest students.

On November 28, Bell was placed on probation by the university's student Honor Council because he deceived two professors about his intentions to go to the square the night of June 3, when the Chinese army assaulted student demonstrators. Bell spent that night in Beijing's Palace Hotel, about three blocks from Tienanmen, with American reporters. The next morning the Wake Forest group left for Hong Kong and Bell took with him the tape of the shootings at the request of an NBC News producer. The tape was broadcast that night.

The case centered on whether Bell was truthful when he told the study tour's leader that he was going to visit an acquaintance at the *Washington Post*'s news office in another part of the city. Bell said he ended up at the NBC News office by chance, but did not tell another faculty member exactly where he was because he thought the professor would make him return to the group in the university district, well away from the square.

"I doubt that he would have shared my belief that this was a great opportunity for my education," Bell said. Others among the 26 students on the trip had been angered by Bell's action because, they said, it could have put them in danger. Bell had been accused of endangering students, but that charge was dropped. Bell spent the summer working for NBC News as a production intern in Hong Kong. Reported in: *New York Times*, December 4.

privacy

Washington, D.C.

Justine Gubar wants to protect her privacy, so she is all for the service. It would shelter her and other single women against harassing phone calls, she believes. Alison Russell wants to protect her privacy, so she is dead set against the service. It would put her unlisted number in the hands of people who have no right to it, she says.

The two Washington residents gave this contradictory testimony December 4 at hearings into "Caller ID," a service that the Chesapeake and Potomac (C&P) telephone company began introducing in Maryland and Virginia last fall and was proposing for the District of Columbia. Used with a small electronic display screen, it tells a person the number of the phone from which an incoming call was placed.

Proponents of the service argue that they have the right to know the numbers of people who call them; opponents say that to safeguard their own numbers in an age of telemarketing and computer data bases, the service must be blocked. Debate over the issue promises to spread as the service is proposed by telephone companies nationwide.

New Jersey residents were the first to be able to subscribe to the new service and by the end of last October, about 25,000 homes and 2,500 businesses had signed up. According to New Jersey Bell, the number of requests to trace problem calls in the first area that got the service has since dropped by half.

The D.C. Public Service Commission, which convened hearings on the issue, heard testimony from representatives of crisis organizations, who praised the service, saying that in emergencies it allows their hot line operators to locate callers who may be unwilling or unable to give the information.

Community activist Mark Plotkin, however, said the system would open the door to Orwellian excesses. "It's a joint venture between C&P and Big Brother," he told the commission. "That right of privacy to have an unlisted number has now gone out the window." He also raised the prospect of computers spitting out all manner of personal information about callers, based on the originating number. Or, he said, government agencies could simply not answer calls from people they disagreed with.

A few businesses are already using the service in conjunction with data bases about customers. Some consumer activists fear it will become common for companies to record the numbers of people calling them and use them to build lists of people interested in certain products. This information might be sold to telemarketers and used to target specific groups.

In other jurisdictions, critics have said the service could jeopardize the security of residents of shelters for battered women, by making it impossible to call family members unless they were willing to have their numbers disclosed. Regulatory authorities in Maryland and Virginia cleared the way for the service with little public attention. Pennsylvania regulators recently approved it after protracted debate, but the proposal is now before the state Supreme Court. In California, the state legislature passed a law requiring that if the service is offered, people placing calls be able to prevent their numbers from showing up on screens if they choose. Reported in: *Washington Post*, December 5.

television

New York, New York

The American Broadcasting Company (ABC) filed suit December 4 seeking the right to televise the 1991 Pan American Games live from Havana, Cuba. The legal battle began after the Treasury Department twice turned down requests by ABC for a license to televise from Cuba. The government refused to issue the license on grounds it would allow the network to violate the "federal trading with the enemy" act.

ABC has offered to pay $8.7 million to organizers of the games for the right to televise the competition in the U.S. The hitch is that 75 percent of that money would be turned over to Cuba to cover the cost of hosting the games.

ABC argues that the Treasury Department's actions violate the First Amendment rights of both the network and the American public. A U.S. team, subsidized to about $16 million, is scheduled to take part in the games. So will teams from 36 other countries. The suit filed with U.S. District Court Judge Michael Mukasey named as defendants Treasury Secretary Nicholas Brady and R. Richard Newcomb, director of the department's Office of Foreign Assets Control. Newcomb said previously in a letter to ABC that the government's "sole concern is that ABC's proposal would transfer very substantial sums to Cuba."

A Treasury representative added: "We have no quarrel with someone going to Havana to play a little ball as long as Cuba doesn't profit from it. The bottom line is we're upholding the law that forbids doing business with Cuba."

Stephen Solomon, senior vice president of ABC Sports, said the network went to court "because any further delay would make adequate television coverage of an event of this magnitude virtually impossible." Solomon criticized what he called "the inconsistency inherent in the Treasury Department's decision to allow the U.S. team to compete in Cuba" but to deny Americans the right to view the competition. Reported in: *New York Post*, December 5.

prisons

Washington, D.C.

Attorney General Dick Thornburgh on November 29 ordered the U.S. Bureau of Prisons to withdraw proposed regulations that would have restricted news media interviews with federal prison inmates. Thornburgh said the proposal, which had generated immediate criticism from media groups on its announcement the previous day, had been "submitted prematurely and without my personal review. It will be subject to further review before resubmission."

The bureau wanted to require that, as a condition to any face-to-face interview with an inmate, a journalist provide officials with "an opportunity to respond to any allegation that might be published or broadcast." The proposals also would have permitted prison wardens to deny a request for a media interview or visit with an inmate "in whom other government agencies have expressed an interest."

This, in effect, would have allowed a government agency, such as the Immigration and Naturalization Service or the CIA, to control media access to an inmate without offering any justification.

Among provisions in the proposed rules were:

- For an interview, a "media representative" must make application at least two working days in advance. "It must indicate the scope of the intended interview, and affirm that the media representative is familiar with the rules and regulations of the institution and agrees to comply with them."
- Reporters "may not obtain and use" information from one inmate about another inmate who refused to be interviewed.
- Interviews can be denied for juveniles or if they "would cause serious unrest or disturb the good order of the institution" or because the Bureau of Prisons has received objections from other government agencies.
- "Ordinarily," reporters would not be allowed more than one face-to-face interview per institution per day and an inmate would be limited to one such interview per month.
- Inmates may not write for newspapers under a byline or for pay. They may not "act as a reporter" for a news organization.

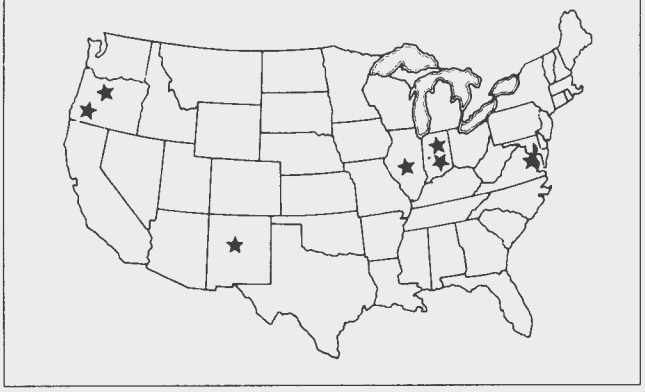
Some of the rules appeared to address the case of Dannie Martin, who has been writing a column for the *San Francisco Chronicle* while serving a 33-year sentence for bank robbery. Last year, after Martin wrote about his warden at Lompoc Penitentiary, he was transferred to a prison in Arizona. Martin and the *Chronicle* sued the Bureau of Prisons. Reported in: *Washington Post*, November 29; *Philadelphia Inquirer*, December 1. □

(from the bench . . . from page 56)

In deciding the case of *New York* v. *Sullivan*, the court relied heavily on the U.S. Supreme Court's 1989 ruling in *Webster* v. *Reproductive Health Services*, which upheld a Missouri statute prohibiting the use of public facilities to perform abortions and requiring physicians to conduct viability tests prior to performing abortions. *Webster* emphasized that so long as no affirmative legal obstacle to abortion is created by denying the use of government funds, facilities, or personnel, the practical effect of such a denial on the availability of such services is constitutionally irrelevant.

The court also rejected the argument that restrictions on the subsidization of speech contained in the regulations are constitutionally impermissible. Individuals employed by projects coming under the regulations remain free to say whatever they wish about abortion outside the project, the court said. Reported in: *U.S. Law Week*, November 21. □

success stories



libraries

Riverdale, Illinois

In a change of heart, the Riverdale School Board voted unanimously October 30 to reverse a decision a week earlier to remove the poem "Dreadful" from an elementary school library's copy of *Where the Sidewalk Ends*, by Shel Silverstein. A student's grandmother had complained that the poem, which begins with the line "Someone ate the baby" and closes with a burp, was in bad taste.

Board member Arvid Ashdown moved to rescind the ban after Superintendent Dennis Rucker explained that the original vote came without adequate preparation. He took responsibility for a lack of information on the controversy available to the board.

Rucker said the board would have taken steps on its own to correct the mistake, but "harsh and abusive criticism in the media" would "wash away" any positive action. He suggested the board rescind its earlier vote and make recommendations on how to handle similar circumstances in the future.

Following Rucker's presentation, several people criticized the decision to remove the poem. Floyd Stockwell, a candidate for election to the board, said that "no child would ever think of eating a baby." He said board "attacks" on Silverstein "are as arrogant as what you did last week."

Elementary librarian Barbara Peterson called *Where the Sidewalk Ends* a "modern classic." To statements that children might misunderstand the poem, she replied: "I give the students more credit." Resident Phil Zumaris recommended the board resign "if they can be swayed by one person, like wheat blowing in the field."

Board president Sue Foster told critics "It is unfortunate that this occurred the way that it did, but mistakes are made, and mistakes can be corrected." She asked the community and the news media to give the board time to rectify its action without "any further cruel and unfair criticism." Reported in: *Moline Dispatch*, October 25, 27, 31.

Bristol, Indiana

The Bristol Public Library Board voted November 8 to deny a request to remove *The Last Temptation of Christ*, directed by Martin Scorsese, from the library's videotape collection. "While we do not feel that we can honor your request to withdraw the video, please know that we wish to follow policies which allow library patrons to exercise discretion according to their own principles," a letter from the board to Bristol residents Don and Cindy Norman said. "The Bristol Public Library subscribes to the principles of the American Library Association." Reported in: *Elkhart Truth*, November 9.

Indianapolis, Indiana

A book of poetry by "beat" poet Allen Ginsberg withstood a review panel's scrutiny and will remain in North Central High School's library, despite parental complaints. The seven-member committee's decision not to ban Ginsberg's *Collected Poems, 1947-1980*, was upheld by Washington Township Schools Superintendent Phillip J. McDaniel November 16.

In a three-page report, committee members said they found thirty poems "personally distasteful," but agreed it is unrealistic in a technological age and undesirable to control exposure to such social issues as homosexuality and abortion. The report called the book "uncomfortably honest, yet admirably comprehensive."

Wanda Clay, a study hall aide at North Central who is also a member of the Coalition of Concerned Minority Parents, made the complaint in October after she found students giggling and passing the book in study hall (see *Newsletter*, January 1990, p. 9). Members of the coalition backed the complaint, the first such challenge in at least a decade.

Mmoja Ajabu, a coalition representative, said the book's use should be restricted by requiring teachers to give permission for students to check it out of the library. "I'm saying that why in the world would they want information like this to be available to kids at their whim?" he said. "Every kid in the school is going to go through there and get that book to find out what he is saying." Ajabu said he did not believe the issue of homosexuality should be ignored, but that it should be dealt with in the classroom when teachers can direct discussion.

Ajabu added that the decision was a slap in the face to his group, which has campaigned unsuccessfully to get a curriculum addressing African-American history and culture. "I don't know why they want their kids to have access to

homosexual information and yet oppose them having African-American information," he said.

School board member Rick Sutton commented: "I would have preferred that there be some sort of limited access." But he added that he did not favor removing books from the library because they contain objectionable material. Reported in: *Indianapolis News*, November 16; *Indianapolis Star*, November 17.

schools

Montgomery County, Maryland

Amos Fortune, Free Man, by Elizabeth Yates, won the 1950 Newbery Award. A biography, it tells the true story of an African prince who, sold into slavery, manages in his old age, after decades of strength and determination, to buy his freedom.

Last fall, a county parent asked that the book be removed from the classroom, complaining that it contained racist dialogue, fostered stereotypes, and could be degrading to black children who read it. Heeding the advice of a committee, Superintendent Harry Pitt reviewed the complaint and decided last November that it had merit.

But Pitt's decision to remove the book prompted a counter-protest. A second parent asked that the book be restored, complaining that Pitt had censored a story about "an almost mythically noble figure." School administrators faced a problem: under district policy a book, once removed from the classroom, may not be reconsidered for at least three years.

Amos Fortune was not required reading, but was on a list of optional books that teachers of classes for "gifted" fifth graders may use in their English unit on biography.

On January 9, however, Pitt provided an unexpected solution. Confessing that "this is something superintendents are not supposed to do," he announced that he had changed his mind. "I could see weight on both sides, but on balance I now believe my decision was not a good one," he said. "I do not lose sleep on that many things, but I did on this one."

Initially, Pitt tried to compromise. While ordering the book out of the curriculum, he said that it should remain in school libraries. "My concern was the stereotyping, the impact the book might have on minority youngsters."

But the superintendent said he was impressed by the reasoning of the second parent, Art Brodsky, and of a few other county residents who had written to him. "The impression I was giving people was censorship, and I did not want to do that. I also am concerned you don't sugarcoat history. Slavery was an ugly business, and kids need to be aware of it." Reported in: *Washington Post*, January 10; *Montgomery Journal*, December 14.

Montgomery County, Maryland

Max Miller, a student at Blair High School, who was prevented from showing his autobiography to classmates because the principal deemed it obscene, was given permission to take the book to school to share it with his friends. During Christmas recess, Blair Principal Phillip F. Gainous said that he never prohibited Miller from showing the book to his friends during free periods, although he earlier had been quoted as saying he did not want it on school grounds.

"He said he didn't want that kind of writing in his school," Miller said. "I think what he's trying to do is slide out of it with as little scars as possible. . . . He's protecting himself." The ACLU had previously filed a formal appeal with the school system, asking that Gainous rescind the ban on Miller's personal writings.

Gainous issued the ban after Miller turned in the first chapter of his book for a creative writing assignment. In the chapter, Miller compared his birth by Caesarean section to a scene from the horror movie *Friday the 13th*.

"The order forbidding Max to bring his book to school constitutes a prior restraint of his speech that violated his First Amendment rights under the Constitution," the ACLU appeal said. "We are sure that you are quite conversant with the now-familiar edict of the U.S. Supreme Court that students in the public schools do not shed their constitutional rights to freedom of speech at the schoolhouse gate." Reported in: *Montgomery Journal*, December 22.

Albuquerque, New Mexico

The Last Temptation of Christ will not be banned from Albuquerque classrooms. Richard Romero, chair of an ad hoc committee that examined the controversial film, issued a memorandum November 21 to Deputy Superintendent Joan Heinsohn explaining his decision not to ban the movie as requested by a group of parents.

"I support the conclusions of the committee that the precedent set by total censorship and banning of this film is not in concert with American ideals and constitutional principles regarding freedom of expression," Romero wrote. Assistant Superintendent Romero added that while he realized the film offends many Christians, the school system "must address the unique needs" of each of its students and "cannot be structured to exclude anyone."

Romero did note, however, that the controversy, which began after the film was shown to two world history classes, demonstrated the need for changes in the district's procedures for deciding whether controversial material should be used in classrooms.

"Informed parental consent must be a primary consideration regarding the use of controversial films and videos," Romero wrote. To ensure this, he added, the district needs to develop procedures and forms that "thoroughly inform parents of the background, rating and content of the film."

Parents unhappy with Romero's decision can appeal to Deputy Superintendent Heinsohn. Reported in: *Albuquerque Journal*, November 22, 23.

Springfield, Oregon

The Springfield School Board voted unanimously in December to permit the play *Blithe Spirit*, by Noel Coward, to remain a part of the school curriculum. Several parents had protested that the play, scheduled for performance at the school in November, encourages occult activities.

"Even though this play is funny, I feel the new age religion is being encouraged," said Donna McCown. "It's very subtle, and it's working its way into our community. I just don't believe that contacting the spirit world is something high school kids should be doing or studying or thinking about."

Coward's 1941 farce is about a novelist who uses a medium to perform a seance so he can gather material for a book. But the medium conjures the spirit of the novelist's dead first wife, who proceeds to cause problems for him and his second wife.

Originally, McCown and parent Debbie Korop took their complaint to drama teacher Beth Rogers-Wallace who tried to convince them "that it was a totally innocent play, that it's not supposed to get a point across, that it isn't didactic in any way."

But the parents persisted, and Principal Wayne Hill invited them to file a formal complaint. The complaint was considered by a parent-teacher-administrator committee, which recommended that the play remain available for future performance and classroom use. That recommendation was confirmed unanimously by the school board. Reported in: *Springfield News*, November 4; *Eugene Register-Guard*, November 16.

Troutdale, Oregon

The Reynolds School Board voted 4-0 December 17 to uphold a book challenge review committee's recommendation to keep *After the First Death*, by Robert Cormier, on an assigned ninth-grade reading list. Parent Mary Lou Zehender, who filed a written objection to the book, told the board, "I'm not asking that the book be banned . . . but I do not like it as assigned reading."

Zehender said she objected to the book's portrayal of teen suicide as well as the way the U.S. Army and the Palestine Liberation Organization were depicted.

Skip Squires, chair of the social studies department at Reynolds High School and one of two teachers who used the book, said the novel was chosen to prompt students to discuss teen suicide, erroneous assumptions about American values made in the book, and the conflict between East and West.

This was the second book challenged by a Reynolds parent in two months. Last November *House Made of Dawn*, by N. Scott Momaday, an alternate reading assignment, was challenged unsuccessfully because of its sexual content (see *Newsletter*, January 1990, p. 32). Reported in: *Portland Oregonian*, December 18. □

(FOIA . . . from page 44)

Agency responses to the same or similar requests often vary, both among and within agencies, the SPJ study found.

In one instance, for example, David Ashenfelter, a reporter for the *Detroit Free Press*, requested the addresses of certain individuals from three agencies. While the FBI and the Central Intelligence Agency refused to release the addresses, the Federal Aviation Administration routinely provided the information.

Thomas Cochran, an anchor for WTHR-TV in Indianapolis, had a similar experience when he requested information from the FBI and the CIA concerning an individual who had been an agent with both agencies. "The FBI gave me the full personnel file on him, while the CIA denied the request for the information," he said.

Inconsistency within an agency may at times be motivated by a desire to protect agency officials from public scrutiny, Ashenfelter said. In a number of instances, Ashenfelter received the information the first time he requested it. After the agency officials learned that the information had been used to produce an unflattering article, Ashenfelter said, they were reluctant to release similar information when it was requested.

Agency inconsistency also is reflected in policies concerning the release of computer records. In this area, the problem is caused primarily by inconsistent positions within government as to whether the FOIA even applies to computer records. When pushed on the issue, most courts and agencies apply the Act to these records, but poorly trained or obstructionist officials can use the lack of a clear directive to delay or deny an FOIA request.

Finally, agencies appear to treat mid-size and smaller news organizations less favorably than they do larger organizations closer to Washington, D.C.

"They (FOIA officers in Washington) don't know who the hell we are," said Ted Wendling, an investigative reporter for the Cleveland *Plain Dealer*. "*The Washington Post* reporters may have better luck with the FOIA because they can just walk across the street. We're out here in the hinterlands. I usually have to explain to them that we're the largest newspaper in the state of Ohio. Then they ask, 'Now, do you spell Plain, 'P-L-A-N-E'?'"

"The biggest problem we have to overcome when dealing with some government agencies is perception," KOAT-TV's Chino said. "We're a small station in New Mexico.

They (FOIA officers) are more reluctant to respond quickly to our requests. If you're *The Washington Post* or ABC or Peter Jennings, people might stand up and listen. We're a small operation, but we try to counter those problems of perception by being persistent."

The most dramatic impact of agency foot-dragging is the chilling effect it has on use of the FOIA. The Society's study and survey found that many journalists do not use the Act, in large part because delays render much of the information they need untimely and useless.

"Generally, I avoid FOIA at all costs," said Calkins of *The Fresno Bee*. "I don't have a lifetime to wait on the information coming through FOIA."

Agency noncompliance with the FOIA has forced journalists to devise new strategies for obtaining government information, both within and outside the Act. A common strategy used by successful FOIA requesters is to attempt to cut through bureaucratic delay by communicating frequently with the FOI officer processing the journalist's request. Other avenues include cultivating sources within the agency, requesting documents verbally, making simultaneous specific and general requests, telefaxing requests to the agency, obtaining documents from their printer, and using a form for requests.

"I usually talk to an FOI officer to help pave the way for a faster response," the *Plain Dealer*'s Wendling said. "This gives me the opportunity to establish a rapport with the individual. He usually helps in making the wording of my request as specific as possible."

Natalie Phillips, a military reporter for the *Colorado Springs Gazette Telegraph*, also usually telephones agency officials before she files a request. She then keeps in close contact with the FOI officer to ensure that the requested documents are sent to her as quickly as possible.

"We have to [call the officers] every couple of months to let them know that this information is important to us," she said. "Also, we want to keep them on their toes. I often find out that rules tend to change with the people. The experiences I've had with some of the military public information officers depend on the person I'm dealing with. One even faxed me information."

Once a journalist gets to know the FOI officer with whom he or she is dealing, the journalist generally is happy with the results. "(FOI officers) try to work with me," said John Winters, a reporter for *The Augusta (Ga.) Chronicle*. "I've even had instances where I hand-deliver FOIA requests, and they turn around and give me the documents within minutes."

FOI officers also can be helpful in explaining certain documents. "Even if the Freedom of Information Act was perfect and acted the way it was supposed to, and we got all of the information we were asking for within the 10 days," Cowen said, "I would never substitute the use of personal contacts within the agency and strictly use the Act. You still need those officials within the agency to explain the documents. I would continue to do both."

Not all reporters, however, have enjoyed productive experiences with FOI officers. "I have found the FOI officers to be extremely unhelpful," said Daniel Zwerdling, a National Public Radio news correspondent in Washington, D.C. "They always seem to be there to answer 'yes' and 'no' to your questions. They don't help to steer you in the right direction. They seem to try to be as unhelpful as possible. If you already know what documents you are after, they seem to help begrudgingly."

In addition to attempting to obtain records promptly by working closely with FOI officers, many journalists continue to pursue the desired information from agency sources even after they have filed an FOIA request.

"When I file an FOIA, I don't stop there," *The Seattle Time*'s Nalder said. "I try to get documents in various ways. Most often the people trail is a better way to get information. Documents aren't going to tell you the whole story."

In fact, in one instance, Nalder withdrew an FOIA request in order to obtain information from a different official in the same agency. Just hours after filing the FOIA request, Nalder received a telephone call from an agency official who told Nalder that he would receive the information faster if he withdrew his request. After Nalder withdrew the request, the official released the information to him within hours.

"Some of my best reports have been obtained from a mole in the agency, rather than through the FOIA," Nalder said. "I'd rather have moles in the agency any day."

David Rossmiller, a staff writer for *The Phoenix Gazette*, agrees. "Requesting information through the Freedom of Information Act is sometimes more trouble than it's worth," Rossmiller said. "It's a far better thing for me to get information or documents by making friends within the agency. The problem with FOIA is that it takes too long. You're no longer in control. You're letting the bureaucrat and the paper take control of your story."

Journalists have developed several other techniques to expedite or circumvent the FOIA. Those techniques include:

- Telephoning an agency official, not necessarily the FOI officer, and asking for the document. If the official refuses to provide the information, the journalist advises the official that he or she considers the refusal to be a denial of a verbal FOIA request that is immediately appealable. This procedure drastically reduces the time usually spent waiting for an initial agency determination and allows the journalist to seek expedited review of the agency decision.
- Using form FOIA requests stored on the news organization's computer system.
- Filing two requests for information, one fairly specific that asks for a document by name and number, and the second asking for the same type of information in a more general manner.

• Telefaxing requests to agencies. "I use the fax machine when I can to send requests," Nalder said. "I often get documents back on the fax. Faxing the requests puts them on alert that you feel your request is important."

• Obtaining the document from the printer. For example, Peter Karl, an investigative reporter with Chicago's WMAQ-TV, obtained a 2,900-page investigative report from a printer. "I tried to cut though all of the red tape," Karl said. "I avoided the filing (of an FOIA request) and got a quicker response."

The persistence of many news organizations and reporters is evidenced by the results of the Society's questionnaire. Those individuals responding to the survey file an average of 10 FOIA requests a year, and 76 percent reported that they contacted agency officials in an effort to speed up or determine the status of their most recent request.

Federal agencies' failure to comply with the letter and spirit of the FOIA has dramatic and lasting effects:

• Delays and illegal withholding of information are widespread.

• Because of these delays and refusals to provide clearly releasable documents, journalists are not using the FOIA as much as they should.

• Those journalists who use the Act have been forced to devise ways to circumvent agency foot-dragging.

These effects pervert the purpose of the FOIA, thwart the will of Congress, wrongfully restrict the flow of information to voters and taxpayers and jeopardize good government. □

non-journalist users of FOIA

by Peter A. Levin

Commercial users of FOIA have experienced delays similar to those described by journalists and in some cases have had to pay substantially more money for the same documents. In fact, federal law distinguishes between commercial users, who may be charged for all aspects of a request, including review and search time, and "educational or non-commercial scientific institutes, or a representative of the news media," who may be charged only for duplication fees. The FOIA also provides that fees chargeable to non-commercial users may be reduced or waived if the information "is likely to contribute significantly to public understanding of the operation or action of the government."

But the license to charge differently according to profession does not extend to the final decision or amount of information granted in an FOIA request. Many journalists have claimed that law and practice are two different things, that businesses and university professors, for example, usually receive a quicker and more thorough response. Interviews with business attorneys and college professors, however, indicate that they too experience problems and frustrating delays.

It is possible that the main difference between journalist and commercial FOIA users is a matter of perception. Businesses also encounter delays of many months, but they usually are not working under deadlines as pressing as those of journalists. According to Tom Sussman, an attorney with the Washington, D.C.-based law firm of Ropes and Gray, one major advantage possessed by lawyers who use the FOIA is that "we can sit on agencies until we get [the information]."

Sussman expects to encounter bureaucratic delays and claims that the follow-up of a good attorney is important. He works with the Act when companies are trying to prevent disclosure of operations information, when searching for specific aspects of government procedures and when interested in other companies' activities in their field. He has found that businesses shy away from the time and money required by FOIA litigation, but rely upon a strategically worded request, a willingness to make concessions (taking less information for a speedy processing, readily paying more money for more documents) and knowledge of the Act to make requests a fairly painless process. "We're not usually breaking any new ground, but [the agencies] generally don't charge an arm and a leg, don't charge for review time and I haven't seen any game playing," Sussman said.

John Heffner, another Washington, D.C. attorney experienced with the FOIA, has built a successful track record with the Act. Over the last few years his requests have taken several weeks at most. The most trouble he has encountered is an attitude of "grudging compliance" to release information in a search he conducted of the financial fitness of a client's competitor. He also has used the Act to track government surveillance of a client's son, who claimed "the FBI was listening into his brain." Heffner suggests that attorneys, in addition to their familiarity with the law, may have more clout than other requesters. But while it is possible that "we have an ability to intimidate," he admits that "people are pretty sophisticated here in Washington and delays still can occur."

Some attorneys have found litigation a useful recourse when their requests are blocked or when an agency withholds part of the information. Diane Curran, a Washington attorney who represents the Union of Concerned Scientists, has had a mixed experience with the FOIA. Her requests, dealing with the safety and procedures of nuclear developments, are filed mostly with the Nuclear Regulatory Commission, which, she claims, "takes a long time in general" and "often doesn't take the time to give enough detailed information." Consequently, she has had to follow-up requests through administrative appeals and litigation in the district court. Legal action has proved to be successful in several instances.

As for university research, Michael Ermarth, a professor of History at Dartmouth College, believes that requesters fare worse now than in the past. He had little or no difficulty in the late 1970s obtaining more than three hundred documents related to the dossier the government had kept on his father. Although it took over three months to get the material, Ermarth speculates that the delays "were bureaucratic rather than a means of withholding information." He maintains that the authorities were quite helpful, supplying telephone numbers, people's names and leads to follow up his request.

Ermarth believes that policy has shifted over the years. Colleagues who have recently requested similar items have come across many more difficulties in the FOIA process. They encounter longer delays and receive less information. In general, responses usually are granted or denied within a few months and vary according to the degree of confidentiality, availability, agency staff experience, and the structure of a particular request.

What can one do to plot the best possible search for information? Several of those interviewed suggest *Using the FOIA: A Step-by-Step Guide*, a how-to publication authored by the American Civil Liberties Union. The Guide is a helpful source for beginners and experienced users of the Act.

Public Citizen, a consumer group founded by Ralph Nader, also can help requesters "stuck in the process." A representative of Public Citizen cited extreme cases in which the response to an FOIA request took one or two years. A few "lucky" requesters, however, received documents in 10 days. The group recommends that a requester be creative, check all the angles and possible agencies from which one might get the information, and follow up. Others suggest using an attorney skilled in the FOIA for speed.

A familiarity with the procedures of the agency handling the request also is important. The State Department, cited in a General Accounting Office study as the worst agency in handling FOIA requests, must frequently turn to outside sources such as foreign embassies to obtain documents, where the research is considered extra work and takes a back seat to more pressing matters. The Department advises that, when requesting special services such as expeditious handling or special documents, one should list his or her intentions and credentials. Once again, the more information, the better. □

the view of access professionals

by Richard Kleeman

"It's all attitudinal." That in a nutshell sums up the response of one veteran federal information officer, newly retired after 20 years in that work, to the request for the "other side" — i.e., the government's — of the FOIA process.

"From the bureaucrat's perspective, the tendency too often is to be defensive and to deal with any FOI request — particularly from the media, but also from advocacy or watchdog organizations — as a worrisome, unnecessary burden," said Russ Roberts, who retired this year as director of the FOI/Privacy Division of the Department of Health and Human Services (HHS).

But from the outset in 1969 of his work with the then three-year-old FOIA, Roberts had a different outlook: "The defensive bureaucrat doesn't recognize that without any FOIA requests, he's not going to have much of a career. The requester is *not* the enemy and the most effective way to deal with FOIA requests is to bite the bullet, do the work and try to be helpful."

It was this attitude that led Russell A. Powell, new president of the American Society of Access Professionals (ASAP), which Roberts helped found in 1980, to write to the retiring Roberts: "As the Freedom of Information/Privacy Act Officer for the Department of HHS, you and your office have been recognized for many years as a model for others throughout government."

If requests make the information officer's career, then Roberts surely culminated a successful one: in 1988, the huge, sprawling conglomerate that is HHS handled a total of 131,000 requests under the Act. These were handled under the "service to the public" guidelines that Roberts helped write, with the aid of an advisory task force and the successive support of numerous secretaries of the department, known in its early days as Health, Education and Welfare (HEW).

Within the federal establishment, Roberts said, about one-third of the agencies designate their legal counsels to handle FOIA requests, another third use records managers or administrative officers and the remaining third give the job to public affairs officers.

But program managers tend to back away from the "additional work" entailed and also have vested interests in whether or not to release information, and the lawyers, according to Roberts, often take the position that their responsibility is to give legal advice on alternatives — but not to make policy.

So Roberts favors the rationale followed at HHS, to place ultimate FOIA responsibility in the public affairs office: "They are used to dealing with the public and with the news media and they can perceive the public relations impact of disclosure or nondisclosure."

He outlined the detailed process for handling requests when they concern just one of the five major agencies under the HHS umbrella — and when they "crosscut" two or more agencies. An appeals process is provided for both, but perhaps the key to Roberts' operation lay in his willingness to handle telephone requests (if not too complex) and to get on the telephone with problem cases.

"We tried in every way to expedite hard cases," he observed. "We didn't ask for legal briefs, and in general

we tried to cut down on unnecessary adversarial positions. We didn't have any fear of requesters, although they don't always know that their request may have fired a shotgun."

He would get on the phone too with recalcitrant information officers within HHS, telling them that unnecessary litigation or delay "just costs money." In some cases he would even bring the requester and the subordinate FOI officer together "to dispel some of that adversarial atmosphere."

Although no federal official ever will admit to having a budget adequate to the job at hand, Roberts recalls as "the best advice I ever got," the counsel of former California Rep. Paul (Pete) McCloskey: "If you want good budgets, keep good data."

It was such good data that enabled him to ask additional staffing when processing time for HHS handling for FOIA requests rose to 16 days, where the law calls for a 10-day turnaround.

Asked for advice to requesters, Roberts cites as a shining example of doing it right Dr. Sidney Wolfe of the health project at Public Citizen, founded by Ralph Nader. For every FOIA request he files, Wolfe unfailingly first calls the FOI officer to announce what he is seeking and often (although this is not required and is distasteful to some FOIA users) what he intends to do with the information.

This personal contact is followed up with a detailed list of materials wanted, often hand-delivered. The FOI officers all know that Wolfe is backed by a strong Public Citizen litigation arm, Roberts pointed out, but if available resources are used "aggressively," as Wolfe does, FOIA litigation often becomes unnecessary.

In contrast to HHS is the State Department, which received a stinging criticism of its FOIA request-handling from a General Accounting Office report. The report accelerated a reorganization that is designed to "rationalize" the process—and improve it for requesters.

"The State Department's inability to keep pace with its FOIA workload has resulted in delays and backlogs in processing information requests," the GAO, Congress' watchdog agency, charged in the report, which was issued in January 1989. "Over the three-year period ending Dec. 31, 1987, approximately three-fourths of the 7,567 requests we analyzed took over 6 months to complete. At the end of this period, the Department reported a backlog of over 3,700 pending requests."

The GAO further pointed the finger at "managerial weaknesses and resource limitations" as the causes for these problems, and the reorganization still in progress at State is calculated to remedy these within budgetary strictures.

H. Eugene Bovis is recently retired after 37 years as a Foreign Service Officer, the last 16 months of which he spent as State's classification and declassification officer. In an interview, he outlined the ongoing reorganization that is intended to bring the entire information management function under a single umbrella.

This change, together with planned technological improvements intended to automate on a computer database most of what has been handled as a labor-intensive manual process, should be helpful to requesters. Already under way before the GAO report, the reorganization was given new impetus by that criticism.

"It was a first-in, first-out process and often, even after a sign-off, a request could sit for several months before being finally processed," he said. Under reorganization, the entire process will be under one director (Frank M. Machak) of the Office of Freedom of Information, Privacy and Classification Review.

Machak in turn will report to a single deputy assistant secretary of state, where previously there was a divided reporting responsibility between the request processing office and the office for clearance of public information.

The automation, if adequately funded, also should give requesters a better quality of responses. Often these used to be "second and third generation" photocopies (because deleted information had to be recopied to make sure it did not show through). Once on computers, however, deletions can be accomplished on a screen before a document is printed.

Machak reported that the reorganization, of which his office's is but a "very small piece," is intended to put the FOIA program "under the organization that has the information people are asking for."

Machak, still designated "acting director" of the office, says his group is "fighting like heck for the money" to accomplish the automation. At the moment, he said, 90 percent of State's FOIA requests are for paper-based files.

"We've been limping along for years," Machak said, "but the Secretary says he wants the problem solved." This was no doubt a reference to the pointed reminders of GAO criticism that Secretary James Baker encountered when he appeared earlier this year before congressional committees.

Machak reports having sent emissaries to view the much-praised FOIA process at HHS and those of other agencies, but he — like Russ Roberts — reminds the interviewer that the material held in various federal agencies differs greatly. At State there are both national security considerations and the delicate situation created by dealing with foreign governments that consider the diplomatic process highly confidential and have less than complete tolerance for U.S. FOIA concerns. □

SUPPORT
THE
FREEDOM
TO READ

(IFC . . . from page 37)

2) We can no longer allow ourselves to address intellectual freedom and ethical issues only in terms of abstract principles or issues that apply primarily when they are challenged from outside the field.

3) We need to recognize, and then find ways to address, the major threat to our credibility that is inherent in the widespread failure to apply our basic principles to new technologies and to our own internal practices.

Let me give you some examples:

- The high incidence of librarians ignoring the principles contained in the *Library Bill of Rights* and its Interpretations in the handling of videotapes in public libraries;
- The widespread willingness of public libraries to modify or abandon their traditional commitment to providing fee-free service, if the services are based upon new technologies, such as videotape or electronic storage;
- The myriad questions with intellectual freedom and ethical considerations raised by this week's battles about editorial prerogatives within the Association;
- Our continued anguish over perceived conflicts of principle between human rights and free expression in our consideration of issues relating to South Africa, Israel, the Occupied Territories, and elsewhere.

These issues threaten to undermine our core values if we do not confront them directly with courage and with honesty. These concerns form the framework for the Intellectual Freedom Committee's current agenda.

The following is a detailed report of our recommendations, accomplishments and plans.

New Initiatives

- *South Africa*: We have been asked to review the AAP report prepared by Robert Wedgworth and Lisa Drew, entitled *The Starvation of Young Black Minds*, to assist ALA in responding to the AAP request that the Association endorse and support the report's recommendations. IFC is actively soliciting input, testimony, and written statements concerning this report from all units, members, and interested parties who have information which can assist the Committee in formulating its recommendations.
- *User Fees:* We are continuing our comprehensive review of the Interpretations of the *Library Bill of Rights* initiated last year. As part of this work, the Committee is undertaking the development of a new Interpretation concerning fee-based library services. We will be seeking specific data from individuals and units with differing perspectives on this issue and intend to initiate a series of hearings beginning at the Annual Conference to support this effort.
- *Freedom of the Press Within ALA:* The Committee has established a sub-committee to develop policy recommendations resulting from intellectual freedom issues raised by the *Public Libraries* incident. Questions and practices more widespread and complex than the specific incidents under debate this week will be addressed by the IFC.
- *Database Licensing, Fair Use of Electronic Media, and Related Issues:* The IFC has established a subcommittee, headed by Susan Brynteson, to identify the intellectual freedom issues inherent in the licensing agreement required by the National Library of Medicine for the MEDLINE database, and to make recommendations, as appropriate. In discussing the NLM licensing requirements, the Committee concluded that such licensing requirements could not be reviewed in a vacuum, but that other issues, including access to government information in electronic formats, the fair use concept of the copyright law as applied to electronic data, government produced databases and the privatization of government information in electronic formats were within the same parameters.

Recommendations

The Committee is bringing to Council recommendations for adoption of revisions of four of the Statements of Interpretation of the *Library Bill of Rights*; a new resolution on the FBI Library Awareness Program; a resolution on Whittle Communications "Channel One" and Other Such Services; and a request for endorsement of the revised *Freedom to View* statement. The Committee also has endorsed, in principle, resolutions from ALCTS concerning free scholarly discourse and from the Legislation Committee concerning the Paperwork Reduction Act.

Background and details on these and other agenda items from this conference follows.

1. *Revisions to Interpretations of the Library Bill of Rights*

Beginning at the 1989 Midwinter Meeting, the Intellectual Freedom Committee undertook a complete review of all of the Interpretations of the *Library Bill of Rights*, in response to a request from the Minority Concerns Committee that the *Library Bill of Rights* be examined to ensure that it reflect free access to library materials and services without regard to language or economic status. The Committee decided at Midwinter, 1989, that it would respond to this request by first examining the Interpretations of the *Library Bill of Rights* to see if revisions to those were warranted, and thereafter, to see if the basic document itself required revision. Revisions of five of those Interpretations were completed at the Annual Conference, and Council directed that they be circulated to divisions and other units for comment. We have received comments from many units, have considered them, and have made many changes. The IFC's work on four of these five interpretations is now complete and we recommend for your approval today revised versions of these statements (see pages 39/40). The fifth — the *Statement on Labeling* — is receiving further consideration by the Committee and should be ready for action at the 1990 Annual Conference.

The Intellectual Freedom Committee is continuing its review and revisions of the remaining Interpretations and will follow the procedure of circulation for comment with regard to these. The Intellectual Freedom Committee anticipates receiving those comments and presenting to Council final revisions of some of those Interpretations at the Annual Conference this summer. Others of the Interpretations may require further attention and action in response to comments received, and will be presented at the 1991 Midwinter Meeting.

As a continuation of its efforts to respond to the Minority Concerns Committee's query, the IFC has committed itself to a thorough examination of the issues surrounding fees for library services. We are beginning work on developing a new Interpretation of the *Library Bill of Rights* addressing the issue of fee-based service.

Recognizing both the importance and complexity of this subject, the Committee is issuing an invitation for all ALA units, affiliates, and members to submit papers and position statements to help elucidate the myriad considerations with intellectual freedom implications relating to this subject.

We anticipate scheduling a series of structured hearings beginning at Annual Conference, as a means of gathering data on this issue. We have few illusions as to the ease or speed with which policy recommendations in the area can be reached.

2. *Revision of the Freedom To View Statement*

We are bringing before Council a revision of the *Freedom to View* statement of the American Film and Video Association which the IFC reviewed at the Annual Conference in Dallas. We recommend that Council endorse this revised *Freedom to View* statement (see page 41).

3. *Resolution on the FBI Library Awareness Program*

As you are aware, ALA received from the FBI the third and final release of documents pursuant to its Freedom of Information Act requests regarding the Library Awareness Program. Linda Crismond reported to you on Sunday that after review by legal counsel, ALA filed an administrative appeal for all of the withheld and redacted documents. The statutory deadline for response to this appeal expired within the last week and no response has yet been received. This is not completely unexpected. While our strategy is to exhaust administrative avenues and remedies prior to initiating litigation in this effort, the significance of the deadline having passed is that we have now entered a period of time in which legal action becomes a possible option. The costs associated with the FOIA appeals were somewhat in excess of $6,000, but it would be tragic if fiscal considerations prematurely assume undue importance in our selection of options.

The documents that have been released deal primarily with the FBI's efforts at damage control in response to librarians' activities to bring this FBI program to a halt.

Among other things, the documents released which were not redacted or withheld show that the FBI conducted background investigations of 266 individuals connected in any way with the Library Awareness Program including, it would appear, librarians and members of library-related organizations who objected to the program.

In connection with the revelation that the FBI conducted background checks on individuals objecting to the Library Awareness Program, the Intellectual Freedom Committee has reviewed a proposed form letter developed by legal counsel to be used by individuals to seek their own files in order to discover additional information about the Library Awareness Program. As Linda Crismond has already reported to you, this material will be published, probably in the March *American Libraries*, and disseminated in other appropriate ways.

From the documents, the IFC is able to identify roughly 100 extremely plausible candidates for inclusion among the 266. These individuals and/or organizations will be directly contacted by the IFC and urged to consider requesting their own files from the FBI. None of the people who choose to seek their own files are under any obligation whatsoever to share the results of their efforts with ALA. All of those who choose to do so, however, will provide us with invaluable data to flesh out our understanding of the FBI's sorry performance in this whole matter.

Other items of particular interest to us revealed through the material which the FBI has released include the following:

- There are indications of Washington Field Office activities that parallel the New York efforts at "Library Awareness" that have been previously unrevealed. This information is one of the specific focal points of the ALA FOIA administrative appeal.
- The documents also reveal that the FBI did not begin to undertake a comprehensive review of state library confidentiality statutes until the spring of 1988.
- Furthermore, the documents reveal that, although at a meeting on September 9, 1988, with the Intellectual Freedom Committee, the FBI stated that no library awareness contacts had taken place since December, 1987, agents were in fact instructed in March of 1988 that contacts in libraries could be resumed.

As the FBI publicly announced, new guidelines for such contacts were promulgated during 1988; however, they did little to substantively respond to our concerns. We have recent additional confirmation that the FBI is still currently active in libraries. Within the last two weeks, we have received information from a librarian concerning a FBI contact relating to public access to on-line catalog and database services provided by the library, a federal agency special library.

The Committee has prepared a new resolution on the FBI Library Awareness Program for your consideration (see page 72).

4. *Resolution on Whittle Communications "Channel One" and Other Such Services*

In response to a specific request from the Executive Board, the Intellectual Freedom Committee considered, and consulted with AASL on, the matter of Whittle Communications "Channel One," a news program with commercials designed for high school classroom use. The Intellectual Freedom Committee has identified several areas of concern, some of which may fall outside the primary charge of the Committee. The IFC has prepared a resolution setting forth our concerns (see page 72) that "the selection of such services must be made within the established guidelines of written materials selection policies, without regard to gifts or premiums," and recommending "that other units of ALA carefully review the implications of such services in light of existing ethical, legal, union and moral policy issues." The Committee intends to review the Whittle licensing agreement to determine if further policy recommendations are appropriate.

5. *Paperwork Reduction Act*

The Intellectual Freedom Committee received a report from Anne Heanue of the ALA Washington Office, and Nancy Kranich, representing the Committee on Legislation, regarding the Paperwork Reduction Act and the status of its reauthorization. The intellectual freedom issues raised by this legislation are intricate, complex and, given the anticipated progress of this legislation, urgent. The Committee wishes to express its gratitude to the Washington Office and the Committee on Legislation for their superb work and help on this complex legislation. The IFC has received their legislative alert on this matter, and has endorsed in principle the resolution which the Committee on Legislation will bring before Council on the Paperwork Reduction Act.

6. *Resolution on Free Scholarly Discourse*

The Association for Library Collections and Technical Services referred a resolution on issues raised by a lawsuit filed by the publishing firm of Gordon & Breach. The lawsuit involves a dispute concerning the results of a study on serials pricing. The Committee endorsed the ALCTS resolution in principle.

7. *South Africa*

The Intellectual Freedom Committee again took up the question of access to books in South Africa. The Committee received, as an information item, the published report by Robert Wedgeworth and Lisa Drew on their mission to South Africa, entitled *The Starvation of Young Black Minds: The Effect of Book Boycotts in South Africa.* The Committee also received from Corinne Nyquist, representing SRRT, a draft of the SRRT Guidelines with respect to South Africa. The Intellectual Freedom Committee was pleased to receive this information and the draft Guidelines, and continues to solicit input on this important issue. In that spirit, the Committee has prepared a written response to SRRT outlining several queries and concerns regarding the Guidelines. Further, in anticipation of a referral by Council of the AAP request that ALA endorse the recommendations in the Wedgeworth/Drew report, the Committee is issuing an invitation to all ALA units and other interested parties to provide the Committee with background information, comments, written statements and recommendations prior to the Annual Conference.

8. *Freedom of the Press Within ALA*

The Committee has expressed grave concern about a range of issues raised by the current controversy concerning editorial policies within the Association and its units.

A great deal of anecdotal information has been circulated during this conference, much of it without documentation or easy verification, concerning a significant number of separate incidents that raise issues within the scope of the IFC's responsibilities.

Policy development requires a solid base of factual information as well as a careful consideration of issues that is often hard to reach in the framework of a single incident.

For this reason, the IFC has established a subcommittee on Freedom of the Press Within the American Library Association. This group will solicit information concerning specific verifiable incidents which involve the infringement of intellectual freedom principles and policies within the publishing experience of the Association and its units as a basis of formulating policy recommendations or guidelines to protect the rights of authors, editors, and publishers within the context of the American Library Association, its Divisions, Round Tables and Committees.

The IFC welcomes suggestions from all interested parties to assist it in carrying out this endeavor.

9. *ALA v. Thornburgh*

As you learned from the Freedom to Read Foundation's report to Council (see page 41), ALA and its co-plaintiffs were victorious at the District Court level in *American Library Association v. Thornburgh*, the lawsuit challenging the constitutionality of the Child Protection and Obscenity Enforcement Act of 1988. In July, the government filed a notice of appeal, and the case is currently pending before the United States Court of Appeals for the District of Columbia. A briefing schedule has yet to be set, and we anticipate that oral argument will not be scheduled at least until the fall of this year. In the meantime, Senator DeConcini reintroduced certain of the record keeping provisions which District Court Judge George Revercomb struck down as unconstitutional. The Committee believes, however, that these bills, proposed to reinstate those provisions, will lie dormant at least until the Court of Appeals renders its decision.

10. *NLM Licensing Requirements*

In response to another specific request from the ALA Executive Board, the Intellectual Freedom Committee con-

sidered the National Library of Medicine's license requirements for the leasing of the MEDLINE database. The Committee determined that the material presented raises serious intellectual freedom concerns. We have established a task force, chaired by Susan Brynteson, charged with conducting a more detailed examination of the NLM issues, and with mapping a strategy for future attention to related issues involving, among others, electronic databases, fair use of information in electronic formats and licensing restrictions on access to electronic information.

Other Matters

11. *Modular Education Program Development*

Members of the Intellectual Freedom Committee and other colleagues have scheduled the first phase of the development of the Intellectual Freedom Committee's Modular Education Program, which will combine education concerning confidentiality of library records with a total package of training about intellectual freedom in libraries. Design development teams have been assigned to create modules on: 1) the current status of First Amendment law as it affects libraries; 2) dealing with the media; 3) coping with legislators and dealing with library-related legislation; 4) policy-writing, including confidentiality, selection, and reconsideration policies; and 5) a separate module on the importance of and philosophy behind confidentiality. The design development teams will meet February 9-11, 1990, in Chicago, to begin intensive work on the content of each of these five modules. Phase II of the program, field testing, is scheduled to begin on or about September, 1990.

12. *Banned Books Week 1990*

The theme for Banned Books Week 1990, to be celebrated September 22-29, will be "Caution: Books At Work." The theme illustrates that books have the power to change the course of history and change the course of an individual's life.

13. *Bicentennial of the Bill of Rights*

The Intellectual Freedom Committee and the Office for Intelleetual Freedom are working with the American Bar Association on producing a Bicentennial of the Bill of Rights *Resource Book*, which will include lists of organizations planning events and making available materials in celebration of the Bicentennial of the Bill of Rights, a chronology of major Supreme Court cases, and a bibliography. A similar publication was prepared with ABA in 1987 in celebration of the Bicentennial of the Constitution.

14. *Summary of Division IFCs and Intellectual Freedom Round Table Activities*

At the joint meeting of the IFC, Division IFCs, and IFRT, representatives of the units reported as follows:

AASL — Bill Murray reported on behalf of AASL that the AASL/IFC participated with the AASL/SS in presenting a program for the AASL Conference in Salt Lake City: "Freedom to Learn — Aspects of Academic Freedom in Public Education." An AASL packet on intellectual freedom has been completed and is on sale. Murray reported that the AASL/IFC noted a need for a greater presence by AASL as an organization and as represented by its individual members on IFC, IFRT, and the Freedom to Read Foundation, and also noted that practical ways to participate actively with other education groups concerned with intellectual freedom, such as IRA, NCTE and AECT, should be explored. AASL expressed its support for the IFRT/NMRT sponsored "Get to Know Intellectual Freedom" reception to be held Monday, June 25, 1990, at ALA. A committee member will be asked to volunteer as a representative of AASL/IFC at the event.

ALSC — Sandra Collins reported that ALSC will sponsor a program called "Beginner's Luck Has Just Run Out" on June 24, 1990, at the Annual Conference. The program will present techniques for coping with challenges, specifically targeting youth librarians who have yet to encounter their first challenge, or have been faced with complaints about resources for the first time. Ginny Moore Kruse will keynote, and a panel will include a school librarian, public librarian, and trustee.

ALTA — Madeline Grant reported that ALTA is sponsoring a program entitled "Covert and Overt Censorship in Public Libraries" on June 24, 1990, to enlighten trustees and librarians to practices and policies which may constitute censorship. Gene Lanier will be the featured speaker.

PLA — Brenda Johnson reported that the PLA/IFC will sponsor a program on Monday, June 25, 1990, on English as the official language. PLA/IFC is also planning a program for their 1991 National Conference, entitled "Fee Vs. Free."

In addition, the IFC submitted proposals to PLA for a program on "Freedom to View: Videotapes in Libraries," and a post-conference, field testing the new modular education program, to be considered for PLA's national conference in San Diego in 1991.

YASD — YASD will present a program on "Reviewers as Censors: Killing Books Softly" on June 25, 1990 featuring speakers from the worlds of writing, publishing and media.

IFRT — Bill Davis reported that the IFRT's program, cosponsored by the IFC, is "Living the Library Bill of Rights," featuring Eric Moon and a panel of responders on the issue of the practical implementation of the principles of the Library Bill of Rights.

Conclusion

The Intellectual Freedom Committee's agenda for this and future Midwinter meetings and Annual Conferences appears to be ever-lengthening. It seems the next few years will hold no respite for the Committee in matters requiring its attention. It is my privilege to follow in the footsteps of C. James

Schmidt, who so ably led this Committee through a very turbulent three years, and I will endeavor to uphold the high standards of leadership he embodied.

I look forward to a busy and productive tenure as Chair of the Intellectual Freedom Committee and I thank Council for the opportunity to serve. □

Resolution on FBI Library Awareness Program

Whereas, The American Library Association has previously condemned the FBI Library Awareness Program and similar programs because of their infringement on the exercise of First Amendment rights; and

Whereas, The American Library Association has expressed its strong support for H.R. 50 "a bill to regulate the conduct of the Federal Bureau of Investigation in certain matters relating to the exercise of rights protected by the first article of amendment of the Federal Constitution;" and

Whereas, Documents recently released by the FBI under the Freedom of Information Act reveal that 266 checks were conducted on names of individuals connected in any way with the Library Awareness Program since October 1987 "to determine whether a Soviet active measures campaign had been initiated to discredit the Library Awareness Program;" and

Whereas, The FBI has continued to visit libraries and seek out librarians, including a documented visit as recently as December 20, 1989; now therefore be it

Resolved, That the American Library Association request that the FBI, provide the 266 individuals and subsequent others for whom indices checks were made with copies of their own files at no cost; and be it further

Resolved, That the American Library Association request that the FBI after providing the information to the individuals involved, expunge such records from FBI files; and be it further

Resolved, That the American Library Association express its outrage at the continuation of the Library Awareness Program and all similar attempts to intimidate the library community and to interfere with the privacy rights of users; and be it further

Resolved, That copies of this resolution be forwarded to the President of the United States, the Senate Judiciary Subcommittee on Technology and the Law, the House Judiciary Subcommittee on Civil and Constitutional Rights and to the Director of the Federal Bureau of Investigation.

Adopted by the ALA Council January 10, 1990.

Resolution on Whittle Communications "Channel One" And Other Such Services

Whereas, The published reports concerning the Whittle Communications "Channel One" project of a television news service with commercials being marketed to schools raises many concerns for various groups within the American Library Association; and,

Whereas, The Intellectual Freedom Committee has reviewed these published reports; and,

Whereas, The concerns revolve around questions of selection procedures for such commercialized services, enticement to acquire based on equipment offers, mandatory attendance requirements, commercial influence on news reports, and quality of content; and,

Whereas, The primary concern of the Intellectual Freedom Committee in this issue is the selection and acquisition of such services in accordance with published materials selection policies; therefore be it

Resolved, That the selection of such services must be made within the established guidelines of written materials selection policies, without regard to gifts or premiums; and be it further

Resolved, That other units of ALA carefully review the implications of such services in light of existing ethical, legal, union and moral policy issues.

Adopted by the ALA Council January 10, 1990.

Memorandum on Guidelines for Librarians Interacting with South Africa

On January 6, 1990, the Intellectual Freedom Committee (IFC) discussed the "Guidelines for Librarians Interacting with South Africa" (Guidelines) circulated for comment by the Social Responsibilities Round Table (SRRT). The IFC members had received copies of the Guidelines before coming to Chicago, and Corinne Nyquist, Chair of the SRRT International Human Rights Task Force, had been invited to participate in the discussion.

The IFC appreciated the efforts of those involved in drafting these Guidelines for trying to reconcile the concerns of various constituencies within ALA regarding interaction with South Africa. The summary of the IFC discussion which follows is intended to respond to the request that we provide a written statement to clarify our concerns with the document presented to us on January 6, 1990. This should not be interpreted as an attempt to set conditions for any IFC action on the draft presented or any subsequent version. We will welcome the opportunity for further dialogue on this subject.

First, the Guidelines obviously relate to many different areas of concern within ALA. In addition to the distribution list on the Guidelines cover memorandum of December 15, 1989, the IFC specifically recommends that the Committee on Professional Ethics be asked to review the sections which relate to its responsibility. Many sections of the document offer guidance to librarians for carrying out their professional responsibilities in relation to South Africa and, therefore, fall clearly into the area of jurisdiction of the Committee on Professional Ethics.

Second, the IFC believes that this document would be greatly strengthened if there were explicit citations to and quotations from the principles and major policy statements of the American Library Association, such as the Library Bill of Rights and its interpretations (Policy Manual, Section 53), the Librarian's Code of Ethics (Policy 54.16), the policy objectives of ALA's international relations program (Policy Manual, Section 57), and the principles of Article 19 of the Universal Declaration of Human Rights (Policy 57.3). By incorporating specific references in the Guidelines to these underlying principles, the IFC firmly believes that the Guidelines would be placed in a needed context with the added benefit of assuring those individuals, familiar or not so familiar with ALA's mission, that the Guidelines are built on a solid foundation.

Third, the IFC is most interested in Section 2.3 of the Guidelines, which is the most direct statement on the free flow of ideas and information. The addition of the words, "the mass democratic organizations and anti-apartheid institutions in," to Section 2.3 appears to define and limit the free flow of information to and from South Africa and, therefore, violates the intellectual freedom and free access principles upon which the ALA stands. The original 2.3 statement is clear and is supported by ALA principles.

In closing, the IFC is highly interested in working with SRRT and other groups in an attempt to reach consensus on the issue of interaction with South Africa, find our common ground, and reduce the polarization, divisiveness and conflict which these issues have produced within ALA. We reject the proposition that our common commitments to human rights and freedom of expression must result in conflict with each other and among ourselves, and that, in regard to South Africa or other equally difficult circumstances within and outside our national boundaries we should ever place ourselves in the position of choosing one of these commitments over the other. □

(IF Bibliography . . . from page 74)

McMurtry, Larry. "Sex, Art and Jesse Helms." *The Washington Post National Weekly Edition*, Vol. 7, No. 7, December 18-24, 1989, p. 30.

Merrett, Christopher. "In a State of Emergency: Libraries and Government Control in South Africa." *Library Quarterly*, Vol. 60, No. 1, January, 1990, p. 1.

Munk, Erika. "On the Contrary." *The Village Voice*, Vol. 34, No. 52, December 26, 1989, p. 73.

Pertschuk, Michael and Wendy Schaetzel. *The People Rising: The Campaign Against the Bork Nomination*. Thunder's Mouth Press, New York, New York, 1989.

_____. "The Remaking of Robert Bork." *The Nation*, Vol. 249, No. 21, December 18, 1989, p. 750.

Pitman, Randy. "Pushing Pause: Hesitations About the Video Revolution." *Library Journal*, Vol. 114, No. 19, November 15, 1989, p. 34.

Randall, Richard S. *Freedom and Tatoo: Pornography and the Politics of a Self Divided*. The University of California Press, 1990.

Ridgeway, James and David Lindorff. "Making a List, Checking It Twice: State Department Spies on Americans for El Salvador." *The Village Voice*, Vol. 34, No. 52, December 26, 1989, p. 18.

Shipler, David K. "Perestroika's Next, Crucial Step: An East Block Bill of Rights." *The Washington Post National Weekly Edition*, Vol. 7, No. 7, December 18-24, 1989, p. 24.

Tajima, Renee. "I Just Hope We Find A Nip in This Building Who Speaks English." *The Village Voice*, Vol. 34, No. 49, December 5, 1989, p. 104.

Wall, James M. "Salman Rushdie: Newsmaker of the Year." *The Christian Century*, Vol. 107, No. 1, January 3-10, 1990, p. 3.

Wiener, Jon. "Dollars For Neocon Scholars." *The Nation*, Vol. 250, No. 1, January 1, 1990, p. 12.

Williams, Linda. *Hard Core: Power, Pleasure and the Frenzy of the Visible*. University of California Press, 1990.

Willwerth, James. "Facts of Life: California Sides With Darwin." *Time*, Vol. 134, No. 21, p. 118.

Woods, Jeanne M. "Closing the Border to Flow of Ideas." *First Principles*, Vol. 14, No. 3, September 1989, p. 1.

director of Corcoran resigns

Christina Orr-Cahall, the director of the Corcoran Gallery of Art, resigned December 18 after six months of debate and controversy over her decision to cancel an exhibition of photographs by Robert Mapplethorpe (see *Newsletter*, November 1989, p. 209; January 1990, p. 3). Announcement of the resignation, effective February 1, was made by the president of the gallery's board, which had been called into executive session to vote on the tenure of the director and to receive the report of a panel appointed to investigate all aspects of the museum's operations.

Orr-Cahall's cancellation of the Mapplethorpe show, which had the support of the board at the time, was followed by Congressional legislation barring federal funds for art that is deemed obscene. At the museum, there were staff resignations, an artists' boycott, and demands for the director's resignation. Under the weight of public and artistic protest, the board, which had actively endorsed the director, began to back away from its support.

"The last several months have been extraordinarily difficult for us all, as we are caught up in issues which reach far beyond the Corcoran in their importance to the American public," the director wrote in her letter of resignation. "I think we all agree that the time has arrived for the Corcoran to turn its eyes to the future and to make every effort to assure that it is not consumed by the kind of contention that distracts the institution from achieving its goals." Reported in: *New York Times*, December 19. □

intellectual freedom bibliography

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

Belfrage, Cedric. *The American Inquisition, 1945-1960: A Profile of the McCarthy Era.* Thunder's Mouth Press, New York, 1989.

Brustein, Robert. "Disaster at the NEA." *The New Republic*, Vol. 201, No. 24, December 11, 1989, p. 28.

Charns, Alexander. "How J. Edgar Hoover Spied on the High Court. *The Washington Post National Weekly Edition*, Vol. 7, No. 6, December 11-17, 1989, p. 24.

Cheatham, Bertha M. "A Fight for Rights." *School Library Journal*, Vol. 35, No. 16, December 1989, p. 29.

Cloud, Stanley W. "How Reporters Missed the War." *Time*, Vol. 135, No. 2, January 8, 1990. p. 61.

Cose, Ellis. "Yellow Peril Journalism: Is Latent Racism Coloring Business Coverage of Japan?" *Time*, Vol. 134, No. 22, November 27, 1989, p. 79.

Dargis, Manohla. "I'm Not Bad, I'm Just Drawn That Way." *The Village Voice*, Vol. 34, No. 49, December 5, 1987, p. 102.

Doernor, William R. "Dear Editor: You're Fired, Signed, Mikhail Gorbachev." *Time*, Vol. 134, No. 18, October 30, 1989, p. 62.

Ensign, David. "Copyright Considerations for Telefacsimile Transmission of Documents in Interlibrary Loan Transactions." *Law Library Journal*, Vol. 81, No. 4, Fall 1989, p. 805.

Fakih, Kimberly Olson. "Books Unbound: Abridged Vs. Unabridged Audio Cassettes." *Library Journal*, Vol. 114, No. 19, November 15, 1989, p. 38.

Gardner, Stan. "The International Dimension: Censorship and Librarianship in Oman." *Library Journal*, Vol. 114, No. 19, p. 54.

Goldstein, Michael J., Harold S. Kant and John J. Hartman. *Pornography and Sexual Deviance*. University of California Press, 1990.

Halton, Mark. "Legislating Assimilation: The English Only Movement." *The Christian Century*, Vol. 106, No. 36, November 29, 1989, p. 1119.

Hancock, Lynell. "Censoring Abortion: The Feds Prepare to Abort the Word." *The Village Voice*, Vol. 35, No. 2, January 9, 1990, p. 29.

Havel, Vaclav. "Words on Words." *The New York Review of Books*, Vol. 36, Nos. 21 and 22, January 18, 1990, p. 5.

Hentoff, Nat. "Look Who's Trashing the First Amendment." *The Village Voice*, Vol. 34, No. 51, December 19, 1989, p. 20.

Hess, Elizabeth. "Frohnmayer's Normal Waterloo?" *The Village Voice*, Vol. 34, No. 50, December 10, 1989, p. 69.

_____. "The Last Temptation of Jesse Helms." *The Village Voice*, Vol. 34, No. 52, December 26, 1989, p. 125.

Hoffman, David. "Zip My Lips: George Bush's Penchant For Secret Decisions." *The Washington Post National Weekly Edition*, Vol. 7, No. 11, January 15-21, 1990, p. 23.

Index on Censorship, Vol. 19, No. 1, January 1990.

Indiana, Gary. "Out of Sight, Out of Mind." *The Village Voice*, Vol. 34, No. 49, December 5, 1989, p. 99.

John, Bruce S. "A More Cooperative Clerk: The Confidentiality of Library Records." *Law Library Journal*, Vol. 81, Fall 1989, p. 769.

Kastor, Elizabeth. "On Exhibit at the Corcoran: Its Board of Directors." *The Washington Post National Weekly Edition*, Vol. 7, No. 9, January 1-7, 1990, p. 34.

Kennedy, Bruce. "Confidentiality of Library Records: A Survey of Problems, Policies and Laws." *Law Library Journal*, Vol. 81, No. 4, Fall, 1989, p. 733.

Kennedy, Lisa. "Lianna Massey Eats Pussy." *The Village Voice*, Vol. 34, No. 49, December 5, 1989, p. 108.

Kramer, Rosalyn. "The Neutrality Ploy," *The Village Voice*, Vol. 34, No. 50, December 12, 1989, p. 69.

Lee, Earl. "Library Censorship After *Webster*: Has the Supreme Court Given a Green Light to Censors?" *American Libraries*, Vol. 20, No. 11, December, 1989, p. 1044.

Levicoff, Steve. "Upholding Students' Religious Freedom." *The Christian Century*, Vol. 106, No. 36, November 29, 1989, p. 1108.

McCormick, Charles H. *This Nest of Vipers: McCarthyism and Higher Education in the Mundel Affair*, 1951-52. University of Illinois Press, 1989.

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