newsletter on intellectual freedom

IFC ALA

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IFC Report to ALA Council

At the American Library Association's 1990 Annual Conference in Chicago, the Intellectual Freedom Committee presented two reports to the ALA Council. On June 26, IFC Chair Gordon Conable reported to the Council about the committee's continuing review of Interpretations of the Library Bill of Rights. *At that time, the IFC recommended, and the Council approved, the adoption of three revised Interpretations and the recision of the Interpretation of "Circulation of Motion Pictures and Videotapes." That report and the texts of the revised interpretations begin on page 152.*

On June 27, Conable reported more fully on the work of the IFC. In that report, the IFC recommended, and the Council subsequently approved, three resolutions. The text of the report, followed by the resolutions on page 178, begins below.

The complexity and quantity of intellectual freedom concerns which face this Association continue to expand exponentially. In the work of the Intellectual Freedom Committee, we find that for every issue on which we take action, four or five demand our attention each time we gather. Many of the issues require ongoing attention, and appear to persist with little sign of resolution or abatement.

This reinforces the need to ensure that our policy documents are as strong as we can make them, uncompromising in regard to our principles, and broad enough to be applicable to analogous situations rather than being focused too narrowly in reaction to specific cases and circumstances.

global concerns

Changes across the globe — social, governmental, political, and economic — are occurring at a furious pace. The process by which this is happening echoes the speed and impact of technological change which already has us reeling. These changes are accelerating the American Library Association's expanding vision and understanding of intellectual freedom into new arenas, and broadening our focus beyond the borders of our own country. Much of the body of our intellectual freedom policy is grounded in the First Amendment to the United States Constitution and is domestic in its focus. We must find ways to reach beyond our own legal structure to the underlying truths inherent in basic human rights to make our policies readily applicable in international situations. Then our principles can effectively guide our actions and our positions in relation to the rest of the world.

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

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protests mount in arts community
NEA revises obscenity rule, kills four grants

The embattled National Endowment for the Arts on July 10 adopted an obscenity definition identical to the Supreme Court's standard, but most observers agreed it would not end the continuing controversy over the endowment's restrictions on its artistic grants (see *Newsletter*, July 1990, p. 119). The move followed the endowment's denial of grants to four controversial performance artists whose work has a strong sexual content.

The original restriction imposed on the endowment last year by Congress barred the agency from financing work that "may be considered obscene, including . . . depictions of sadomasochism, homoeroticism, the sexual exploitation of children, or individuals engaged in sex acts and which, when taken as a whole, do not have serious literary, artistic, political or scientific value."

But NEA representative Josh Dare said under the new definition, "Whether or not a photograph is homoerotic and obscene, for example, will be determined based on the standard set forth by the Supreme Court." That standard defines as obscene any work that the average person, applying contemporary community standards, would find appeals to prurient interest; that depicts sexual conduct in a patently offensive way; and that, on the whole, lacks serious literary, artistic, political or scientific value.

In a letter to the U.S. Attorney's office, Attorney Floyd Abrams, who represents the New School for Social Research in New York in a lawsuit challenging the restrictions, asked whether the Supreme Court definition may be substituted for the Congress-imposed definition when artists sign contracts accepting grants. Abrams said that if the endowment had offered the Supreme Court definition to begin with, "certainly there would have been much less controversy and less concern that people were being asked to sign away their First Amendment rights. Now we have a situation of some confusion."

Jonathan Fanton, president of the New School, said: "We believe the obscenity condition, even as now interpreted, will continue to cause grant recipients to avoid producing controversial art for fear it will be seen as coming too close to the line that defines prohibited speech." The New School challenged the obscenity guidelines in connection with a $45,000 grant to build a sculpture garden.

Shortly before the new rule was announced, NEA chair John Frohnmayer overruled a panel of theater experts and defunded four performance artists — three of whom are openly gay. The decision came after final approval of 18 theatre fellowships was delayed following a conservative newspaper column's condemnation of one of the recipients, Karen Finley. In response, the 12-member theater advisory panel sent a confidential note to top NEA officials condemning endowment critics as "zealots, bigots and homophobes." At a press conference responding to the move, performer Richard Elovich called for the creation of a "blacklist fund." His plan was to have artists who did receive grants share their money with the four defunded artists.

The four artists singled out by Frohnmayer were Finley, John Fleck, Holly Hughes, and Tim Miller. These artists (along with a fifth, rumored to be Elovich) were described by the right-of-center *Washington Times* as people who "perform sexual acts on stage." None of them do, but all do challenge sexual stereotypes in their performances, often in graphic manner.

When Hughes accepted her NEA playwriting grant last May, she had to sign the new obscenity clause. She sent a protest letter to the NEA, President Bush, and every member of the Congressional committee considering reauthorization of the agency. Responding to news that his grant had been denied, Tim Miller wrote "An Artist's Declaration of Independence": "When in the course of cultural events . . . a government gets too big for its own wing tips and tries to tell its citizens what to think and feel, it is the job of the artist to speak truth to King George Bush in a challenging and angry way."

But not only artists are feeling the pinch of the controversy. The venues that support them are also victims. Last May, the Kitchen, a popular club for performance art in New York City, was singled out for a restriction on its federal funding because it had presented former porn star Annie Sprinkle's "Post-Porn Modernist." A letter from the NEA's general counsel, Julianne Ross Davis, directed the Kitchen to provide the agency with a list of bookings for the whole year before any funds would be released.

Barbara Tsumagari, the Kitchen's executive director, said she would attempt to comply, although the theater space does not usually book a whole year in advance, and some shows evolve down to the moment they open. "I have no problem with the endowment's effort to collect information on the use of its funds," Tsumagari said. "But it's awkward that it comes from the general counsel. It implies that the general counsel will decide artistic merit."

Then, early this summer, an investigator from the General Accounting Office (GAO) called both the Kitchen and Franklin Furnace, another New York venue popular with performance artists, inquiring about performance dates — back to 1984 — for four artists: Finley, Cheri Gaulke, Frank Moore, and Johanna Went. These artists had been singled out in February in an article on "obscene" art in the *New York City Tribune*, which, like the *Washington Times*, is funded by the Rev. Sun Myung Moon's Unification Church.

In March, Sen. Jesse Helms (R-NC), who has led the battle to defund the NEA, asked the GAO to investigate the endowment because of its alleged indifference to enforcing

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ALA Council approves three revised Interpretations of *Library Bill of Rights*

The following is the text of IFC Chair Gordon Conable's June 26 report to the ALA Council at ALA's 1990 Annual Conference in Chicago concerning the committee's ongoing revision of Interpretations of the Library Bill of Rights. *The full texts of three revised interpretations follow.*

In March, the Intellectual Freedom Committee circulated to ALA Councilors, Divisions, and other units four proposed actions concerning Interpretations of the *Library Bill of Rights*. These include:

1. A recision of two sentences in "Exhibit Spaces and Meeting Rooms," recommended as a temporary measure while work is finalized on two new Interpretations to replace this one;

2. Adoption of a revised and augmented "Statement on Labeling;"

3. Adoption of a revised and reordered version of "Library Initiated Programs as a Resource;" and

4. Recision of "Circulation of Motion Pictures and Videotapes," which has been superseded by "Access for Children and Young People to Videotapes and Other Nonprint Formats."

After considering comments received about these proposals, IFC rearranged language in the proposed version of "Exhibit Spaces and Meeting Rooms" for clarity, and added a reference to "multicultural communities" and "cultural barriers" to the proposed version of "Library Initiated Programs as a Resource." Our other two proposals are unchanged.

We recommend adoption of the three revised Interpretations, and the recision of the Interpretation of "Circulation of Motion Pictures and Videotapes."

We are completing work on revisions of the remaining Interpretations, and expect to circulate these for review and comment following the end of this conference. □

Exhibit Spaces and Meeting Rooms
An Interpretation of the *Library Bill of Rights*

As part of their program of service, many libraries provide meeting rooms and exhibit spaces for individuals and groups. Article VI of the *Library Bill of Rights* states that such facilities should be made available to the public served by the given library "on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use."

In formulating this position, the American Library Association sought to accommodate the broad range of practices among public, academic, school and other libraries, while upholding a standard of fairness. Libraries maintaining exhibit and meeting room facilities for outside groups and individuals should develop and publish policy statements governing their use. These statements can properly define and restrict eligibility for use as long as the qualifications do not pertain to the content of a meeting or exhibit or to the beliefs or affiliations of the sponsors.

It is appropriate for a library to limit access to meeting rooms or exhibit space to members of the specific community served by the library or to groups of a specific category. The library may properly limit the use of its meeting rooms to meetings which are open to the public, or it may make space available for both public and private sessions. It is not proper to apply such limitations in ways which favor points of view or organizations advocating certain viewpoints.

Exhibits and meetings sponsored by the library itself should be organized in a manner consistent with the *Library Bill of Rights*, especially Article II which states that "libraries should provide materials and information presenting all points of view." However, in granting meeting or exhibit space to outside individuals and groups, the library should make no effort to censor or amend the content of the exhibit or meeting. Those who object to or disagree with the content of any exhibit or meeting held at the library should be entitled to submit their own exhibit or meeting proposals which should be judged according to the policies established by the library.

Adopted February 4, 1981. Amended June 26, 1990, by the ALA Council. □

Statement on Labeling
An Interpretation of the *Library Bill of Rights*

Labeling is the practice of describing or designating materials by affixing a prejudicial label and/or segregating them by a prejudicial system. The American Library Association opposes these means of predisposing people's attitudes toward library materials for the following reasons:

1. Labeling is an attempt to prejudice attitudes and as such, it is a censor's tool.
2. Some find it easy and even proper, according to their ethics, to establish criteria for judging publications as objectionable. However, injustice and ignorance rather than justice and enlightenment result from such practices, and the American Library Association opposes the establishment of such criteria.

3. Libraries do not advocate the ideas found in their collections. The presence of books and other resources in a library does not indicate endorsement of their contents by the library.

A variety of private organizations promulgate rating systems and/or review materials as a means of advising either their members or the general public concerning their opinions of the contents and suitability or appropriate age for use of certain books, films, recordings, or other materials. For the library to adopt or enforce any of these private systems, to attach such ratings to library materials, to include them in bibliographic records, library catalogs, or other finding aids, or otherwise to endorse them would violate the *Library Bill of Rights*.

While some attempts have been made to adopt these systems into law, the constitutionality of such measures is extremely questionable. If such legislation is passed which applies within a library's jurisdiction, the library should seek competent legal advice concerning its applicability to library operations.

Publishers, industry groups, and distributors sometimes add ratings to material or include them as part of their packaging. Librarians should not endorse such practices. However, removing or obliterating such ratings — if placed there by or with permission of the copyright holder — could constitute expurgation, which is also unacceptable.

The American Library Association opposes efforts which aim at closing any path to knowledge. This statement, however, does not exclude the adoption of organizational schemes designed as directional aids or to facilitate access to materials.

Adopted July 13, 1951. Amended June 25, 1971; July 1, 1981; June 26, 1990, by the ALA Council. □

Library Initiated Programs as a Resource

An Interpretation of the *Library Bill of Rights*

Library initiated programs support the mission of the library by providing users with additional opportunities for information, education and recreation. Article 1 of the *Library Bill of Rights* states: "Books and other library resources should be provided for the interest, information and enlightenment of all people of the community the library serves."

Library initiated programs take advantage of library staff expertise, collections, services and facilities to increase access to information and information resources. Library initiated programs introduce users and potential users to the resources of the library and to the library's primary function as a facilitator of information access. The library may participate in cooperative or joint programs with other agencies, organizations, institutions or individuals as part of its own effort to address information needs and to facilitate information access in the community the library serves.

Library initiated programs on site and in other locations include, but are not limited to, speeches, community forums, discussion groups, demonstrations, displays, and live or media presentations.

Libraries serving multilingual or multicultural communities make efforts to accommodate the information needs of those for whom English is a second language. Library initiated programs across language and cultural barriers introduce otherwise unserved populations to the resources of the library and provide access to information.

Library initiated programs "should not be proscribed or removed (or canceled) because of partisan or doctrinal disapproval" of the contents of the program or the views expressed by the participants, as stated in Article 2 of the *Library Bill of Rights*. Library sponsorship of a program does not constitute an endorsement of the content of the program or the views expressed by the participants, any more than the purchase of material for the library collection constitutes an endorsement of the contents of the material or the views of its creator.

Library initiated programs are a library resource, and as such, are developed in accordance with written guidelines, as approved and adopted by the library's policy-making body. These guidelines include an endorsement of the *Library Bill of Rights* and set forth the library's commitment to free and open access to information and ideas for all users.

Library staff select topics, speakers and resource materials for library initiated programs based on the interests and information needs of the community. Topics, speakers and resource materials are not excluded from library initiated programs because of possible controversy. Concerns, questions or complaints about library initiated programs are handled according to the same written policy and procedures which govern reconsiderations of other library resources.

Library initiated programs are offered free of charge and are open to all. Article 5 of the *Library Bill of Rights* states: "A person's right to use a library should not be denied or abridged because of origin, age, background, or views."

The "right to use a library" encompasses all of the resources the library offers, including the right to attend library initiated programs. Libraries do not deny or abridge access to library resources, including library initiated programs, based on an individual's economic background and ability to pay.

Adopted January 27, 1982. Amended June 26, 1990, by the ALA Council. □

ALA Conference
FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council, delivered June 24 at the 1990 ALA Conference in Chicago by FTRF 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 the Midwinter Meeting. At the Opening General Session yesterday, the Foundation presented its third annual Roll of Honor awards to Russell Shank and William D. North, two staunch supporters of intellectual freedom who have been instrumental in guiding the Foundation. I am pleased to acknowledge their contributions to the Foundation and congratulate them in being named to the Foundation's Roll of Honor.

The Foundation heard a report on the status of *ALA* v. *Thornburgh*, the lawsuit challenging the Child Protection and Obscenity Enforcement Act of 1988. After succeeding at the trial level we are now defending our victory against the government appeal. ALA and its co-plaintiffs, including the Foundation, filed their appellate brief before the United States Court of Appeals for the District of Columbia Circuit Court on April 16. The government filed its brief on May 31. Our reply brief will be due on July 17, and oral argument in this case is scheduled for September 24.

The victory at the District Court level was substantial. Nearly all of the record keeping and most of the forfeiture provisions of this repressive statute were struck down. Although the record keeping portions of the statute have been reintroduced in Congress, the Foundation does not expect that they will be acted upon prior to the resolution of the appeal in this lawsuit.

Last year, the Foundation joined in an *amicus* brief in *FW/PBS* v. *The City of Dallas*, a lawsuit challenging a Dallas ordinance which would have denied business licenses to speech enterprises on the basis of a single past obscenity offense. On January 9, 1990, the United States Supreme Court struck down the Dallas licensing ordinance. The Court did not reach the First Amendment issue. Rather, the Court found the ordinance unconstitutional because it failed to provide sufficient procedural safeguards to those seeking licenses. The ordinance not only failed to set a finite time period within which required fire and safety inspections must be included, but also forbid a business from operating until the inspection was performed. Accordingly, the ordinance vested too much discretion in the official decision maker to grant, deny or delay licenses.

More recently, the Foundation joined with the People for the American Way in an *amicus* brief in the two recent flag burning cases brought before the Supreme Court. The Court struck down the new federal statute outlawing flag burning. The Foundation supports the Court's decision and opposes proposals for a constitutional amendment to overturn the decision or dilute the First Amendment. It appears that the U.S. House of Representatives agrees with the Foundation since the House defeated the proposed constitutional amendment on June 21, by a vote that was 34 short of the two thirds needed.

We have also been alerted to a recent decision of the U.S. District Court for the Southern District of New York which ruled that Jonathan Kwitney's 1984 book, *Endless Enemies*, infringed the copyright of a journalist named Kenneth Love by quoting more than 50 percent verbatim from an unpublished manuscript of Love's. Because it raises copyright issues different from two previous decisions of the United States Court of Appeals for the Second Circuit, *New Era International* v. *Henry Holt & Company* and *Salinger* v. *Random House*, the Foundation did not see it as a threat to the First Amendment like these other cases that could affect scholarship. In these other cases, the Second Circuit held that only minimal quotation of previously unpublished material is allowable under the federal copyright laws, and courts are authorized to enjoin publication and distribution of materials found to infringe copyright by making use of unpublished material. As a result of these decisions, a planned biography of Malcolm X has been withdrawn so that the author may excise passages that quote unpublished material. St. Martin's Press also has postponed publication of a biography of author Saul Bellow amidst speculation that this action may be due, at least in part, to quotations from previously unpublished letters.

These recent court decisions have very serious implications for scholarly research, writing and publishing, calling into question practices which previously had been accepted as standard. The Foundation is investigating avenues of involvement on behalf of libraries which may wish to collect scholarly research or other writing which makes use of previously unpublished materials.

The Foundation will file an *amicus* brief in *Rust* v. *Sullivan* and *New York* v. *Sullivan*. The United States Supreme Court has granted review of these two cases, which involve the constitutionality of regulations promulgated by the Department of Health and Human Services which, among other things, prohibit federal grantees of Title X funds from counseling women about abortion. These cases face squarely the issue raised by ALA and the Foundation in their joint *amicus* brief in *Webster* v. *Reproductive Health Services* last year, namely, that since libraries make information available on all sides of the abortion issue, library collections are jeopardized by laws and regulations restricting speech about abortion.

The Foundation decided to become a named plaintiff in a case challenging Tennessee's new harmful-to-minors statute, *Davis Kidd Booksellers* v. *McWherter*. Staff has been in contact with the Tennessee Library Association and we will coordinate further actions with that Chapter.

In the state of Washington, a repeat of last year's antipornography initiative, which was defeated due to lack of valid petition signatures, has been reintroduced. The Foundation

Mapplethorpe case to go to trial

The Mapplethorpe obscenity case (see *Newsletter*, May 1990, p. 80; July 1990, p. 119) is going to trial. On June 19, Hamilton County Municipal Court Judge David Albanese refused to dismiss obscenity charges against the Cincinnati Contemporary Arts Center (CAC) and its director, Dennis Barrie, involving the controversial exhibition of photographs by Robert Mapplethorpe. Albanese set a September 24 trial date on charges of illegal use of minors in a nudity-related situation. There had been speculation that the case might be dismissed once the exhibit left Cincinnati.

The judge also set an August 20 hearing on a second charge of pandering obscenity at which a prosecution motion that the controversial photos be considered separately, rather than in the context of the entire collection, was to be heard. Depending on the hearing's outcome, the pandering obscenity charge could be dropped, added to the September 24 trial, or set for trial at a later date.

Albanese warned attorneys that "the court does not mean to give the impression that the evidentiary hearing is going to be a footpath toward [determining] what is obscenity. This will deal only with a very narrow issue — what constitutes an exhibit as a whole."

Among other things, Judge Albanese also noted that the arts center, according to the dictionary definition, is an art gallery, not an art museum. This theoretically could be viewed as meaning the center may not enjoy the same protection under Ohio law as do art "museums," which are specifically mentioned as special cases in the state obscenity statutes.

Attorneys for the CAC and Barrie did not appear upset with the judge's refusal to accept their motion to dismiss the charges. "Three months ago we asked for a jury to determine what was obscene," said Marc Mezibov, attorney for Barrie, recalling that the CAC had originally filed suit asking for a jury trial to decide. "The exhibit has now come and gone; there was no seizure. There has been a cooling off and now we will have a trial where the burden of proof will be on the state (to prove obscenity) rather than on us (to prove there is no obscenity)."

"I was hoping it wouldn't go to trial, but now that it is I feel very confident that we'll win," added Barrie.

The exhibit first attracted controversy in 1989 when Washington, D.C.'s Corcoran Gallery of Art canceled its showing in response to Congressional criticism of its contents and of funding for the exhibit by the National Endowment for the Arts. That controversy has since grown into a major national and Congressional debate over arts funding and freedom of expression in the arts (see page 151). The exhibition opened in Cincinnati April 6 to record crowds, despite efforts to prevent its showing and despite the obscenity charges filed against the CAC and Barrie.

When the exhibit left Cincinnati May 26, it had been seen by over 80,000 Ohioans. That single exhibit figure was higher than the 51-year-old CAC's season attendance for any year before 1987 and was three times higher than for any previous exhibit.

Commenting on the controversy, Director Barrie said: "Every museum in the country will be watching [the development of the case] because every museum realizes it is also on trial. They know if the CAC loses, every museum in the country will be open to policing by law enforcement agencies. And where does that stop? The libraries, the bookstores, the schools are next.

"I think the action of the law enforcement agencies gave Cincinnati a tremendous black eye," he added. "The city is now perceived as being out of step with the rest of the country, with its attitudes, and its Constitution. I think we are all going to have to work very hard to repair the damage. And I think if we actually go to trial, the damage is going to last a long, long time. I think Cincinnati will have a deep hole to climb out of."

These sentiments notwithstanding, however, the controversy did, Barrie acknowledged, provide the CAC with some benefits and it suggested that many Cincinnatians were determined to change the city's image. Before the controversy CAC membership averaged about 1,200 to 1,500. At the exhibit's close it stood at more than 3,000. Barrie said 1,400 new members had signed up since March.

"The image of the CAC has been greatly enhanced nationally," Barrie said. "I have hundreds of letters from museum directors across the country, from artists and people in the cultural world, who are absolutely so proud of us, so supportive of us, and feel the CAC did the right thing. And so our image is very much enhanced.

"I've had people on the street come up to me and shake my hand and say thank you for what you are doing," the beleaguered director continued. "It is remarkable. And I think it could very well carry over into the elections of the public officials involved in the issue. You know, it all could ultimately work out well for the city. It has, after all, made the city think about what it stands for and how it is presented. . . . Here is a whole city talking about nothing else but art and freedom. And that is a healthy thing."
Reported in: *Cincinnati Post*, May 25, 26, June 19, 20; *Cincinnati Enquirer*, May 26. □

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is once again monitoring whether this proposed initiative will find its way onto a Washington state ballot.

In closing, I want to assure you that the Foundation will be an active participant in the 1991 celebration of the Bicentennial of the Bill of Rights. Plans for a litigation strategy planning colloquium for the 1990's also are proceeding. I am confident that the Foundation will maintain and strengthen its role as the premier defender of the freedom to read in libraries in the years to come. □

Florida judge declares rap record obscene

Civil liberties experts and First Amendment lawyers expressed shock after a federal judge in Florida on June 6 found that a rap album by the Miami-based group 2 Live Crew was obscene under the Supreme Court's 1973 criteria of contemporary community standards (see *Newsletter*, July 1990, p. 138). The decision by U.S. District Court Judge Jose Gonzalez in Fort Lauderdale was followed within days by the arrest of record store proprietor Charles Freeman for selling *Nasty As They Wanna Be*. On June 11, two members of the band also were arrested for performing parts of the recording at a Hollywood, Florida, performance for adults.

Record stores across South Florida quickly removed the album from their racks and law enforcement agencies elsewhere, including in South Carolina, Oklahoma City, and San Antonio and Dallas, Texas, used the ruling to pressure for its removal in their jurisdictions. Legally, however, the decision was binding only in Judge Gonzalez's judicial district, which includes Broward, Dade and Palm Beach counties.

The finding of obscenity came, ironically, in a civil case brought by the album's maker, Skywalker Records, which had charged that Broward County Sheriff Nick Navarro had violated the company's First Amendment rights against prior restraint of publication by threatening criminal action against stores selling the album, even though no court had ruled it obscene.

The judge upheld the complaint against the sheriff, saying he should have waited, but he ruled nonetheless that the album was obscene and could be banned because it appealed to prurient interests, was patently offensive to the community and lacked any serious artistic merit. It was the first time ever that a judge declared the lyrics of a recording obscene. Attorneys for the group and for Skywalker Records filed an appeal of the decision on June 11.

Under Florida law, the sale of obscene material to a minor is a felony punishable by up to five years in jail and a fine of $5,000. People who buy and therefore possess the material in public are subject to the same penalties.

According to Elliot Mincberg, legal director of People for the American Way, Judge Gonzalez did not issue a finding of criminality, but only provided the legal basis for local authorities to act against the album. "It means the judge has given a green light to state prosecutors to go forward and bring criminal charges," Mincberg said. However, he added that if the local authorities do bring charges against a seller or buyer of the album, they will have to prove in a criminal trial that the album was obscene "beyond a reasonable doubt," a more difficult standard of proof than the "preponderance of evidence" standard used by Judge Gonzalez.

South Florida record store owners overwhelmingly complied with the ruling. We sell everything here but not 2 Live Crew," said Larry Paull, owner of the CD Exchange in Lauderdale Lakes. "I don't like the ruling, but I'm no fool. I don't want to go to jail for selling a piece of music."

Although the decision removed the album from South Florida stores, sales elsewhere were brisk. Even before the Gonzalez ruling, 2 Live Crew had generated sufficient interest to sell 1.7 million copies of the *Nasty* album, which was released in 1989. But the attention drawn to the record by Judge Gonzalez's ruling promised to boost sales even higher. "In one day, our orders increased 60 percent, which is very unusual for a record this old," said Jerry Suarez, president of JFL Records, a Miami distributor. "Everyone wants to stockpile the album because they're afraid they're going to stop manufacturing it."

2 Live Crew also capitalized on the controversy surrounding the album by quickly releasing another recording — *Banned in the USA* — on July 4.

Controversy over what some call the increasingly harsh lyrics of rock and rap albums has risen dramatically this year (see *Newsletter*, May 1990, p. 75). Those critical of the lyrics say they are too sexually explicit and often seem to appeal to violent instincts, and especially the abuse of women. But others contend that lyrics, unlike movies, in which sexual and violent acts are seen directly on the screen, do not necessarily deliver the same message to everyone.

Reaction to the decision was swift and dramatic. "This is a shocking decision — it should shock the conscience of every free-thinking adult in South Florida and across the United States," said Robyn Blumner, executive director of the Florida Civil Liberties Union. "On the 200th anniversary of the Bill of Rights we in South Florida are celebrating by gouging the First Amendment."

Support for 2 Live Crew also came from the recording industry. Jay Berman, president of the Recording Industry Association of America (RIAA), which recently established standardized parental warning labels for recordings with "explicit lyrics" (see *Newsletter*, July 1990, p. 121), said his association would file an *amicus curiae* brief on behalf of 2 Live Crew's appeal. RIAA's participation in the case was unusual because the group's company — owned by 2 Live Crew leader Luther Campbell — is not a member.

"I think this case raises some of the most fundamental issues regarding freedom of speech," Berman said. "We're very troubled by certain ideas addressed in the judge's obscenity decision. It has implications which we believe will not only affect a group like 2 Live Crew, but the music industry as a whole."

"I am also troubled by the opening line of Judge Gonzalez's ruling, where he says this case is about a battle between two ancient enemies: Anything Goes and Enough Already," Berman said. "That is such a total and preposterous mischaracterization of the facts and it indicates to me that we have a very serious problem here about First Amendment protection regarding artistic expression."

Mike Greene, president of the National Academy of

Recording Arts and Sciences, said he was pleased to hear that the RIAA had decided to join the battle. "The industry needs to galvanize and protect our right to artistic expression," he said. "The more I think about how these conservative crusaders have tried to turn this into a religious issue, the angrier I get. I don't think the majority of American citizens intend to tolerate this kind of right-wing environment in America."

The Florida case had its origins early this year in a campaign by an anti-pornography crusader, Jack Thompson, against the 2 Live Crew album. In letters to prosecutors across the state, he appealed for action. In eight of Florida's 67 counties, including Broward, prosecutors took the album before state judges or grand juries and obtained opinions that it was "probably obscene."

Sheriff Navarro showed an opinion by Circuit Court Judge Melvin Grossman to record stores and warned them that they might be subject to criminal penalties unless they removed the album. Many stores complied. But Skywalker Records, declaring that there had been no trial or criminal finding of obscenity, charged in the federal suit that the sheriff was engaging in prior restraint of expression, the most egregious form of censorship under the First Amendment.

The company asked Judge Gonzalez to decide if the album was obscene and to bar the sheriff from intimidating record stores. In a two-day trial, the judge heard the album, took testimony from experts, and was shown X-rated movies and magazines purchased in Broward County.

The Florida decision quickly had national ramifications. In San Antonio, Texas, 84 record store owners were asked to sign a document that, in part, declared: "I was visited by vice officers of the San Antonio Police Department and informed of the obscene lyrics" of certain songs on the *Nasty* album. In Dallas, police were not quite as direct, depending instead on "the media" to get the word out to record stores that "in our opinion, the material is obscene."

"We're going to take it on a case-by-case basis," said Dallas Police Department vice squad Capt. Dwight Walker. "If we get a complaint, we will go in and make a buy and then go to a magistrate and get a warrant."

"It's a leap over the Grand Canyon of logic to say now that this is obscene in Texas," commented South Texas College of Law Associate Dean T. Gerald Treece. "If no judge in Texas has ruled it is obscene, then it is not obscene. It's really hilarious to think that anybody is basing a decision on what happened in Florida."

But record store owners and civil libertarians in Texas and elsewhere were hardly laughing. For even without judicial authority, the actions by the San Antonio and Dallas police seemed to have had some effect. Major record stores, such as Sound Warehouse and Hastings, reportedly removed the album from their racks.

"This action already has led to censorship," said Joe Cook, president of the Dallas-area ACLU. "What Sound Warehouse and Hastings have done is a form of self-censorship." Reported in: *New York Times*, June 7, 8; *Ft. Lauderdale Sun-Sentinel*, June 6, 8; *Los Angeles Times*, June 16, 22; *Houston Chronicle*, June 17. □

Florida a battleground in censorship war

The boiling controversy over the allegedly obscene lyrics of rap group 2 Live Crew (see page 156) focused attention this summer on a broader battle going on in Florida over censorship. The issues involve what people should be able to read, watch and listen to. And, according to a new study, the atmosphere of censorship has spread to the state's schools. In a survey of Florida teachers, over one-fourth reported experiencing pressure to avoid "a particular course, subject or idea."

In the past year alone:

- Holiday Inn hotels in the Jacksonville area cut off an adult pay-TV channel under pressure from anti-pornography crusaders.
- In Daytona Beach, State's Attorney John Tanner convinced grand juries in Volusia, Flagler, Putnam and St. John's counties to declare some X-rated videos obscene (see *Newsletter*, July 1990, p. 143). An appeal by defense attorneys to Florida Governor Bob Martinez to remove Tanner, a fundamentalist Christian, from prosecution of the cases on grounds that his judgment had been affected by his religious beliefs, amounting to a conflict of interest, was denied.
- On June 28, in Orange County, a grand jury indicted a video store owner on charges of obscenity for renting the John Waters movie *Pink Flamingos* to a 14-year-old. *Pink Flamingos*, which stars the late transvestite actor Divine, is a "trash classic" that has been shown nationwide, including previously without incident in Orange County.
- In Spring Hill, a principal denied a librarian's request to buy four books for teachers' use on issues of censorship and academic freedom. The librarian has been fighting for three years to stop the arbitrary removal of publications.
- In Fernandina Beach, parents objected to a 12th-grade reading class' use of *Lord of the Flies*, *The Picture of Dorian Gray*, *Jane Eyre*, and *Frankenstein*, saying the books were "depressing . . . detrimental to students' minds." The parents later withdrew their complaints after attending an English class. However, since 1986, 11 publications have been removed from the school library.

According to a survey by People for the American Way, such pressures may be a common experience for Florida educators and librarians. The group mailed questionnaires to 6,000 Florida teachers in March and received 316 responses, "a good return for this type of study," said Donna Hulsizer, the organization's national issues director.

The results indicated:

- Twenty-nine percent of the teachers reported at least one attempted censorship incident in the last five years, with many reporting several incidents.
- One-tenth said they "personally had faced censorship challenges" in the last five years.
- Thirteen percent said one or more of their colleagues had faced such challenges, and fifteen percent reported attempts to remove books from school libraries, including such titles as *Huckleberry Finn*, *Catcher in the Rye*, and *I Know Why The Caged Bird Sings*.
- Twenty-eight percent of the teachers reported that they had "refrained from teaching a controversial topic or book in the classroom for fear of complaints or retribution."

Outside the classroom, the principal force behind attempts to suppress what it deems offensive material in Florida is the American Family Association (AFA), headed by the Rev. Donald Wildmon. To prevent what it sees as moral decay, the AFA is leading a campaign against convenience stores that sell *Playboy* and *Penthouse*. Their weapons include letter-writing, boycotts and picket lines. The tactics have succeeded in persuading 1,600 retailers to remove the magazines, according to AFA leader David Caton.

"As a Christian, I have a mandate to live according to the Scriptures — to expose evil, going beyond the law if I have to," said Ralf Stores, president of the AFA's Dade County (Miami) chapter. "Rome fell from within. It self-destructed because of perversion, pornography and orgies. I don't what to see that happen here."

Last October, Waldenbooks, *Playboy*, *Penthouse*, and the American Booksellers Association filed suit in Miami federal court against the AFA, contending that the group's activities amount to racketeering and extortion. AFA has picketed Waldenbooks and its owner, K-Mart, because the bookstore sells adult magazines.

The lawsuit, which was moved to Tampa, marks one of the first times that an anti-racketeering statute has been used against pro-censorship groups. Its outcome could set a precedent that will affect the censorship battle nationwide.

In April, Waldenbooks and ABA ran a full-page ad in the *New York Times* and other newspapers decrying the "growing pattern of increasing intolerance" (see *Newsletter*, July 1990, p. 124). More than 75,000 people sent letters in support of the booksellers and an additional 100,000 signed petitions in bookstores. According to officials of Americans for Constitutional Freedom, the greatest concentration of responses to the ad came from Florida. "There's a greater public recognition in Florida as to how threatened the system is," they said.

Paul Joseph, president of the Florida chapter of the ACLU, agrees: "We're entering a period of national hysteria over censorship," Joseph said. "The next few years will be very difficult, a time when it's important for people to understand why people must be allowed to speak, rather than be suppressed."

But Joseph warns that as the battle gets fiercer, the dangers intensify. He worries that actions like the lawsuit against AFA could end up violating the First Amendment by trying to protect it.

"If you censor the censors, then you're not supporting the First Amendment, you're destroying it in another way," Joseph said. "People have the right to want to ban books, they just don't have the right to ban books." Reported in: *Ft. Lauderdale News*, May 21; *Ft. Lauderdale Sun-Sentinel*, June 21; *Orlando Sentinel*, June 20, 29. □

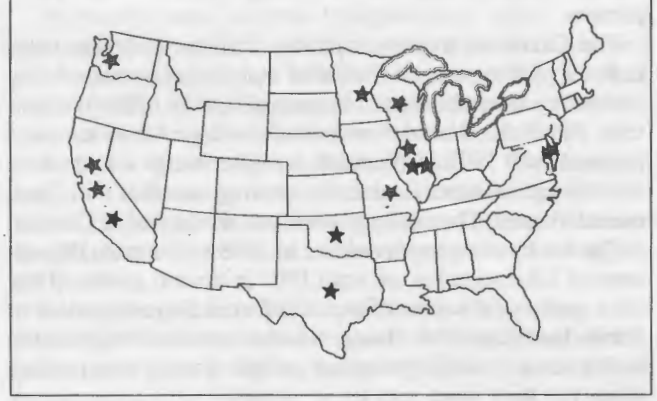
sex videos booming despite censorship

Highly visible efforts to censor sexually-oriented expression in art, rock music, films and videotapes suggest that the war against pornography and "moral decay" is heating up. Yet, despite a public social climate that seemingly embraces chastity and censorship, Americans are watching X-rated videos in record numbers. According to national surveys of video store sales and rentals, the adult video business is booming. In January, *Video Store Magazine* surveyed 1,000 stores nationwide and found that 68 percent carried sexually explicit tapes.

Consider the following:

- According to *Video Insider* magazine, in June, *Playboy Sexy Lingerie II* ranked sixth on the national video sales list, ahead of both *Bambi* and *The Little Mermaid*.
- Industry surveys indicate that sales and rentals of adult tapes trail only children's tapes and new releases in popularity nationwide. In the Northeast and on the West Coast, adult tapes are more popular than children's tapes and can account for up to 20 percent of a store's rentals.
- The University of Chicago polled 1,000 people in March 1989 and found that 31 percent of the men had seen an X-rated video in the previous year, an increase of 11 percent from a similar poll in 1980. For women, the figure rose from 13 percent to 17 percent.
- In Florida, where censorship efforts have been especially strong (see page 157), a Tampa-based X-rated video club reports that it gains 20-30 new members every day. Since the Todd Theater opened three years ago, 15,323 people have paid the $21.20 membership fee.
- Also in Florida, Jack Humphrey, who manages the Pussycat Theaters in Largo and Tarpon Springs, as well as the Blue Garter Theater in St. Petersburg, said sales and rentals of adult tapes at his stores are up 85 percent in the last two years. "The biggest increase is in the number of women who come in," he said. "It's funny, but they never used to come in. Now, about 50 percent of our customers are women." Reported in: *St. Petersburg Times*, June 18. □

censorship dateline



libraries

St. Peters, Missouri

A controversy last March over a book in the Central Elementary School library has caused the Francis Howell School District to revise its policy for public complaints about curriculum, instructional and media materials. The Board of Education voted 4-2 in June in favor of a new, more defined policy.

In March, a parent asked the board to remove the book *Cerberus*, by Bernard Evslin, from the elementary school library. A committee found the book's language acceptable, but its illustrations objectionable and it was moved to the junior high library. The decision prompted several complaints and a committee to revise the review process was formed (see *Newsletter*, July 1990, p. 126).

The committee was comprised of four parents, two principals, two librarians, and two district administrators. They devised a policy that was more descriptive of the steps to be taken in the review process, time limits, and the composition of committees. One change from the old policy is that complainants will not be allowed to serve on review committees. The committees will also be instructed to read the challenged material and first judge it on 12 criteria before reading the complainant's remarks. Reported in: *Wentzville Journal*, June 13.

Madison, Wisconsin

Over thirty supporters of controversial Madison librarian Don Zermuehlen attended a spring meeting of the Madison Library Board to voice their dissatisfaction with the Madison library system. They presented a petition containing more than 130 signatures calling for a change in the way material is selected.

Several times over the past years, Zermuehlen has lashed out at what he sees as self-censorship in the library system. He has charged that the Madison library spends too much on popular items and not enough on books offering alternative points of views. For example, last May, Zermuehlen criticized the library for buying 90 copies of a book by Lee Iacocca while buying only one copy of a book by media critic Noam Chomsky.

"To me that's censorship," said Zermuehlen, supervisor of the South Madison branch. He went on to say the library system had purposely avoided controversy at his branch by "filling the place with bland, Bobsey Twins books, junky novels and how-to books."

Zermuehlen said books at the South Madison branch should be geared to its patrons, many of whom are black. He criticized the library system for spending $700 for a book about Jackie Kennedy and not spending $3.50 for a book called *Countering the Conspiracy to Destroy Black Boys*. "To me that's really rotten librarianship," said Zermuehlen, who has worked in the Madison libraries since 1963. "We're concerned they're turning the library into an agent of the mass media. We need to balance the collection. It's the only way to preserve reader sovereignty."

Zermuehlen's complaints have generally been ignored, but this spring he gained support. Tenia Jenkins, a teacher at Malcolm Shabazz High School, was one of the South Madison patrons who spoke in support of Zermuehlen. "We're trying to make sure the library agenda parallels issues that concern our community," she said. She said the library staff and board should be trained in "anti-racism strategy" in selecting materials.

"A lot of power has been usurped from the individual librarians," Jenkins added.

Book selection in the Madison system is done by a central selection committee according to guidelines established by the Library Board in 1988. Prior to 1988, librarians from each of the seven branches would meet regularly to discuss materials selection. Branch librarians now submit requests for material each month but have no final say over what is purchased.

Library Board member John Strother said it was important that dissenting voices like Zermuehlen were heard. "We like our staff to speak out without fear of retribution," said Strother, who has served on the board since October 1989.

Strother said the board, which has several new members, would take Zermuehlen's arguments into account when it considers the book selection policy. "If it doesn't lead to open selection of materials, then we would consider making some amendments," he said. Reported in: *Madison Capital Times*, May 24.

schools

Rocklin, California

Some parents in Rocklin cited violence as a reason to ban books by Edgar Allen Poe and other famous authors from junior high reading lists. The parents complained that writings by, among others, Poe, John Steinbeck and O. Henry "were unacceptable due to [their] content of murder, violence, drugs and tobacco." The complaints were brought to the Rocklin Unified School District Trustees on April 4.

Parent LaVerne McGrath initiated the complaint about proposed reading lists two months earlier. The lists included the "objectionable" short stories "The Tell-Tale Heart," "The Cask of Amontillado," and "The Black Cat," by Poe; "The Lottery," by Shirley Jackson; "The Interlopers," by H.H. Munro; the book *Lord of the Flies*, by William Golding; and several novels by John Steinbeck. Also criticized by McGrath was *The War Between the Classes*, by Gloria Minkowitz, about Japanese-Americans and prejudice. McGrath and parents Linda Bender and Mike Jones took the complaint to the board after informal inquiries at the school level led to the removal of one book and a short story from the suggested reading list. Removed were *The Dream Killer*, by Claire Stewart, and "The Haunted Boy," an anonymous short story published in *Mademoiselle* magazine.

In her complaint, McGrath said, "Although a few changes have been made, there are still many books and supplemental materials that do not reflect the social standards that are expected from the students on campus. The materials that have been used are not consistent with good citizenship. The content of most of the English reading depicts murder, violence to both man and beast, as well as generating a lack of social conscience. There is a danger of causing undue feelings of fear and hopelessness within students."

Superintendent John Anderson suggested to the board that it form a committee on criteria for selection of instructional materials and allow up to three parents to serve on it. "There's nothing wrong with people coming to the board to make comments. People have a right to question curriculum, books, videos and actions taken by administrators and teachers," he said. Reported in: *Roseville Press-Tribune*, May 2.

San Andreas, California

Against the advice of a committee that reviewed the controversial "Impressions" textbook series, Calaveras Unified School District trustees voted June 5 to keep the series out of a pilot program in grades 3-6. Trustee Wes Hodgson, who made the motion against the books, told supporters the decision "was what I feel and live."

The Holt, Rinehart and Winston series has drawn fire in school districts throughout California from parents who say it frightens children and promotes Satanism and the occult (see *Newsletter*, March 1990, p. 46; May 1990, p. 85). Neighboring Ripon and Lincoln Unified districts have retained "Impressions" over strong objections by some parents.

The Calaveras trustees said they had cast previous votes in favor of the series on the belief that the books were being revised by the publisher to remove allegedly offensive content. But Holt, Rinehart executives said no revisions were planned until 1993. "We made a slight change six or seven months ago to Americanize the spelling, but that's it," one executive said. The reading series was developed in Canada.

The books were approved late in 1988 by the state Department of Education for use until 1992 in several grades. They have won vocal support from California Superintendent of Public Instruction Bill Honig, who has attacked critics of the series as a "small group of people [who] are reading whatever they want into these stories."

In September, 1989, the Calaveras district began testing "Impressions" and several other series for possible classroom use. After pressure from parents and local church members, trustees voted in March to pull the books pending review by an ad hoc committee. The committee issued a report in May eloquently defending the books and asking that they be returned to testing.

"Removal of the series . . . would violate the spirit and letter of the Constitution and allow a few people to impose their value system on everyone," wrote the committee, which was led by Principal Jo MacInturf of Jenny Lind School. The board, however, declined to accept the committee's report, retaining the series only at the first grade level, where it has not been as controversial. Reported in: *Stockton Record*, June 7.

Winters, California

About 100 residents crowded into the Winters Middle School multi-purpose room May 17 to voice opinions on the language arts curriculum, "Impressions." The Winters school board met with parents and teachers to review the controversial textbook series, which has been challenged in the neighboring Dixon and Woodland school districts.

Parent groups in Winters have been outraged at stories, illustrations and activities included in the series. "Impressions" combines a literature-based reading program with teacher manuals to stimulate students into reading more creatively.

Some of the complaints in Winters, as elsewhere, are that the books promote excessive violence and morbidity, witchcraft and the occult, and promote a Canadian rather than an American heritage.

"If these books were inclined to the Christian religion, they'd be out in an instance," said Laura Clayson, a critic of the series. She told the board the series has overtones of witchcraft and that it should be banned. Witchcraft, she contended, is a recognized form of religious belief. "When it

starts talking about spell casting, then it's gone too far," she said.

Phyllis Haywood, another "Impressions" critic, said: "It goes against my child's worship in God, when they ask them to bow down to a pig or a snake on a throne to give them their loyalties." She suggested that the series has implications of anti-Semitism, and should be a concern for all.

A mother of three, Linda Alsbury, added: "I have a great respect for literature. . . . I have always been careful to monitor the things my children ingest mentally, and I believe the 'Impressions' series focuses on the negative, and negates the positive."

But others in the audience defended the readings. Bill Spalding, President of the Winters Area Education Association, read a letter to the board deploring the actions of those trying to ban the series.

Members of the district's curriculum steering committee also addressed the board. Committee member Joyce Sahara said that "none of the complaints we are now hearing were raised during the review process." Sahara said the series was a whole language literature program, which presents an entire story before discussing it. "We still believe that this series doesn't promote the things that were challenged," she concluded.

Pam Scheeline, another committee member, added that "the 'Impressions' series doesn't dictate values," but rather provides stimulating reading materials to promote higher thinking in young readers. "Reading is more than decoding words," she said.

Gaylene Anderson, a teacher in nearby Dixon, told the board that she uses the series in her classes and is pleased with it. PTA representative Diane Beaton added that her organization was also happy with "Impressions." She criticized those wanting to ban the materials, saying, "this is not a group of local parents, but a nationwide group seeking censorship."

Margaret Grissom, who organized a parent group in support of "Impressions," said, "The board needs to protect and defend your students' rights to learn." Reported in: *Woodland Democrat*, May 18.

Elk Grove and Chicago Heights, Illinois

Elementary schools in Elk Grove Village and Chicago Heights have banned a T-shirt featuring a likeness of television cartoon character Bart Simpson. The shirt shows the bug-eyed, spiky-headed boy demanding: "I'm Bart Simpson. Who the hell are you?"

In both cases, school administrators objected to the word "hell." The shirt has also been banned in some schools in California and Kentucky, and pulled from J.C. Penney stores.

In Elk Grove Village, in late May, a second grader was asked to turn the "hell" shirt inside out for the school day and not to wear it again. In Chicago Heights, a ten-year-old was asked not to wear the shirt to school again.

"We have guidelines that vulgar language is not allowed in school. We would sanction teachers or students for doing it, and I don't think it's that much different if it is a written slogan on a shirt," said James K. Fay, superintendent of Elk Grove Township Elementary District 59.

In a statement released by Fox Broadcasting, "Bart" was quoted as saying: "I have no comment. My folks taught me to respect elementary school principals, even the ones who have nothing better to do than tell kids what to wear. Is it possible elementary school principals have lost their sense of humor?" Reported in: *Chicago Sun-Times*, May 30.

Kankakee, Illinois

Armed with letters from police, school and religious officials, forty parents attended the Bourbonnais Elementary School Board meeting June 12 to ask the school administration to reconsider its recent purchase of textbooks. The group questioned the appropriateness of the reading series published by D.C. Heath Co. They charged that the books "undermine absolute truth and value, teach situation ethics and a lack of respect for authority, and curiosity in the occult."

According to district superintendent Ron Goodall, five parents filed requests for reconsideration. One of the five, Andrea Taylor, who said she discovered the objectionable material at a parent-teacher meeting in April, presented school board members with letters from, among others, Kankakee police chief Don Story and Police Detective Charles Obertini.

Obertini's letter said "the material in the books introduces the idea of witchcraft, calling on demons, or spiritual beings to protect the children from danger or to receive answers to important questions in their lives, as being the proper thing to do. . . . As a police officer I find this kind of teaching a possible danger. It is a problem today with the teenagers and adults that dabble in these things, as well as drugs and alcohol. Now it seems we are teaching our very young that it is all right to do this . . . This is the time to reevaluate what dangers our children can be subjected to." Reported in: *Kankakee Journal*, June 13.

Mankato, Minnesota

Charging censorship and armed with petitions they said had about 100 signatures, a Mankato couple attempted in May to have three books returned to School District 77's Early Childhood and Family Education resource room. The books, *Dare to Discipline*, *The Strong-Willed Child*, and *Emotions: Can You Trust Them?*, all by Dr. James Dobson, were part of the program's collection of materials available for use by parents. They were among 46 books taken out of circulation in the summer of 1989.

Kim Ross said she believes the Early Childhood Director Abby Draper removed the Dobson books because of the author's Christian philosophy and because Draper does not

agree with his philosophy of discipline, which includes physical punishment. Although the books are not on the shelves in the resource room, they are on a reserve list and may be obtained upon request.

Draper said the decision to remove the 46 books was mutually agreed upon by the program's staff of parent-education professionals. The staff members reviewed the materials and eliminated those that did not fit in with the program's philosophy, she said.

Draper questioned whether censorship was the real issue. "If censorship is their case, how come they're not concerned with other books I pulled from the shelf?" she said. Among other books removed were *Summerhill: A Radical Approach to Child Rearing*, *Open Marriage*, *Stop the World I Want to Get Off*, *Toilet Training in Less than a Day*, *Dr. Atkins' Diet Revolution*, *Mother Earth News Almanac* and *The Adventure of Being a Wife*.

Ross met with Draper and with Community Services Director Tom Anderson. "We felt their actions were inappropriate," she said. "Any time books are on shelves as long as these were, it's not right to remove them because one disagrees with the content." Reported in: *Mankato Free Press*, May 10.

student press

Edwardsville, Illinois

When the second version of an Edwardsville Senior High School poetry magazine was printed, the poem, "With All My Love," by Jennifer Orr, was missing. Principal Lawrence Busch said he considered the poem inappropriate for a high school publication and for most adults. The poetry magazine Orr helped edit, *The Quest*, was reprinted without the poem.

"I think they have a little too much power over student publications," Orr said. "I think they have a warped idea of what's obscene and what's not."

"With All My Love" was submitted for the magazine in February. Orr said she thought that faculty advisor Ernestine Nathan had read it. But apparently, it was not until after another teacher saw the poem and brought it to the principal's attention that Nathan read it.

Orr said Busch objected to two of the poem's 29 lines. They read: "Your lips run down my neck. They dance across my breasts and stomach." The poem describes a couple making love in an open field.

Five hundred copies of the original magazine were printed. Two other poems by Orr appeared in the censored version, which cost $100, raised by students originally to help pay for *The Quest* next year.

"Our principal and school board are so afraid someone in the community will get offended, that anything that might offend anyone they shut out. They are being paranoid," Orr said. Reported in: *Belleville News-Democrat*, May 25.

film

Plano, Texas

The controversial X-rated film *The Cook, The Thief, His Wife, and Her Lover* closed abruptly in Plano after more than 70 residents, including Mayor Florence Shapiro, persuaded the owners of the Loews Chisholm 5 Theaters to stop showing the critically acclaimed movie. The film closed abruptly after showing for only two weeks.

Shapiro said she wrote to Loews Theater Management in New Jersey after receiving more than 75 letters from residents angry about the film's showing in Plano. "I can understand if you show it in New York City. I can even understand if you show it in Dallas, Texas," she said. "But this is a suburban community of families."

Shapiro said that the incident might prompt her to ask the City Council to consider a citywide ban on X-rated movies. "A community like Plano is no place for an X-rated movie," she said. British director Peter Greenaway's film received an X rating from the Motion Picture Association of America (MPAA), but he and the film's distributor rejected the X and released the film unrated.

Russell Schwartz, executive vice president of Miramax Films, the film's distribution company, said theaters in at least five other cities had stopped showing the movie because of residents' complaints. He said that Plano's reaction illustrated a problem created by the X rating. Because the MPAA did not copyright the X designation, makers of pornographic movies use the letter as a marketing tool, even though their movies are not submitted to the MPAA board.

"The pornographers have co-opted that rating for themselves, and it's taken on a new meaning," Schwartz said. "It's just one more example of the problem of what the X rating means. This film is not pornography in any way, shape or form. You can't compare this movie to *Debbie Does Dallas*."

"This was not, in our view, a picture that was smutty or dirty," said Don Baker, Loews' vice president for public relations. "It was an art film. Had we thought that the picture would offend the people of Plano, even though we abhor censorship, we might have made a different judgment and have done something else."

Shapiro acknowledged that she had not seen the movie, but said she didn't need to. "When something is rated X, that says to me that it's not suitable for all of the areas in a community," she said. "My concern lies with the citizens in my community that are outraged by this, and I'm responding to them." Reported in: *Dallas News*, June 28.

rap music

Oklahoma City, Oklahoma

"We reserve the right to turn down any group that advocates violence or opposition to public law enforcement

officials. We don't choose to take the position of censors, but when it comes to providing security, we have to make the decision to ensure the safety of the public."

The words were those of Oklahoma City public facilities director Pat Downes, who announced in June that the city had refused to book the rap group Public Enemy and another rapper, M.C. Hammer, for a summer concert. He said the decision came after members of the local Fraternal Order of Police voted not to serve as off-duty security officers if Public Enemy or the rap group N.W.A. appeared.

Downes said the situation was thus different from the recent controversy involving rappers 2 Live Crew. "This goes beyond that," he said. "That is an issue of community standards. This is a public safety issue." P.D. Taylor, president of the police group, said he was pleased with the decision. Reported in: *Oklahoma City Oklahoman*, June 20.

publishing

Seattle, Washington

Several small publishers are claiming that printers' censorship is on the rise. The most recent case involved Bay Press of Seattle, which charged that Arcata Graphics refused to print *AIDS Demo Graphics* because it was "too sensitive."

Described as "part history, part guidebook, part polemic," the book by Douglas Crimp and Adam Rolston is the first to document the activities of AIDS Coalition to Unleash Power (ACT-UP), Bay Press said. Acknowledging that the graphics are "bold and often quite provocative," managing editor Thatcher Bailey added, "but we're talking about people who must not only struggle for their lives but also for their basic rights."

The press had hoped to have the book, scheduled for its lead title, featured at the American Booksellers Association convention. "There's no question that we will be hurt financially by not having the book at the ABA," Bailey said, "but the real shame is that ten years into a devastating and tragic epidemic, fear and prejudice are still so pervasive."

Publishers believe that the actions of printers like Arcata Graphics reflect a growing censorious mood in the country. Sebastian Orfali, publisher of Ronin Press, who experienced a printer's rejection, said his company "flags" a title that might be sensitive to the printer's representative. This was the case, he reported, with *A History of Underground Comics*, by Mark J. Estren. First published in 1974, the book went out of print. In 1986, Orfali contracted for the book and the first printing was by Delta Lithograph. "In 1988, however, we went back for reprint and Delta refused," he said.

Red Eye Press claimed that Banta West printers in Nevada refused to do a second printing after printing 250,000 copies of *Deluxe Marijuana Grower's Guide*, by Mel Frank and Ed Rosenthal. Rosenthal said he was told that Banta was instituting a drug-testing program and felt the book was inappropriate.

The book was shifted to McNaughton & Gunn in Ann Arbor, Michigan, which provided two print runs of 5,000 copies each. "When I called for a third run, they informed me they were going to start a drug-testing program and, like Banta, felt the book would be inconsistent with that situation," Rosenthal said. Two other West Coast publishers, Interport Press and Quick Trading Co., also had marijuana horticulture titles rejected after initial printings in the thousands.

Joani Blank of Down There Press in Burlingame, California, said that all short-run printers in Ann Arbor turned down *Men Loving Themselves*, a self-education book dealing with masturbation. A small commercial printer printed two runs, and not only refused a third but destroyed the negatives. Blank took the printer to court, and lost.

Few printers have formal guidelines defining obscenity or outlining a process for dealing with it. Printing house representatives said they reject projects for business reasons, when they fear material would offend other customers or their employees, particularly where plants are located in the so-called Bible Belt. A representative of R.R. Donnelley said, "You have to think about the persons on the line. In some cases, those who object to a book are permitted to get off that production line." Reported in: *Publishers Weekly*, June 29.

art

Frederick, Maryland

Art supporters threatened to move an annual festival from Frederick City Hall in the wake of Mayor Paul P. Gordon's decision to ban a photograph of a nude woman from the show. Some Frederick Arts Council members, furious at the mayor's action and fearing more pressure, demanded that the festival be removed entirely from city property. Photographer Darrell W. Kolb, who took the photo, called Gordon's decision "censorship," and a prominent local sculptor said he would boycott future City Hall exhibits.

Despite the stormy response, Gordon defended his order pulling the photo from a third-floor display shortly after its opening May 26. "When you have classes of young children coming into City Hall, it wasn't a difficult decision to make," the mayor said.

Kolb said he feared the nude photo might be controversial, but denied that he tried to provoke a confrontation. He said he cleared the idea with the city coordinator for the festival. "I was told there would be no problem," he said.

Members of the city's arts community said the clash was ominous if it meant city officials intended to pass judgment on art exhibits. "I think it's dangerous when artists are asked to censor themselves," said Arts Council director Carole

Werking. Besides sponsoring the arts festivals, the city owns the Weinberg Center for the Arts and will hold the lease for the new Delaplaine Visual Arts Center. Gordon insisted, however, that the city wouldn't intervene in the arts center. "City Hall is not a gallery," he said. Reported in: *Hagerstown Herald-Mall*, May 30.

in review

Censorship, Secrecy, Access, and Obscenity: Readings from Communications and the Law, 3. Kupferman, Theodore R. (ed.). Meckler Corporation, 1990. 422 p.

This multiplex book covers a number of issues in twenty-two articles throughout which runs a First Amendment thread. Serving as underpinnings are the two articles, "The Irrelevant First Amendment" and "An Affirmative First Amendment Access Right." Together, the articles written by experts from law, journalism, and communications, cover four subjects included in the title.

Some of the articles are rather technically written, but anyone interested in First Amendment issues will find the volume inviting for scanning. Novices will find clear discussions on prior restraint, due process, privacy, and open courtrooms. The article on the case of Frank Snepp, author of *Decent Interval*, is especially intriguing. Snepp, a former CIA official, was charged by the government since he did not submit his manuscript to the Agency for pre-publication review and possible censorship even though it did not contain any classified information.

There is an interesting discussion of "second knowledge" (reference tools, abstracts, indexes, archival finding tools, etc.) and the information age with all its technologies. Who will control the switches of information and will there be universal access?

Other concerns are the Federal Communications Commission (FCC) and obscene/indecent programming; children's rights under the First Amendment (important for librarians to know as states continue revising their anti-obscenity legislation); Supreme Court rulings dealing with obscenity; broadcasters disclosing their sources of information (shield laws); attorneys' attitudes toward closed criminal proceedings; television in the courtroom; prior restraint of the press and the right to know; censorship in the military press; political speech or obscenity?; open meetings statutes; and a comparison of the Warren and Burger courts.

History buffs will enjoy reliving events used as references in the articles. The authors of the articles describe such happenings/cases as the Pentagon Papers (*New York Times Co.* v. *United States*); *Gannett* v. *DePasquale*; *United States of America* v. *Frank W. Snepp, III*; Martin Luther's reform of the Catholic Church; the George Carlin comedy album ("Filthy Words" segment); the Supreme Court's *Miller* decision defining obscenity; *Bellotti* v. *Baird* on children's rights; *Ginsberg* v. *New York*; *Tinker* v. *Des Moines Independent School District* on wearing armbands; the Equal Protection Clause; the political and social philosophy of John Dewey; *Roth* v. *United States* obscenity decision; the clear and present danger test; *Near* v. *Minnesota* on prior restraint; the President's Commission on Obscenity and Pornography; the Manson trial; the Freedom of Information Act; the Lindbergh baby kidnap/murder trial; the Watergate affair; the Office of Censorship and the Code of Wartime Practices in the military press; public nuisance laws; *Richmond Newspapers* v. *Virginia* on the exclusion of the public and press from criminal trials; Larry Flynt and *Hustler*; "dial-a-porn"; and many more.

This volume is truly interesting reading for First Amendment adherents if they overlook the multitude of references and footnotes. Attorneys, however, would find these extremely important and meaningful. Laypersons may object to the detail but would definitely have a much better understanding of what the First Amendment is all about if they had the courage to tackle this book edited by The Honorable Theodore R. Kupferman. *—Reviewed by Gene D. Lanier, Professor & Director of Graduate Studies, Department of Library & Information Studies, East Carolina University, Greenville, North Carolina.* □

ABA launches anti-censorship foundation

Censorship was targeted as a pressing issue by the nation's booksellers at the American Booksellers Association's 90th annual convention in Las Vegas. On June 2, the association announced the formation of its Foundation for Free Expression. The foundation will spend much of its $150,000 budget for the first year on an information kit advising booksellers on how to handle outside pressure to remove material on sale in their stores.

"The censorship problem is getting worse," stated Oren Teicher, who will head the new foundation. The Foundation for Free Expression is the result of a two-year study by an ABA task force on free speech. The task force reported a successful response to a national newspaper campaign that ran on April 23, which produced 75,000 affirmative responses to a statement of support for "the consumers' right to buy, stores' right to sell, authors' right to write, and publishers' right to publish constitutionally protected material" (see *Newsletter*, July 1990, p. 124). Reported in: *Oakland Tribune*, June 4; *Washington Post*, June 5. □

from the bench

U.S. Supreme Court

In another 5-4 decision, the Supreme Court declared June 11 that the new federal law making it a crime to burn or deface the American flag violates the free speech guarantee of the First Amendment. Justice William J. Brennan, Jr., wrote the majority opinion, as he did in *Texas* v. *Johnson* a year before. The decision provoked another attempt to enact a constitutional amendment making it possible to ban flag burning. But despite the support of President George Bush, the amendment failed to win the required two-thirds majority in both the Senate and the House.

Justice Brennan said that despite some differences, the Federal Flag Protection Act of 1989 "suffers from the same fundamental flaw" as the Texas law overturned last year, that of "suppressing expression." He added, "Punishing desecration of the flag dilutes the very freedom that makes this emblem so revered and worth revering."

Brennan was joined by Justices Thurgood Marshall, Harry A. Blackmun, Antonin Scalia and Anthony M. Kennedy. Justice John Paul Stevens filed a dissenting opinion that was joined by Chief Justice William H. Rehnquist and by Justices Byron R. White and Sandra Day O'Connor. The vote, cutting across the Court's usual ideological divisions, was the same as in the Texas case.

The decision in two combined cases, *U.S.* v. *Eichman* and *U.S.* v. *Haggerty*, upheld rulings in federal district courts in Washington, D.C., and in Seattle earlier this year (see *Newsletter*, May 1990, p. 96). Judge June L. Green in the District of Columbia and Judge Barbara J. Rothstein in Seattle dismissed prosecutions of protesters who burned American flags, ruling that the new federal law was unconstitutional under the principles the Court had declared in the Texas case.

The federal law was enacted last year in the aftermath of the Texas ruling. Its sponsors hoped to deflect the momentum for a constitutional amendment by providing a statutory means of protecting the flag. The Texas law referred to the offensive message conveyed by desecration of the flag. The sponsors of the federal law said they hoped to overcome the Court's objections by outlawing the physical mutilation of the flag while omitting any reference to the flag burner's message or motive.

But the effort to differentiate the federal law from the Texas statute failed. Justice Brennan said that while the federal law "contains no explicit content-based limitation on the scope of prohibited conduct," its structure and logic made clear that the government's interest lay not in the flag's physical protection but in its symbolic meaning and "in the communicative impact of flag destruction."

Justice Brennan noted that the law "does not prohibit flying a flag in a storm or other conduct that threatens the physical integrity of the flag." The statute's use of such words as "defile" and "trample," he said, "unmistakably connotes disrespectful treatment of the flag and suggests a focus on those acts likely to damage the flag's symbolic value."

Justice Brennan's brief opinion, barely eight pages long, was written in a straightforward style that made only oblique reference to the political controversy swirling around the Court. One such reference was to the Bush administration's argument, in its brief, that the Court should "take into account the national consensus underlying the Flag Protection Act."

Brennan said, "Even assuming such a consensus exists, any suggestion that the government's interest in suppressing speech becomes more weighty as popular opposition to that speech grows is foreign to the First Amendment."

The dissenting opinion by Justice Stevens spoke for all four dissenting justices, which was in contrast to the Texas case. In that case, Chief Justice Rehnquist filed a biting dissent, quoting "The Star Spangled Banner" and accusing Brennan of delivering "a regrettably patronizing civics lecture." Stevens had not signed that opinion.

In this second dissent, Stevens wrote that the case came down to "a question of judgement" on which "reasonable judges may differ." He said that those who burn the flag may be expressing a variety of messages, and that the government has a legitimate and independent interest in preserving the flag's symbolic value "regardless of which of many different ideas may have motivated a particular act of flag burning."

There was also an angry passage in the dissent, directed not at the Justices in the majority, but at unnamed "leaders" who, Stevens wrote, "seem to manipulate the symbol of national purpose into a pretext for partisan disputes about meaner ends." He maintained that "the integrity of the symbol has been compromised by those leaders who seem to advocate compulsory worship of the flag even by individuals

Justice Brennan retires

Supreme Court Justice William J. Brennan, Jr., a stalwart supporter of intellectual freedom whose views and opinions shaped the direction of the court for more than three decades, resigned July 20 at age 84. In a brief letter to President George Bush, Brennan said the "strenuous demands of court work" were "incompatible with my advancing age and medical condition." Brennan had suffered a small stroke several weeks earlier.

In a separate statement, the retiring justice said he had been confronted with "a very difficult decision" to step down after almost 34 years of service. "It is my hope that the court during my years of service has built a legacy of interpreting the Constitution and federal laws to make them responsive to the needs of the people whom they were intended to benefit and protect," Brennan said. "This legacy can and will withstand the test of time."

Brennan's departure paved the way for President Bush to enlarge the court's 5-4 conservative majority, shoring up conservative control of the court on such divisive issues as abortion and affirmative action.

Brennan was appointed to the High Court by President Dwight Eisenhower in 1956. He soon became a driving force of its liberal wing. His intellectual power, long tenure and skill at forging coalitions with his fellow justices made him one of the most influential figures in the history of the court.

Brennan was the architect of numerous landmark rulings during the heyday of the Earl Warren court, including the 1964 *New York Times* v. *Sullivan* decision extending constitutional protection to newspapers sued for libel. Most recently, he was the author of two majority opinions declaring flag burning constitutionally protected expression under the First Amendment.

"We would be living under a very different Constitution if Justice Brennan were not on the Supreme Court," wrote ACLU president Norman Dorsen in a 1987 article in the *National Law Journal*.

Brennan "ranks with Marshall, Holmes and Brandeis as the greatest justices the country has ever had," said Sen. Edward Kennedy (D-MA). "No justice has more faithfully reflected our country's defining ideal of commitment to the Bill of Rights and equal justice under law."

The conservative *National Review* wrote in 1984: "There is no individual in this country, on or off the court, who has had a more profound and sustained impact upon public policy in the United States for the past 27 years." Reported in: *Washington Post*, July 21. □

whom it offends."

Just ten days after the decision was announced, the House of Representatives voted on a proposal to amend the Constitution to permit the prohibition of flag desecration. The amendment failed, gaining a majority of 254-177, 34 votes short of the two-thirds needed to propose a constitutional amendment.

The proposal, strongly backed by President Bush, had overwhelming support among Republicans, with 159 supporting it and only 17 opposing it. But Democrats voted against 160 to 95.

When the Court struck down the federal law, Congressional leaders in both parties predicted that the proposed amendment would prevail. But passions had cooled since the debate over flag burning began following the first High Court ruling in the 1989 Texas case. Lawmakers and political strategists said mail and telephone calls in favor of the amendment were nowhere near as heavy as they were a year ago.

The vote was a victory for House Speaker Thomas S. Foley (D-WA). "We should not amend the Constitution to reach the sparse and scattered and despicable conduct of a few who would dishonor the flag and defile it," he told his colleagues. Later, he took the unusual action of casting a vote against the amendment; by tradition the Speaker seldom votes, except to break ties.

Several conservative Democrats, including Representatives Beryl Anthony of Arkansas, Charles W. Stenholm of Texas, and Tim Valentine of Tennessee, who originally supported an amendment, announced on the floor of the House that they had changed their minds. Valentine, one of the amendment's original sponsors, asked that his name be removed from the measure. "Over the rhetoric of the last few days, I have finally heard the voice of my own conscience," he said.

Proponents of the amendment charged that Foley and the Democratic leadership had rushed the proposal through the House, saying there was not enough time for those favoring the amendment to rally support. Rep. Newt Gingrich (R-GA) said Foley "deliberately rushed this thing to the floor so the American people would not be heard." But other lawmakers acknowledged that their constituents no longer seemed very aroused by the issue.

The five-hour debate over the amendment flashed with moments of eloquence and entertainment. Supporters invoked the sacrifice of American soldiers; opponents appealed to the sanctity of the Bill of Rights. Rep. Gary L. Ackerman (D-NY) pulled out paper plates and napkins festooned with American flags and asked whether throwing them in the garbage would constitute illegal desecration.

"Are we so fragile as a nation that we cannot rise above such cheap tactics as flag burning? What assurance is there that this excision in the Bill of Rights, once breached, would not lead to others?" asked David Skaggs (D-CO).

Five days later, the Senate also rejected the proposed amendment. Because the House vote essentially killed all chance of passage this year, opponents of the amendment

charged that bringing it up for a vote in the Senate only provided electoral ammunition for its supporters to use. Still, the Senate voted 58-42 in favor of the amendment, nine votes short of the required two-thirds majority. Reported in: *New York Times*, June 12, 22, 28.

On June 4, the Supreme Court upheld the constitutionality of a federal law requiring high schools that sponsor extracurricular student clubs to allow student prayer groups to meet on school premises. The court ruled 8-1 that the 1984 Equal Access Act making available to religious groups the same school facilities as chess clubs or scuba diving clubs did not violate the constitutionality mandated separation of church and state.

"We think that secondary school students are mature enough and are likely to understand that a school does not endorse or support student speech that it merely permits on a nondiscriminatory basis," Justice Sandra Day O'Connor wrote in the plurality opinion.

The decision in *Westside Community Schools* v. *Mergens* involved students at Westside High School in Omaha who were turned down by school officials when they attempted in 1985 to form a Christian club to engage in Bible study and prayer. In 1981, the high court ruled in another case that colleges must allow student religious groups to meet on campus on the same terms as other extracurricular activities, and Congress passed the Equal Access Act three years later to extend that ruling to high schools.

The law prohibits public high schools that accept federal funds and allow extracurricular clubs from discriminating against groups based on "the religious, political, philosophical or other content of the speech at such meetings."

Westside officials contended that the law did not apply to the high school because all its student activities were "curriculum related." If the law did apply, they added, it would violate the First Amendment's Establishment Clause.

The Court rejected both arguments, but was deeply divided on how to measure infringements on the separation of church and state. Only three justices — Chief Justice William Rehnquist and Justices Harry Blackmun and Byron White — joined O'Connor in her interpretation of the Establishment Clause. Justices Anthony M. Kennedy and Antonin Scalia said O'Connor applied too stringent a test by asking whether school officials had endorsed religion. Instead, they said, the court should only determine whether the government gave direct benefits to religion or coerced students to participate in religious activity.

At the other end of the ideological spectrum, Justices Thurgood Marshall and William J. Brennan, Jr., warned that schools must take great care to "disassociate themselves effectively from religious clubs' speech."

In a dissenting opinion, Justice John Paul Stevens warned that the court's interpretation of the law "leads to a sweeping intrusion by the federal government into the operation of our public schools." Under O'Connor's interpretation, he said, "If a high school administration continues to believe that it is sound policy to exclude controversial groups, such as political clubs, the Ku Klux Klan, and perhaps gay rights advocacy groups, from its facilities, it now must also close its doors to traditional extracurricular activities that are noncontroversial but not directly related to any course being offered at the school." Reported in: *Washington Post*, June 5.

library

Decatur, Texas

On May 9, Texas Judicial Court Judge John R. Lindsey quashed a subpoena for circulation records of the Decatur Public Library sought by the Wise County District Attorney Pat Morris. Specifically, the District Attorney sought the names and addresses of all persons who had checked out materials on childbirth within the last nine months from the library. The request was a result of a grand jury investigation of the March 16 abandonment of an infant. It was the first time that the First Amendment has been used as grounds to quash a subpoena.

Judge Lindsey concluded that the library had standing to assert the constitutional rights of its patrons, that the patrons have a constitutional right of privacy in not having information about their book-borrowing revealed by the library, and that the state had not demonstrated a compelling interest that would warrant intrusion of those rights.

The library had the support of Decatur Mayor Bobby Wilson. "With two or three top county offices needing investigating, they're wasting their time on a witch hunt trying to see who checked books out of the library," Wilson said. "As far as I'm concerned the U.S. Supreme Court is the only one that will make me turn the records over. It looks like with all the crime we have here they ought to be doing something else with their time other than seeing who checked out books at the library."

In his ruling, Judge Lindsey wrote: "It is often said that those powers not delegated to the government are reserved unto the citizen. It is our American tradition to believe that we have a privilege to freely travel from place to place, to enter any church of our choice, any government building or public park without hindrance and to be free to use public libraries to privately seek out information. All of these rights and privileges seem so fundamental as to not require citation. . . .

"Unquestionably, the State through its legitimate police powers can and does impinge on the individual's privilege of privacy. However, the State's right must be done with due process and only when the government can demonstrate that such an intrusion is reasonable. . . .

"In the event the State discovers an unexploded bomb, the wiring and details of which was identical or similar to illustrations contained in library books of recent publication,

the State might well be within its rights in a specifically worded subpoena *duces tecum*, to require identity of patrons who had recently checked out those specific books as reasonable bounds of the State's police powers. However, the inquiry would have to be carried out on a case by case basis in compliance with due process.

"After hearing the testimony, this Court does not fear that the Grand Jury or the testifying officer in charge of the investigation would intentionally misuse any information that might be given him in his investigation. However, the Court has reached its decision on a much broader ground. The next official seeking such information may not have as much expertise or be as sensitive to the rights of fellow citizens." Reported in: *Wise County Messenger*, May 6, 9.

art

New York, New York

A federal judge June 25 stopped further publication of a pamphlet used by a conservative religious organization to press its case that the National Endowment for the Arts is supporting pornography. The temporary injunction, issued by Judge William C. Conner of the U.S. District Court for Southern New York, came at the end of a day of testimony in a libel suit brought by an artist against the American Family Association.

The pamphlet in question is titled "Your Tax Dollars Helped Pay for These Works of Art." It consists largely of reproductions of small sexually explicit portions of much larger works by artist David Wojnarowicz. The association, led by the Rev. Donald Wildmon, sent the pamphlet to 4,000 churches, members of Congress and other individuals as part of its campaign against the endowment (see *Newsletter*, July 1990, p. 119).

Wojnarowicz filed suit against Wildmon, asserting that the reproductions in the pamphlet violated copyright laws. He also contended that the fragments of his work in the association's pamphlet amounted to gross distortions and damaged his reputation as an artist. He is seeking $1 million in damages.

In explaining the temporary injunction, Judge Conner said, "The pamphlet could be construed by reasonable persons as misrepresenting the work of the artist, with bringing harm to the artist's reputation and to the value of his works."

A lawyer for Wildmon, Benjamin W. Bull, objected to the ruling, asserting that the pamphlet was "political speech" protected by the First Amendment. He said Judge Conner's ruling would have a "chilling effect" on the association's activities.

Conner replied that the First Amendment does not provide a right to libel an author or to violate copyright laws. He said the only thing the association could not do was publish a pamphlet that includes fragments of Wojnarowicz's works without identifying them as fragments.

The association and other groups opposed to the endowment had focused on several works by Wojnarowicz shown at an exhibition at the Illinois State University Galleries earlier this year. A catalogue of reproductions of 60 of his paintings, collages and photographs was partly financed by the endowment. Groups opposing the endowment were particularly offended by an image of Jesus as a drug addict. In testimony before Judge Conner, Wojnarowicz said: "I wanted to create a modern image of Jesus; if he were alive, he would have been a symbol of the vast amount of suffering that was taking place in the streets."

Referring to Wildmon's exclusive use of sexually explicit fragments of far larger and more varied works, Wojnarowicz argued that galleries and museums would be reluctant to buy or show his work, with damaging effects on his career. Wildmon defended his use of the photographs on the grounds that they represented the kind of art, supported by the endowment, that was offensive to many people.

"I didn't know Mr. Wojnarowicz personally and had no knowledge of him," Wildmon said. "The whole thing we have done is try to address the issue of government support of this kind of art. I had no malice toward Mr. Wojnarowicz." Reported in: *New York Times*, June 26.

Richmond, Virginia

A federal judge ruled June 27 that Richmond authorities cannot prevent the display of a gallery-front window painting of three nude men said to be obscene under Virginia law. "This particular piece of artwork is not obscene [and] is entitled to, and guaranteed, the protection of the First Amendment," said U.S. District Court Judge James R. Spencer, an ordained minister.

Spencer granted a preliminary injunction against Richmond Commonwealth's Attorney Joseph D. Morrissey after he found there were reasonable fears that Morrissey might prosecute and that the federal courts were entitled to intervene.

The painting, "In Memoriam," by New York artist Carlos Gutierrez-Solana, was covered shortly after its unveiling at the 1708 East Main Gallery in response to a meeting between Morrissey — who responded to public complaints — and representatives of the Richmond Arts Council. Following Judge Spencer's ruling, the painting was uncovered, along with other art that had been covered by the gallery in protest.

"It's very important," said Gutierrez-Solana, of the ruling. "I'm very damn certain about my work. . . . It just feels real good to have a judge vindicate that."

The artist, who is homosexual and who did the piece in memory of three friends who died from AIDS, testified in court about the painting on the window and related art inside the gallery that was also part of the work. "I was rather

furious that it was covered," he said. "The piece is about intolerance; it's about grief."

Representatives of the commonwealth's attorney's office argued that the painting was obscene because it displayed what they said were male genitals in an aroused state and that the figures were suggestively posed.

Judge Spencer said that he understood Morrissey's concerns with responding to complaints from the public and with upholding Virginia law. He said that he also understood the concerns of parents who want to shield their children from seeing such art. But, he said, the work did not predominantly appeal to prurient interest and had artistic and political value. Reported in: *Richmond Times-Dispatch*, June 28.

college

San Diego, California

An appellate court ruled in May that San Diego Community College administrators had no right to cancel a drama class because they disapproved of a play to be staged by students that bore strong overtones to a recent criminal case. The 2-1 decision by the Fourth District California Court of Appeal said the First Amendment rights of former Educational Cultural Complex teacher Alan DiBona and one of his students were violated when San Diego Community College officials decided in 1986 to cancel the play "Split Second," by Dennis McIntyre.

College officials said they decided not to produce the play because it contained obscene words, but DiBona believed the play was canceled because of its similarity to the criminal case. U.S. Supreme Court rulings have given school administrators powers to limit schol newspapers and class curriculum, but the appellate justices said college administrators are more limited in what can be censored because their students are adults. They said college officials can limit plays performed to works "of an acceptable literary quality."

"At least where adults are concerned, however, literary quality cannot be measured simply by counting the number of 'indecent' words in a book or play," the justices wrote. "No bright line can be drawn between the manner of communication and the content of the ideas communicated." Justices Howard B. Wiener and Don R. Work concurred in the opinion, while Justice Richard Huffman dissented. Reported in: *San Diego Tribune*, May 31.

obscenity

Madison, Wisconsin

Wisconsin's obscenity statute was upheld May 7 by a panel of the U.S. Court of Appeals for the Seventh Circuit. Judge Richard A. Posner ruled that the statute's alleged distinction between depictions of simulated and actual sexual activity did not make it constitutionally vague, as plaintiffs had alleged. The court also ruled that the statute's exemption for libraries, schools and contract printers did not violate equal protection. Reported in: *West's Federal Case News*, May 18.

nude dancing

South Bend, Indiana

Nonobscene nude dancing of the barroom variety, performed as entertainment, is expression and, thus, entitled to protection under the First Amendment. Accordingly, the U.S. Court of Appeals for the Seventh Circuit ruled *en banc* May 24 that an Indiana statute which on its face provided for a total ban on nudity in public places was unconstitutional as applied to prohibit such dancing. The statute had been challenged by a South Bend night club proprietor. Reported in: *West's Federal Case News*, June 8.

Soviets approve new press law

The Soviet legislature on June 12 approved a new law on freedom of the press that eliminates state censorship, guarantees press freedoms, and permits any public organization, political party or individual to start a publication. Hailed by its supporters as the first law in the country's history to detail guarantees for journalists, the law is the latest step in the policy of *glasnost*, or increased openness, introduced by President Mikhail Gorbachev.

As a statement of principle, the law is sweeping, flatly declaring: "Censorship of mass information is not allowed." The law also specifies that public officials who withhold information from journalists or hamper their work could face criminal charges. And it stipulates that journalists may decline to write stories that go against their beliefs and refuse to allow versions of their work that have been "distorted during the editing process."

The new law does not deal, however, with what journalists say is the basic problem, namely, the government's monopoly on the limited supply of printing paper. Lev Timofeyev, a former political prisoner who now edits the

independent journal *Referendum*, said, "We'll have to wait three or four months to find out what this law really means in practice. Does it mean that the independent papers and journals will have to register with the authorities and come under their control in order to get paper and have access to typographical machines? Without a real market for paper, without independent access, the law will have less meaning than it should."

The press law was approved after months of revision and debate, with considerable attention paid to international human rights standards. Anatoly Yezhelev, a member of the Supreme Soviet and a leader of the Leningrad Union of Journalists, said that free press advocates had beaten back all "changes for the worse."

Still, some were suspicious of a new requirement that newspapers be registered with central or local government executive councils. But Yezhelev said the registration requirement was not intended to limit the number of periodicals and that the law allowed "very few" grounds for rejecting potential publishers. "All the main democratic articles we fought for were left in," he said.

According to the new law, newspapers will have the right to try to sue government agencies that refuse to supply information. The risks of disclosing stories based on secret government information are to rest with the sources, not with the newspaper that publishes the stories. The new law bars political interference in broadcasting and the press. It also bars pornography, calls to violent overthrow of the government, or appeals to religious or racial intolerance.

The law also attempts to allow press enterprises to be more profit-motivated and independent of traditional bureaucracies, with the right to run their own finances and to open bank accounts. Reported in: *New York Times*, June 13; *Washington Post*, June 13. □

(NEA . . . from page 151)

the ban on obscene art. He attached a list of "questionable NEA activities," including the Sprinkle show, a David Wojnarowicz exhibit (see page 168), fellowships to lesbian poets Audre Lorde, Minnie Bruce Pratt, and Chrystos, and performances by the four artists named above. When the GAO subsequently exonerated the NEA in its report, Helms called it a "whitewash."

Henry Wray, the GAO's senior associate general counsel, described the new inquiry on the four artists as "a continuation of what we're doing for Sen. Helms. It's just information. We're not pursuing anybody's agenda. We're trying to be objective."

But few artists found objectivity possible in the atmosphere of censorship and of threats to federal arts funding that developed this spring. As opponents of arts funding and advocates of arts censorship mobilized support for restrictions on or even defunding of the NEA, artists, performers and their supporters also began to move. Among the many actions taken were:

- Citing concerns over censorship, Boston composer and Harvard music professor Earl Kim declined to serve a second term as cochair of the NEA music panel. In a letter to NEA chair John Frohnmayer, Kim wrote that he could not subscribe to "any form of censorship of the arts. . . . As long as the Helms amendment is law, the awarding of grants can no longer be viewed simply as rewarding artistic excellence." Kim was the second NEA panel member to withdraw from his position as a result of the obscenity fracas. Last November, Elizabeth Sisco of San Diego resigned from the Visual Artists Organizations Panel.

- The Association of Art Museum Directors declared June 7 as Arts Day and asked that art museums around the country take the day to dramatize what would happen if the NEA were eliminated. In Norfolk, Virginia, officials of the Chrysler Museum took yellow "crime scene" tape and blocked off the gallery, denying entry to patrons. They said they were illustrating how the museum will suffer if the $30,000 a year it receives from NEA is eliminated. Similar actions were taken at other museums, including the San Diego Museum of Contemporary Art, where the "Pacific Union" sculpture park, funded by an NEA grant, was temporarily closed. The Taft Museum in Cincinnati covered up some 20% of its collection to show what would happen if endowment funds for cleaning and conservation of art were denied. In Houston, Texas, the Museum of Fine Arts dimmed the lights of its European art pavilion and the Contemporary Arts Museum draped black fabric over a major painting acquired with endowment support.

- Acclaimed choreographer Bella Lewitzky said June 14 that she would reject $72,000 in NEA funding for her Lewitzky Dance Company and file suit against the agency, hoping a court would invalidate the endowment's pledge not to create obscene work. The grant represents about 8.5% of the 74-year-old dance legend's operating budget. Lewitzky's announcement was attended by Los Angeles Mayor Tom Bradley. The choreographer and Michael Hudson, vice president and general counsel for People for the American Way, said the suit would be filed in Los Angeles or Washington, D.C. Hudson said the action would make arguments slightly different from those already filed in federal court in New York by the New School for Social Research.

"I decided that I could not, in good moral conscience, accept the fact that a trampling on the rights of the First Amendment was good or even legal," Lewitzky said. The press conference was held at the same hotel where, in the 1950s, Lewitzky refused to answer questions of the House Un-American Activities Committee at the height of the McCarthyite Red Scare. Choreographer Ferne Ackerman also rejected an endowment grant.

librarians protest NEA attacks

A boisterous demonstration featuring bass drums and American flags was held in support of the National Endowment for the Arts in Grant Park during the 1990 ALA Annual Conference in Chicago. Threatened with cutbacks in the reauthorization of funds, librarians came out in support of the endowment. In a demonstration organized by Richard M. Buck, Freedom to Read Foundation trustee and director of the New York Public Library Performing Arts Research Center, librarians read from Pulitzer Prize-winning and other plays which had been produced or written with the support of endowment funds. The demonstration received broad press coverage. □

• The 32-member board of the Oregon Shakespeare Festival in Ashland voted June 15 to reject a $49,500 grant from the NEA to protest the restrictions. "Even Shakespeare in his day had his own set of censors," said festival artistic director Jerry Turner. "Censorship was wrong then, and it is wrong now." The action followed a similar move taken by Joseph Papp's New York Shakespeare Festival in late April (see *Newsletter*, July 1990, p. 120). At that time, Papp said he would reject a grant of $50,000 for his group's annual festival of Latin American cultures to protest "the Helms-inspired amendment on obscenity." Also rejecting endowment grants were the Cornerstone Theater Company of Cambridge, Massachusetts, and the Theater for the New City Foundation of New York. Another prestigious regional theater, the Mark Taper Forum in Los Angeles, said it would accept grants but not observe the restrictions and would seek court action if any attempt to restrict the artistic content of its work was made. Also accepting federal funding under protest was the Long Wharf Theater in New Haven, Connecticut.

• Officials of the University of California at Los Angeles said they would ask University administrators to allow them to turn down all grants from the NEA this year and would recommend that the entire nine-campus U.C. system take the same action. UCLA had received notification of grants totaling $40,000 and had another nine pending requests totaling more than $700,000. In 1989, the university campus received more than $800,000 in NEA funding. The recommendation was the product of discussions among UCLA Chancellor Charles Young and administrators of the campus's art galleries, performing arts center, and School of Theater, Film and Television.

• In May, the University of Houston in Texas formed a committee to decide whether to accept grants from the endowment. The action was prompted by the terms contained in contracts for two NEA awards totaling $40,000 received for the university's Arte Publico Press, the largest publisher of United States Hispanic literature in the country.

• The University of Iowa Press became the first publishing company to turn down an NEA grant June 2. Director Paul Zimmer said he would formally notify the agency that he would not accept a $12,000 grant, which was to be used to help pay for production costs for the Iowa Short Fiction Awards. "I truly think the NEA is a force for good as compared with a lot of things the government does with its money. I hope it continues for a century," Zimmer said. "But I don't see how it can be an effective aid to the arts and literature if it has to labor under this kind of ridiculous restriction. I don't feel that it is the business of the NEA to tell me as an editor what is obscene or to threaten me as a publisher." In early July, the annual meeting of the Association of American University Presses unanimously passed a strongly-worded resolution urging Congress to renew funding for the NEA "without requirements for the imposition of any prior conditions on grant recipients designed to restrict the subject matter or content of artworks, creative works, or publications."

• *The Paris Review*, a prestigious literary journal, announced in late June that it would decline its $10,000 NEA grant rather than agree to the obscenity clause. Editor George Plimpton said, "There are a great many literary magazines that can't afford to . . . act on principle. But we had to make a statement."

As protests against the restrictions mounted, funding for the NEA continued to be blocked in Congress. In mid-June, Sen. Orrin Hatch (R-UT) said that if a vote were taken on the arts endowment's future at that time, "I see the NEA losing heavily." Hatch's conclusion was significant because the conservative has emerged as an unlikely supporter of the endowment. Hatch said that, despite mail from his constituents running 500 to 1 against the arts endowment, he hoped to find a way to retain the agency without gutting its artistic integrity through overwhelming restrictions.

Hatch said the task of preserving the beleaguered arts agency had been made significantly more difficult as the controversy escalated. "As of right now, I see the NEA losing heavily. I think it's going to be very difficult for it to withstand some of the criticisms," Hatch said. "I do think great countries should support the arts and we should not have censorship in that process." Reported in: *Boston Globe*, May 3; *Boston Herald*, June 28; *Chicago Tribune*, July 11; *Cincinnati Enquirer*, June 7; *Des Moines Register*, June 3; *Hartford Courant*, June 27; *Houston Chronicle*, June 7; *Houston Post*, May 26; *Los Angeles Times*, June 15, 16, 22; *Norfolk Ledger-Star*, June 8; *Salem Statesman-Journal*, June 17; *San Diego Tribune*, June 8; *San Francisco Examiner*, June 6; *Village Voice*, July 17. □

is it legal?

library

New York, New York

Detectives seeking the so-called Zodiac gunman obtained a subpoena for library circulation records in July and interviewed people who had recently requested books by the Scottish mystic Aleister Crowley. The subpoena, issued on July 3 by a grand jury, ordered librarians at the New York Public Library to give detectives the slips used to request books.

Investigators said they believe that the man calling himself the Zodiac, who had shot four men since March 8, is inspired by Crowley's 1904 work *Book of the Law*. A stockbroker, who said he allowed his girlfriend's brother to check out the book on his library card, was questioned by the police, although he did not fit the description of the killer. The man agreed to be fingerprinted, but after a second visit from the police he contacted a lawyer. Detective Joe McConyllie said the stockbroker had been cleared of all suspicion. Reported in: *New York Times*, July 18; *New York Post*, July 18.

broadcasting

Montgomery, Alabama

Since February, when an 18-count misdemeanor obscenity indictment was unsealed in a Montgomery courtroom, satellite TV viewers with a taste for sexually explicit films have been out in the cold. Until then, such movies were beamed into the homes of 30,000 subscribers nationwide by American Exxxstasy, an adult satellite channel launched by the Home Dish Satellite Network of New York City.

Not only did Montgomery District Attorney Jimmy Evans succeed in chasing Exxxstasy out of Alabama, he effectively shut down Home Dish with indictments aimed at the companies that manufactured and operate the satellite that carried its movies: U.S. Satellite, GTE Corp., and GTE Spacenet Corp. The companies quickly dropped Exxxstasy, though the firms remain under indictment. Another service, the soft core porn cable channel Tuxxedo Network, also was indicted and dropped by its carrier, Hughes Communications. The channel had 1.2 million subscribers. New York Gov. Mario Cuomo was expected to decide whether to extradite the four officers of Home Dish to face charges in Alabama.

"We're not trying to violate anyone's First Amendment rights," insisted Steven Feaga, a deputy assistant attorney assigned to Montgomery County's white collar crime unit. "Obscenity is not covered by the First Amendment."

ACLU president Norman Dorsen is representing Home Dish. He argues that the Montgomery County action is a significant threat to free speech. "The practical, hard facts are that by merely getting an indictment, the prosecutor in one Alabama county where there are only 22 subscribers to the Exxxstasy channel, has brought down an organization. It's a vivid example of the chilling effect." Dorsen added that by dropping the channels GTE and Hughes Communications were behaving much as employers who participated in McCarthy era blacklists. "The government is using its muscle to intimidate or induce," he said. Reported in: *Atlanta Journal*, June 17.

Washington, D.C.

The Federal Communications Commission (FCC) July 12 said it would enforce a 24-hour ban on the broadcasting of "indecent" programs by the nation's radio and television stations in a move designed to protect children from questionable programming. Although the ruling did not affect programs that run exclusively on cable television, it covered programming of all local radio and TV stations and the three major networks. Before the ruling, the ban on indecent material only applied to programming aired between 6 a.m. and 8 p.m.

If it withstands a final ruling by an appeals court and an anticipated challenge by broadcasters, the ban would enable the agency to levy fines against broadcasters who air material considered indecent under a definition adopted by the Supreme Court in 1978. The ruling defines indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary standards for the broadcast medium, sexual or excretory activities or organs." Material deemed "obscene" by a similar test is already banned from the air at all times.

The FCC needs approval from the U.S. Court of Appeals for the District of Columbia before it can extend the ban. In January, 1989, the court blocked the FCC's first attempt to impose a 24-hour ban until the commission provided

evidence of a real risk that children were being exposed to late night programming. In its action, the five commissioners voted unanimously to adopt a report that responds to the appeals court's request and tries to demonstrate that the ban would not violate the First Amendment. The FCC said new data compiled by Arbitron rating service indicated that there are some children under the age of 17 listening to the radio and watching television at all hours of the day.

"Parents feel beleaguered in their efforts to instill proper values," said Ervin Duggan, one of the commissioners. "The people who support this are not extremists, they are not know-nothings. They are people like you and me." FCC officials also said they had received 92,500 letters from the public in favor of a 24-hour ban, support they cited as additional evidence of a compelling national interest.

The decision immediately raised questions about what material would be subject to government action. Asked by reporters if such relatively daring network programs as "L.A. Law" and "thirtysomething" could face government scrutiny, FCC general counsel Robert L. Pettit said, "It's impossible to say in the abstract. We'd have to see it first and judge it on a case-by-case, complaint-by-complaint basis."

In an indication of what the FCC might consider indecent, it previously cited a Kansas City television station that aired *Private Lessons*, a movie about a housekeeper's seduction of a 15-year-old boy, in prime time. It also cited four radio stations that broadcast songs and skits about homosexual sex acts, penises and masturbation. Since 1987, the courts have upheld only one FCC fine for indecency, against a Los Angeles public radio station that aired a play about homosexuality during daytime hours.

The enforcement actions of recent years have had "a chilling effect" on broadcasters, said Timothy Dyk, an attorney who represents a coalition involving the three networks, other broadcasters and public interest groups that has opposed the 24-hour ban.

"Broadcasters have been saying to themselves, 'When in doubt, leave it out,'" said Dyk. "There are large areas of doubt. Anything that addresses the issue of sex, potentially, is going to raise questions. Even if material has serious merit — plays, films or even things as dance — it may be found to be indecent. The effect has been self-censorship. No one wants to be fined by the FCC."

Congress ordered the FCC to develop regulations for a 24-hour ban in September 1988. After the regulations were issued, broadcasters appealed; the Court of Appeals issued a stay in January, 1989, and the commission agreed to compile a record justifying the ban.

In an attempt to allay objections to a constitutional violation, the FCC said that broadcasters would be able to defend themselves by arguing that there were no children under the age of 17 in an audience at the time of a disputed broadcast. But Dyk called that "an absolutely meaningless concession." Reported in: *Washington Post*, July 13; *New York Times*, July 13.

child pornography

San Francisco, California

When on April 25, agents of the Federal Bureau of Investigation (FBI) and San Francisco police raided the photography studio of Jock Sturges, who is known for his black-and-white portraits of families in the nude, and confiscated his work in an investigation of child pornography, it set off a storm of charges of government censorship. The police arrived without a search warrant, but refused to leave. When the warrant arrived several hours later, they swept through the photographer's apartment and studio, confiscating 100,000 negatives, his personal computer and fifteen years of business records. They also took his enlarger, his passport, and personal belongings.

An associate of Sturges had given 27 sheets of "internegative" film, made from color transparencies, to a San Francisco lab for processing. According to Sturges, the film consisted of informal, candid shots of friends — adults and children — that Sturges took on a "clothing optional" beach in France. Sturges was using the film to practice his color printing techniques and to prepare gifts for friends. Someone at Newell Color Labs, in an attempt to comply with a sweeping federal child pornography law, called the police.

The raid shut down Sturges as both a commercial photographer and artist. Although no charges have been filed, his equipment, records and contacts remained in FBI hands more than two months after the raid. Working their way through his address book, agents have startled and sometimes humiliated numerous friends of Sturges, calling to ask if they or their children have ever been involved with Sturges in an "unclothed" photo session and to get them to supply information on Sturges' "sexual proclivities." The photographer's largest and most longstanding commercial client, the Marin Ballet, abruptly canceled his contract to photograph its children's dance class, which he had done for more than six years.

Joe Semien, who works with Sturges, had delivered the film to Newell. Before raiding Sturges' studio, the police threatened Semien with prosecution. They hammered on the door to Semien's apartment, got him out of bed, interrogated him and took him to jail after he asked to call his lawyer. During two days of interrogation, Semien refused to reveal the name of the photographer whose film he had dropped off. Finally a judge ordered him released on his own recognizance, even though a district attorney had asked for an $81,000 bond on an assortment of charges.

Semien was arrested under a state law on two felony and ten misdemeanor charges of possession of obscene material depicting minors. The charges against him were suspended and he was allowed to enter a program under which his record can be cleared in six months if he has no further incidents.

Assistant U.S. Attorney Rodolfo Orjales is the prosecutor on the case. He is also coordinator of a Bay Area child por-

nography task force. He admits the Sturges case "is rather unique" because of Sturges' professional standing: his figure studies hang in the Museum of Modern Art and the Metropolitan Museum of Art in New York and Biblioteque Nationale in Paris, among others. His work also has appeared in *Harper's*, *Vogue* and *Mothering* magazines.

According to Orjales, the definition of child pornography used by his office was derived from a decision by the U.S. Court of Appeals for the Ninth Circuit in *U.S.* v. *Arvin*. The case involved photos of young children sent to an undercover police officer. The court set down a series of criteria to define obscene photos involving children: "the apparent age of the child, whether the photo focuses on the genitals, whether the child is in an unnatural position."

The court also ruled, Orjales explained, that expert testimony on artistic merit is not relevant or admissible. "Your gut tells you and you go with that. That is what the court said. Your gut tells you whether something is art or exploitation," he said.

The Bay Area arts community, newspapers, and the San Francisco Board of Supervisors have rallied to Sturges' support. Without having seen the pictures, the supervisors by a 9-2 vote July 9 passed a resolution urging the U.S. Attorney to drop the investigation. The resolution cited "a dangerous state of hysteria and repression over freedom of expression of artists" and said the First Amendment is under a "national assault." Mayor Art Agnos signed the nonbinding resolution on July 17.

"I'm more than pleased by the Board of Supervisors taking a strong stand for preservation of our constitutional rights," said Michael H. Metzger, Sturges' attorney. "If you look at Jock's work as a whole and at the intent of the photographer, it is not obscene or even suggestive of obscenity." Metzger, who has seen the photographs, said all were made with the permission of the children's parents. Reported in: *The Nation*, July 9; *New York Times*, July 23.

Washington, D.C.

On June 28, the U.S. Senate passed an amendment to the much debated Child Protection and Obscenity Enforcement Act. The amendment changes the definition of materials subject to record-keeping requirements for publishers and other producers of sexually explicit photographs or motion pictures. Proposed by Sen. Strom Thurmond (R-SC), the amendment could affect the lawsuit filed against the U.S. government over the law by the American Library Association, the Freedom to Read Foundation, the American Booksellers Association, and others.

The Act was signed into law in October, 1988, and was then challenged by ALA and other plaintiffs because of "record-keeping requirements that would do more to infringe, hinder, and in some cases effectively prohibit the production and distribution of material with sexual content that is protected by the First Amendment than it would to stop the creation and dissemination of child pornography," according to attorney Maxwell J. Lillienstein, ABA counsel. The law was declared unconstitutional last year by a Washington, D.C., court, but the government appealed.

Under the proposed amendment passed by the Senate, materials containing "lascivious exhibition of the genitals or pubic area" would be excluded from the law. Lillienstein said that this changed the law significantly and "would appear to be in response to our case. It appears that the law now applies principally to 'hard core' material. This would not create big problems for trade booksellers, publishers, and publishers of magazines like *Playboy* and *Penthouse*." But Lillienstein cautioned that the bill still had "constitutional problems by unreasonably stopping the sale of constitutionally protected material containing sexually explicit matter." Reported in: *ABA Newswire*, July 16.

obscenity

Nashville, Tennessee

On June 15, the ACLU, on behalf of Davis-Kidd Booksellers and R.M. Mills Bookstores, the Association of American Publishers, and others, filed a legal complaint charging that parts of Tennessee's six-week-old obscenity law are too vague. The Freedom to Read Foundation became a co-plaintiff later that month. The suit seeks to have the law declared unconstitutional and asks that the state be barred from arresting anyone under its provisions until the issue is resolved.

Barry Friedman, a Vanderbilt University law professor and Tennessee ACLU board president, said portions of the law are so broad and vague — especially the sections regulating material containing excess violence, nudity and "harmful to minors" — that the popular new movies *Total Recall* and *Another 48 Hours* might be illegal under its terms.

The law was signed May 4 by Gov. Ned Ray McWherter, defining material that is "harmful to minors" as having "that quality of any description or representation, in whatever form, of nudity, sexual excitement, sexual conduct, excess violence, or sadomasochistic abuse when the matter or performances a) would be found by the average person applying contemporary community standards to appeal predominantly to the prurient, shameful or morbid interests of minors; b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and c) taken as a whole lacks serious literary, artistic, political or scientific value for minors." In addition, the definition of "harmful to minors" includes "excess violence," which is defined as "violence for violence's sake."

The suit also challenges the sections of the law that allow the state's 31 judicial districts to determine their own defini-

tions of obscenity and which allow police officers to remove material that they themselves determine to violate the law. The plaintiffs also object to "massive forfeiture and seizure provisions" that are likely to intimidate booksellers and others.

"The purpose of the lawsuit is to safeguard fundamental First Amendment rights to disseminate constitutionally protected books, magazines and videos," Friedman said. Reported in: *Memphis Commercial-Appeal*, June 16; *ABA Newswire*, June 25.

government secrecy

Washington, D.C.

Government decisions to classify information as "Top Secret," "Secret" or Confidential" dropped by 35 percent last year, according to the Information Security Oversight Office (ISOO). In its annual report, ISOO said there were 6,796,501 classification actions in the fiscal 1989, a decrease of more than 3.6 million from the year before. But it added that the unprecedented drop was "primarily the result of more accurate counting, rather than an actual tremendous decrease in classification activity."

ISOO Director Steven Garfinkel said much of the improvement came from steps taken by the Navy to correct serious deficiencies in sampling and reporting methods that had made past figures "vastly inflated." For instance, he said, the Navy had been counting "the number of all classified documents on hand, not just classification decisions that they had originated."

The report said original classification actions — initial determinations that information must be protected because its unauthorized disclosure would likely cause damage to the national security — totaled 501,794 in fiscal 1989, an 80 percent decrease. In addition to the striking drop at the Defense Department, primarily owing to the Navy's actions, the report said that the CIA reported 22 percent fewer original classification decisions and the State Department, a 13 percent reduction.

By contrast, the Justice Department grew more secretive, especially the FBI, the report indicated. Original classification decisions at Justice jumped by 43 percent.

Another 6,294,707 classification decisions were "derivative" actions applied to documents that deal with certain proscribed subjects or that restate or paraphrase already classified information. The Pentagon had nearly 3.2 million derivative classifications last year, the CIA 2.3 million, and the Justice Department 735,457. Reported in: *Washington Post*, April 10.

universities

Santa Clara, California

The California Lambda chapter of Sigma Phi Epsilon fraternity has been suspended for at least four years by Santa Clara University for using offensive language in a chapter newsletter last March. The language was "repugnant, obscene, and wantonly degrading to women, racial minorities, and homosexuals," said James I. Briggs, vice president of student services at the university.

Four members of the fraternity were also disciplined, but the university declined to release their names or describe their punishment. Briggs said the university had withdrawn recognition of the chapter through the 1993-94 academic year. Reported in: *Chronicle of Higher Education*, June 13.

Washington, D.C.

The American Association of University Professors censured Catholic University of America June 16 for suspending Charles E. Curran in 1987 in violation of "values of academic freedom and institutional autonomy that the administration had publicly promised to uphold." The censure resolution, adopted at the association's annual meeting, did not carry juridical effect such as loss of accreditation. The action is, however, generally seen as damaging to a school's reputation.

When, in 1986, Catholic University refused to allow Curran to teach Catholic theology after his published views on sexual ethics were censured by the Vatican, he sued the university for violating terms of his tenure. In February, 1989, a District of Columbia court ruled that the university did not violate any tenure contracts with the priest. AAUP's investigating committee, however, said Curran was "for all practical purposes deprived of his tenure without due process and without adequate cause."

According to William J. Byron, the university's president, the AAUP censure represents "a serious misunderstanding of the case." He said there was no violation of due process because "canonical statutes which govern this case were meticulously followed in every detail." Curran "was fired by no one," according to Byron, but was barred by the university trustees from teaching Catholic theology because he was "declared ineligible to do so by the highest doctrinal authorities in the Catholic Church." An alternative assignment "in a field of his competence, namely social ethics, was offered, but refused by him. That offer remains on the table."

In turn, Byron charged the AAUP with refusing "to recognize the university's First Amendment right under the 'free exercise' clause" and with making "a direct attack on the university's freely chosen and widely proclaimed understanding of its own institutional purpose and identity." He went on to say that "academic freedom is not absolute freedom. It is, in every instance, limited by the discipline itself. Internal to the discipline of Catholic theology is respect

for and fidelity to the magisterium of the church."

Father Curran has been visiting professor at the University of Southern California for two years. Reported in: *Christian Century*, July 11-18; *Chronicle of Higher Education*, June 13.

Milwaukee, Wisconsin

A group of students and an instructor in the University of Wisconsin system have filed suit against the Board of Regents, charging that its anti-harassment policy violates their right to freedom of speech. The lawsuit, which was filed in U.S. District Court in Milwaukee, challenges a policy that prohibits comments that demean individuals on the basis of their race, sex, or ethnic background. The Board of Regents instituted the policy on all of the system's 26 campuses last fall.

The lawsuit charges that the policy violates the rights protected by the First Amendment to the Constitution because it is too broad, too vague, and applies only to students. The policy deters students from debating controversial issues, said Jeff Kassel, a lawyer for the students.

The suit was filed by the ACLU on behalf of seven students from the university's Milwaukee campus, two from Madison, one instructor at Green Bay campus, and a student newspaper. Reported in: *Chronicle of Higher Education*, April 11.

BANNED

BOOKS

WEEK

SEPTEMBER 22-29

(IFC report . . . from page 149)

The importance of this came home to me recently when I read *Life and Death in Shanghai*, a personal account of an individual's refusal to permit her government to rewrite her personal history or its meaning to suit the political needs of the moment. Throughout her imprisonment and torture, Nien Cheng's defense of the truth and the integrity of her own experience provide a monument to the universality of the propositions of intellectual freedom which we embrace as librarians.

We also are aware of a disturbing willingness among some members of this Association to advocate subordination of these basic principles concerning free expression to serve other political ends. On the premise that basic human rights are inalienable, the Intellectual Freedom Committee believes that ALA policy should always be written in a way that affirms that individual rights supersede political purposes. We believe that the *Library Bill of Rights* means what it says.

In March, the ALA Executive Board referred the AAP report, written by Robert Wedgeworth and Lisa Drew, entitled *The Starvation of Young Black Minds: The Effect of Book Boycotts in South Africa*, to the Intellectual Freedom Committee and the International Relations Committee for review concerning possible action by the American Library Association. The Intellectual Freedom Committee reviewed the report, relevant ALA policy, material presented at the IRC hearing on the AAP Report, and a variety of other documentation.

For reasons which I have discussed, we believe that there is an inadequate basis in existing ALA policy to respond to the myriad of international situations before us. To address this gap, we have prepared a new draft Interpretation of the *Library Bill of Rights* on the Free Flow of Information, which is being circulated for comment. Following a clear statement of the Association's principles on these subjects, the Committee will find itself better equipped to respond to the Executive Board request concerning the AAP report.

We must note, however, our grave concern about the emotional level of the debates on South Africa within the Association. At this conference, we have heard many unsubstantiated charges and accusations being made about the AAP report, its authors, and its sponsors; conflicting and undocumented assertions about the situation in South Africa; personal invective; and violations of standards of professional conduct, ethics, and due process. These have characterized much of the public condemnation of the report. We believe that the issues involved in this subject are too important to be resolved in this manner. And we believe the threat to the Association's credibility and commitment to free speech and due process is substantial. We must find more measured and honest ways to resolve our differences. This distress is a major reason that we seek to clarify the policy framework before

we proceed further in this matter.

attacks on the arts

One of the hottest areas of intellectual freedom concerns in recent months has been the creative arts. These areas are troublesome since they present an opportunity for political posturing, and are opening new fronts in the battle over the legal limits of obscenity. Ominous trends in legislative activity at the local, state, and federal levels indicate that there are a number of efforts underway apparently intended to give the U.S. Supreme Court the opportunity to overturn the *Miller* standard — itself a narrowing of previous court doctrine — and replace it with a much broader definition of obscenity.

We are specifically troubled by the issue concerning the reauthorization of the National Endowments for the Arts and Humanities, and endorsed the resolution which Council has already adopted. We have also prepared a resolution concerning the new "anti-obscenity pledge" required of N.E.A. grant recipients (see page 178).

The Committee is closely monitoring the progress of the obscenity prosecution of the rap group 2 Live Crew. We understand the Freedom to Read Foundation is considering entering this case as an *amicus*, and will recommend further action to Council when it becomes appropriate.

We have drafted a resolution in support of Dennis Barrie and the Contemporary Art Center of Cincinnati commending their leadership and courage in resisting censorship, and their commitment to the free expression of ideas in the face of extreme personal risk (see page 178).

Finally, we have been closely following legislative efforts in relation to the labeling of recorded music. The Record Industry Association of America is rushing to embrace voluntary labeling. While they are advocating an approach to labeling that is voluntary with the decision to do so retained by individual record companies instead of by an industry ratings board like the MPAA, the approach still violates ALA policy.

flag burning

The United States Congress has just resisted a serious attempt to tamper with the Bill of Rights by rejecting, for the time being, attempts to amend the Constitution to outlaw a form of free expression involving flag burning. The U.S. Supreme Court has twice held this activity to be protected under the First Amendment. Supporters of the proposed amendment have already announced their intentions to utilize the issue in campaign attacks upon the courageous members of Congress who voted to uphold our most basic constitutional principles. We have prepared a resolution commending Congress for its action in rejecting the Amendment (see page 178).

recommendations

In summary, we request Council approve the following Resolutions:

- Resolution in Opposition to Anti-Obscenity Pledge Requirement of the National Endowments for the Arts and Humanities
- Resolution in support of Dennis Barrie and the Contemporary Arts Center of Cincinnati
- Resolution on Flag Burning

other matters

Among other matters before the Committee are:

Fees for Service: Much of the recent concern about fees for service has focused on public library practices, such as charging for use of videotapes, meeting rooms, or database searches. The issue is taking dramatic new turns in recent proposals for "cost-sharing" by depository libraries, privatization of government information, and proposals to establish new fees for service from the Library of Congress.

Fee-based service is, therefore, assuming urgency for libraries of all types. ALA's policy on Free Access to Information contains a strong statement endorsing fee-free service in libraries which receive their major support from public funds. New initiatives to implement this policy are clearly necessary.

The Intellectual Freedom Committee believes that there is good reason to link this policy firmly with the existing body of intellectual freedom policy. In response, therefore, to the current charge to review the *Library Bill of Rights* in relation to concerns about economic status, the IFC is doing work preliminary to drafting a new Interpretation of the *Library Bill of Rights* addressing the issue of fee-based service. This is a complex and potentially contentious undertaking. We are requesting units and divisions to develop positions relating to their concerns on this subject. We intend to hold hearings on this matter at future conferences.

FBI Library Awareness Program: We are continuing to work closely with National Security Archive to obtain information withheld from both our organizations' FOIA requests for FBI documentation of FBI intrusions into libraries. Further developments will be reported at Midwinter.

ALA v. Thornburgh has reached the appeal stage. Oral argument is scheduled for September 24, 1990.

OIF Activities: The Committee conducted its annual review of OIF publications, activities, budget, and ongoing projects. We continue to believe that the work of the Office and the Committee would be enhanced by additional professional level staffing to increase our research and data gathering capability in relation to the range of issues addressed at the beginning of this report.

Given the richness of issues, and the challenges facing this Committee, I am pleased to report that the caliber of work being produced by my fellow Committee members and the extraordinary effectiveness of OIF staff in support of the Committee, despite ever escalating demands upon their time and resources, makes this assignment fascinating and stimulating.

I appreciate the opportunity to continue to serve you in the year ahead. □

Resolution in Opposition to the Anti-Obscenity Pledge Requirement of the National Endowments for the Arts and Humanities

Whereas, The American Library Association supports the First Amendment rights of all Americans to free expression in its *Library Bill of Rights* and Freedom to Read Statement; and,

Whereas, The United States Congress adopted a set of instructions for the National Endowment for the Arts and National Endowment for the Humanities under the Helms Amendment in July of 1989, which mandates the exclusion of grant funds to promote, disseminate, or produce materials that "may be considered obscene"; and,

Whereas, The National Endowment for the Arts now requires grant applicants to sign an "anti-obscenity" pledge; and,

Whereas, The pledge constitutes a form of prior restraint that is antithetical to American traditions and constitutional rights; and,

Whereas, The pledge is unconstitutionally vague and goes beyond the Supreme Court definition of obscenity; now, therefore be it

Resolved, That the American Library Association urge the United States Congress and the National Endowment for the Arts to eliminate this requirement for an anti-obscenity pledge; and be it further

Resolved, That copies of this resolution be transmitted to the Endowments' authorizing and appropriating committees of the U.S. Congress.

Adopted June 27, 1990 by the ALA Council. □

Resolution in Support of Dennis Barrie and the Contemporary Art Center of Cincinnati

Whereas, Dennis Barrie, Director of the Contemporary Art Center of Cincinnati, acting under the direction of and with the full support of the museum board of trustees courageously exercised his constitutional and creative rights to exhibit the works of photographer Robert A. Mapplethorpe; and

Whereas, The Contemporary Art Center is a private art museum; and

Whereas, The museum made special efforts to inform the public of the diverse nature of the exhibit prior to its opening and throughout its showing in Cincinnati; and

Whereas, Legal precedent requires that cultural and creative works be judged as a whole, and all but three of the works on display have previously been published in books readily available in bookstores and libraries; and

Whereas, The exhibit had been on display in museums across the United States without restrictive action; and

Whereas, Dennis Barrie and the board of trustees continue to resist the efforts of censors and the refusal of the court to dismiss the charges against the museum and Dennis Barrie himself; and

Whereas, Dennis Barrie faces a prison term, fines, and extensive legal fees as a result of his efforts to protect freedom of expression; now, therefore, be it

Resolved, That the Council of the American Library Association on behalf of its more than 50,000 members honor and support Dennis Barrie and the board of trustees of the museum for their leadership and courage in resisting censorship and their commitment to the free expression of ideas in the face of extreme personal risk, and, be it further

Resolved, That a copy of this resolution be forwarded to Dennis Barrie, to the president of the board of trustees of the Contemporary Art Center, government officials of the City of Cincinnati, and the chairman of the National Endowment for the Arts.

Adopted June 27, 1990 by the ALA Council. □

Resolution on Flag Burning

Whereas, The rights of expression are among the most basic of human rights; and

Whereas, The American Library Association is committed to the protection of free speech as provided for in the First Amendment of the United States Constitution; and

Whereas, The Bill of Rights has stood for two centuries as the protection of free speech regardless of assaults by special interests or for political expediency; and

Whereas, The U.S. Supreme Court has determined that burning the flag is a form of free speech and thus is protected by the First Amendment; now, therefore, be it

Resolved, That the American Library Association expresses its support and appreciation for the vote in the U.S. House of Representatives and the U.S. Senate to uphold free expression as provided in the Bill of Rights, by defeating the proposed constitutional amendment on flag burning; and be it further

Resolved, That this resolution be transmitted to the leadership of the House of Representatives and the Senate, to the House and Senate Judiciary Committees, and to the President of the United States.

Adopted June 27, 1990 by the ALA Council. □

success stories

About 40 citizens spoke at the public meeting, almost all opposed to the carding system, repeal of which won a standing ovation from the crowd. Among opponents of the policy were a pediatrician, a school board president, a high school student, a former library employee, and a high school graduate and mother of six who called the policy an affront to Thomas Jefferson.

"I'm deeply ashamed of our library and totally embarrassed," said resident Mary Grana. "My friends from all over are saying, 'Oh, you live in that Nazi village?'"

For more than 13 years, library officials said, Oak Lawn has allowed children access to *Playboy* magazine and all other library materials, excluding music videos, which are available only to patrons 18 and over. In that time, no resident has filed a complaint against the policy or *Playboy*, library trustee Evelyn Goltz said. Goltz, who proposed that the board rescind its June vote, said after the policy's defeat that she feared Czerwiec's drive to censor library material was not over.

"This is not a dead issue," echoed Nancy Czerwiec. Reported in: *Chicago Tribune*, June 28, July 12; *Chicago Sun-Times*, July 12; *Southtown Economist*, July 11.

libraries

Oak Lawn, Illinois

By a 4-3 vote, the Oak Lawn Library Board of Trustees voted July 10 to rescind a restricted access policy for children that passed 3-1 at the previous month's meeting, when three of the trustees were absent. Nearly 150 people turned out as the board abandoned a system whereby parents of children under 14 could have obtained library cards limiting them to the "youth service section." Librarians had warned that the system would bar young patrons from access to novels, dictionaries, encyclopedias, magazines, and newspapers.

The policy's author was library trustee Nancy Czerwiec. "An idea is on trial tonight: the idea of parental choice for children," Czerwiec told the crowd during her closing statement supporting the access limitation. "While the American Library Association, in its [Library] Bill of Rights, may consider children equal to adults, I believe the words of St. Paul, who said, 'When I was a child, I spoke and thought and reasoned as a child, but when I became a man, my thoughts grew far beyond my own childhood.'"

"When librarians make choices about which materials will be in our libraries, these choices are called selective review. But when you and I, John Q. Public, acting as ordinary citizens, question and challenge, you and I are labeled censors, book banners, or right-wing fanatics," she said.

In 1980, Czerwiec led a highly publicized and unsuccessful campaign to ban the controversial sex education book *Show Me!* from the library. An anti-abortion activist, she also has led other local campaigns, including a 1987 effort to get the Oak Lawn Village Board to ban stores from renting X-rated videotapes. She was elected a library trustee in 1989.

Colonie, New York

The Progressive, a prominent liberal periodical, will remain in the Shaker High School library, Superintendent Charles Szuberla ruled in late May. A committee of school employees had informed the superintendent that the magazine "would have to be of little value as a library source or be incendiary in nature to warrant a recommendation for its removal. There is no support for either conclusion."

Michael Elmendorf, a Shaker sophomore, wanted the magazine removed because he found certain classified advertisements offensive. He objected specifically to the ads for publications titled, "The Anarchist Cookbook," "Women Loving Women," and "Prove Christ Fictional," as well as to a full-page ad placed by the Jewish Committee on the Middle East.

"If someone wants to read [*The Progressive*], fine," Elmendorf told the review committee, "but don't spend my family's tax dollars on it." Elmendorf submitted a petition seeking the magazine's removal that was signed by 123 students. The magazine, however, received a vigorous defense from school library director Joyce Horsman, who presented a petition signed by 395 students in support of retaining the publication. "Libraries should provide information on all points of view," Horsman told the committee.

In its report, the committee noted that "Mr. Elmendorf's request for removal constitutes a call for unwarranted censorship of a reputable publication that has been, with good reason, included in the media center's collection for more than ten years. We do students a disservice if we feel they will succumb to every enticement they encounter. They are fully capable of ignoring the advertisements Mr. Elmendorf cites as objectionable."

"It was very clear, concise and thorough . . . It was unanimous," Szuberla said of the report. "One of the important things is that we have a process in place. Decisions can be made on a thoughtful and objective basis. This wasn't emotional on the part of the district." Reported in: *Albany Times-Union*, May 25; *The Progressive*, July 1990.

New Cumberland, West Virginia

Seventeen books on the occult will be returned to the library shelves at Weir Junior High School after a year-long absence. The Library Book Review Committee found that "education must be commited to presenting all sides of an issue or topic. Educators have a responsibility to present students with a variety of materials which will enable them to formulate intelligent and informed decisions."

The books, dealing with witchcraft, its history and its practices, were pulled from the library shelves last year after a group of parents questioned their contents and appropriateness. They were returned to the library June 15.

"All books presented were reviewed," the committee reported. "Nothing was found to be questionable or offensive in any of the books. They deal with the history of superstitions, religions and actual presentations of rituals included in the cultures, and heritages of peoples in the world. The books were determined to be appropriate for the intended audience."

Fourteen other books, most dealing with astrology and fortune telling, had previously been returned to the library's shelves.

William Mathew, husband of school librarian Mary Lou Mathew, noted the collection "was recommended by a number of the best reviewing sources." he also asked for an apology, saying his wife's "moral reputation and her professional reputation were damaged beyond repair."

But Board President Connie Sherensky, who accepted the review committee's findings, said an apology had been offered a year ago. "There was never, never any objection to Mrs. Mathew," she said. "Some of those books had been in the library for years, before she became a librarian. She was never under attack by the board and her judgement was never in question." Reported in: *Weirton Times*, June 12.

ALA Conference
living the *Library Bill of Rights*

At the American Library Association's 1990 Annual Conference in Chicago, the ALA Intellectual Freedom Committee, the Intellectual Freedom Round Table, the Committee on Professional Ethics, and the Intellectual Freedom Committees of the American Association of School Librarians, the Association for Library Service to Children, the American Library Trustee Association, the Public Library Association, and the Young Adult Services Division sponsored a program entitled "Living the Library Bill of Rights." *The program featured Eric Moon, past President of the American Library Association; Ginnie Cooper, Director of the Multnomah County (OR) Library System; and William Jones, Acting Director of the Library of the University of Illinois at Chicago. Slightly edited versions of their speeches, and excerpts from the question and answer session that followed them are below.*

remarks by Eric Moon

Eric Moon has been President of the American Library Association; Director of Libraries for the Province of Newfoundland, Canada; Editor-in-Chief of Library Journal*; and President of Scarecrow Press. He has served many years on the ALA Council, been a member of its Executive Board, is a past Chair of the Intellectual Freedom Committee, and is currently a member of the Coordinating Committee on Freedom and Equality of Access to Information and the Endowment Campaign Committee. He is the author of* Book Selection and Censorship *and* Library Issues In The 60s, *and hundreds of editorials that have appeared in various publications through the years.*

Living the *Library Bill of Rights*. Has a nice ring to it. But I have found that assigned titles, when you start examining them and consider how you can squeeze what you want to say under their narrow umbrella, are often a bit simplistic or annoyingly restrictive. Just as a person who lives by bread alone, never indulging in the joyous sin of whipped cream and chocolate cake, is unlikely to develop a taste for the *enjoyment* of food, the librarian whose life is devoted simply to the *Library Bill of Rights* seems to me likely to descend into dullness and pedantry.

Even if we consider the *Library Bill of Rights* as a set of principles by which librarians should live their *professional* lives, the title hangs on to its straitjacket qualities. I would argue, for example, that there is a larger, more encompassing Bill of Rights that librarians, as other Americans, should not only live by but strenuously promote and defend. And further, in this increasingly interdependent and chaotic world, that we need to think in less parochial terms and consider more universal sets of principles as being relevant to our lives, our thinking, our behavior.

ALA has adopted as policy, for example, "the principles of Article 19 of the Universal Declaration of Human Rights adopted by the United Nations General Assembly." Had our policies not been assembled in Topsy fashion to meet individual crises as they occur, we might well have considered adopting other sections of that splendid document. Could ALA possibly disagree with the second paragraph of Article 21 of the Universal Declaration, for example, which reads: "Everyone has the right of equal access to public service in his country."

If we peer over the *Library Bill of Rights* to these broader horizons of principle we may avoid, as recent administrations in Washington have not, falling prey either to the folly that our domestic laws and documents are applicable to and enforceable upon all the peoples of the world, or to the hypocrisy inherent in the belief that while law must govern our behavior at home we may as a nation flout international laws or principles whenever it suits our purpose to do so.

Our chair today, Mr. Davis, tells me that the intended purpose of this program is to focus on the provision of equality of service, and in that context, he says, there are librarians who are not happy with Section 5 of the *Library Bill of Rights*, who see it as restrictive rather than expansive in its wording. For those among you who do not have the words of Section 5 engraved upon your memory, it reads: "A person's right to use a library should not be denied or abridged because of origin, age, background, or views." By specifying particular groups of users whose rights should not be abridged, the argument goes, those not named are, by omission, excluded from protection. Mr. Davis, and others, would like to see Article 5 abbreviated as follows: "The rights of an individual to the use of a library should not be denied or abridged (period)." In this form, the statement certainly has the virtues of concision and of being all-encompassing. Why, then, the need for what some have called a "laundry list of protected groups" in the *Library Bill of Rights*?

About the time I was pondering this matter, I was charged, as a member of ALA's new Coordinating Committee on Freedom and Equality of Access to Information, with analyzing the ALA Policy Manual to see where we stand in regard to policies governing access. Apart from the simple finding that our policies are uncoordinated and fractionated, not to say chaotic, I discovered that the *Library Bill of Rights* does not have an exclusive on laundry lists. In the set of policies under Section 59, Minority Concerns, another laundry list appears in Policy 59.2 which opposes discrimination because of "race, sex, creed, color, or national origin." Note that race, sex and color are not mentioned specifically in the *Library Bill of Rights*, nor is age mentioned in the Minority Rights policy.

That isn't the end of it. Yet another laundry list appears in Section 3, on intellectual freedom, in ALA's Federal Legislative Policy. This one, the most inclusive, lists "age, sex, race, religion, national origin, disability, economic condition, individual life-style, or political or social views."

Wondering whether laundry lists were a particular obsession of ALA's, I took a fresh look at that other Bill of Rights, the Amendments to the U.S. Constitution.

Lo and behold, similar specificities crop up in that venerable document. For example, Article XV, Section 1 reads; "The right of citizens . . . to vote shall not be denied or abridged . . . on account of race, color, or previous condition of servitude." And Article XIX adds: "The right of citizens . . . to vote shall not be denied or abridged . . . on account of sex."

But the U.S. Bill of Rights also suggests, perhaps, a solution to the objections of those who see the laundry list in the *Library Bill of Rights* as restrictive. Article IX of the Bill of Rights says: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." A similar amendment to ALA policy might read: "The enumeration in the Library Bill of Rights and in other ALA policies, of certain persons or groups whose right to use a library should not be denied or abridged, shall not be construed to exclude other persons or groups not so specified."

The question remains, why do these laundry lists occur in our *Library Bill of Rights* and other ALA policies, and in the U.S. Bill of Rights? Why are they necessary? The answer, of course, lies in our history, in George Orwell's observation that some human beings have been regarded and treated as less equal than others. It lies also in the way that most policies are formulated. In the main they are reactive, responding to a sudden or a gradual realization that there is a wrong that needs righting. As we have come to understand, usually much too slowly, that certain groups or individuals have been dealt with less equally than others, we have felt it necessary, in amending both the U. S. Constitution and our own ALA documents, to give special emphasis to those individuals and groups whose rights have been most flagrantly denied, as a first step in beginning to remedy the wrongs that have been committed against them. There may also be a third element among the reasons for the existence of these laundry lists. Without the specifics, some of the less conscious among those whose rights have *never* been restrained may well wonder why such policies are needed at all.

Living the *Library Bill of Rights* requires a commitment from each of us on several levels, levels so integrally linked that we cannot hope to achieve our goals without involvement in all of them. As individual librarians, it is our responsibility within our own institutions to do all we can to promote equality of service, maximum access to information, resistance to censorship pressures, etc. But our policies and practices at local levels, and our thinking in these areas, are shaped to a significant degree by what evolves among us as a community of librarians, a profession, via our various associations and organizations.

As a community of librarians, we live the *Library Bill of Rights* by constantly refining and promoting policies that lead to more informed, more humane practices in libraries and among librarians. We also find in our associations the strength, the numbers, to do battle with the larger enemies of our goals, such as repressive and regressive government policies or unrestricted commercial control of the sources of information. Here, too, we see that bidirectional linkage between individual action and professional policy. ALA's Policy on Governmental Intimidation, for example, which we have cause to refer to in the light of recent FBI incursions upon libraries and library users, had its origin in a 1971 resolution presented by Zoia Horn and Pat Rom after Zoia had gone to jail rather than bow to government intimidation.

At a third level we need to recognize that we are members of the information and cultural and educational communities and that our defense of the rights of libraries and library users rings hollow unless we are prepared to defend intellectual freedom in this larger arena. If we are prepared to accept Sen. Helms, wielding federal funding as his axe in his recently adopted role as art critic, judging what is fit for us to view, can it be long before we face the prospect of Jesse as literary critic, deciding what is fit for exposure on the shelves of libraries receiving federal funds? When the First Amendment rights of an author, a publisher, a bookseller, a filmmaker, a scientist, an educator are attacked, we are all in danger. When the press is not free, freedom of information and access to much of what we need to know is gone.

There is ample recognition in ALA policy statements of this broader responsibility to intellectual freedom, notably in the *Federal Legislative Policy* and the *Freedom to Read* Statement, and many of the actions of the Freedom to Read Foundation in recent years have involved the defense of intellectual freedom beyond library boundaries. But there have been occasions in the past when we have been willing to sacrifice the rights of others in the book community in order to retain exemptions for libraries and librarians in legislation otherwise restricting intellectual freedom.

At the local level, the front line, the library profession, has produced an array of heroes, willing — no, determined — to wage the battle for intellectual freedom even at great personal risk. Examples include Joan Bodger, fired from the Missouri State Library in 1969 for protesting the suppression of an underground newspaper, and a decade later, Jeanne Layton, a Utah librarian dismissed for refusal to remove a Don DeLillo novel from library shelves. One could cite many more such examples, but the changing tenor of our problems is exemplified by the latest cadre of library heroes on the front line: the many librarians who resisted and publicly opposed the flagrant invasions of libraries and the rights of library users by the FBI under the mantle of the so-called Library Awareness Program — librarians who, as a result, now find *themselves* subjects for investigation by the FBI.

The necessary change in our focus was noted by Gordon Conable, current chair of the Intellectual Freedom Committee, in his excellent report to Council last January. IFC's agenda, he said, "is no longer focused as much on specific

censorship incidents." This is not, I'm sure, because Gordon or the IFC believes, any more than I do, that censorship pressures from individuals or vocal self-righteous groups are likely to disappear, but because, as Conable put it, "an explosion is occurring in the complexity and diversity of intellectual freedom issues which directly involve librarians," many of which "are being defined in the legal, political, and social environment in ways which tend to submerge their First Amendment implications."

It is not altogether new that the defense of intellectual freedom involves more than battling against a stream of what we have come to call "censorship incidents." Back in the fifties and early sixties, when ALA had already established a proud record as a leading defender of intellectual freedom, we had done virtually nothing to oppose and eradicate the most vicious censorship of all — the racist barriers erected between black people and libraries in many sections of the country. We had black people barred from using what were properly *their* libraries, or limited to use of "separate but equal" (i.e. inferior) facilities, or treated to such indignities in their use of libraries (anyone remember "vertical integration" in Danville, Va.?) that to talk of intellectual freedom was a mockery. It was only through the courageous and prolonged efforts of a few librarians like E. J. Josey and, I am proud to say, an increasingly activist library press — including editors such as John Wakeman at the *Wilson Library Bulletin*, Bill Eshelman in California and John Berry in Massachusetts — that the consciousness of the profession and of ALA was sufficiently aroused to recognize that here was an intellectual freedom problem (not to mention a human rights problem) of immense dimension, and one which, if our traditional stance as a defender of intellectual freedom were to have any credibility, had to be addressed and overcome.

Our credibility will always be suspect as long as there exist wide gaps between the policies and principles we espouse as a community of librarians and the practices that exist at the individual institution level. Conable referred to "the major threat to our credibility that is inherent in the widespread failure to apply our basic principles to new technologies." He cited a number of issues that "threaten to undermine our core values if we do not confront them directly with courage and with honesty," including, he said, "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."

This is another example of why the title of this program is too narrow. There is not one word in the *Library Bill of Rights* about economic barriers to intellectual freedom. That is not to say that the American Library Association does not have a policy or set of principles which address this issue. Indeed Policy 50.4, "Free Access to Information," may be the single strongest and most unequivocal statement in the entire Policy Manual. It reads, in part: "The American Library Association asserts that the charging of fees and levies for information services, including those services utilizing the latest information technology, is discriminatory in publicly supported institutions providing library and information services."

Despite the ringing conviction of this statement it is clear that many members of our profession are not convinced that this is a principle they can live by. Indeed, a couple of years ago, ALA's Planning Committee, I believe, urged us to reconsider this policy because so much of library practice was not in accord with it. Now there's a constructive attitude! If we had all along shaped our policies and principles to match the worst of library practices, there never would have been a *Library Bill of Rights* or a set of Minority Concerns among our policy documents. We could have concluded, as indeed some among us seem to have done, that we have *no* principles, other perhaps than "expediency is the best policy."

In my view, the economic barriers that have been and are being erected in libraries and library service are the nearest 1980s and 1990s equivalent of the racial barriers of the 1950s, '60s and before. The people who most desperately need certain kinds of information to survive and progress in our society and civilization — the poor and oppressed, including many members of minorities — are those most likely to be excluded from the enhancement of information opportunity made possible by expanding technology. This situation is exacerbated by the government's handing over of much of this kind of information to commercial brokers who are unlikely to find it either profitable or enticing to distribute, given the economic base of the potential market.

One can have some considerable sympathy for librarians and institutions faced with the dilemma of vastly increased costs and declining tax support. And we cannot zero in on technology as the lone culprit. Some of the abandonment of our traditional principles and beliefs is the result of a climate set by regressive national administrations and a corporate world seeking new territories, both of which have sought to foster the idea of information solely as a commercial commodity, a product, and to abandon public responsibility in favor of private gain. We must not, however, change our suit of clothes to match the tailoring requirements of this breed, but must turn more of our efforts toward working assiduously for changes in national policy, for recognition that equality of access to information is an essential ingredient of democracy, of government not just *of* the people, but by and for the people.

If librarians are to lay claim to a leadership role in defense of people's right of access to information, though, we must make every effort to ensure that our performance in terms of service matches pretty closely the words we utter as a profession, through our Association policies and public position statements. The fees question is by no means the only area in which there is a serious credibility gap between pronouncement and performance.

Listen, for example, to our words in "Free Access to

Libraries for Minors," one of the interpretations of the *Library Bill of Rights*: "The American Library Association opposes libraries restricting access to library materials and services for minors. . ." and "the word 'age' was incorporated into Article 5 of the Library Bill of Rights because young people are entitled to the same access to libraries and to the materials in libraries as are adults."

Now how many public libraries do you know where the services to minors come close to equating with those policy interpretations? In how many libraries do children have unrestricted access to adult shelves? In how many libraries are youngsters permitted use of interlibrary loan?

Yet, 23 years ago almost to this day, a preconference in San Francisco on Intellectual Freedom and the Teenager, cosponsored by IFC, YASD and AASL, decided that not teenagers alone but all young people should be the focus of its discussions, and recommended that "free access to *all* books in a library collection be granted to young people."

Summarizing that three-day event, Ervin Gaines, then chair of IFC, dealt at some length with the comments of Edgar Friedenberg, author of *Coming of Age in America* and the most outspoken of the panelists on the program. Friedenberg said, among other things, "the library is just one more place where the kids are taught they are second-class citizens." Gaines reported that Friedenberg "made the assumption that intellectual freedom was an inalienable right, that age is not a morally relevant factor and that adults have themselves no right to determine for youth access to ideas." Sounding somewhat surprised himself, Gaines added: "This assumption echoed and re-echoed throughout the conference. There was surprising unanimity of opinion on this particular point."

Nearly a quarter-century later, I think it fair to say that our performance is far from reflecting that unanimity of opinion — *or* Article 5 of the *Library Bill of Rights*. Is it also fair to conclude that our fear of parents has weighed more heavily upon us than our belief in the rights of access of young people?

Public libraries, of course, are not alone in discriminating among their users. In how many academic libraries do undergraduates have access to materials and services equal to that of faculty, or even graduate students? In his article in the latest edition of the *Intellectual Freedom Manual*, Paul Cors, himself an academic librarian, says: "It is in the area of services, not collections, that academic libraries are more likely to fall short in their devotion to intellectual freedom," and he attributes this to the fact that "the academic community is a socially stratified one, and this stratification will affect the library." So here we see discrimination not so much on the basis of age as upon the basis of status — another item not covered by the laundry list in Article 5 of the *Library Bill of Rights*.

If the practices of some of our libraries tend to undermine the intellectual freedom principles we espouse, attacks on the freedom of speech and thought in the temple of purity itself, ALA, can only leave us subject to ridicule and charges of hypocrisy. In recent months, at least two librarian members of ALA have resigned from the editorship of division journals under pressures that we would probably abhor if they occurred elsewhere. In one case, the editor refused reappointment at least partly because the division president insisted on screening her editorials before publication. In the other, the editor was instructed, just prior to publication, to pull an article from the forthcoming issue because it was written by a candidate for the ALA Presidency. I asked at Midwinter whether this policy — referred to in some of the correspondence as an unwritten policy, which is an oxymoron — applied to candidates for all offices in ALA, and whether ALA was prepared to tell its members that in order to run for office they must be prepared to forego their First Amendment rights. One comment during the debate on this matter caught the ridiculous heart of the issue. A councillor said, "Of course we don't want our members to read what our candidates think while they are running for office. Better to wait until after the election. Right?"

Can we really expect individual librarians and libraries to adopt and adhere to ALA intellectual freedom policies when even units of the Association act as though the policies of the Association do not apply to them? The latest tactic of those whose desire to control information is stronger than their belief in freedom of expression is apparently to have these divisional journals edited by staff rather than members, on the theory, I suppose, that the freedom of speech of staff can be more easily curtailed. Such practices do great damage to the reputation of both the Association and the profession, and those involved need to be reminded of Ben Franklin's words: "We should all hang together lest we all hang separately."

I cannot close without a word or two about collections, which is where the spirit of the *Library Bill of Rights* lives, or should live. One of the things that concerns me here is that we seem to have focused much more of our attention and effort on defending what is *in* library collections than we have devoted to what is missing from them. This may be because those who want something *out* make more noise than those who want something *in*. But that is not the whole story.

Take the Salman Rushdie incident, for example. When Khomeini "called for international censorship, book burning and murder," to quote Pat Berger's splendid letter to the Chair of NCLIS, ALA and other library associations and many librarians throughout the country responded promptly and admirably, denouncing Khomeini's actions and demonstrating publicly their support of Rushdie's right to write and publish whatever he chose without being threatened with murder. Given how some other groups gave in to fear of reprisals or simply failed to act or express themselves, it was a moment to be proud of the library profession.

But what about the other side of the coin? There is no doubt that *Satanic Verses* upset many followers of Islam in addition to extremists like Khomeini. Could we say to them, your

side of the story, the achievements of Islamic civilization, the tenets of the Islamic faith, are well represented on our shelves for those who want to understand *why* Rushdie's novel caused such uproar? I doubt it. Yet there can be no excuse for a failure to exhibit such balance in library collections. For decades now one of the most powerful forces impacting upon world affairs has been the Islamic revolution, an impact comparable perhaps to the incredible collapse of Communist power.

But so it goes with issues. In a recent *Library Journal* editorial, John Berry wrote: "Libraries have never spent even a small part of the resources needed to dig out full information on issues like drug addiction, health care, the federal budget, housing, transportation, the savings and loan scam, or U.S. competition in foreign markets. Libraries have never adequately publicized the availability of that kind of information to the citizens who need it.

"Most library service would collapse after the first two dozen serious citizen inquirers grabbed what they needed to understand, in depth, on any of these issues." Berry's editorial comment is an exact echo of a comment made by Dan Lacy nearly thirty years ago: he was talking then of the Berlin problem.

In terms of living the *Library Bill of Rights*, I continue to wonder how far we have come since the classic Fiske Report of 1959. For those of you too young to remember, Marjorie Fiske, reporting on book selection in California school and public libraries, found that nearly two-thirds of all librarians who had a say in book selection reported instances where the controversiality of a book or author resulted in a decision not to buy. Worse, nearly 20 per cent habitually avoided buying *any* material known to be controversial or "which they believe[d] *might become* controversial."

For such librarians, if they still exist — and I am sure they do — there may be small hope, but library schools could do much to improve the attitude of future librarians if they would urge upon their students the advice of Dorothy Broderick, holder of the Robert B. Downs Award and one of the profession's most ardent defenders of intellectual freedom. Arguing that libraries must present an image of fairness, she says: "we would have to be sure that we are not imposing our personal values on the collection. My rule of thumb for that is that at least 25% of everything you buy ought to be personally offensive to you. I believe every library ought to have two big posters at the doorway. The first would read, 'This library has something offensive to everyone.' The second would read, 'If you are not offended by something we own, please complain!"

I am sure that Dorothy does not underestimate, any more than I do, the difficulties faced by the librarian on the front line, but we both know that principle cannot be defended by quiet acquiescence. Men like Nelson Mandela and Vaclav Havel understood that, and understood too the cost of defending freedom, but freedom and principle emerged incredibly the stronger for their refusal to capitulate.

We, too, have an obligation to resist attempts to limit freedom of expression in our country. Tom Wicker nailed that obligation with precision in a column a couple of weeks ago. What really threatens freedom of expression in America, now only more visibly than usual, is the persisting fear of difference, and the willingness to be different, even to be despised.

"Political dissent, provocative or outrageous art and expression, social protest, an insistence on the rights of the individual — all at some point," said Wicker, "strike fear into the hearts of many who loudly extol the land of the free. But that land cannot exist if it is not also the home of the brave."

Those who produced the *Freedom to Read* Statement in the dark days of McCarthyism understood that when they wrote: "Freedom itself is a dangerous way of life, but it is ours."

Living the *Library Bill of Rights* can be dangerous, too, but if we fail to do it, the role of libraries and the library profession in society will, over time, crumble into insignificance. And the people will be the poorer for it. We must not allow that to happen. □

remarks by Ginnie Cooper

Ginnie Cooper is currently the Director of the Multnomah County Library System in Portland, Oregon. She has served as Director of the Alameda County Public Library in Fremont, California, and the Kenosha Public Library in Kenosha, Wisconsin. Prior to that, she held positions at the University of Minnesota Medical School Library, the Washington County Library in Lake Elmo, Minnesota, and the St. Paul Public Schools. She has served on several national committees of the American Library Association, and received the Librarian of the Year Award from the Trustee Section of the California Library Association.

I'm not foolish enough to think you are here to listen to me. I was tricked into this. I received one of those phone calls where they say, "There are at least six people ahead of you who we're going to talk to, but if we really get desperate, would you be willing to respond to Eric Moon's speech?" And, in a moment of foolhardiness, with much else, including changing jobs, on my mind, I said, "It's a long ways off. . .sure." And lo and behold, here I am!

If responding to Eric Moon means disagreeing with him, then I shouldn't be here. In my heart, I don't disagree. In addition, I'm not foolish enough to disagree before THIS particular audience!

There are others in our profession who have the same values that Eric has just espoused. They hold those values

with the same kind of conviction, and carry them out with all the vigor that he, and we, might wish. He says all the things that are true, principles in which I believe, and the values that drew me to be a librarian — living the *Library Bill of Rights*.

I think my credentials in this regard are pretty good. Like many of you, I have fought a battle or two. I'll give you just a few examples, beginning with the library board member in Kenosha, Wisconsin, who wanted to know who had a particular book, so he could get it. He knew the book was overdue. He had been waiting for it. When he asked the circulation staff member for the name and telephone number of the individual who had the book, he knew that information was readily available. You remember those days. . .it was when the book cards were filed at the circulation desk with people's names and phone numbers, and such information was very easy to look up. In fact, at one point, the Library Board member reached over the desk to get it. He didn't get the information, although the resulting discussion by the Library Board (that finally backed my decision) was very, very interesting. There were a lot of people who needed to work through this issue to understand why such a simple thing as giving the board member a borrower's name and address was *not* going to be done.

Another example occurred at Alameda County. I had been a County Library Director for less than six months, when a fairly newly-elected member of the five-man — they were all men then — County Board of Supervisors called me with what he felt was a very straightforward request with which I should comply immediately. He asked me to get rid of a particular book from the local public library that a neighbor, and a constituent, had found in his son's room and brought to him. This county official and his neighbor agreed that this book — the title of which was *Recreational Drugs* — had no redeeming value. The son was suspected of being on drugs. These two men were convinced that this book was a contributing factor in this problem.

Now, this was complicated slightly by the fact that we owned a lot of copies of this book. We bought it, literally, by the caseload. It was an excellent book for a particular school assignment required of all seventh graders in California. You know the kind of thing — written at exactly the right level, perfect for the one-and-a-half-page-long essay on a required drug assignment.

The results of this case were also interesting: a lot of news coverage, a lot of posturing by a lot of people, and plenty of talk. Some would tell you I "sold out" my principles by agreeing to keep the book on the reference shelves, and not circulating it for six months, although we made a very strong point that access to minors was not restricted, and that the book was on open reference shelves (not closed) so it was justifiably available to all who had heard about it. We actually did have strong interest because of the media attention.

After this relatively short period, the book was available, on open shelves, as before. The remaining caseloads of the paperback copies we bought (both before and after this incident) remain there now, and still circulate. I wanted to end the discussion and defuse the polarization that had gone on. Much had been won in this battle, including an understanding on the part of the Board of County Supervisors that this was, in fact, a larger issue than it had at first seemed to them. An added benefit was the identification of many in our communities who would be the library's supporters in these and similar issues in the years to come.

My last example is on the book *Show Me*! A number of you know this book, I'm sure. Published more than ten years ago, it's a sex education book designed to be used by children with their parents or others in discussion of sex-related questions.

It's a beautiful book, well reviewed at the time of publication, with beautiful black and white, explicit photographs. It's a favorite target of those who would like to raise community awareness of the library's "collection of smut," as one community member referred to it. And there were those who saw this issue as a way of raising their own visibility in that same community.

By the way, for those of you who have been following the Mapplethorpe case, I had the opportunity to see the photographs on display in Berkeley a few months ago, and let me assure you, the controversial photographs of the two children are nothing in comparison with those in this particular book, or in a number of others in our collections. I mention this just so we keep in mind the fact that this battle is ours, as well.

At Alameda County Library at that time, we owned two copies of the book that remained from the original purchase of ten or so. The book had been on our shelves, and had circulated many, many times without incident. Alameda County Library was one of several libraries in the country who fought this particular battle.

In our case, the fuss was enormous. There were a lot of phone calls, a lot of letters, many newspaper reports, editorials, and — this is how I really measure whether an incident is major — there was a lot of local TV news coverage. I even had the experience — may it never be repeated — of having reporters waiting outside of my front door with TV cameras, while I went out the back door. There was a major hearing before the library's advisory board with three or four hundred in attendance, picketers with inflammatory signs, and lots and lots of speakers for and against the material. In the end, the Library Board and the elected County Board of Supervisors followed my recommendation that the book remain a part of the collection, and continue to be available.

But do I present myself to you as someone who has lived the *Library Bill of Rights* perfectly? No, far from it.

For example: I've already explained the *Recreational Drugs* issue, and told you that many believed that I ought

to have done something other than the compromise that we worked out.

Another case in point is *Playboy*. This is an example of the way in which I was, and am, far worse.

At a number of our branch libraries, *Playboy* was held behind the reference desk. Our reason for doing so was because we were afraid people would steal the centerfolds and other pictures. But in truth, I know that it's less likely that kids will get that magazine when it's held behind the reference shelf, and that means we'll be less likely to have complaints about it.

Third case example: at the new library where I am now Director, one of my first actions on the job was to remove the $5.00 annual fee that was charged to those who wanted to take videotapes from the collection. But have I removed the fee that we charge for database searches? No, not yet.

Finally, and most serious, is that I am rarely as up-to-date as I ought to be in terms of the important issue of training staff on this important topic. I remember that most often complaints first come to the circulation desk staff who have the least professional training in this area, the highest turnover rate, and the poorest ability to deal immediately with such a situation.

I'm not proud of the things I've just described to you. But on the whole, I am proud of my service record. I have strived to make sure that equity of access is possible. I have sided with the right of children's privacy when the issue of parents' access to circulation records became an issue. And there are a number of other areas where I think I've done what I needed to do.

I want to tell you briefly about something serious that can happen, though, to those of us who adopt the position that Eric Moon described so well earlier this afternoon — those who understand and espouse the traditionally held beliefs of our profession — the kinds of things that can happen, in fact, to you and me. We can forget about the need to engage in discussion with those critical of our policies. We can forget, in fact, whose library it actually is. We develop elaborate, off-putting forms and procedures that ask people to write, in detail, about a particular policy or a particular item of our collection about which they want to register a complaint. You know. . .the forms that say, "Have you read *all* of the book?" and "Specify the particular pages that you found offensive. Please list." Then, sometimes in responding to those who fill out such a form — that form, by the way, should be a truly easy way to make a comment; an invitation to comment, rather than a barrier — we sometimes send people reviews of the book from "experts" who say that the book, videotape, or whatever it is, is really fine, maybe even recommended. This is just another way to say to the person who is making the complaint, "See, we know more than you. You are wrong. We are right. The book really is fine. The videotape is fine for children. And, in fact, this group meeting in our meeting room really is a good group."

How does a member of the public respond to this? I'll tell you how I would respond if I were treated like this. I'd be angry. I would feel the library was trying to put me down. And I think I'd be right. I'd certainly have no love or respect for that institution. I expect that in those circumstances, phrases like "Who do those librarians think they are, anyway?" and "Those are my tax dollars they're spending on those dirty books that they're allowing my children to see," or whatever the issue is the patron may raise, are frequently used. These attitudes and ways of behaving create real problems.

Somehow, what we really need to do is encourage dialogue with those we serve. Our aim might well be to change the focus of the discussion, to frame the question differently. For example, don't discuss whether *this* book is acceptable, but rather why the library has a wide range of materials available, including some that insult everybody. Talk with them about parents' responsibility to be involved in their child's reading, listening, viewing, rather than control being turned over to any other body — the library in this case. Discuss the desire and the need for the library to represent the real world, not a particular vision of an ideal world. Talk about the fact that the library has a variety of viewpoints available, rather than endorsing or recommending particular points of view.

What I've suggested here is difficult, but very, very important. Truly, we betray the principles we cherish and the values important, not just to us, but to the future of our democratic nation, more by our disrespectful handling of those who disagree with us than by anything else we do.

Those who challenge our principles, whether in specific items in our collections, or in our exhibit or meeting room policies, or the access we allow children to all of our services, agree with us about two things that are fundamental:

First, that ideas in the library are powerful and important. If we didn't believe that, we wouldn't be doing what we're doing.

Second, that the library is the public's library, not yours, not mine.

Somehow, I believe there must be a way — and I know this sounds naive — to find in these common beliefs of the importance and values of ideas, and the value of the public's library, a way to make allies of these people, at least in some instances.

This is part of the difficulty of living the *Library Bill of Rights* — to recognize our own imperfections, to talk about examples not only of what we've done well, but the ways in which we could improve how we handle these situations. This requires a commitment, as Eric Moon said earlier, from all of us, and a renewed dedication to those principles. It's about our actions, our acts of omission as well as commission, every day, in many, many ways. Thank you. □

remarks by William Jones

William Jones is currently the Acting Director of the Library of the University of Illinois at Chicago. He also has been Assistant University Librarian at the same institution; Head Librarian at both the Mudd Library for Science and Engineering and the Technological Institute Library at Northwestern University in Evanston, Illinois; and Librarian at the Institute for Social Research at the University of Michigan. He is the author of many journal articles, most recently "Patterns of Information Seeking in the Humanities" in College and Research Libraries. *He is Chair of the American Library Association Constitution and Bylaws Committee; and Chair of LAMA's Networks Task Force Committee and Committee on Organization.*

Mr. Moon, Ms. Cooper, Mr. Davis, friends, and colleagues, I am honored to be among you, discussing a topic of such vital importance to the well-being of our profession, and vital to the health of our society. Because I am an academic librarian, and have devoted my professional career to academic libraries of one kind or another, my remarks will be made from the perspective of academic library use. That differs, in a number of respects, from public and special library perspectives, and it may be instructive to see whether the differences have implications for the principles of intellectual freedom.

I will re-state the text of Article V of the *Library Bill of Rights*, "A person's right to use a library should not be denied or abridged because of origin, age, background or views."

The Summer, 1990, Intellectual Freedom Round Table *Report* states that many believe equality of service is explicit in the document. And it is likely that such issues will continue to be debated within IFRT and other forums.

I would suggest that one of the first issues for us to consider is whether rights of use, equality of access, and equality of service are meaningful distinctions; and, especially, whether there is a presumption that we are required under them to adopt identical operating procedures and policies for all users. Because academic libraries, in fact, have such a wide range of policies governing use, we should consider for a moment why this should be so, and what it is about academic institutions that lead to them.

Academic institutions, that is primarily colleges and universities, provide instruction and training for an educated citizenry, preparing it to assume positions of responsibility within our society, with the capability of promoting the general welfare of its members. They teach their students to read critically and to think analytically, and through the efforts of their faculties, individually and in collaboration with each other, they create new knowledge for the increase of human understanding and well-being.

Article I of the *Library Bill of Rights* acknowledges that libraries serve communities. Its wording is that "books and other library resources should be provided for the interest, information and enlightenment of all people of the communities the library serves." At the heart of this article is the obligation of the library to serve all people within the community that supports it, and it implicitly recognizes that there may be more than one kind of community, whether it be political, social, religious, or some other nucleus of information. Universities are one kind of community, and they create libraries to serve them, as do municipalities, businesses, churches, and governments.

Once a library has been created, an organization must be created to administer it, collect materials, catalog them, and to see that its contents are made available to the sponsoring community in a way that will sensibly meet the needs of that community. In the case of universities, that would be the faculty, who are empowered by centuries of tradition to determine the content of the academic curriculum, and how it is to be taught. Others may administer or determine what is to be taught, but the manner of teaching is, and has been for many centuries, a faculty domain.

Those who manage the library, then, make determinations about loan periods, hours, circulation policies, and creation of service points that equitably allocate resources to insure that the various goals of the faculty in their teaching roles are met. Policies governing use may not be, as a result, uniform within the university. But principles of free exchange of information, openness of debate, and exchange of criticism may still be preserved.

In private universities, service may be limited to those who are directly members of the community, and it is true that library use may be hard to come by for those who are not members of that community. In state institutions, also, access can be limited to the academic community. But the pattern established in the great land grant institutions of research, teaching, and service has usually resulted in access to library collections for the public community that sponsors them, even if it does not insure equal treatment within them. That is entirely appropriate, in my view. But I am here partly to tell you that, as far as I can determine, universities are doing very well at providing access to libraries for communities within them as well as without.

For example, the University Library of the University of Illinois at Chicago makes available to its students and faculty, collections that circulate over several hundred thousand volumes each year. UIC ranks second, nationally, only to its sister campus in Urbana-Champaign in interlibrary loans, partly as a result of the state-wide resources sharing system supported by the Board of Higher Education and the State Library. As the home of the Regional Medical Library, UIC offers extensive access to collections and information services to a ten state midwest region. We have no hard data on public use of collections by members of the community on-site, but we believe it to be high, as it surely is at other public, urban research libraries.

My colleague, Stephen E. Wiberley, Jr., and I have been

engaged for two years in a project to study the information seeking behavior of humanists, and we have learned that their reliance on libraries and archival sources across the globe is extensive. My friend, James Bennett, recently quoted in the *Chronicle of Higher Education* for his work with independent scholars, that is, those not formally affiliated with academic institutions but conducting serious scholarship, tells me that virtually no scholar is denied access to research library collections, and that universities are usually flexible in making arrangements for their access.

Anthropologists, historians, and literary scholars have all told us of librarians and archivists who have gone out of their way to make it possible for them to use libraries and their collections effectively. The principle of use enunciated in the *Library Bill of Rights*, not only for the groups identified, but for all citizens, is doing very well.

But I should not leave you thinking that my outlook is entirely sanguine. I see problems of use for the public community in the large sense that surely constitute infringement in spirit, if not in a literal sense, of Article V of the *Library Bill of Rights*.

There are behavioral and social considerations. Documented in the literature and from accounts of those to whom we have spoken is our lack of success as librarians in creating an environment where our reference and information services are seen as approachable by users. This will come as a surprise to many harried reference librarians, but many users admit to fear at admitting that they do not know something, particularly those who are considered to be experts in the field. I believe we have very little understanding of how design of services and service points promotes or hinders use. Libraries are not fast food emporia, department stores, supermarkets, or other centers of commercial activity, where counters and queues are the standard model. Reference desks are places where people go in search of assistance, and some other designs for service, possibly older models reminiscent of temple use, may be worth exploring, especially when compared with the fast food model of reference services.

There are also geographic considerations. Academic institutions, just like library information desks, can be very hard to get to. Some of the largest are placed away from metropolitan areas in bucolic settings surrounded by farm pasture. Urban institutions often have boundaries that repulse intruders. Although concerns for security and the establishment of formal methods for gaining access may be justified, we should think carefully about whether we are placing unnecessary obstacles to use, or as Robert Frost said, know what we are fencing out and fencing in.

Long ignored was the forbidding nature of most campuses to the handicapped. And only recently, under pressure of legislative action, have improvements been made.

There are economic considerations. Our humanist colleagues made us very aware of what it means, in terms of convenience and efficiency in doing their research, to have adequate equipment. This is no longer a matter of sharpened pencils and clean paper, but having laptop computers with which to take notes, hand held photocopiers, and microfilm cameras of their own. There is a kind of economic elitism, and when dealing with libraries in other counties, even imperialism that derives from the very well-funded, and we should be aware that library access, like access to almost anything else in our society, is made easier for those with ample means.

At the same time, declining budgets are surely leading to less diversity in collections, less breadth and depth and scope of collecting. Are our rights to information infringed as we become a country less willing to support our libraries?

And then there are political considerations. The use of politics to abridge our rights to information needs no further example than the surveillance of libraries by the FBI in the Library Awareness Program; the tendency to impose excessively restrictive classifications on government-sponsored information; and the declining federal support for deposit of publicly financed information in depository libraries.

We have barriers of our own making. Poorly designed catalogs, automated or manual, and unprocessed collections may effectively limit use of libraries. Are we confident in our knowledge of how people use such resources of the library; that we have sufficiently enlarged the opportunities for access, especially for those whose ability to use them is limited?

There are preservation considerations. Rudy Rogers, the librarian at Yale once said that the Yale Library swept up a book a day in its stacks. Are we abridging rights of use by failing as a nation, and as a society to take effective steps to secure our irreplaceable collections for future generations?

And there are ethical considerations. In a free society there is always tension between the rights of the individual and the good of the community. I mention this, because one of our historians working in the area of European colonial history, used archives from which he came to have some knowledge of people who would today be accused of collaborating with the enemy, and who even now would have their lives endangered. How do we insure access to information, yet protect the individual from public disclosure of potentially harmful kinds of information and its unethical use?

I close by suggesting that living the *Library Bill of Rights* requires us to think seriously about how resources are allocated, and socially useful ends achieved.

Can we assure diversity in a research library, and even build ones for the future, so that the rights of future generations to knowledge of our generation is not abridged, even when we're not sure that what we're collecting will have value? I'm reminded, in this regard, of Vartan Gregorian's comment about the preservation of Warsaw telephone books in the New York Public Library. For years, there were those who wanted to throw them out, until at some point these

telephone books were recognized as important sources of information about Jews who had perished in the Warsaw Ghetto in World War II.

Can we find ways of preserving various kinds of records until their value is realized, until they become important enough for people to create access to them? In today's scholarly environment, almost any topic has become researchable. How do we preserve the perishable records of our time: electronic messages, game shows, commercials?

And a final question: can we look to a time when the enduring principles of the *Library Bill of Rights* are legitimated through legislative action, not just as a statement of principles of our Association? Thank you. □

question and answer session

Question: Mr. Moon, I agree that Article V of the *Library Bill of Rights* could be improved by something being done along the lines you suggest, but a more effective, powerful, punchy amendment could be made by changing the period at the end of the current sentence to a comma, and adding "or any other factor."

Moon: I hope Gordon Conable is here, and is taking notes, and that the IFC will consider that change.

Question: Many of us loathe the apartheid regime in South Africa, but in our own Association we have some [members] urging limits on the information we can give to South Africa. Our own social freedoms group in Dallas last year adopted a position advocating guidelines limiting interlibrary loans, photocopies of material, and travel to South Africa, which seems to me to be a violation of our adopted policy on intellectual freedom. Would you comment on the apparent or real contradiction in these positions?

Moon: I've been waiting for this one. As you know, over the last several years, we've had a number of heated debates on this issue. I think anybody who doubts my position on apartheid, or on racial matters, does not know me or know anything about my record. I am thoroughly against apartheid and what the South African Government has been doing for a long long time. However, having just read my good friend Zoia Horn's article in *Library Journal*, and re-read it to see if she could convince me, I have to tell you I am still in disagreement with Zoia Horn, because I, too, believe that our present policy on South Africa is in violation of ALA policies, including our adoption of Article 19 of the document I cited earlier. I do not believe that you can successfully fight censorship with censorship, and that is my position, pure and simple.

Question: Just a couple of comments: when we were revising the *Library Bill of Rights*, as Martha Gould reminded me, we wanted to make the statement, as you suggested, Eric, that a person's right to use the library shall not be denied or abridged, period. But various units of this association said, "No, no, you must include age, you must include this, you must include that." We were also considering the economic condition, an issue you brought up, which is why we constructed the language as broadly as we did to be as inclusive under an umbrella as we possibly could. In that revision of the *Library Bill of Rights*, we also specifically wanted to include academic libraries, which is why the language of Articles I and V is written as it is.

Question (Zoia Horn): I had thought that when I had written the *Library Journal* article that Eric Moon mentioned that I had finished my job. I stand, uncomfortably, to defend, and to assert something that is very important, and that is, we are dealing in South Africa with the issue of racism. The major tool of racism is censorship. The reality is that when you are dealing with a country that uses censorship, what is allowed to be read by whom is controlled. And everybody, both white and black, suffer from this censorship. The ALA has a long history of being against racism. At one time, we refused to provide library materials to racist schools that were trying to avoid integration. We made a policy on that score. We have also supported nationals in other countries who were suffering from suppression, repression, and so on. I think the reality of supporting the boycott is a recognition that we are supporting those forces in South Africa that are trying to stop censorship, to allow for the maximum access of information of all kinds to all the people, not just those who are in a comfortable position, the white minority, who are being served now. Even if the boycott was to be lifted, the likelihood of the kinds of books that would be permitted to come in, or that would serve the majority of black people in their needs would be non-existent. I am aware of the fact that libraries have now been desegregated, as of a few days ago. That does not, however, open the doors of libraries all over the country. The libraries are mostly in the white neighborhoods, and those that exist in the black neighborhoods are pitiful, if they exist at all. I think that I would urge you to read the article, because I go into greater detail, and I hope more eloquently that I have been able to speak now.

Question: There is a set of guidelines for collection development in South Africa that were originally promulgated by the South African academic librarians in this country, that I think, in itself, demonstrates that one can both advocate and bring forth a whole range of documents that would otherwise be suppressed and censored in South Africa, and at the same time not censor the majority side. This set of guidelines was narrowed somewhat by SRRT, in ways that at least some of us didn't like, but basically, it still is a good set of guidelines, and I urge you to take a look at it. Eric, I've been quoting your ringing line about those who pay the most get the least service, in my own academic library, and I get a response of outrage from a couple of teachers. That is, somehow this sense of status is so ingrained, that is, the notion that we need the books more because we are setting curriculum and doing our research,

and we're underpaid; that kind of argument. Taking courage from you, as many of us do, I've still held the line, but I wondered if, you Mr. Jones, too, would like to comment.

Moon: I would think you might appeal to the vanity of some of your faculty members, which isn't hard to do, and suggest that maybe the students need the books more than they do, because presumably the students have more to learn.

Jones: I almost said that, in some ways, I thought that probably undergraduates were better served than the faculty in our institutions. We really are aware of students' needs, and spend a good deal of time trying to devise ways of reaching them, whereas we assume the faculty know what they want. Our own research, however, has shown that [faculty] are quite unwilling to ask questions. Nonetheless, there is the question about what would be the consequences of giving students exactly the same access as we give faculties. I think we do pretty well. □

ALA Conference
Sen. Leahy on intellectual freedom

The following is the text of remarks delivered by Senator Patrick Leahy, Democrat of Vermont, at a program sponsored by the ALA Intellectual Freedom Committee and the Association of American Publishers Freedom to Read Committee at the 1990 American Library Association Annual Conference in Chicago. Sen. Leahy chairs the Appropriations Subcommittee on Foreign Operations and the Judiciary Subcommittee on Technology and the Law, and is former vice-chair of the Senate Select Committee on Intelligence. During the 100th Congress, he led the intensified scrutiny by the Senate Judiciary Committee of nominees for the federal courts. He was a principal architect of legislation that will give copyright protection to U.S. firms and individuals against international piracy of tapes, records, and television signals. Sen. Leahy has received numerous awards for his work on behalf of the First Amendment, and was the first recipient of the James Madison Award for protecting the public's right to know, given by the Coalition on Government Information, an organization initiated by the American Library Association.

Good morning. I always welcome the opportunity to speak to a group of librarians and publishers — particularly about the First Amendment.

Thomas Jefferson said:

> "I have often thought that nothing would do more extensive good at small expense than the establishment of a small circulating library in every county, to consist of a few well-chosen books, to be lent to the people of the county, under such regulations as would secure their safe return in due time."

He recognized what history has proven — that libraries and the books in them contain a wealth of information. That information is valuable not just because it is entertaining, but because it gives us the power to understand what is happening in the world around us. That power is the key to exercising our right to govern ourselves.

Just over 200 years ago, the Congress of our new Republic sent the Bill of Rights to the states for ratification. The debate over these first ten amendments began during the Constitutional Convention in 1787, when many argued that it was unnecessary to delineate basic liberties because the government had no power or authority to abridge them.

Not everyone agreed. To quote Thomas Jefferson again, "A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference." Imagine how different our history might be if Jefferson's argument had not prevailed.

Imagine a government unrestrained by guarantees of freedom of speech, freedom of religion, freedom of the press, trial by jury, or freedom from cruel and unusual punishment. Our Constitution reflects the collective genius and experience of early Americans who fought for the right to govern themselves. They earned that right and fashioned a democratic framework to protect it.

The First Amendment, perhaps more than any other provision of the Constitution, reflects the essence of American democracy. It protects the rights of all Americans to say what we want, to pray or not to pray, to defend and offend beliefs as we please without the threat of government censorship or reprisal. It ensures the rights of the minority — even a minority of one — in a political system run by the majority.

Every American holds dear the freedom guaranteed by the First Amendment. As the son of a Vermont printer, it has special meaning for me. My father was the publisher of a weekly newspaper, and I grew up in a family which venerated freedom of speech.

I learned that freedom of expression is the First Amendment to the Constitution for a very profound reason. If we are not free to express our thoughts, the inalienable right to govern ourselves is meaningless.

Tomorrow, the Senate will decide whether to pass an amendment that would limit the scope of the First Amendment for the first time in our nation's history. The House of Representatives defeated that attempt last week and I hope that the Senate will do the same.

Some have argued that a constitutional amendment to prohibit flag burning is a small, insignificant infringement on the First Amendment. But there is no such thing as a tiny chip in the liberties guaranteed by the Bill of Rights. Does anyone believe that we can afford to infringe on the First Amendment even a little bit? And if we do, where do we stop?

Through two world wars, a bloody civil war, a great depression, the addition of 37 states, and the succession of 41 presidents, the United States has survived without any

amendment to the Bill of Rights. Through each challenge to our core principles and values, the basic charter of liberties survived unscathed. Our predecessors demonstrated wisdom and foresight. It is time for us to do so as well.

Many serious issues demand the attention of Congress. Will we ignore them to debate issues that are more symbolic than real? Will we ignore the fact that the S&L crisis could cost this nation $500 billion? Will we ignore the fact that one in five American children lives in poverty and hunger? Will we ignore the fact that drugs and drug-related violence are threatening the future of our youth?

Will we ignore an issue of particular importance to all of you — the fact that millions of Americans cannot even read or write? To those who advocate a constitutional amendment, I say, it is unnecessary, unprecedented and ill-advised. All over the world people are embracing our principles of freedom and democracy. Now is *not* the time for us to betray them.

We should reaffirm those principles and resist all threats to our intellectual freedom — whether they take the form of

- a constitutional amendment to restrict the Bill of Rights, or
- book censorship, or
- the FBI's Library Awareness Program, or
- an assault on the National Endowment for the Arts, or
- the nomination of federal judges who would limit our freedoms.

Each battle we lose chips away at our fundamental liberties. Vigilance is our greatest weapon in the battle for freedom of expression.

I have found that within the government, the greatest threat to freedom of expression and freedom of the press may be the government's reluctance to share information.

The single best way for the American people to monitor what their government is doing is through use of the Freedom of Information Act, which gives meaning to the public's right to know. This "right to know" guarantees our power to prevent the government from infringing on our liberties. Its existence and vitality remind the government that we are free citizens with not only a right, but an obligation, to govern ourselves.

Government officials who withhold information beyond the scope of the Act's exemptions frustrate the principles of democracy, censor information that belongs in the public arena, and violate the law. We in Congress try to monitor this government censorship, but we cannot do it alone. We rely on requesters who believe in access to information to alert us to illegal or intransigent agency practices.

We have had our hands full in the last decade. During the Reagan years, the Administration used every means at its disposal to gut the Act — executive orders, delays, budget cuts, restrictive interpretations of fee provisions and Orwellian legislative proposals. FOIA requesters were treated as burdens, not as the beneficiaries of a statute whose fundamental premise is that American citizens have the right to know.

We have had more encouraging signals from the Bush Administration. At a conference of the American Society of Newspaper Editors, the President said that FOIA "was passed to facilitate the distribution of information." In response to my questions at a Department of Justice oversight hearing, Attorney General Thornburgh acknowledged that delays and agency intransigence would contradict the President's commitment to open government. But concrete changes have been slow.

New technology — particularly computers — offer the potential to improve access to government information both for libraries and for individual FOIA requesters. Through the Depository Library Program, libraries are using new technology to disseminate government information to the public. From computerized catalogs and circulation systems to electronic bulletin boards and CD-ROMS, libraries have moved into the computer age.

So much is going on. Just look at the new information infrastructure developing in Vermont. The state colleges have a terrific interactive TV network, and Patty Klink has the card catalog of virtually every library in the state on-line in her office in Montpelier. That is service. And those are the benefits of the information age.

From the FOIA perspective, we must ensure that the information age and increased use of computers by the government do not provide the means by which those who seek to restrict access to government information can do so more insidiously. We should work together to ensure that federal agencies apply the FOIA to all government information — whether that information is recorded on a piece of paper or in an electronic database.

This fall, my Subcommittee on Technology and the Law will hold a hearing to examine the issue of electronically stored government information. I welcome your suggestions for ensuring that government information remains accessible in the computer age. We are working on the best way to approach the issue of electronically stored information. Now is the time to reaffirm that the same principles apply regardless of the technology or the medium involved.

I ask you to work with me to promote the pursuit of information, scholarship and research. Our democratic system depends on the robust debate of an informed public. As the repositories of the greatest stores of information, you play a vital role in the enlightenment of the American public.

As Lawrence Powell, librarian emeritus of UCLA said: "The good librarian recognizes a threefold obligation — to the past for its heritage, to the present for the support which maintains him and his charges, and to the future which may flower in a Montaigne, a Cervantes, a Goethe, to the ennoblement of mankind." □

ALA Conference

Charles Bailey: "what's novel for the '90s?"

The following is the text of remarks delivered by author Charles W. Bailey at a program sponsored by the ALA Intellectual Freedom Committee and the Association of American Publishers Freedom to Read Committee at the 1990 American Library Association Annual Conference in Chicago. Charles W. Bailey is co-author of Seven Days in May, *one of the most famous political suspense novels ever written, but he is primarily a journalist. He was a Washington correspondent, Washington Bureau Chief, and Editor for the* Minneapolis Tribune*; and he has served as Washington Editor for National Public Radio. A trustee of the Carnegie Endowment for International Peace, he has been a member of the board of the American Society of Newspaper Editors, President of the White House Correspondents Association, Secretary of the Overseas Writers of Washington, and a member of the Standing Committee of Correspondents, the governing body of the Congressional Press Galleries. Besides his fiction, he is the author of, among other non-fiction works,* Conflicts of Interest: A Matter of Journalistic Ethics, *published in 1984 by the National News Council.*

Thirty years ago, the student editors of a college newspaper invited E. B. White to speak at their annual banquet. He replied promptly by collect telegram: "SORRY CANNOT SPEAK. DO NOT KNOW HOW. MANY THANKS." I may say this is not the first time I wish I had written something that E. B. White wrote.

It has always amazed me when people actually invite writers to talk. Especially newspaper writers, who have always been glad to talk about almost anything to almost anyone just for the sport of it. But nowadays some of them actually earn more money talking than they do writing, which seems crazy to me, especially when you hear what they have to say.

Nevertheless, I am delighted to have a chance to speak to a roomful of librarians. Now, a cynic might assume that's because I have a new book coming out next winter, and I confess it did occur to me that I ought not to pass up a chance to meet so many people who buy books. But mostly I am glad to be here because it gives me a chance to thank you all for providing the resources that make possible the work of so many writers.

I am particularly grateful because I am lucky enough to live only a short subway ride from the Library of Congress. I recently spent nearly two years there. It was my first experience with the Library, and it was mind-blowing. I had reserve shelves and even a private study room to work in, and cheerful and capable librarians, and there were books I never dreamed of. I am still working there, and this month I have been in the manuscript division reading the correspondence of Teddy Roosevelt and William McKinley and Mark Hanna and William Jennings Bryan. And when I get tired of doing that, I can step down the hall and find all the major American newspapers and magazines of the 19th and 20th centuries on microfilm. And all free for the asking. So if anyone asks me what I get for my federal income taxes, I have a pretty good answer.

And to some degree all those resources are replicated in every university library or public library or state historical society. So let me just begin by saying thank you. I'll be around to see some of you in the next couple of years, because I am about to start work on another book. It's habit-forming.

I can't promise you, however, that my next book will be another work of fiction. The one I have just finished is a novel by accident, or rather by default. It started life as a work of non-fiction. I set out to write a history of the politics and politicians of the Great Plains. I spent most of my newspaper life as a political reporter, and I covered a lot of Great Plains politicians—Hubert Humphrey and Lyndon Johnson; Sam Rayburn and George McGovern, Bill Langer of North Dakota, Mike Mansfield of Montana—and more.

These men always seemed to me a special breed. Someone once said of Hubert Humphrey, "There must have been something in the water." Well, I'm not sure about that, but I am sure that the Great Plains have had a much greater influence on American politics than their population would lead you to expect, and those larger-than-life politicians had everything to do with that.

But there was more. The Plains also spawned the greatest agrarian revolt in our two hundred years. It bore the label of Populism, and it reached its climax with William Jennings Bryan and the presidential campaign of 1896. Bryan lost to McKinley, but the Populist ideas survived and found their latter-day expression in the Progressive movement and in the reforms of Teddy Roosevelt and Woodrow Wilson. The angry farmers failed — but their ideas won.

I wanted to write a book about all this. But after spending the better part of a year reading and researching, I found I had plenty of material but I didn't have a book. Or at least that's what my wife, my agent and my editor said, and they were the only people whose judgement mattered at that moment. What they really meant was that even if I could write that book, they thought no one would buy it.

I was discouraged. I was depressed. Depression is the writer's favorite disease, and I'm like all the rest of them. ut then my ever-helpful wife said, "Why don't you turn it into a novel. You know how to do THAT." This reasoning appealed to me, dangling as I was over the precipice of failure. More important, the idea appealed to my editor, Michael Bessie; and so I sat down and began to write.

I knew how I wanted the book to start and I knew how I wanted it to finish. That was the easy part. It was a lot

harder figuring out what to put in between, and several funny things happened to me on the way from beginning to end.

First, I discovered that it is a lot easier to write a book when you have a collaborator — especially a collaborator with a vivid imagination and a knack for plotting. I had forgotten that my major contribution to *Seven Days in May* and the other books I did with Fletcher Knebel had been to RE-write and to tone down his purple prose. This time I was on my own, and I soon learned what hard work it is making up a story all by yourself.

My second discovery was that I had collected a lot more historical material than I was going to be able to use. The cast of true-to-life characters was so strong — Bryan, Mark Hanna, McKinley, LaFollette, George Norris, and both Roosevelts, to name just some of them — that it threatened to overwhelm the story and the fictional men and women I had so painfully invented. So the writing of this book became an exercise in creative tension — with real public figures and events competing for attention with my new friends, the characters I invented.

It's a tricky business mixing real and imagined people, but it can be done — as has been demonstrated by Gore Vidal, Doctorow, Dos Passos, Kenneth Roberts, Walter Edmonds, and others. I tried to be historically accurate in writing about real-life public figures; wherever possible I have used their actual on-the-record words, and I have worked hard not to ascribe to them views that I did not know, from hard documentary evidence, that they actually held. I tried to use history as the background for the adventures of my fictional characters, placing them front and center in the story. The result, I hope, is a fair mix.

Along the way I discovered a third thing: It is quite true that characters do really acquire a life of their own. Some of them turned out quite differently than I had planned; they simply would not want to behave as prescribed in my outline. For example, I had originally perceived one of the major characters as cold and selfish; he turned out to be a much nicer fellow as the writing went on and I got to know him better. In fact I sometimes went to bed at night wondering what my characters were going to be doing when I turned on the word processor in the morning.

A particular joy of this project was that I was working with events so far back that I had no problems with government secrecy or security classification. That was a welcome change from my reporting years in Washington and from the first book Knebel and I did — the story of the World War II atomic bomb.

We started work on that book in 1959, the year that all kinds of hitherto secret papers relating to the bomb were released from security classification. The air force and navy were quite cooperative, and they quickly declassified everything we asked for. But the army held out, and after a few weeks we discovered why: General Leslie Groves, the chief of the wartime Manhattan Project that built the bomb, was writing his own book — and he wanted to hold back the best of the secret papers so he could be the first to publish them.

We protested — it seemed patently unfair as well as bad policy. But he wouldn't budge, and the army wouldn't take the papers out of his control. Eventually we got around him anyway — thanks to one of the oldest rules of government bureaucracy: If there's an official document in a file, there's got to be a copy of it somewhere else. And that is how we got hold of Grove's long, exultant report to President Truman in July 1945 on the first atomic explosion, the test at Alamagordo.

Groves had sent his report to Truman at Potsdam, where the President was meeting with Stalin and Churchill. A copy of the document was duly filed in the State Department archives of that meeting. When I interviewed Charles Bohlen, who was Truman's interpreter at Potsdam, he suggested we ask to read those papers, which by then were in galley proof awaiting publication by the State Department. We went to the Department's historical office, put in a routine request, and bingo! they produced the proofs. So the State Department, albeit unwittingly, restored to us what General Groves had taken away.

Other people find other ways to get around government restrictions. For, example, the producers of the movie version of *Seven Days in May* needed to shoot some film on an aircraft carrier — one of the key scenes in the story occurs on a carrier. Now, there was no question of obtaining official Defense Department cooperation for a story about an attempted military coup led by the Chairman of the Joint Chiefs of Staff. You can imagine the plot changes they would have demanded. So the movie people didn't even ask. Instead, the producer took a film crew down to San Diego where a carrier was tied up. He used a public pay phone on the dock to call the ship's captain. He gave him a song-and-dance story that strongly implied prior endorsement by the highest authorities. It worked. The camera crew was on and off the ship with the necessary footage shot before anyone in authority figured out what was really going on.

When I told my friends I was working on another book, most of them assumed that it would be about Washington. That's a reasonable assumption, given my reporting experience and the kind of books I had been involved in earlier. Some people have even credited us with helping to invent the "Washington novel". That's nice to hear, of course, but it overlooks the efforts of a few other writers — from Henry Adams to Allen Drury, to name just a couple.

I never really considered doing another Washington story. That may have been because no one else seems to be writing Washington novels these days. There have been no big bestsellers like "Seven Days in May" or "Advise and Consent". That kind of yarn seems to have gone out of fashion, at least temporarily. I'm not sure why this has happened, but I have some hunches.

One is that reality has outpaced the writer's imagination. Twenty-five years ago, Knebel and I wrote "Convention" — a story about the military-industrial complex trying to prevent the nomination of a presidential candidate because he promises to cut defense spending. It seemed a little far-fetched at the time; today it would be dismissed by any reputable editor as a rehash of old headlines.

There was Watergate, in which truth shamed fiction, and reality was more dramatic than any product of the imagination. With burglary and electronic eavesdropping, with the involvement of the CIA and the FBI, with criminal trials and congressional hearings and impeachment proceedings and a Supreme Court case and the resignation of a President — with all those real-life events, there was nothing left for the novelist to dream up.

Beyond those rather obvious elements, I think there is another reason for the decline of the Washington novel. For more than a decade — from 1976 through 1988 — a major theme of American politics was to denigrate Washington and to trash the government that operates there. Both Jimmy Carter and Ronald Reagan "ran against Washington", even after they moved there to run it. The Washington novel flourished in the Kennedy years, when Washington had some perceived glamour and people still thought government could solve problems; the genre withered partly because Washington itself lost much of its sparkle and people lost faith in government's effectiveness.

After all, the Washington novels of the sixties were based on an essentially optimistic assumption: The idea that public officials generally are men and women of good will and high motives. In an era when such assumptions have been challenged if not shattered, you are less likely to have books based on them.

Finally, the place is pretty dull these days. The stage is overrun by small to medium-sized actors; there's not a giant in sight. As novelist John Buckley said in a recent review: "There's not much happening in Washington these days that could justify a so-called epic sweep. A television series or, at best, the docudrama is regrettably the artform that matches the scale of events currently taking place here."

I am sure all these things contributed to my decision to choose a subject beyond the Beltway, but there were other reasons too.

For one thing, the cultural and economic and political homogenization of this country is rapidly erasing the regional differences that have been a hallmark of our society. It's easy to forget that this country, unlike any other, was formed by waves of immigrants filling up an essentially empty land. And in an overwhelmingly urban society, it is easy to forget that most of our early American settlers were farmers who came here looking for free land.

The changes that have occurred in our country in this century impose a special obligation on writers — an obligation to be sure that our past is recorded for our children and grandchildren. That's one reason I wanted to write about the Great Plains. That area and its people played a disproportionately large part in the development of the nation, and that deserves to be recorded and remembered.

I have tried to do that with a novel. I think I have satisfied those three original critics — my wife, my agent and my editor. As for the rest, well, we'll find out along next February.

Although nowadays I write books, I am really still a newspaper man. I worked at that trade for thirty-two years, and that kind of work is what shaped my attitudes about governments and bureaucracies. At the police station in Minneapolis and at the White House in Washington, and at other places in between and beyond, I found that what was required of a reporter in any situation was pretty much the same.

At the police station, I had to learn to read upside down so I could glean information from reports that the detective captain wouldn't hand over to me. And in that same place, I first learned to be skeptical of what I was told by government officials.

When I got to the White House 13 years later, I didn't have so much use for upside-down reading — they usually put their papers away before they let a reporter in. But strong skepticism about official assertions was essential to covering the White House in the Johnson and Nixon years. It remains a useful attitude today, and presumably always will.

When I first went to work in Washington back in the 'fifties reporters were not celebrities, and they did not expect to be. Most of us had come into newspapering because it seemed likely to be fun, and we stayed because it was fun. It let you travel a good deal at someone else's expense, and it gave you a front row seat for whatever was going on.

We weren't in it to save the world, and we certainly weren't in it for the money, because there wasn't any, and we weren't in it to become celebrities, which was just as well, because even the best and brightest reporters were largely unknown to the public. In those days, most readers didn't even notice, let alone remember, the by-lines that meant so much to reporters.

Nowadays, of course, things are different, thanks mostly to television. In the view of the men who run television, news is just another profit center, like game shows and daytime soaps. As one Texas newspaperman wrote: "TV news is for people who think they're getting an in-depth report if the sign on the bank gives both time and temperature." The real business of television, of course, is entertainment, so television uses the techniques of show business in covering the news, and we should not be surprised when television news people are chosen for their looks, or their charm, or their previous condition of celebrity.

As reporters have become famous, or at least notorious, they have also become socially acceptable. Now, God help us, we have to read the society pages to find out what the big-name pundits are up to. That wouldn't matter much except that it makes them even more susceptible to what James Reston calls the biggest occupational hazard in Washington

— the tendency to confuse what you are with what you merely represent.

Walter Lippmann figured that out fifty years ago. In 1940 he wrote that "... the most insidious of all temptations is to think of oneself as engaged in a public career on the stage of the world rather than as an observant writer of newspaper articles about some of the things that are happening in the world."

That has always been true in Washington, but it's worse now because of television's tendency to turn reporters into celebrities and to prefer noisy confrontation to reasoned discussion. Every one of the weekend panel shows seems to offer a flood of opinions, but hardly any facts. (That calls to mind the wise — and cynical — remark of a former editor of the Manchester Guardian. He noted that "comments are free, but facts are expensive.")

Speaking of "comment" brings us around to the First Amendment. News people tend to talk about it as if it were their private property. It is not. To the founding fathers, freedom of speech meant the freedom to stand on a street corner and criticize the King of England, or the United States government, without being thrown into jail. The authors of the Bill of Rights could not have dreamed of a press like the one we have today. They were trying to protect the right of printers to publish newsletters reporting ship news, political gossip and opinion — without being hauled into court or having their printing presses smashed.

So contrary to what some in the news media would have you believe, the First Amendment is not the exclusive property of the press. It belongs equally to rock bands and record stores and avant-garde little theaters and art museums — and bookstores and libraries — and Salman Rushdie, too.

I also know that no one has any business preaching to librarians about freedom of speech. You know about it, and about the threats to it, and you learned the hard way. You live on the front lines of the First Amendment battles. So please forgive my presumption in raising the subject here.

The news is not all bad. There are still a few good voices in Washington. One of them belongs to a man named Fred Grandy, a Republican congressman from that notorious hotbed of social thinking, Iowa. Last week, referring to attempts to restrict the kinds of art that are eligible for federal subsidy, he said: "I cannot sign off on language that attempts to proscribe the human imagination, because I believe it cannot be written."

That's a brave thought, and a true one: "Attempts to proscribe the human imagination." The human imagination: That's what literature is all about, isn't it? We should encourage other members of Congress to think as clearly as Mr. Grandy.

The Congressmen could especially use some backbone-stiffening these days on another subject — the American flag. That is the most serious First Amendment question before us at the moment, despite the encouraging vote last Thursday in the House of Representatives. The House vote does mean that Congress will not adopt a constitutional amendment narrowing the freedom of speech — at least not THIS year. But the argument has merely been moved from the halls of Congress to the congressional campaigns.

The issue is simple: Do we want to protect the flag by damaging the First Amendment? It is that simple because if a constitutional amendment were passed outlawing the destruction or desecration of the flag, it would mean that one kind of speech was no longer free. And if that happened, what would prevent Congress and the state legislatures from punching other holes in the First Amendment?

A lot of this would be absurd if it weren't so important. For example, the sheriff of Broward County, Florida, who brought obscenity charges against a rock band, seems to find no fault with a local establishment called R-Donuts, which purports to be the country's only topless doughnut shop.

But it is deadly serious business, and it is neither easy nor simple. First Amendment cases almost always deal with worst-case situations, and the protected speech is usually offensive to a large part of the community. Reasoned opinions offered in polite language by nice people rarely are the stuff of great constitutional cases.

Of course that's beside the point. None of these things — controversial art, rap music, books, even the burning of a flag — does any harm to the public. Until now, the only allowable restraints on the freedom of speech have applied to words or acts which could actually harm innocent bystanders. The examples usually cited are reporting the sailing of wartime troopships and falsely shouting "Fire!" in a crowded theater.

You all know the current uproar is mostly politics. The Republican leader of the Senate has been chortling about how flag-burning "would make a good 30-second spot," and the chairman of the Republican congressional campaign committee called it "an excellent issue on which you define your opponent, his character and values."

The political courage of those House members who voted against the amendment has repelled at least for this year, this particular attack on our basic freedoms. But the issue won't go away. It will be demagogued to bits this fall in the congressional campaigns.

We're in for a bad time, and all of us who believe in free speech will once again, as in the past, have to be willing to stand up and be counted — in the full knowledge that in the short run the right side will probably be the unpopular side. But we'll have company and it will be good company.

There is irony in the fact that these venomous challenges to our liberties arise at the moment in history when men in other countries are desperately seeking to guarantee those same liberties. All across Eastern Europe...in the Soviet Union...and even in China, reformers are trying to write new laws and constitutions modeled on the American Constitution, and particularly on our Bill of Rights.

In Moscow two weeks ago, a member of the Supreme Soviet stood up and criticized a proposed anti-censorship law

— because, he said, what they really need is true freedom of speech as embodied in the American Bill of Rights.

Next week, a group of U.S. lawyers and news people will sit down with a delegation from the People's Republic of China — to discuss how these American guarantees could be written into a new Chinese press law. Even in Beijing in these difficult times, the forces of liberty and reform look to America.

Every country has a flag, as House speaker Tom Foley said last week, but no other country has the Bill of Rights. We should act accordingly.

Obviously these are not the best of times in the United States for freedom of speech. One roll-call in Congress does not permanently protect the First Amendment; neither does one decision in the Supreme Court. The struggle continues, in legislative hearing rooms, in political campaigns, and in art museums and publishing houses and theaters across the country — and in libraries, too. There will always be people who want to limit liberty in the name of conformity or decency or piety.

At this moment and in this city — and before this audience, whose members are responsible for protecting and preserving and propagating the printed word — it may be appropriate to recall some words of a former governor of Illinois. In 1952, Adlai Stevenson told a roomful of newspaper people: "Your typewriter is a public trust. Its sound may be the most beautiful noise you know, but it has meaning and justification only if it is part of the glorious symphony of a free society."

Stevenson was reminding us that the First Amendment belongs to all Americans, and therefore its protection is the business of all Americans. His warning still applies today. We will ignore it at our peril. □

(targets . . . from page 150)

artists, performance artists, and photographers

intellectual freedom bibliography

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