

newsletter
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evolution goes in the books

The (hopefully) final chapter in a decades-long textbook debate that split Texas and influenced the country's classrooms was written November 10. The Texas Board of Education, which spearheaded a drive in the 1970s to erase evolution from textbooks, cleared the way for a new generation of science books that will explain to Texas students how humans evolved from other forms of life.

In adopting new high school biology and elementary science books by an 11-4 vote, the board signaled the end to the once-dominant demands of creationists on textbook selection in the state. "There is no doubt they will no longer have the clout they once had," said board member Emmett Conrad of Dallas. "This is the breakthrough that we have been waiting for."

Mike Hudson of People for the American Way, a group which helped focus the battle against the creationists in Texas, called the decision "a major victory for science education nationwide." As the second largest purchaser of textbooks in the nation, Texas exerts considerable weight on what publishers put in textbooks. Most of the books sold to Texas are later marketed in other states.

"This was the last hurdle," said Hudson. "This reassures the major textbook publishers that they can now include evolution in their textbooks without fear of retribution."

Sixteen years ago, a quite different board approved an anti-evolution rule that had a profound impact on the textbook publishing industry. That rule sharply limited coverage of evolution by specifying that evolution had to be treated as "only one of several theories to explain the origin of humankind." Further, the rule said, evolution had to be explained "in a manner not detrimental to other theories of origin."

That requirement was a major victory for creationists and particularly for the state's best-known textbook critics, Mel and Norma Gabler of Longview. For the next ten years, the rule intimidated publishers, causing them to water down and in some cases eliminate all mention of evolution. "It was probably the single most negative influence on the coverage of evolution in textbooks," said Hudson.

As late as January, 1984, the board rejected an effort by some members to require that publishers of high school biology books include some mention of evolution. That action drew national attention, as well as scorn from scientists across the country. Within a month, a group of distinguished scientists and educators petitioned the board to drop its anti-

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NEA funding approved but with Helms amendment; artists and theaters join lawsuits

The National Endowment for the Arts appeared to clear a major hurdle October 24 when the Senate approved a \$170 million appropriation for the agency and defeated an effort to restrict public funding of sexually explicit art. But at the last minute, Sen. Jesse Helms (R-NC) caught some senators off guard and won voice vote approval of an amendment forbidding funding of material that denigrates religion. The senators had to scramble to rescue a laboriously crafted compromise that eliminated specific restrictions on the type of work funded by the National Endowment for the Arts (NEA), which unravelled October 16 when the Appropriations Committee reinstated a controversial list of forbidden subject matter.

A month earlier, on September 28, four performance artists, whose NEA grant applications were rejected by Endowment Chair John Frohnmayer, filed suit in Los Angeles federal court, charging the rejection was based on the political rather than the artistic content of their work. In addition, on October 15, more than 160 nonprofit theaters and 65 prominent artists and performers filed a motion to join as *amici curiae* in previously filed lawsuits against the Endowment's controversial content restrictions (see *Newsletter*, September 1990, p. 151; November 1990, p. 202).

The impact of the Helms amendment was not immediately clear, but Senate sources predicted it would not survive a conference to reconcile the House and Senate versions of the legislation. Before the Helms amendment, the Senate voted 73-24 for a compromise approach that included no content restrictions but empowered the NEA to recoup funds from grant recipients whose work was found in court to be obscene or to violate child pornography laws.

The House approved similar legislation October 11 by a 349-76 vote. The original version of the House bill would have allowed the NEA also to ban grant recipients convicted of obscenity from receiving further NEA money for three years. But that provision was eliminated in a voice vote. It remained, however, in the version passed by the Senate. The House bill would allot the agency \$180 million.

Rep. Pat Williams (D-MT), an architect of the House legislation, said he was surprised by the lopsided vote. "It's a bigger victory in favor of tolerance and freedom of expression than I frankly expected." He said that six months earlier he feared the reauthorization would be defeated.

The vote came after the House voted 361-64 to defeat a measure introduced by Rep. Philip Crane (R-IL) to eliminate the Endowment. The House also defeated, 249-175, a proposal by Rep. Dana Rohrabacher (R-CA) to forbid funding of art depicting "sexually explicit conduct" including "bestiality; masturbation; sadistic or masochistic abuse" and more. The Rohrabacher bill also would have forbidden works

that defiled the flag or used "any part of an actual human embryo or fetus."

The House legislation differed from that passed by the Senate in several other respects. It contained no language on child pornography, but included a provision urging the NEA chair to ensure that grants will be awarded "taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public." In addition, the House version increased the money allotted to state agencies from 20 percent to 27.5 percent.

If the Helms amendment is eliminated, controversial content restrictions imposed in the fiscal 1990 appropriation could be a thing of the past. Those restrictions forbid funding of works that "may be considered obscene, including, but not limited to, 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."

Early in the debate, Helms, the endowment's leading opponent in the Senate, appeared to acknowledge defeat on the content issue, but vowed to continue the battle in the future. "I say to all of the arts community and homosexuals who may be upset. . . . What is past is prologue. You ain't seen nothing yet," he said.

Helms argued that the sanction provisions adopted by the Senate would be ineffective, citing the acquittal of the Contemporary Arts Center in Cincinnati, which had been indicted for displaying homoerotic and sadomasochistic images by photographer Robert Mapplethorpe (see page 5). Artists "are not going to be taken to court," Helms said. "You saw what happened in Cincinnati. We can't duck our responsibility here. But the Senate is ducking it."

The Senate defeated by 70-29 a Helms proposal to forbid funding of "materials that depict or describe, in a patently offensive way, sexual or excretory activities or organs." Helms also attempted unsuccessfully to deny grants to artists who earn more than a certain income.

In addition to defeating Helms' proposal, the Senate also rebuffed efforts by Appropriations Committee Chair Robert C. Byrd (D-WV) that, according to Sen. Edward M. Kennedy (D-MA), would have "erected new barriers" to freedom of expression. Byrd had in committee tucked into the measure an obscenity ban weaker than Helms' but crippling in the view of endowment backers.

The principal Senate architects of the legislation were Senators Kennedy, Orrin Hatch (R-UT), Claiborne Pell (D-RI), and Nancy Kassebaum (R-KA). The legislation passed by the House was crafted by Reps. Williams and Thomas Coleman (R-MO).

After the Senate had rebuffed efforts to impose content restrictions and approved the compromise, Helms proposed and won approval of the amendment blocking funding of "material which denigrates the objects or beliefs of the

adherents of a particular religion." The measure passed on a voice vote in a nearly empty chamber.

In the judicial arena, performance artists Karen Finley, Holly Hughes, John Fleck, and Tim Miller, whose applications for NEA grants were unanimously approved by a panel of artists but denied last summer by NEA chair Frohnmayer, filed suit in Los Angeles, charging that Frohnmayer had violated NEA procedures. Those procedures require the chair to receive guidance from the National Council on the Arts; in this case, Frohnmayer polled the council by phone, rather than convening a quorum of council members, before he made his decision.

"There is no question that the work of these artists is considered excellent in the arts community," said attorney Ellen Yaroshefsky, a member of the National Campaign for Freedom of Expression Legal Defense Team, which filed the suit. "The works talk about the victimization and powerlessness of women in this culture, the victimization of gay people, and the victimization of people with AIDS, and all of them express the views that heterosexuals and homosexuals should be treated equally."

Finley, Hughes, and Fleck had all been targeted by critics of the NEA before their grants were rejected. All four have received NEA support in the past. "The four vetoed grants was certainly the most extreme action Frohnmayer took in fulfilling the right wing's agenda in his role as chairman," commented Miller.

At its May meeting, the endowment's National Council deferred consideration of all grants in the category of solo performance, including the four controversial applications. Frohnmayer then sent information about a number of grants to the council members and consulted with them by phone before rejecting the grants. Several days earlier, he told a group in Seattle that he might turn down some controversial grants on political grounds to avoid exacerbating the agency's funding problems in Congress. The four artists appealed, but in August Frohnmayer upheld his original denial.

Legal scholars said the case would hinge on whether the plaintiffs can prove that the government was engaged in the "suppression of dangerous ideas."

"It does seem to me that the law is rather clear," said conservative legal scholar Bruce Fein. "If the purpose of the rejection was that those who disliked the proposal wanted to suppress the ideas — they were animated by malice — that is a good First Amendment claim." But, Fein said, "it's the kind of case that's very, very difficult to prove. Anyone who doesn't get a grant can allege, 'They don't like my idea.'"

The suit also charges that the NEA violated Finley's right to privacy by breaching the confidentiality of her grant application.

The suit by the performance artists joins a growing list of lawsuits against the Endowment by opponents left and right.

On October 15, more than 160 nonprofit theaters and 65 distinguished theater artists and prominent individuals filed a motion for leave to file an *amicus curiae* brief in U.S. District Court in Los Angeles in support of the Bella Lewitzky Dance Company's suit against the NEA's content restrictions. The same group filed a similar brief later the same week in New York in support of another suit against the restrictions by the New School for Social Research.

Joining the brief, organized by Theater Communications Group of New York, were Edward Albee, Ossie Davis, Colleen Dewhurst, Christopher Durang, Spalding Gray, David Henry Hwang, James Earl Jones, Kevin Kline, Craig Lucas, Arthur Miller, Harold Prince, Christopher Reeve, Jerome Robbins, Ron Silver, Stephen Sondheim, Wendy Wasserstein, Robert Wilson, and other prominent actors, playwrights, directors and designers.

"Theater is particularly vulnerable to violations of freedom of expression," said Robert Falls, president of Theater Communications Group and artistic director of the Goodman Theater of Chicago. "That is why we felt compelled to join the lawsuits as *amici curiae*. Our greatest concern is that the anti-obscenity certification endangers the diversity and creativity of theater artists in this country, which could effectively cripple the field's artistic development for years."

The *amici* argue two main points in their briefs, stating that the NEA anti-obscenity pledge "is unconstitutionally vague and will chill protected artistic expression" and "is aimed at banning and suppressing constitutionally protected speech."

Even as pressure mounted against the restrictions, opponents of arts funding for alleged "pornography" also stepped up their activities. On October 3, television minister and former Republican presidential aspirant Pat Robertson blanketed members of Congress with letters denouncing federal support of "obscenity, pornography, and attacks on religion." He also stepped up attacks on the endowment through his "700 Club" television program and in newspaper advertisements.

Robertson called attention to a September 21 puppet show at the Atlanta Arts Festival that, he charged, featured simulated oral sex and may have been supported by the NEA. Puppeteer Jon Ludwig is associated with Atlanta's Center for Puppetry Arts, which received more than \$132,000 in NEA funds in 1989. But documents produced by the endowment showed no direct link between this support and the controversial show, entitled "Zeitgeist."

The controversy arose after a local minister complained to officials that some children slipped past security officers and attended the performance, which was labeled adults only. But the minister distanced himself from Robertson's use of the incident, and Frohnmayer accused Robertson of practicing "guilt by association." He contended that NEA had faxed Robertson material on the extent of NEA involvement with Ludwig before Robertson broadcast his charges.

Ludwig even denied that the show was as Robertson described it, whether or not the NEA had anything to do with it. "The intent was to satirize all the lust and this hoo-haw over lust in our society," he explained. He categorically denied that it included oral sex. "It was not simulated oral sex. It's impossible. How can puppets do that? They don't even have the parts." Reported in: *Washington Post*, September 28, October 11, 12, 17, 25; *New York Times*, October 10, 18; *Los Angeles Times*, October 5. □

the Mapplethorpe verdict

On October 5, an eight-person jury acquitted the Cincinnati Contemporary Arts Center and its director, Dennis Barrie, of obscenity charges, bringing to a close one of the most dramatic and closely watched battles in the nation's developing controversy over obscenity and art (see *Newsletter*, May 1990, p. 80; July 1990, p. 119; September 1990, p. 155; November 1990, p. 199). After deliberating less than 2½ hours, the jury returned not guilty verdicts on charges that seven photographs by the late Robert Mapplethorpe, displayed as part of a larger exhibit of 175 pictures, were obscene. Five photographs depicted homoerotic images, and two showed a child with exposed genitals.

"If the prosecution could have come up with just one credible witness — a sociologist, a psychologist, somebody, anybody — maybe we would have voted differently," reported juror Anthony Eckstein, an engineer and the only college graduate on the panel. "It had artistic value, and that's what kept it from being obscene."

"It's a great day for this city, it's a great day for America," Barrie rejoiced immediately after the verdict was announced. Delivered by "average citizens" who don't go to art galleries, the verdict proved that Cincinnati is more tolerant than it often is portrayed to be, he added.

"We're not New York. We're not L.A. We're not even Washington, D.C. We're part of the vast middle, but that vast middle is not as dumb as people like Jesse Helms and Donald Wildmon think it is," Barrie said.

Art experts from across the country had testified in the trial, which prosecutors said was the first time a museum or art gallery had ever been tried for obscenity in this country. "It [the verdict] sends a very important message that these museums are protected," said Barrie.

The trial marked a watershed in the growing national debate over artistic freedom of expression, which has been concentrated most prominently in the fight in Congress over proposals to restrict the kinds of work that may be supported by the National Endowment for the Arts (see page 3). The Mapplethorpe exhibit first attracted attention when it was canceled by a Washington, D.C., gallery for fear of antagonizing members of Congress who were using grants to the exhibit to indict the Endowment.

Benjamin Bull, general counsel to the Rev. Donald Wildmon's American Family Association, which has fought NEA funding, said the verdict would only spur the assault on government arts funding. The legislation renewing the NEA would prohibit funding obscenity, but verdicts like the one in Cincinnati, Bull said, "mean that NEA could fund Mapplethorpe again," because community standards define obscenity. "Rather than looking at the verdict," he said, "let's look at the art."

"This is not a landmark, Pearl Harbor decision," added Rev. Wildmon. "I think this really puts the NEA issue right back in the political arena where it belongs."

But backers of free artistic expression and of NEA funding also took heart. "I hope that [the verdict] . . . says to Congress that here's one of the more conservative cities in the world . . . turning its back on a kind of reckless attempt to call this stuff obscene," said John Walsh, director of the J. Paul Getty Museum in Malibu and a witness for the defense at the trial.

Defense lawyers painted the case as a fight over First Amendment rights, but prosecutor Frank Prouty told jurors in his closing statement that "the First Amendment doesn't enter into play." The gist of his case simply was that the seven photographs at issue were obscene by local standards, and that the defendants violated the law by displaying them. "The pictures speak for themselves," he said.

In fact, the prosecution made virtually its entire case out of the disputed photographs, calling only four witnesses, three of whom were police officers who merely confirmed that the exhibition had taken place. The other was a communications specialist and a former research director of Wildmon's group, Judith Reisman, whose primary artistic credential was presented as writing songs for the "Captain Kangaroo" television show. The defense, by contrast, paraded expert after expert, from directors of leading museums to the original curator of the exhibit.

While the prosecution tried to play to the artistic naivete and seeming parochialism of the jurors, it was in the end the jurors' admitted lack of exposure to art that worked for the defense.

"All of them, to a person, were so certain it was art," said James Jones, a warehouse manager. "We had to go with what we were told. It's like Picasso. Picasso from what everybody tells me was an artist. It's not my cup of tea. I don't understand it. But if people say it's art, then I have to go along with it."

"The prosecution basically decided to show us the pictures so that we'd say they weren't art when everybody else was telling us they were," added Eckstein. "The defendants were innocent until proven guilty, and they didn't prove them guilty. We thought the pictures were lewd, grotesque, disgusting. But like the defense said, art doesn't have to be beautiful or pretty."

Even as they signed the verdict sheets some jurors still could not believe that they were exonerating photographs that showed, among other things, a man urinating into another man's mouth. "At one point we said to ourselves, 'Is this really us making this decision?'" Eckstein said.

On the panel's first vote, one juror opposed acquittal for religious and moral reasons. The seven other jurors then recalled the four days of jury selection in order to persuade the holdout. "We reminded him that when we were questioned we said we would put moral beliefs and standards aside," Eckstein recalled. "We all had to go home and face family and relatives. We were saying to ourselves, 'Oh my gosh, how are we going to explain this to people? What will everybody think?' There was a lot of pressure."

In a real sense, Cincinnati was on trial. Since the 1950s, the city has produced national leaders in the movement against pornography and obscenity. Local anti-obscenity leaders boast that Cincinnati is a clean city and that it is virtually impossible to rent an X-rated video or buy *Hustler* magazine there. This is in good measure the work of Simon Leis, the crusading county sheriff. In his arguments, Prouty made it clear that the trial was an attempt to extend this kind of enforcement of obscenity laws into any venue, even those such as museums, that were previously held sacrosanct.

"At what point in time do you say, 'People, listen: enough's enough as to what can or cannot be in our museums,'" Prouty told the jury. "Merely because they are a museum, don't take that as a given that they've not violated the law."

From the other side, Marc Mezibov, the art center's lawyer, accused law enforcement officials of exploiting and abusing the legal system. Noting that arts center officials had given police officers a tour of the exhibit prior to its opening, had decided to restrict admittance to adults, and then had filed a lawsuit seeking to determine whether the photographs were obscene by local standards before the exhibit opened, Mezibov said, "I think it's clear that the state of Ohio had no interest in determining whether the photos were obscene."

The art center's lawsuit was dismissed April 6, the day before the exhibit opened. The next day, the museum was raided by the police. The case was initially brought by county prosecutors, but within weeks the city took over the indictment.

"The county will probably blame the city" for losing the case, said Barrie's lawyer, H. Louis Sirkin. "They'll probably say the city blew it. I do not think they blew it. The case never should have been brought. Cincinnati was the place they thought they could win. If not here, where?"

The verdict clearly struck a blow for the First Amendment. Some legal scholars said it indicated that, despite the concerns voiced by civil libertarians when the Supreme Court enunciated its famed tripartite definition of obscenity in the 1973 case of *Miller v. California*, the *Miller* test, however imperfect, does provide a formidable barrier against cen-

sorious prosecutors.

"Unless the political climate changes very dramatically, the *Miller* test provides quite solid protection for civil liberties," said Cass R. Sunstein of the University of Chicago. "The Mapplethorpe case shows there's a wide consensus that we shouldn't regulate speech just because it's disturbing. Even people who seem to have very traditional values are opposed to censorship. Those who think we're entering into a period of widespread prosecutions are wrong."

Sunstein and other scholars agreed that it was the third prong of the *Miller* test, regarding a work's literary or artistic value, that provided the greatest bulwark against conviction in the case. "At least three jurors seem to have been prepared to say that a person who spends his life making artistic judgments is entitled to some respect for his opinion, whatever they may have thought of the work themselves," said Kenneth L. Karst of the University of California at Los Angeles.

In a sense, the acquittal had more symbolic value than legal significance. Legal scholars suggested that any conviction would surely have been overturned. The reversal could have been either on the ground of the photographs' artistic value or on the more narrow ground that by forcing the jury to consider the photographs in isolation rather than in the context of the entire 175-photograph exhibition, Judge David Albanese misconstrued the law.

"The Mapplethorpe prosecution never should have been brought, and that it was is very disturbing," said Sunstein. "To prosecute a serious artist at the time when the Communist world is discovering free speech is really terrible."

"Yes, we have a Bill of Rights," attorney Mezibov told reporters. "But it is meaningless unless we fight for that Bill of Rights." And the fight will no doubt continue. Floyd Abrams, a New York First Amendment attorney, said other cases could still arise. "Another prosecutor could think, 'I'll do it differently, I'll do it better, put me in front of the jury,'" he said. Abrams also cautioned that the mere fact of the trial could discourage arts presenters from taking on anything remotely controversial.

In Cincinnati, the vice squad has already been asked to review other arts offerings in advance of the public. Producers at the Playhouse in the Park asked officers to sit in on a dress rehearsal of *Equus* to determine if its full frontal nudity was obscene. The vice squad gave its blessing and the show went on.

"This kind of thing is scary," said a trustee of the arts center. "The vice squad is now the moral and cultural arbiter of Cincinnati."

The arts center also faces more than \$100,000 in legal costs, and corporate sponsors are growing increasingly timid. "The more high-profile companies may back off for a year," said Martin Wade, treasurer of the center's board. "I'd like to think corporate America won't back down because we had a controversial exhibit."

The finding of artistic merit in the Mapplethorpe case may

have eased somewhat the art world's sense of alienation from society at large. Here, after all, was a jury of four men and four women who rarely if ever had entered a museum, whose cultural life consisted largely of television and magazines. Yet they took only two hours to agree that the prosecution had not proved its case.

That was what most in the art world had hoped for, but, it must be admitted, what few expected. As prospective jurors were questioned in the courtroom, sympathizers of the Contemporary Arts Center could be heard to groan at their answers. Ordinary people who had never visited an art museum were assumed to be proponents of censorship. The verdict turned that preconception on its head.

Defense attorney Sirkin said the jury "did exactly what we hoped they would do." He added, "Personally, I didn't like the pictures either." Reported in: *Cincinnati Enquirer*, September 24, October 3; *Cincinnati Post*, September 26, 28; *Los Angeles Times*, September 29, October 6; *New York Times*, October 6, 10, 18; *Philadelphia Inquirer*, October 7. □

2 Live Crew a mixed verdict

Supporters of free expression experienced victory and defeat last fall in the continuing controversy over the lyrics of music by the Miami-based rap group 2 Live Crew, whose album *As Nasty As They Wanna Be* was declared obscene by a Florida judge in June (see *Newsletter*, July 1990, p. 138; September 1990, p. 156; November 1990, p. 203).

On October 20, a six-person jury found the group not guilty of violating Florida obscenity laws during a concert that resulted in the arrests of three band members. However, on October 3, a Fort Lauderdale, Florida, record store owner was convicted of a misdemeanor for selling the *Nasty* album. On September 28, a federal judge ruled that the Westerly, Rhode Island, Town Council could not stop the group from performing at a local night club. On November 8, Dallas, Texas, prosecutors dismissed charges against a record store chain accused of selling the group's album, but only on condition that the record not be sold in the future.

In the group's own trial, the jury of four women and two men deliberated for two hours before returning acquittals. Later, in a press conference, they explained that they regarded the lyrics as comedy, but not obscene.

"In this day and age, this is the vernacular of the youth," said Beverly Resnick, 65, a retired hospital administrative assistant. "The fact a black group did it — well, that is the way they talk."

"This is not something I want to see out in the mails," said Susan Van Hemert, a school guidance counselor. "But if you can fight and go to Iraq, you can go to a club." The jury had only one black member, Gertrude McLamore, a

retired cook. Several of the other jurors said they wanted to buy 2 Live Crew's album. "We took the whole thing as comedy," said Van Hemert.

The three rappers, Luther Campbell, the group's leader, Mark Ross, and Christopher Wongwon, were charged with staging an obscene performance at a Hollywood, Florida, night club last June, just four days after their album was declared obscene in a civil suit brought by the group to end harassment by local authorities. In their 45-minute adults-only performance, the group performed sexually explicit lyrics while dancing on a stage before a raucous crowd.

The jurors said they found the defense's expert witnesses, a music critic and a black literary critic, enlightening but not necessarily persuasive. Helena Bailie, a retired college professor and at 76 the oldest juror, said she considered the performance political. "They mentioned the governor and the sheriff in negative terms," she said. "I got the idea that the sheriff had spoken about closing them out. They were thumbing their noses back."

Jurors said they agreed with all the defense arguments except one: race. Because the rappers' music emerged from the black ghetto, the defense contended, the lyrics should not be judged by the standards of white culture. But the jurors said race had little to do with the case.

During the trial, the controversial language at issue lost its shock value as it was read over and over in monotonous courtroom bureaucratese by nearly every participant in the trial except the defendants, who chose not to testify. Ultimately, the graphic lyrics failed to affect the jury. "After you heard them the first time, you'd heard them," Resnick said. "It had no impact. Those were their songs. They were doing their poetry in song."

"I thought it would've been cute if we could have come out with the verdict like we were doing a rap song," Van Hemert added.

In his closing argument, prosecutor Pedro Dijols said, "This was a plain, simple, nasty act; that's all it was. It's unbelievable they can come in here with a straight face and tell you something different."

Defense attorney Bruce Rogow responded: "If that's all it is, it's not against the law. The First Amendment does protect speech, even nasty speech, even four-letter words. The purpose of the Constitution is to keep the state from not liking something and putting people in jail. Of all the things in this world, sex is the one that all of us do. But if you don't say it quite the right way, you can get in big trouble with the state."

"It's not a matter of taste," Rogow continued. "If you don't like it, you don't have to go to their concerts. But to deny those people who want to do it is to deny their freedom of speech. That's not what this country is about."

Each side in the trial called two witnesses. Two undercover officers who used small cassette recorders to tape the show testified for the prosecution, which presented brief but largely unintelligible segments of the tapes. The detectives

offered their version of the lyrics, which repeatedly prompted jurors to laugh and shake their heads.

For the defense, literary critic Henry Louis Gates, Jr., of Duke University, whose book on black culture, *The Signifying Monkey*, won an American Book Award, called rap music a contemporary form of "signifying." Signifying, he explained, is rhythmic teasing and cajoling, often peppered with lewd and off-color remarks that can be meant as insult or compliment. "It was the way the black people could fight against the oppression of their slave masters," he said. "There's no call to violence here. What you hear is great humor, great joy, and great boisterousness. It's a joke. It's a parody, and parody is one of the most venerated forms of art."

According to jury foreman David Garsow, a 24-year-old office clerk who sings in a church choir, the jurors accepted much of Gates' testimony. "We agreed with what he said about this being like Archie Bunker making fun of racism. But Gates was saying that in order to understand the lyrics you had to be young and black. We didn't buy that."

Garsow said the jurors were critical of the prosecution effort. "If that's the best the Broward County Sheriff's Office can do, they're in trouble," he said. "It was a waste of time and money. It bugs me to think they would do something like this when there are drug dealers out there."

The verdict was less favorable, however, for Charles Freeman, owner of E-C Records, a small independent record store, who was convicted of a misdemeanor two weeks before by a different six-person jury for selling 2 Live Crew's *Nasty* album. Freeman was arrested by undercover deputies June 8 after selling the album, which two days earlier had been declared obscene.

That judge's ruling had no bearing on the verdict, however, because it was the result of a civil suit. The jurors had to apply a tougher standard of proof in this criminal case: they had to find *Nasty* obscene "beyond a reasonable doubt." They did.

Attorney Rogow also defended Freeman, and he criticized the jury selection process in the case, noting that there was only one black person in the pool of 35 potential jurors. Freeman is black, and his store is located in a predominantly black neighborhood.

Both juries were supposed to determine the community standards in Broward County, as required by the Supreme Court's *Miller* obscenity test. Referring to the Freeman verdict after 2 Live Crew's acquittal, Rogow said, "Two weeks ago I had six different people from the community who felt differently. This just points up the whole fallacy of asking six people to speak for 1.2 million people."

Rogow said the Freeman verdict would be appealed, and the Recording Industry Association of America (RIAA) said it would provide financial assistance. "We are appalled that a man has been convicted of obscenity for selling a musical work," said RIAA representative Trish Heimers. "The implications of this, with the current climate in the arts, is hor-

rific. I am afraid that it's going to send a message to people that it's OK to say art is obscene. And it's not."

Freeman's conviction stood in sharp contrast to the Dallas case, where eight misdemeanor charges were dropped against the giant Sound Warehouse chain at the request of prosecutors. The chain agreed not to sell the records and Assistant District Attorney Mike Sullivan said the county would drop the case as long as the record was not being sold in Dallas stores.

In the Rhode Island case, negotiations between sponsors of the group's performance and town officials were brought to a halt when U.S. District Court Judge Raymond J. Pettine, ruling in a suit filed by the ACLU, barred the Westerly Town Council from conducting a show-cause hearing on whether to revoke the entertainment license of the Windjammer nightclub for the night of the 2 Live Crew show. Council members had objected to the group's lyrics, and called the rappers a threat to public safety, arguing that their appearance would draw a violent element to the beach community.

But Pettine said the town had not demonstrated that the concert would "incite or produce imminent lawless action." If the council were allowed to conduct the hearing, he said, the club owner, at risk of losing his license, would be forced to undergo a "standardless review process. The chilling effect upon the freedom of expression of others is to be considered."

"The Constitution makes it very clear that there is no room for this type of behavior on the part of public officials — to use the issue of public safety concerns to conduct a kangaroo court to restrict this group because they don't like what the group was singing about," commented ACLU attorney Stephen Fortunato, Jr. Reported in: *New York Times*, October 21, 22; *Washington Post*, October 4, 21; *Chicago Tribune*, November 8; *Providence Journal*, September 29. □

STATEMENT OF OWNERSHIP AND MANAGEMENT

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In review

Kupferman, Theodore R. *Advertising and Commercial Speech: Readings from Communications and the Law*, 4. Westport, Ct.: Meckler, 1990.

The rights and responsibilities of advertisers in presenting their products to the public via the media and the extent to which commercial speech is protected by the First Amendment has been a concern of the courts since the 1941 case of *Valentine v. Christensen*, in which the U.S. Supreme Court held that the First Amendment does not protect "purely commercial advertising." In the ensuing decades, this issue has found its way to the courts on a regular basis and, although numerous decisions have been handed down, there is still no general agreement over the extent to which commercial speech is protected.

The editor's assertion that this collection of articles goes "a long way toward being the definitive discussion of the constitutional and legal aspects of advertising and legal speech," is only partially achieved. The articles, written by attorneys, journalists, and business school faculty with expertise in advertising, provide different perspectives on free speech, advertising, and the law. Unfortunately for the reader, there is no substantive introduction. Not until the collection's third essay is there a discussion of public policy issues embedded in the role of advertising in informing customers and thus being a factor in decision making. Several of the essays cite at length the same set of decisions as the author prepares to add a particular perspective to the discussion. The several articles on advertising of alcoholic beverages are interrupted by the essay on false and comparative advertising and that article is separated from the article on First Amendment defense to negligent misstatement.

Ideally, there should have been an introductory essay outlining the issue and providing a history of decisions. The individual authors could then provide their particular perspectives without extensive repetition. A more careful ordering of essays to place all of those dealing with alcoholic beverage and tobacco advertising in sequence would have made it easier to follow the threads of the debate of whether advertising these products adds information to the public domain and thus may merit First Amendment protection. Similarly, the article on false and comparative advertising and the article on First Amendment defense to negligent misstatement belong together.

The information interspersed throughout these essays could serve as the basis for a well organized single essay on commercial speech that would inform the reader, free of repetition and the need to jump back and forth among essays to follow important threads of the discussion. Considerable reorganization of content is necessary before this "definitive discussion" becomes "reader friendly." — *Reviewed by Ann E. Prentice, Associate Vice President for Information Resources, University of South Florida.* □

California approves new history texts

The California Board of Education on October 12 approved a set of controversial textbooks designed to end the "dumbing down" of history education in California schools, reflect the ethnic diversity and heritage of the United States, and improve sections on religion and geography. The full board upheld the recommendation of the Policy and Planning Committee despite continued opposition to the texts from minority and religious groups who said they were either neglected or inaccurately portrayed in the volumes.

The textbooks, *Social Studies*, a kindergarten through eighth grade series published by Houghton Mifflin; *Story of America*, an eighth-grade textbook published by Holt, Rinehart and Winston; and *America: The People and the Dream*, published by Scott Foresman, were written in response to social studies guidelines approved two years ago by the board.

"This has been the most scholarly, intensive, thorough and responsive process in the memory of any of those who have observed those processes," said Charlotte Crabtree, chair of the panel that reviewed and recommended two of the textbooks to the board. The Scott Foresman text was not initially recommended by the panel.

Several changes were agreed to by Houghton Mifflin as a result of objections raised by Jews and Muslims in the books dealing with religion. Some changes were also made at the behest of African and Asian Americans. However, complaints from Chinese Americans that their contributions in history had been omitted were outweighed, said Crabtree, by the "total presentation of various perspectives and multi-ethnic contributions" in the books.

"With the great diversity of cultures and ethnic groups represented in California, it is impossible to mention each group's contributions or involvement at a particular period in history," Crabtree told the board. She added that objections raised by gay and lesbian groups were "not within the scope" of this textbook adoption because they were not issues addressed in the kindergarten through eighth grades.

The general complaint from some members of some ethnic groups that the books were written with a Eurocentric perspective, said Crabtree, "is simply not supported by the facts. The texts in fact constitute a significant breaking out of the Eurocentric model and devote major emphases to world cultures, their history, achievements and world view."

When compared with textbooks already in use, Crabtree said, the new texts include much more, including information about blacks before the Civil War, Muslim culture and history, the lives of Chinese while building the railroads, "strong treatment" of the war with Mexico, and the study of early Asian and African societies as well as the traditional focus on Greeks and Romans.

The books include slave narratives, the speeches of Black Hawk, a Sauk Indian chief and of Chief Joseph of the Nez Perce Indians and of Martin Luther King, among others, and

journals of Japanese-Americans incarcerated in internment camps in California during World War II. The books also include study of religions, which has been avoided for several decades because of potential controversy.

Francie Alexander, director of curriculum, instruction and assessment in the state Department of Education, also took issue with critics of the books. "How dare they criticize these books if they're not criticizing what's being used in school today?" she said. "It doesn't mean they can't be improved, but these are A-minus when the others are C-minus to F." Reported in: *San Francisco Chronicle*, October 12; *San Francisco Examiner*, October 12. □

report finds press curbs on rise in Britain

An international human rights organization said in a report released October 18 that the British government had dramatically eroded press freedom over the last year and greatly increased its powers of censorship. Article 19, a London-based organization that seeks to defend freedom of expression, said that several developments reflected a trend toward tighter state control, including the introduction of a bill in December, 1989, that created the potential for restricting broadcasters.

The group said its concern about the bill was that it called for the government to make senior appointments to bodies responsible for the content of programming and for decency standards. Britain's Home Secretary also would have the power to refuse a franchise to an independent television company, the report said, if he believed that "it would not be in the public interest."

Publication of the report coincided with the second anniversary of the broadcasting ban, under which the government has barred British radio and television from broadcasting live or recorded interviews with members or supporters of the outlawed Irish Republican Army and its legal political organization in Northern Ireland. The curbs were put in place by a simple administrative notice and, according to Article 19, resulted in widespread self-censorship and the banning of a number of television and radio programs.

A representative of the Home Office dismissed the report as a "rag bag of things which hijacks an anniversary that has nothing to do with censorship."

In response, Frances D'Souza, director of Article 19, said: "Virtually every current freedom of expression controversy in the United Kingdom is before the European Commission of Human Rights and yet the government has shown itself to be more concerned with control over the media than with

creating safeguards to freedom of expression and editorial independence." The organization called on the government to immediately review rights of freedom of expression and information and to repeal the broadcasting ban. It also criticized the new Official Secrets Act.

The act, originally adopted in 1911, makes it a crime to disclose without authorization information considered damaging to national defense, information entrusted in confidence to other states or international organizations, and data concerning activities of security and intelligence services, as well as international relations. Reported in: *New York Times*, October 19. □

U.S. policy exempts books from Iraqi embargo

Although British publishers have appealed to their government for relief from trade sanctions imposed by the United Nations on Iraq, American publishers apparently have felt protected by a U.S. policy that exempts books and other informational material from the embargo on trade with Iraq. Ironically, the troubles between the U.S. and Iraq came at a time when there was an explosion of U.S. book exports to that country.

The British Publishers Association asked its government for an exemption for books from the United Nations sanctions. American publishers, however, have operated under the U.S. government's unilateral embargo, which exempts shipments of medical supplies and "informational materials" such as books, magazines, newspapers, catalogues or other reading matter.

William Lofquist of the U.S. Commerce Department said that for the first six months of 1990, the value of U.S. shipments of reading material to Iraq had increased by 400% over the same period in 1989, when \$169,000 worth of such material was shipped. Although that level is being allowed by the U.S. government, subject to decisions by Iraqi buyers and U.S. publishers, an even bigger trade presumably has been lost. U.S. publishers shipped \$1.3 million worth of informational material to Kuwait in 1989, and that traffic had increased by 31% through the end of June, 1990.

In 1989, Saudi Arabia bought \$3.9 million worth of reading material from the U.S., and shipments were up 30% for the first half of 1990. Those shipments will, presumably, continue to grow. Reported in: *Publishers Weekly*, September 7. □

— censorship dateline



libraries

El Mirage, Arizona

Checkout of a children's book about a young boy's involvement with magic and mystery has been restricted in libraries of the Dysart Unified School District. Children who want to read *The Figure in the Shadows*, by John Bellairs, will have to get parental permission, Dysart board members decided September 18.

Kannah Fay Divine, whose children attend elementary school, brought the book to the district's attention in the spring. She asked that the board consider its "appropriateness." She complained about two uses of profanity. In one, a little boy is unable to defend a friend when she is picked on by a bully and, out of frustration, says "Goddamn." In the other passage, a man who has rescued the boy from a storm uses the word hell. Two other characters, a "friendly" wizard and witch, also concerned Divine.

A review committee found the book to have received favorable reviews, but board members who had either read or skimmed the book voted to restrict its circulation. "It was a rather unusual book," said board member Pam Justice. "It had some vulgarity in it but it was very little." But Justice called the story "a little odd" because of its link to magic. "I hope there isn't (sic) too many other library books like this," noted board president Rachel Villanueva.

Kingswood Park Elementary School librarian Darlene Bray said the Bellairs book was the first to be placed on a restricted status. "When you talk about censorship where do you draw the line?" she asked. "It opens the door. It is a hard line, though. I'm a Christian and I don't approve of the language in the book."

But Catherine Morgan, youth coordinator at the Glendale Public Library, said *The Figure in the Shadows* was a popular book. "Our concern is that this mother in the Dysart district is trying to restrict what everyone's children read," she said. Reported in: *Arizona Republic*, September 21.

Newtown, Connecticut

Protests by a group of angry citizens and clergy against the holding of a mock seance for middle school students forced the cancellation of a Halloween celebration at the Cyrenius H. Booth Library. The adults were concerned the seance, which would have "summoned the spirit" of town benefactor Mary Hawley, would send the wrong message to the children regarding the occult.

Library officials said the party was supposed to be both fun and educational. Children's librarian Sylvia Vuilleminot was to dress up as Hawley and give a talk on her contributions to the town. "It was supposed to be a history lesson," librarian Janet Woycik said. In addition to the mock seance, "fortune tellers" would have read the children's future. There also was to be a haunted attic and an apple-bobbing competition.

But Woycik received numerous calls protesting the party. Rev. Barry Fredericks, pastor of the Grace Christian Fellowship, said by holding the event the library was in effect telling children it was all right to participate in occult rituals.

"I'm not opposed to young people having fun," Fredericks said. "These are things that people don't understand. These are things that can hurt young people. I don't think this was intentional, but just seeing this gives children approval that they can do it on their own. They'll begin to dabble in things they don't know anything about. What some people think of as innocent is clearly deception."

Woycik was taken aback by the vehement opposition to the party. "The thing that galls me is that people would think that the library staff would hold something that would hurt the kids," she said. "It's really a sad statement on the affairs of society."

Although he would not comment on the library controversy, Newtown Police Youth Officer Michael Kehoe said parents should be concerned about the occult. "There are a lot of kids that dabble in it," he said. "If you dabble in drugs, you're going to become a drug addict. It's the same if you dabble in the occult." Kehoe said police have no knowledge of satanic rites being performed in town. But, he added, "it's something we're always aware of. It's out there. We know it's out there." Reported in: *Danbury News-Times*, October 29.

Howard County, Maryland

A county public school official agreed October 5 to remove from elementary school libraries a book on the occult that

a mother charged was a virtual "how-to" manual on demon worship. Associate superintendent Joan Palmer agreed with a recommendation by a committee of teachers, students and parents to restrict *Curses, Hexes, and Spells*, by Daniel Cohen, to middle and high school libraries.

The advisory committee voted to recommend the book's removal because review sources said it was more appropriate for older students. At the same time, the advisory group voted to retain *The Devil Did It*, by Susan Jeschke, that had prompted a written complaint from another parent.

Karen Trotsky, who filed the complaint against *Curses, Hexes, and Spells*, told the committee that her 10-year-old son was given the book by a school librarian when "he asked for a book about Halloween to do research for costumes." She said he drew a circle in the driveway and placed candles inside the circle as he followed the book's directions on how to cast a spell.

"Children are influenced by these things, and the occult is as much a threat as alcohol and drugs," Trotsky said. "I felt the book teaches how to go about demonic worship. It is a very dangerous thing to have in the hands of young children."

Trotsky told the committee she would "take this issue to the highest levels" to get the book removed from elementary school libraries, but would "wait until my son gets to middle school before I decide what to do on that level."

The Devil Did It prompted a parent's objection that it showed the devil as "a benign or friendly force." But the committee said the book shows the triumph of good over evil and recommended its retention. Palmer agreed. Reported in: *Baltimore Sun*, October 5, 8.

Baldwin, Michigan

A controversial book of modern poetry was permanently banned from the Baldwin High School library October 16 after Board of Education members objected to its contents. *Living Room*, by African American poet June Jordan, which deals with contemporary social issues such as racism and unemployment, was removed from the library in September after a parent complained it contained profanity and racial slurs. Rejecting the recommendation of a special committee formed to review the book, the board voted 4-3 to remove it permanently.

"This is a moral issue," said board member Solomon Sim, who cast one of the majority votes. "It doesn't need to be on our shelves. Our children are exposed to enough of this on the streets."

Board President Deborah Smith-Olson disagreed. "If you start here, you will guarantee that the list of books removed will grow," she said. The review committee of two community members, two students, two teachers, and the school principal had recommended that the book be returned to circulation only among juniors and seniors. Some committee members wanted it restored without restrictions.

Librarian Pamela Groat defended the book as appropriate for the age group and the school's diverse student body, which includes about 30 percent minorities. "I did not feel it needed to be pulled," she said. "I probably would not have the book if I felt it was totally offensive. There are words in any book that people would take offense to."

Groat said there had been about six or seven books challenged during her fifteen year tenure at Baldwin High. Reported in: *Grand Rapids Press*, September 26; October 18.

Livingston, Montana

About three hundred books were removed last fall from the library of the Livingston Middle School — some because they were outdated and others because they were deemed inappropriate for young readers. Among the books removed by school librarian Susan Martenson as inappropriate were novels by Stephen King, including *The Shining* and *Christine*. Another book considered for removal was *The Chocolate War*, by Robert Cormier, because of an explicit rape scene.

"She's using good judgment in my opinion," said Principal Shelly Blatter of Martenson's review of materials. Blatter noted that many books removed were in disrepair or, as in the case of several science books from the 1920s and 1930s, woefully outdated. Others, such as *Your Telephone and How it Works*, were removed because they were below the reading level of middle school students. The King books, however, were removed because they were deemed not "suitable for intended audience," owing to violence, explicit sex, and inappropriate language. Reported in *Livingston Enterprise*, October 8.

Chapel Hill, North Carolina

Amid charges of censorship, a feminist library was removed from the Chapel Hill Women's Center because of complaints that some of the collection was sexually explicit and promoted lesbianism. The issue divided the center's board of directors, prompting three resignations.

"I'm surprised that this has happened in Chapel Hill; that there could be such a censorship of books by people who claim to be somewhat liberal," said Spring Brooks, one of the organizers of the collection. The library, which included writings by and about women, was organized by the Women's Book Exchange and contained about 5,000 volumes. It became part of the Women's Center two years ago. After merging with the center, a private, non-profit agency, the collection's founders continued to oversee it.

Complaints about the library began about six months after it became part of the center. According to Melody Ivins, another of the library's founders, about a half-dozen books were judged to be objectionable. They included *The Joy of Sex* and *The Joy of Lesbian Sex*, both by Alex Comfort, and *Women Loving*, by Ruth Falk. Several committees were formed to resolve the conflict, but failed. Consequently, the center's board of directors voted to dissolve the group's association with the library. Reported in: *Raleigh News and Observer*, October 26.

Hampton, Virginia

Librarian Janet Scheitle has been spending her time placing white stickers over steamy romance novel covers that dare to show women's cleavages and spy novel covers that might depict Arabs as villains. It's a librarian's nightmare: Ripping off the covers of some books, covering pictures on others, and throwing some out altogether because they may be too suggestive.

Too suggestive for whom? For Saudi Arabian customs officials. Scheitle is acquisitions librarian at the TRADOC library and information network at Fort Monroe. Her assignment is to supervise the mailing of books to U.S. troops in the Persian Gulf. The books cannot in any way offend Saudi Arabia's rigid moral standards, and American tastes often don't match Arab sensibilities.

"It's like a reverse role for a librarian who likes freedom of speech," said Scheitle. "As librarians, we are pledged to maintain a well-balanced collection that presents all points of view. Censoring books is such a contradiction for us."

Even *Gone With the Wind* could not be sent untouched. The amorous embrace of Clark Gable and Vivien Leigh on the cover needed to be sanitized with stickers. A book on Olga Korbut was thrown out because it contained several pictures of the former Olympic gymnastics star in a leotard. "Some of the covers on the books can be racy, even science fiction books," Scheitle said. "It's just amazing how science fiction can have a lot of nudity on the cover." Reported in: *Northern Virginia Sun*, October 5; *St. Paul Pioneer Press*, October 7.

Vienna, Virginia

About 70 angry parents said they would form a committee to oppose a plan to mix children's and adult books on the shelves at Patrick Henry Library. The parents said the move would expose children to adult books and overwhelm them with the sheer number of books available. Under the plan, conceived as part of a library renovation and expansion that threatens to close the library for 18 months in 1991 and 1992, readers above the third grade level no longer would be able to get books from a separate children's section.

Opposition to the plan crystallized at a three-hour meeting October 2 between the Vienna Town Council and library officials. Resistance to the plan came from the Parent-Teachers Associations of some fifteen elementary schools and from some Vienna council members.

"I felt the [library officials] did not hear anything that was being said to them, that their minds were made up," commented council member Martha Pruett. "I hope I'm completely wrong. . . . What they want to do does affect a lot of people in town." The council told library Director Edwin S. Clay, III, it would rather cancel the library renovation than do without the library for 18 months. Reported in: *Arlington Journal*, October 4.

Gillette, Wyoming

A Gillette woman asked in October that a book written for young adults in the libraries of Campbell County's junior high schools be checked out only to students with the permission of their parents. Susan Belless said she did not want to ban *Fade*, by Robert Cormier, from the libraries, but said its use should be restricted because of scenes of sex and violence.

"I don't believe in banning and burning," she said. "But I do believe in restrictions. I happen to be one of these people who really values the written language. But I believe literature requires responsibility. As adults, as a parent, we have a responsibility to know what our kids are reading." Belless said some scenes in the book, including what she described as a "psychotic ending," were inappropriate for students aged 11 to 13.

The book is about a 13-year-old boy who inherits the ability to become invisible but finds the power leads to death and destruction. Belless said she became aware of the book after her 13-year-old daughter checked it out of the Twin Spruce Junior High School library, believing it to be a mystery.

"She brought it to me and said she was far too embarrassed to continue," Belless explained, because the book contained "oral sex, incest, old men and young girls. . . . It was graphic in its violent ending."

Cormier admitted that "there are two very shocking, explicit scenes in this book. It's meant to shock the boy in the book and, by extension, probably shock some readers. There's so much phoniness in the world. Wrong messages are being sent to kids all the time . . . the good guy always wins." Cormier's 1974 novel, *The Chocolate War*, ranks as one of the most challenged books in the country, but this was the first time *Fade* has come under attack.

While Cormier acknowledged some sympathy for Belless' concerns, he stressed that "every parent should have the right to choose what their children should do. The problem is that they tell the people next door what they should do." Reported in: *Gillette News-Record*, October 21; *Laramie Boomerang*, October 25.

schools

Montgomery, Alabama

The Alabama textbook committee turned in its list of recommended materials to the state Board of Education November 8 over the objections of nine committee members. The 23-member panel is made up of 14 educators appointed by State Superintendent of Education Wayne Teague and nine lay people appointed by Governor Guy Hunt. Eight of the nine dissenters were appointed by the governor.

While the vast majority of the hundreds of texts recommended by the committee were considered acceptable by the

minority, Montgomery attorney Tom Parker said there was a “possibility that some will slip through that should not be bought with taxpayers’ dollars.”

Of the books considered, nine were rejected by the committee. Ten others were challenged by the dissenters. The dissenting group, which included Eagle Forum education liaison Joan Kendall of Birmingham, objected to portions of several textbooks because of information they included about homosexuality, AIDS, birth control, meditation techniques of Asian religions, and suicide. Kendall was among several people who earlier had pushed for the adoption of *Of Pandas and People*, a science text that contained information about creationism, called “intelligent design” in the book.

Among the objections outlined by the dissenters were the following:

- The teacher’s edition for *Creative Living*, a home economics textbook that received the committee’s endorsement by one vote, contained information about suicide that could lead students to try it themselves.

- Five health education textbooks for secondary students drew fire from the group because they “either fail to give the failure rates of contraceptives or understate the failure rates. The major concern with these proposed textbooks is that they would give students a false sense of security about sex with contraceptives.”

- Three textbooks for secondary students were deemed unacceptable by the minority because they allegedly advocate Eastern religious practices such as transcendental meditation and yoga. The group charged that these religious themes violated the principle of separation of church and state.

- *Married and Single Life*, a home economics text, was deemed unacceptable because it “tries to present homosexuality in a favorable light by using misleading statements.” Among the assertions the group objected to was a statement that homosexuals differ from heterosexuals only in sexual preference. “The promiscuity that goes with homosexuality differs vastly from that of heterosexuals (prostitutes excluded),” the group said. The report also criticized the book for portraying homosexuals as law-abiding in a state where sodomy is against the law.

Debbie Ward of Decatur, the lone gubernatorial appointee not in the dissenting group, said local school systems could further screen out books and materials they found inappropriate. “My understanding is that we’re supposed to screen books that don’t meet [state] curriculum guidelines,” she said. “We screen to a point and let the local systems screen further.”

“It would be great if we could put together the perfect textbook,” Ward added, noting that the books to which the minority objected were imperfect but not fatally flawed. “But it would be a shame to withhold education. It could save lives.” Reported in: *Montgomery Advertiser*, November 9.

Fairbanks, Alaska

The nation-wide controversy over the *Impressions* reading series has spread to Alaska. In October, Mike Baker pulled his fifth grade daughter out of Badger Road Elementary School after examining *Thread the Needle*, one of the books in the series. Soon after, about ten people called the Fairbanks school district curriculum office with questions about the books. Debbie Hall, president of the Fairbanks Council of PTAs, said she also had received about fifty calls regarding the books in one week.

As a result, the district placed all of the *Impressions* books, plus other materials recently adopted as part of a new language arts curriculum, on display at district offices.

Baker said he would pursue a formal review of the books, but didn’t want to wait for that to take his daughter out of school. He said his wife learned of possible problems with the books at a Bible study meeting. Then the couple received a copy of the September 17, 1990, issue of *Citizen*, a publication of the Christian organization Focus on the Family, a conservative lobbying group headed by psychologist James Dobson, who was a member of the Meese Commission on Pornography. Books by Dobson advocating corporal punishment were removed from the Mankato, Minnesota, schools last fall (see *Newsletter*, November 1990, p. 209). The magazine cover story was “Nightmarish Textbooks Await Your Kids — Concerned parents say *Impressions*’ violent and occultic content torments even happy, well-adjusted children.” District officials said that all callers who complained about the books quoted from the article.

Impressions has been under fire since 1987, primarily in western states, where it was first marketed in the U.S. after being sold in Canada since 1984. Initial hostility to the series included criticism of its alleged “Canadianisms,” but the controversy shifted after the publisher, Harcourt Brace & Jovanovich, released a U.S. edition. In California, *Impressions* has been the object of censorship efforts in at least twenty school districts. The series “topped the list of materials most frequently attacked” last year in schools across the country, according to the annual report on school book challenges issued by People for the American Way (see *Newsletter*, November 1990, p. 201). The series also has been the target of protests in Georgia, Illinois, New Mexico and other states (see below).

Robert Hess, editor of *Citizen*, said the controversy “is not an issue of censorship. It’s an issue of selection of curriculum.” Although he acknowledged that objectionable material in the readers may only amount to five percent of their content, Hess added, “You find a pattern of darker themes” that includes witchcraft and fear.

Hess said the seven-page article in *Citizen* about *Impressions* was the opening shot of a campaign. “Parents haven’t been involved in the past, and this is what has slipped in under their noses,” he said.

According to Anson Franklin, vice president at Harcourt Brace, *Impressions* is used in more than 1,200 schools in

34 states and is the leading reading program in Canada. "Of the 822 stories [in the series], 22 refer to the witches and goblins," he said. "They are very much part of the American folklore."

Franklin said he knew of 23 formal challenges to the books, which were removed in two cases. However, of five states that recently considered adopting *Impressions* as approved books, only New Mexico did (see page 29). Reported in: *Fairbanks Daily News-Miner*, October 12; *Chicago Tribune*, November 11.

Rohnert Park, California

A book assignment at Rancho Cotati High School drew intense criticism from parents who contended *The Handmaid's Tale*, by Margaret Atwood, is too explicit for students. The book, about a totalitarian society dominated by men, is assigned reading in two senior literature classes. The objecting parents want it removed from the classroom. "It's going before the school board," said parent Gene Stidham. "There is no way we're going to let this drop."

The debate over the book was reminiscent of a battle eight years ago that divided the district and resulted in the removal of *Deenie*, by Judy Blume, from elementary school libraries.

In a letter to residents and school trustees, Suellen Grenko, a former English teacher, said "sex is not the issue. If you as parents do not rise up and go to your schools over issues such as these, we will continue to educate our kids for the gutter." Grenko's letter included an excerpt from the book involving sexual intercourse and rape.

"In school, if my daughter was caught passing a note like that," commented parent Stidham, "there is no doubt that they would call me, have me down at the school and tell me there's something wrong with my daughter. And more than likely, she would be booted out of school."

After a meeting with Principal Penny Chennell, another parent, Jack Behl, said he opted to have his son read another book. Behl said he found *The Handmaid's Tale* objectionable because it puts down Christianity. Behl and Stidham attend an Assembly of God church in Rohnert Park.

School officials said that if a formal objection was filed to the book, a review committee would be formed. Reported in: *Santa Rosa Press-Democrat*, September 15.

San Diego, California

Educators at Ericson Elementary School altered a children's mural that features stacks of books as stairways to the wonders of the universe, painting over the titles of books banned at one time or another by schools and libraries in the United States. Ken Keegan, an Ocean Beach artist who supervised the painting of the mural by Ericson students in October, 1989, as part of an artists-in-schools program, learned a year later that the titles were painted over last spring after one or more teachers and parents complained that they were not appropriate for elementary school pupils to see.

The titles included *The Catcher in the Rye*, by J.D. Salinger; *The Grapes of Wrath*, by John Steinbeck; *The Adventures of Huckleberry Finn*, by Mark Twain; and *Ulysses* by James Joyce.

"It really bothers me," said Keegan, who devised the idea for putting the titles on the "stairs" after seeing a list of books that had been banned in San Diego or elsewhere. "I knew the vice principal was upset, because she called me to tell me that the book titles were not appropriate, but I never knew they had painted them over because I never gave them permission to do it. My feeling was that, if the kids can read that well [to know the titles], they ought to be able to read the books if they want." Keegan said he did offer to paint titles of children's books that have been banned in various schools and libraries, but the school never took him up on the offer.

Ericson Principal Stewart Brown said that, while Keegan "worked well" with children, the staircase mural, one of two on which he worked with students, resulted from "these artists who are impressed with themselves who feel strongly about leaving their mark at a school."

While the principal said he "is a liberal and was not jumping up and down" with anger at the completed mural, "I did have people I had to respond to who felt it was inappropriate. We don't need some artist to come out here and leave his mark. If he has an ax to grind, this is not the place to do it."

Brown said that if the artist needed titles for books he could have chosen those that are part of the reading curriculum. "We are trying to get kids to read more books, and if we were in an area where there were books on a banned list, well, perhaps" the mural could have been a learning exercise, he explained. "But I just don't think of it as appropriate at this age level; maybe if we were a junior high or middle school, or high school instead." Reported in: *Los Angeles Times*, October 8.

Adams County, Colorado

Adams County School District 14 removed a drama anthology from a suggested reading list at Adams City High School in September after a parent complained about obscene language in the book. *Monologues: Women II*, had been suggested as supplemental reading for an elective drama course since 1989. But freshman Brigitte Burgos found that the book contained explicit language and her mother complained to Principal Tome Budde. District officials agreed the book was "inappropriate for kids" and banned its use. The book is an anthology of monologues for female characters, culled from contemporary plays. Reported in: *Rocky Mountain News*, September 15.

Green Cove Springs, Florida

My Friend Flicka, a classic children's book first published in 1941, was pulled in October from fifth- and sixth-grade

optional reading lists in Clay County schools because of two words. Some parents complained to Clay County School Board officials that the book uses the word "bitch" to refer to a female dog, as well as the word "damn." At the same time, another children's book, *Abel's Island*, was removed from the list because of references to drinking wine.

Supervisor of elementary curriculum Dawn Wilson said Assistant Superintendent Ben Wrotham, with approval from Superintendent Ann Wiggins, pulled *My Friend Flicka* after a parent filed a formal complaint. He said the book contains "damn" twice and "bitch" once. Other informal complaints came from parents at three of the district's fifteen elementary schools.

Administrators pulled *Abel's Island* on their own initiative, after determining that its mention of drinking wine went against the district's substance abuse policy. The objectionable passage reads: "At home he had to drink some wine to dispel the chill in his bones. He drank large draughts of his wine and ran about everywhere like a wild animal, shouting and yodeling."

The books were discussed at an October 15 board meeting, but no vote was taken. "I think it's a little bit of a knee-jerk reaction," commented board Chair John Thrasher. "You have to be cognizant of community standards, and we all want to do this, but we also want to make sure we're not overreacting." He said that both books would still be available in school libraries. Reported in: *Orlando Sentinel*, October 26.

Atlanta, Georgia

Cheered by appreciative fundamentalists, Georgia's state textbook committee on September 26 rejected the controversial *Impressions* reading series. The 13-8 vote not to include the series on a state list of approved textbooks virtually assured that it will be used in few, if any, Georgia public schools. Schools can use books not on the approved state list but must pay for them with local funds, a practical impossibility for most school systems. The state Board of Education has final say over the committee's recommendation.

The series has been dogged by complaints that it dwells on witches, ghouls and New Age ideas. In Georgia, parents allied with the conservative Christian group Family Concerns, and armed with a point-by-point guideline on how to fight the series, published in Focus on the Family's *Citizen* magazine, were quick to tell the committee which lines offended them and which pages to turn to for viewing objectionable material, although most had not even seen the books themselves.

"I do feel like the special interest people influenced the textbook selection process," said committee member Lynne Donehoo. With complaints about the series suddenly assuming a high profile in Georgia, several committee members said the panel found itself examining the books with a new

approach, zeroing in on potentially objectionable pictures and passages, and looking at them in the worst possible light.

Selections ranging from Laura Ingalls Wilder's *Little House on the Prairie*, to speeches by Dr. Martin Luther King, Jr., both of which appear in the books, got little attention as the committee focused on witches, child abandonment, chants and "scary" pictures.

Sharon A. Cernogorsky, a teacher from Thomasville, characterized *Impressions* as the most scrutinized textbook series in Georgia. "This was not something we took lightly," she said. But Pat Turner, an assistant principal from Americus, commented, "In some ways, I'd say we just went through a witch hunt." Reported in: *Atlanta Constitution*, September 27.

Wheaton, Illinois

More than three hundred Wheaton parents descended on a school board meeting November 7 to urge the board to abandon the use of reading textbooks they charge deal in the occult and amoral behavior. "These are terrible, gory stories. They have nothing to do with real life, and I know they would give my children nightmares," said parent Linda Jandeska.

The books, part of the controversial *Impressions* reading series, are supplementary and were adopted by the board in February, 1988, for a new language arts curriculum. Parents complained that some of the stories in the series focus on fantasy and folklore and refer to witches, ghouls and other things that could be frightening. "Part of the issue here is trust," parent Martha Iler told the board. "We trust you with our children for six hours a day. We feel that trust has been violated."

Eighteen parents spoke at the meeting, many quoting passages from stories in the *Impressions* series. Some wanted the board to develop a citizen committee to review the series; most demanded its removal. None of the residents who addressed the board said their children were negatively affected by the stories; in fact, none of the speakers mentioned whether their children actually had read any portion of the series. That didn't matter to some. "Garbage in, garbage out, so let's try to get another textbook," concluded Becky Fisher.

Responding to the criticism on behalf of a committee of teachers that recommended *Impressions*, Gayle Galloway said the readers contain "many, many wonderful stories." She said that none of the controversial stories had been used in district classes. "We all agreed that in selecting stories for use with children we would not choose to use every story or poem. The books are not meant to be used in their entirety."

The outcry was fueled by a story in *Citizen*, a magazine distributed by Focus on the Family, a conservative lobbying group headed by psychologist James Dobson. According to Maud Hall, assistant superintendent for instruction, the books faced no objections until immediately after publica-

tion of the *Citizen* article. "I'm not aware of another book, another anthology, with as much high-quality literature," Hall said. Reported in: *Chicago Tribune*, November 9, 11; *Wheaton Daily Journal*, November 8, 9; *Wheaton Press*, November 15; *Daily Herald*, November 8, 15.

Pembroke, Massachusetts

Pembroke residents last fall circulated a petition calling for the removal of a book used in ninth grade health classes that they say is sexually explicit. Published in 1979 and revised in 1987, the book is *The New Teenage Body Book*, by Kathy McCoy and Charles Wibbelsman.

"I want this book removed from the curriculum because it's obscene," said Robert Hayes, who withdrew his daughter from a class at Silver Lake Regional High School to protest the book. "I am not against sex education. I am against this book because it teaches to an expectation of sexual promiscuity for ninth graders."

In six weeks, Hayes collected roughly a thousand signatures on a book banning petition to be presented to the school board. Three other parents withdrew their children from the class, Hayes said, and 27 parents told him that they would not allow their children to take the course in the spring. After defending the book and arranging a meeting between parents and co-author McCoy, a San Francisco doctor, school officials decided to withhold public comment.

To advance his petition, Hayes highlighted excerpts from the book, which its authors argue cannot be fairly judged when taken out of context. Hayes found this passage particularly objectionable: "Masturbation is not physically harmful unless you choose to masturbate with objects that may be irritating (soft drink bottles, for example). . . . If you come to rely solely on props during masturbation, you may find it difficult to become turned on or to have an orgasm when circumstances change, for example, when you're having sex with another person. So it's best to vary your masturbation techniques."

Hayes said he was also angered by passages on oral sex. He also charged that school officials had practiced a "pattern of deception" in keeping the book from parents.

The New Teenage Body Book is used as one of several supplemental guides to a health course that most students take in the ninth grade. The course is required, but school officials said that no student would be denied graduation if parents want their child removed. Officials said that when Hayes submits a formal request for reconsideration, it would be considered by a review committee.

"I think this is pretty much the effort of one man," commented McCoy of Hayes' crusade against the book. "He's on strike from Greyhound and this has become a whole second career."

"That's probably very true," Hayes readily acknowledged. "That's how the teachers got away with this. Parents are just too damned busy working hard and earning a liv-

ing. None of the parents I've talked to were aware of what was in this book." Reported in: *Boston Globe*, November 1, 5.

Albuquerque, New Mexico

The Albuquerque Public Schools were spared the battle over the controversial *Impressions* textbook series after representatives of the books' publisher violated school district guidelines by visiting at least 40 schools during the textbook review period. The visits were made before the state school board voted 12-2 to allow *Impressions* on the statewide adoption list. The vote left districts around New Mexico to decide whether to allow their schools the option of buying the series (see page 29).

More than fifty parents testified against the readers and teacher workbooks during a September hearing in Albuquerque because they said the stories contain too many references to ghosts, witches and the occult. Parents also packed the state school board meeting in October. After the final vote, several vowed to wage a battle throughout the state against the books. New Mexico schools must spend 80 percent of their textbook funds on books included on the state adoption list. The other 20 percent may be used for other material.

Albuquerque's district textbook adoption coordinator said the district had specific guidelines that prohibit publishers' representatives from having contact with the schools during the review period. "We prefer to review materials and make recommendations about what's appropriate before we ask for help from the publishing company," she said. Reported in: *Albuquerque Journal*, October 18.

Erie, Pennsylvania

Erie school director Eva Tucker wants Mark Twain's *The Adventures of Huckleberry Finn* removed from a high school English reading list because of what he calls its derogatory references to African Americans. Specifically, Tucker objected to the novel's use of the word "nigger." Tucker said he was not seeking to ban the book from school libraries, but maintained it should not be required reading for the English course.

The book is on a supplemental reading list for the American literature section of advanced placement English offered to 12th grade students at three high schools. Teachers decide which books from the supplemental list students must read. In response to Tucker's complaint, Erie schools Superintendent Joseph Rodriguez said that a curriculum committee of teachers and administrators would review literature by minority authors and add some of their works to the list.

Mary Frances Kinney, president of the Erie County Chapter of the Pennsylvania Association of School Retirees, said the book should not be removed. "If you take one [book] off, you're going to be taking everything off the shelves. People will find something to object to," Kinney said. Reported in: *Erie News*, September 13.

Darlington, South Carolina

Citing profane language, the Darlington County Board of Education voted September 18 to remove *One Hundred Years of Solitude*, by Nobel Prize winner Gabriel Garcia Marquez, from the reading list for advanced placement English at St. Johns High School. Board member Bill Fleming moved to delete the book until a review process was complete, saying he had heard complaints from some parents about its profane language. "I just don't condone for our students to be reading this," he said.

After the board initially received complaints about the book, a review process began, according to Superintendent Terry Grier. A committee appointed by St. Johns principal Ed Jones recommended leaving the book on the list, acknowledging that it contains "strong language, but also has literary value and is appropriate for mature eleventh-grade students." Fleming's motion came, however, as the book still had to be reviewed by a second district-wide panel.

Board member Dick Puffer objected to the book's removal before completion of the review process, but could muster only one supporter. "I think we have a due process in place and that we should follow it," he said. Reported in: *Florence Morning News*, September 21.

Plano, Texas

Mark Twain's best-known novels are racist and should have been removed from the required reading list in Plano schools long ago, according to David Perry, Plano's first black City Council member and the father of a seventh-grader. Perry then asked the Plano Independent School District to remove *The Adventures of Tom Sawyer* and *The Adventures of Huckleberry Finn* from seventh- and eleventh-grade required reading lists.

"I want to make it very clear that I'm not trying to push my weight around as a council member," Perry said. "But when I took my oath of office, I didn't give up my right to be a parent."

Perry said his daughter bought and read *Tom Sawyer* before classes started. "She was already in pain before school started, wondering when it was going to be read in class and fearful of how her classmates would react to her after reading the depictions of African Americans."

Perry criticized the books' frequent use of the word "nigger" and what he charged were negative stereotypes of African Americans in its pages. He noted one scene in which Tom apologizes for eating with a black man. "After reading this kind of material in the classroom," Perry said, "it is not uncommon for our children to be called 'nigger' and to be teased by their classmates." About five percent of the district's 28,000 students are black.

Perry stressed that he did not want the books removed from school libraries, but only to have them deleted from the required reading list. At a hearing of the district's Materials Review Committee, he was supported by other leaders in

Plano's African American community. But Bettye Mischen, the district's coordinator for secondary education, told the committee the books are an indictment of slavery and racism. Another district representative said that a black consultant had been hired "to help secondary English teachers be more sensitive" in teaching the novels. Reported in: *Dallas Times-Herald*, November 10.

Charlottesville, Virginia

A seventh-grade American history class should stick to history lessons, according to some Burley Middle School parents who object to the use of two non-history books in their children's classes. The parents of two students asked the Albemarle County School Board to stop the use of *The Kids' Book of Questions*, by Gregory Stock, and *The Day They Came to Arrest the Book*, by Nat Hentoff, in American history classes. Another parent asked that his son be given a history-related assignment whenever his class participates in activities from the two books.

John Kuebler, a marriage and family counselor who asked that his son not participate in activities from the two books, cited one question in *The Kids' Book of Questions* — about whether a child has ever farted and blamed it on someone else — as inappropriate in an academic class.

"When my son goes to take the SATs, they're not going to ask him about farting," Kuebler said. He said his son did not understand the connection between the questions and history. Burley Principal Tom Zimorski said the books were designed to develop critical thinking.

About 130 seventh-grade history students are required every other week to spend five minutes responding in their journals to one of the questions raised by the *Kid's Book of Questions*. On other days, students must respond to famous quotations read by the teacher or make up stories.

The Day They Came to Arrest the Book is a novel about a group of students and parents at a high school who decide *The Adventures of Huckleberry Finn* is racist, sexist and immoral and should be removed from reading lists and the school library. All of the seventh graders spent three days reading and discussing the book as a supplement to study of the First Amendment. A history textbook that spans the period from the Civil War to the present is also used in the class.

The parents said they objected to the Hentoff book because it offers an inflammatory challenge to authoritarian roles. The principal in the book is a sneaky book killer, and a teacher is obsessed beyond the point of reason with the First Amendment. They also charged that the book backs into study of the First Amendment. Students should study the basics about free expression and then discuss issues surrounding it. The parents said the question book had no link to history and they charged that some questions challenge parental authority. Reported in: *Charlottesville Progress*, September 26.

student press

San Francisco, California

A running dispute between a prestigious San Francisco law school and its student newspaper flared up in September when the school locked the paper out of its offices. The *Hastings Law News*, went "underground" to produce a special edition reporting the lockout and the ongoing controversy over an audit of the paper. The Hastings College of Law board of directors also ruled that the paper was precluded from using Hastings' name or logo. Attorney James Wagstaffe negotiated with college officials to permit the newspaper to reoccupy its office conditionally, but the dispute remained unresolved.

Hastings, which is part of the University of California, threatened last June to withhold good character certification to the state bar for *Law News* editors, who resisted a demand for a college audit of the newspaper. The editors charged that the audit issue arose after the paper published an editorial highly critical of the college's general counsel. College officials denied the demand for an audit was retaliatory.

The paper does not receive college funds but is housed on college property. The college contends that since the *Law News* generates substantial advertising revenue it is responsible for overseeing it.

"A public university should not be so thick-skinned," commented Wagstaffe. "The reaction was disproportionate to the alleged misconduct. It was an overly aggressive stance that, in my opinion, was a violation of the First Amendment." Wagstaffe said the paper would be audited by an independent firm engaged by the *Law News*. If that audit "comes up clean," he said, the issue would be settled. Reported in: *Editor and Publisher*, September 15.

Manchester, New Hampshire

Central High School's award-winning newspaper, *The Little Green*, was shut down by the school principal November 5, when student editors refused to repeat a public apology to a teacher who was the focus of an editorial. William Burns said he had no choice but to take the action after the students failed to show up in his office to make the promised announcement. He said the newspaper would remain closed until a faculty adviser was found for the staff.

Misbah Taghir and Jeffrey Brodsky, the paper's editors-in-chief, and Justin Kudler, the managing editor, wrote an apology to freshman adviser Salvatore Toscano for an editorial in which they singled him out for withholding the vote count of the freshman class elections without noting that that was standard practice for school elections. The apology was broadcast at the end of the day over the school's public address system, but Burns told the three they would have to repeat it in the morning, since many students leave during the last period. Brodsky said the editors decided during the intervening weekend that they would not repeat the apology.

Taghir said the editors were "just tired of being walked all over." Brodsky noted the editors had given Toscano a copy of the apology, and had put a clarification letter in all teachers' mailboxes, as well as promising to put a clarification in the next edition. "To do any more would be humiliating for the paper," Brodsky said. "There comes a certain point where you've got to stand up for principle." Reported in: *Manchester Union Leader*, November 6.

newspaper

Raleigh, North Carolina

In the midst of the reelection campaign of Sen. Jesse Helms (R-NC), the *Raleigh News and Observer* pulled a number of "Kudzu" comics satirizing Helms' anti-arts funding crusade, and two other North Carolina papers, the *Charlotte Observer* and the *Winston-Salem Journal*, moved the series to their editorial pages. *News and Observer* executive editor Frank Daniels, III, said he started dropping Doug Marlette's "Kudzu" October 15 because he "didn't think it was appropriate to have a partisan comic strip during a local election."

A note in the paper's October 15 edition invited reader reaction, and well over five hundred phoned by the next day. Most protested the "Kudzu" pulling. Daniels said the paper would publish all the Helms-related strips, which ran from October 4 to October 27 elsewhere, after the November election.

"Kudzu" is distributed to about 300 newspapers by Creators Syndicate, whose general manager Anita Medeiros said, "There's an irony here. The comic strip is dealing with Jesse Helms and censorship of art and the paper is in essence censoring the strip."

Cartoonist Marlette agreed that the *News and Observer* is "acting like Jesse Helms does in suppressing certain ideas," and said it "ought to be ashamed." He also commented that he was a little surprised at the pulling because the paper has "bashed Helms for years" and because the *News and Observer* and other North Carolina papers have a "proud" First Amendment tradition. Marlette was an editorial cartoonist for the *Charlotte Observer* from 1972 to 1987. Reported in: *Editor and Publisher*, October 20.

television

New York, New York

A television commercial designed to influence public opinion regarding a Senate vote on military aid to El Salvador was rejected by television stations in New York, Los Angeles and other cities. The 30-second ad, which links the murder of six Jesuit priests in El Salvador to continued U.S. aid, was turned down by WCBS and WNBC in New York,

KABC in Los Angeles and other stations on the grounds that they do not accept “advocacy advertising.” Producers of the ad charged that they were denied access to the airwaves for their viewpoint by stations that regularly air advocacy positions in commercials for political candidates.

The ad was produced by Neighbor to Neighbor, a San Francisco-based political advocacy group, in conjunction with several Jesuit organizations and the Committee in Solidarity with the People of El Salvador. Denise Bergez, media director for Neighbor to Neighbor, said all of the network affiliates in Los Angeles, New York and Washington rejected the ad. It was accepted by network affiliates in Sacramento and San Diego and by stations in Pennsylvania, New Hampshire, Oregon, and other states. A total of 13 stations accepted the ad, she said, while 23 rejected it.

“WNBC in New York turned us down because they said we couldn’t prove that the Salvadoran military killed the Jesuit priests, when even their own government has accused them of doing it,” Bergez said. “Another station’s lawyer said, ‘We can’t take this — there are corpses in this ad,’ even though the shot that we used — the Jesuits’ bodies lying together — had appeared regularly on the evening news. The lines that the stations are drawing seem completely arbitrary to us. It looks like people with a different point of view on a controversial issue are being unfairly shut out of getting that point of view on the air.”

Although WNBC recently began accepting advocacy ads “on a case-by-case” basis, David Vacheron, manager of broadcast standards and licensing administration at the station, said that the El Salvador ad was rejected because the producers did not provide the station with sufficient evidence to support the claims in the ad.

“They gave us articles where the president of El Salvador purportedly admitted the military was involved in the death of the Jesuits,” he said. “But the case was never solved in court, and nobody was ever found guilty.”

“We furnished them with Congressional reports and Congressional testimony saying that the military in El Salvador is clearly implicated in the killing of the priests,” Bergez responded. “It’s ridiculous to hold the commercial to the standard that the soldiers have to have been convicted — the whole problem is that they *haven’t* been convicted.” Reported in: *Los Angeles Times*, October 8.

art

Fresno, California

Heather Capps’ artwork was back on display October 9 at the Fresno District Fair — six days after it was put in a closet for being dangerous and offensive.

The Sierra High senior won a first prize for her sculpture of a fetus in a trash can, entitled “A Factor of Abortion,” but the piece was removed from display in the Junior

Exhibits building October 3. Six days later, it was placed back on display in the art building, along with the work of adult artists.

“I feel I compromised somewhat,” the artist said. “This is my age group. I feel like an outcast, like I’ve done something wrong.” Ironically, a graffiti-splattered painting with the message “censorship sucks” remained on display near where Capps’ graphic sculpture once stood.

Censorship was a word Jan Suydam, junior exhibits superintendent, heard a lot after reporters learned of the display’s removal. Suydam said she removed the piece for safety reasons and because it offended some fair-goers. She said she received about 20 complaints the first day.

“I’ve asked young people, both boys and girls, and adults for their immediate reactions,” Suydam said. “Some said it was disgusting, shocking, some were angered, some were repulsed. Even some of her friends were taken aback. I believe it does not have a place here.”

Suydam added that sharp pieces of exposed metal pulled away to expose the fetus could have injured a small child looking too closely into the trash can. Suydam said in past years she had pulled other metal projects from display for safety reasons.

“The purpose of the fair is to showcase the talents of our children, not to air political statements,” she added. “People enjoy these shows, seeing what the young people are doing. We don’t want them to be offended.” Reported in: *Fresno Bee*, October 9.

Tampa, Florida

Emotions ran high over the removal in late October of seven provocative photographs from a student display at the University of South Florida. The photographs, by junior photography student Mark Wemple, included several images of a couple, seemingly nude but wrapped in an American flag, posed in sexual positions. Two photographs showed the woman alone, bound with a whip and blindfolded, the word “liberty” written across her bare chest. Wemple said he intended the photos as a symbolic commentary on censorship, sexuality and politics, and as an homage to free speech.

Some faculty and students, however, saw the pictures as yet another careless parade of images abusing women. Their protests, along with mounting concerns about the location of the display in a public hallway, led acting art department chair Bruce Marsh to take the photos down. Marsh said he was simply acting to protect people who didn’t want to come upon the photos unaware and to channel discussion of the issue into a public symposium. Wemple and others disagreed, charging censorship.

“We have heard your voice of criticism,” said one graffiti message written on the wall from which the photos were removed. “Don’t try to take away our voice of expression.”

“You are allowed to speak out against violence,” read another message, “but pulling the prints is not speaking out, it is censorship.”

Jo Ann Wein, a member of the art faculty, was one who complained about the use of sadistic imagery in the photos. "My feeling is, if the artist is attempting to protest the censorship that we all deplore, then his symbolism is inappropriate to his message," she said. But Wein said she never intended the photos to be censored.

However, Samia Halaby, a visiting teacher of painting and computer graphics, said artists must take fuller account of how their symbols are perceived. "You can't use a swastika and say, 'Oh, that's that wonderful symbol of symmetry I dreamed about last night.' If they won't take responsibility for their symbols, then we become suspicious of their intentions." Reported in: *St. Petersburg Times*, October 30.

Atlanta, Georgia

The issue of censorship surfaced in Atlanta October 4 when the owner of a building housing "The Earth Factory Art & Performance Show" required the removal of a work of art he found offensive. Ironically, Atlanta artist Julia Helms intended "Nevus of Existence" as a comment on obscenity and censorship. It consisted of a sculptural column with nude magazine photographs pasted on it, and a written statement.

Edward McNally, a coordinator of the event, a benefit for the Georgia Environment Project, told the artist that Tom Mayfield of Data Management Business Records said he would close the show if the piece were not removed. McNally told Helms that the decision was hers, and the Georgia Environment Project would support it.

"There were 230 other artists in the show," she said. "Of course I decided to remove the column." In fact, owing to a broken ankle Helms could not remove the piece and the nude photographs were painted over.

Jay Hatfield of Georgia Environment Project said his group "would not censor the show. We would not ask her to remove the piece. We would not allow anyone to deface it. She didn't have to remove the piece if she didn't want to." Reported in: *Atlanta Journal*, October 6.

Ann Arbor, Michigan

A deliberately provocative art exhibit in Ann Arbor came under fire in October from critics who said it violated Michigan's obscenity laws. Officials of Performance Network, a local theater company, said they staged the exhibit in their lobby to provoke discussion of censorship issues raised by recent controversies over sexually explicit art. Mark Baidel of Canton Township and four others filed police complaints in an effort to close the exhibit.

"It's about civil rights and Christian ethics," said Baidel. "The Mapplethorpe acquittal means kiddie porn is OK. Where are we headed? The social and moral fabric of society is deteriorating. In two years, will I go to the Detroit Institute of Arts and have to hide my child's eyes because of what's on display?"

Baidel filed a police complaint October 11, citing twelve works as obscene. One was a sketch of a man hitting a small boy with a hammer and sexually molesting him. Another, entitled "Gymnastics for the George Bush Regime," depicted a man performing a sexual act on himself. In a letter to U.S. Representative Carl Pursell (R-Plymouth), Baidel said the exhibit amounted to the "perpetuation of sewage" and complained that it was funded by the Michigan Council for the Arts. The Council, however, denied funding the exhibit, although it does assist Performance Network with operating expenses. Baidel also was among ten protesters who picketed the exhibit on consecutive Saturdays.

The exhibit, entitled "Fear No Art," included visual art, music, literature and videotapes. It "was intended to spark conversation about the topic of art and censorship," said a Performance Network curator. Reported in: *Detroit News*, October 16.

Deming, New Mexico

In his hunchbacked frame, the multicolored Kokopelli — a deity revered by ancient American Indian tribes — stores the seeds that bring into life all that is organic. He dances like a sprite to the tune of his own flute, spreading art, music and knowledge. But neither the deity's hump nor his flute raised the specter of censorship. Rather, it was the prominent phallus of Kokopelli featured in a life-size painting by El Paso artist David Nakabayashi.

The painting, now on display at the University of Texas, El Paso, was censored from a September show at the Deming Center for the Arts, not more than five miles from the site of a thousand-year-old rock painting of this fertility symbol. The center's founder, Margo Hoylan, said the painting "was just too much for Deming. This is a very old-fashioned town. We've even had problems at quilt shows. If it didn't go over in El Paso, can you imagine Deming?"

Previously, in March, El Paso's Southwest Repertory Organization hung the painting, half-draped, at a solo exhibition. Nakabayashi said one offended board member took it down, provoking an argument between board members. The dispute was resolved and the painting rehung, but in response to the incident, the organization formed a special committee to review all art before it is exhibited. Reported in: *El Paso Times*, October 20.

Dallas, Texas

Three nude figurines in a Dallas City Hall art exhibit stayed nude until someone noticed the tiny clay women were, well, *naked*. Concerned with the "possible shock value" of displaying nude sculptures as part of a national art competition, city officials arranged to cover most of the foot-tall figures with fake leaves. Art lovers were not amused.

"Personally, I think it's time for Dallas to wake up," said Bonnie Wilber, president of the Dallas chapter of the Women's Caucus for Art, which sponsored the exhibit. "Bodies are bodies. To me, this is censorship."

"I think it was overreacting and silly and kind of sad," added the sculptor, Future Akins. "I can't see in my wildest imagination how these pieces would be offensive to anybody. This censorship stuff is getting out of hand. It's getting too weird. It confuses me that people are worried about nudity when we have toxic waste and S&L failings. The bottom line is there are better things to protest."

Yvonne Washington of the city's Park and Recreation Department, said she had received no complaints about the art, but said "there may be some questions raised. I think there was possibly too much shock value. I'm trying to be sensitive to the whole community."

Assistant City Manager Levi Davis, who was consulted about the decision, said he did not view the action as censorship, but said all exhibits at City Hall should be 'screened.' "I'm not in a position to evaluate this from an artist standpoint," he said. "The shock factor is that it's next door to the Office of Vital Statistics and there's a lot of people, a lot of children, who come through here. Reported in: *Dallas Times-Herald*, October 25.

book burning

Dayton, Ohio

"It's amazing how something as simple as a bonfire can cause such an uproar," said Rev. Donovan Larkins as he stoked the pile of burning literature and surveyed the crowd of congregants and protesters gathered around him. According to Larkin, the book burning was intended to allow members of his Victory Bible Church to rid their lives of cult-related and Satanic materials. The list of items being burned included materials from other religions, including Christian Science, Jehovah's Witnesses, Islam, and New Age literature.

Among those attending were Akil Mahdi and Hassan Abdul Malik, who said they came to try to keep Islamic literature from being burned. "To equate Islam with Satan is not only ludicrous, it's blasphemous," Malik said. "One of the things you are guaranteed by the First Amendment is freedom of religion, freedom of belief. . ." Reported in: *Dayton Daily News*.

foreign

Nairobi, Kenya

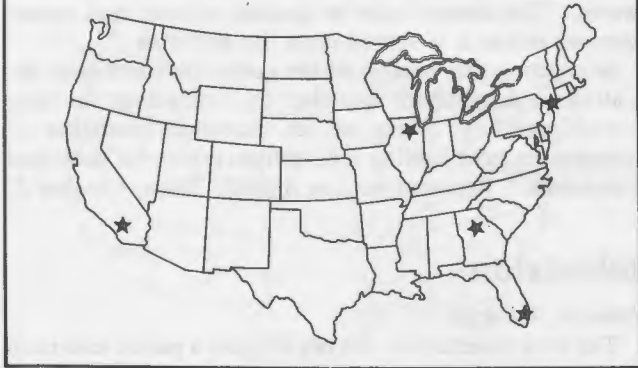
The government of President Daniel arap Moi September 28 banned publication of a Kenyan law magazine that consistently printed articles critical of single party rule and restrictions on civil liberties. No reason was given for the ban "forever" on *Nairobi Law Monthly*, which was announced in a terse legal notice. However, the monthly was known as a champion of the rule of law, civil rights and democratic rule. Last March, several government leaders charged that it was subversive.

The law monthly became the fourth Kenyan publication to be banned in two years. All dealt with political issues. Gitobu Imanyara, publisher and editor of *Nairobi Law Monthly*, said: "At times such as this, our liberties stand on trial. Freedom of expression and therefore of the press is central to a democratic society." He vowed to fight the order in court. Reported in: *Washington Post*, September 30. □

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from the bench



prior restraint

Miami, Florida

A U.S. District Court judge November 28 lifted his ban that had prohibited Cable News Network (CNN) from broadcasting tape-recorded conversations between Gen. Manuel Antonio Noriega, the former Panamanian leader, and his legal team. It appeared that the tapes at issue included little significant information that would jeopardize Gen. Noriega's right to a fair trial.

"The tapes may be published as CNN wishes to publish them," Judge William M. Hoeveler said in brief hearing. The ruling, which broke no legal ground, appeared to end a three-week legal battle that began when CNN reported that it had obtained copies of several Noriega lawyer-client tapes. However, a broader question still before Judge Hoeveler was how the government's drug trafficking case against Noriega will be affected by the disclosure that at least one tape exists of a conversation between the general and his attorneys.

After the judge's ruling, Noriega's lawyers, who had asked the judge to bar the broadcasts, said they would not appeal. But the lawyers insisted they would continue their efforts to have CNN fined and held in contempt for broadcasting portions of one lawyer-client conversation while the judge's ban was in effect.

That broadcast came on November 9, less than two hours after Hoeveler extended for ten days his original November 8 order barring CNN from using any portion of the tapes that could compromise Noriega's attorney-client privilege.

Justice Department personnel apparently wiretapped calls that Noriega made from his Miami prison cell to his attorney and others. CNN President Tom Johnson said Hoeveler's broadcast ban amounted to "unconstitutional prior restraint" and that the station "has a right to air that content while we pursue an appeal."

The network had appealed Judge Hoeveler's temporary ban all the way to the U.S. Supreme Court, which upheld the ban. The High Court had never permitted lower court judges to exercise prior restraint — that is, to permanently prohibit the press from publishing or broadcasting material. In a 1976 case, the Court called prior restraint the "most serious and the least tolerable infringement on First Amendment rights." But the Court has occasionally allowed a temporary ban, as it did in the CNN-Noriega case, until the merits of the material can be assessed. The Supreme Court decision came on a 7-2 vote, with Justices Thurgood Marshall and Sandra Day O'Connor dissenting.

Judge Hoeveler's decision to repeal the ban came after defense lawyers and government prosecutors reviewed transcripts of the tapes. When they dropped their opposition to further broadcasts, Judge Hoeveler quickly rescinded the ban.

Noriega's chief counsel, Frank A. Rubino, termed the tapes "boring stuff." "Of all the conversations," he said, "there is only one attorney-client conversation and that is the one they broadcast. Had CNN showed us the tapes two weeks ago, we could have avoided all this." Reported in: *Washington Post*, November 10; *New York Times*, November 29.

freedom of information

New York, New York

A New York State appeals court ruled October 18 that public access to government records granted under the state's Freedom of Information Law applies to government computer tapes as well as to paper files. The unanimous ruling by the Appellate Division of the State Supreme Court was hailed by freedom of information experts as highly significant because public agencies and private industry increasingly ask that they be given access to government documents on computer tapes rather than in written form.

For the Manhattan real estate company that brought the suit, the ruling meant that it could get computer records from New York City's Department of Buildings for \$46 instead of the "hundreds of thousands of dollars" the court estimated it would have cost if it had upheld the department's insistence that its tape be transcribed onto paper.

The Reporter's Committee on Freedom of the Press in Washington praised the ruling. "It is quite a significant advance," executive director Jane Kirtley said, "given the legal confusion as legislatures are grappling with the issue of computer versus paper access."

The ruling, by a four-member panel of the court's First Department, was regarded as legally significant because it was rendered by the court covering Manhattan, with its huge commercial base, and because several other state and federal appellate rulings on the issue elsewhere have been mixed.

The ruling upheld a March, 1990, decision by Justice David B. Saxe of the State Supreme Court in the case of

Brownstone Publishers, which sought a Buildings Department computer tape that contained statistical information on virtually every piece of property in the city. Brownstone officials said they asked permission to transcribe the city disk to computer tape that they would supply at a total cost of \$46 and a few hours of city clerical time, for which the company said it would pay.

"The Department of Buildings," the court said, "apparently intending to discourage this and similar requests, agreed to provide the information in hard copy, printed out on over a million sheets of paper, at a cost of \$10,000 for the paper alone, which would take five or six weeks to complete. Brownstone would then have to reconvert the data into computer-usable form at a cost of hundreds of thousands of dollars."

The ruling emphasized that the "underlying policy of the law is to insure maximum public access to government records." Reported in: *New York Times*, October 28.

libel

Santa Ana, California

In a decision that offers California newspapers increased protection from libel suits, a state appellate court sharply curtailed the amount of money that Harbor Municipal Judge Calvin P. Schmidt can collect if he wins his libel suit against the *Orange County Register*. In a unanimous decision released October 1, a three-judge panel of the 4th District Court of Appeal held that Schmidt cannot collect general or punitive damages from the newspaper if he wins his lawsuit because he served his demand for a retraction on the *Register's* editor. The California Civil Code requires that demands for retractions or corrections be served on the publisher.

Schmidt's lawyer had argued that the demand for retraction was proper because the newspaper's publisher had delegated authority to the editor. But the appellate court noted that although the editor often decides whether to publish a retraction or correction, ultimate authority rests with the publisher.

"If the demand be mistakenly made on a subordinate, the publisher need not worry about a lawsuit for general or punitive damages," Associate Justice Edward J. Wallin wrote. "The demand may be ignored without legal consequences unless it is served upon the publisher."

In enacting that portion of the code, the court said, the California Legislature intended to "encourage a more active press by means of an increased insulation of newspapers from liability arising from erroneous published statements." Reported in: *Los Angeles Times*, October 2.

television

Atlanta, Georgia

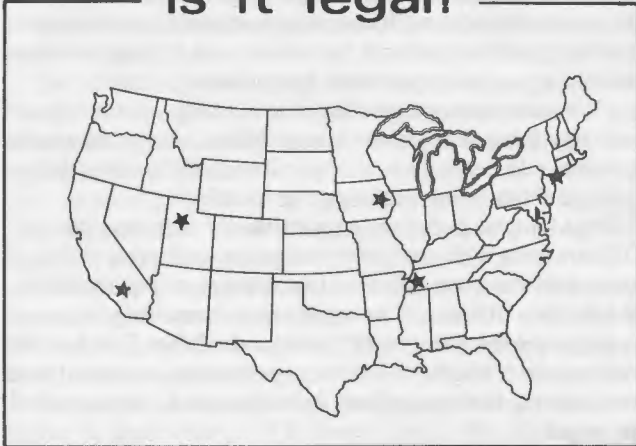
The First Amendment did not obligate a public television station to invite a Libertarian Party candidate to participate in a televised political debate between the Democratic and Republican candidates for governor and lieutenant governor, the U.S. Court of Appeals for the Eleventh Circuit ruled, *per curiam*, October 31. The court said that the decision to air a debate between only the two major party candidates was reasonable and was not an effort to suppress the views of other candidates. Circuit Judge Thomas A. Clark dissented. Reported in: *West's Federal Case News*, November 16.

church and state

Chicago, Illinois

The city of Chicago's prohibition of the Lubavitch Chabad House's free-standing Chanukah menorah structure in a public area at O'Hare Airport did not constitute religious discrimination, Judge John L. Coffey of the U.S. Court of Appeals for the Seventh Circuit ruled November 6. According to Judge Coffey, the city enforced the same prohibition for all free-standing religious symbols. The prohibiting regulation was content neutral and narrowly tailored to serve a significant government interest, as the city provided for adequate alternative modes of communication. Reported in: *West's Federal Case News*, November 16. □

is it legal?



church and state

Salt Lake City, Utah

A debate over prayer at school events in Utah raged over the summer, engulfing school districts, state education officials, and even the governor. The debate intensified when the ACLU filed suit July 30 against the Granite and Alpine school districts calling for an end to prayers at high school graduations, junior high school promotion ceremonies, and such other activities as school-sponsored plays and choir performances. The lawsuit contends the prayers violate the U.S. Constitution's ban on government establishment of religion.

The suit had been threatened for months after ACLU officials wrote to state and local education officials urging that they not allow prayers at graduation. "Reciting prayers at public school activities advances the particular theology proclaimed, with state approval, to the detriment of religious diversity and freedom from state coercion," Michele Parish-Pixler, executive director of the ACLU of Utah, said in a memorandum to state Attorney General R. Paul Van Dam.

Public debate grew when a student in the Jordan school district complained about a Mormon prayer used at graduation. The district dropped prayer from its ceremonies in response to a suit filed on the student's behalf. Approximately 70 percent of Utah's population belongs to the Mormon church.

Even before the lawsuit was filed against the Alpine and Granite districts, Governor Norman H. Bangerter called for a legislative appropriation to help the districts defend against the ACLU. "I believe it is imperative that the support of

the governor's office, the legislature, and the board of education be behind these districts as they fight for their basic values," he said in July.

Loren G. Burton, superintendent of the Granite district, which includes Salt Lake City and is the state's largest, said school officials are not "imposing anything" on students by allowing prayers at graduation and other ceremonies, where attendance is voluntary. Reported in: *Education Week*, September 5.

libel

New York, New York

Author Dan Moldea filed a \$10 million lawsuit against the *New York Times* August 23, charging that a critical review of his book, *Influence: How Organized Crime Influences Professional Football*, libeled him and hurt sales of the book. Published in July, 1989, the book was reviewed by *Times* sportswriter Gerald Eskenazi in the *Sunday Book Review* September 3 of that year.

The suit charges that Eskenazi "willfully and maliciously made false and misleading statements and generated false innuendoes concerning Moldea's writing of the book." The suit also alleges that the review "implied that Moldea purposely and intentionally omitted material information."

Because of the review, the suit says, Moldea's reputation suffered, his publisher withdrew support for the book, sales "plummeted," and Moldea has "subsequently been unable to sell any of his ideas for books to any publishing company or agency."

Moldea denied that his decision to sue was spurred by the recent U.S. Supreme Court decision in *Milkovich v. Lorain Journal Co.*, which found that opinion is afforded no more protection against libel than ordinary speech. "I'm not an enemy of the First Amendment," Moldea said. "I think that every critic, every reviewer should be given the widest possible latitude to express his opinion." This case, however, is an "outrageous misrepresentation," he added. Reported in: *Editor and Publisher*, September 8.

student press

Pomona, California

The faculty adviser of a California student newspaper is fighting his dismissal after writing an op-ed piece blasting the administration for allegedly trying to "tone down" the publication's aggressive reporting. David C. Henley, a tenured associate professor at California State Polytechnic University, Pomona, said he filed a grievance against the institution in which he sought reinstatement as adviser and a "full public apology . . . for my dismissal," which he called "retaliatory and punitive."

"I am angry, humiliated, and embarrassed at being dismissed from my advising post," he said. "It was retaliation for students' aggressiveness and their criticism of aspects of the university administration. It is a textbook case of trying to kill the messenger."

Henley's firing came about three weeks after the appearance of his opinion piece in the twice-weekly *Poly Post* in late May. In that article, Henley wrote, "This academic year the *Post* has covered several issues critical to students, faculty, staff and administrators. In nearly every case, *Post* editors or I have received telephone calls or personal visits from individuals wishing to stop the coverage of the respective issue or 'tone it down.'"

"There was no explanation" for the dismissal, Henley said. "Four years ago, I was named Faculty Adviser of the Year and all of my annual fitness and promotion reports have been superior or excellent." Reported in: *Editor and Publisher*, September 8.

concerts

Memphis, Tennessee

Last April, the Memphis City Council passed what is believed to be the most stringent concert content ordinance in the country. Under the ordinance, any performer, promoter, or venue owner who knowingly exposes a minor to "harmful material" during a concert in Memphis may be arrested. The law had been promoted by FLARE — Family Life America Responsible Education Under God, Inc. — a self-described "moral concerns" group that also was instrumental in helping to rewrite the Tennessee obscenity code and in passing a Memphis ordinance that prohibits dancers at topless bars from getting any closer than twelve inches from a customer.

Larry McDaniel, a truck driver who doesn't drink, smoke or take drugs, but often goes to hard rock concerts with his four children, thought the new ordinance interfered with his rights as a parent. He specifically objected to a provision that prohibits parents and guardians of underage children from allowing minors to attend "harmful" concerts. Violators face fines of \$50 per infraction.

"These people are not going to tell my children what to do. They don't send them to school, they don't buy their clothes, they don't feed them, they don't help them with their homework. So what right have they to tell my children what they can or cannot do? That's my job and nobody else's," he said.

McDaniel contacted the ACLU and a lawsuit challenging the ordinance was filed May 10 on his behalf.

Under the ordinance, concerts considered "harmful to minors" are defined as performances that include "any description or representation, in whatever form, of nudity, sexual excitement, sexual conduct, excess violence or sadomasochistic abuse." A performance would violate the

law if it "predominantly appeals to the prurient, shameful or morbid interest of minors, is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and is utterly without redeeming social importance for minors."

"We aren't attempting to legislate morality with this law," said city council member Jimmy Moore, the ordinance's sponsor. "But enough is enough. Somebody has to stop this garbage from being performed in public."

The Memphis police are responsible for enforcing the law. Officers meet with promoters and performers prior to shows to explain the boundaries and each concert is patrolled by at least two officers. "At some point, somebody is bound to step over the line," said Commander Mike Dodd of the vice squad. "Maybe it will be a performer, maybe it will be a parent, but somewhere down the road, someone will go to jail."

The idea for the concert ordinance was conceived ten years ago by FLARE, but it wasn't until Motley Crue drummer Tommy Lee mooned the audience at a concert in Memphis last February that momentum for its passage built. "All we wanted was something that would force parents to go and see for themselves how bad things have gotten so that they would be able to make a more educated decision on what their children are being exposed to," said Marilyn Loeffel, the group's leader. "We never thought that after ten years of not getting anything done, that they would pass a law that would go this far. But we're glad they did. It's better than anything we ever imagined."

Of her group's crusade against pornography, Loeffel said, "I'm sorry, but when it comes to restricting the spread of pornography, I am my brother's keeper. What we do is a very thankless job. It's like cleaning toilets. I cannot understand how people have allowed things to get this bad, especially Christians."

On May 4, Robert Eugene Crain, director of the Germantown Community Theater, filed a lawsuit charging that the ordinance deprived parents of their right to determine what performances their children may attend. Six days later, the ACLU filed a similar suit on behalf of McDaniel. The suits were consolidated on May 16.

McDaniel said he filed the suit because he feared he might face arrest for taking his daughter to an Aerosmith concert. "In my opinion, as long as I live in America, it should be my choice as to which cotton-picking concerts my children should be able to attend. If I don't deem it harmful to them, by George then they ought to have the right to go." Reported in: *Los Angeles Times*, October 7.

obscenity

Sioux City, Iowa

A jury found all defendants innocent October 2 in the first case to test Iowa's tough new obscenity law. The jury of

seven men and five women acquitted the operators of an adult bookstore where police had seized two explicit videotapes. Defense lawyers acknowledged the films depicted "sex all over the place."

The verdict surprised many observers, particularly because the Sioux City area is one of the most conservative in the state, and may indicate prosecutors will have a difficult time enforcing the 1989 law. Jurors said as they left the court that they couldn't define "community standards" and an "average person," tests the state law says must be applied to judge materials obscene.

"We're just saying that the state did not prove beyond a reasonable doubt the elements of the law," said Darla Garber, the jury's forewoman. "There is so much gray area, there was so much left up to us to decide. If they couldn't define statewide community standards, and we couldn't define it, then what is it? It doesn't exist. We attempted to define it and there was no way."

Garber said of the tapes, "They might be disgusting to some people, but I think the average community standard says that people want to watch these things and want to have them available."

According to the state law, materials are obscene if the "average adult" using statewide contemporary community standards, finds that the materials appeal to prurient interests, that the materials are patently offensive and that they lack serious literary, scientific, political or artistic value. Reported in: *Des Moines Register*, October 3. □

(evolution . . . from page 1)

evolution rule. But the board was unmoved until Texas Attorney General Jim Mattox ruled that the requirement was unconstitutional and had to be discarded. Board members reluctantly complied.

By the summer of 1984, a school reform movement involving Dallas billionaire Ross Perot hit Texas, and the 27-member board was thrown out of office. Replacing the panel was a new, 15-member board that promptly reversed course on textbook selection. However, when elementary science and high school biology books came up for consideration that fall, it was too late for the new board to make dramatic changes. The new group of books that was approved contained only scant coverage of evolution. One book didn't mention the topic.

Those books have been used in Texas schools since the fall of 1985, since state law specifies a six-year cycle for textbooks. The current board began laying the groundwork for major changes in early 1989 by voting to require for the first time that all of the texts teach evolution. That action incurred the wrath of creationists, who charged at a board hearing that it would "plunge our schoolchildren into scientific darkness" and make them act "like animals."

Emboldened by the board's stance, publishers responded with new and revised texts that include thorough explanations of evolution. Those texts won approval November 10 and will be used in Texas public schools for six years beginning with the 1991-92 school year.

"I think we're finally over the hill, and our schools can now expect science books of far better quality than we have ever had before," said board member Will Davis of Austin, who also served on the old board in the early 1980s and was one of the few board members who actively opposed the anti-evolution rule.

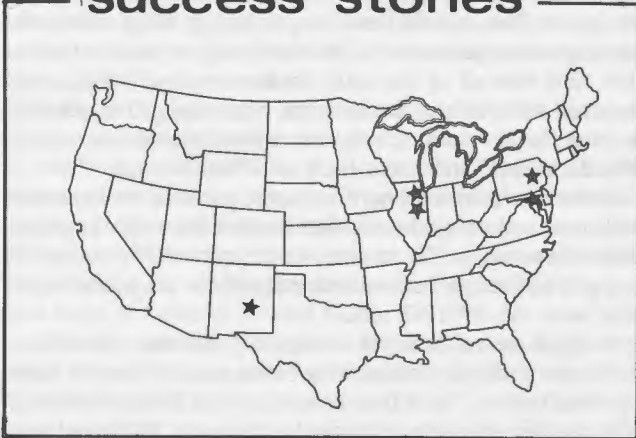
But board member Jane Nelson of Lewisville, who opposed the new books, said most don't provide sufficient evidence refuting evolution or presenting its flaws. "I don't think the issue is that we want to put religion in the biology textbooks. I just want to give enough information for the teachers to use to show that we haven't proven the theory of evolution," she said. Most biologists, however, see evolution as a fact, with various Darwinian theories of natural selection, modified to accommodate modern genetics, offered to explain that fact.

Mel Gabler, who has been testifying at the state's annual textbook hearings for nearly thirty years, was among several speakers at a hearing who called for rejection of the books. Urging that they be rewritten, he charged that publishers had censored mounting evidence against evolution. "These science textbooks were written to accommodate the faith of a small percentage of Americans who want only evolution taught — and they want it taught as a fact," he said. "This is indoctrination, not education."

But Davis said the decision reflected a changing Texas that may be leaving the Gablers behind. "It has become more urban and cosmopolitan, and Texans are better educated. We may be just as religious, but our religious beliefs are tempered by a better understanding of the differences between religion and the education of our children."

"We have reached a point where some of the things we used to do in our schools are no longer acceptable," he continued. "We cannot engage in religious theory. That's for churches; that's for your own soul-searching. In our public schools, we must teach science, not religion." Reported in: *Dallas News*, November 11. □

— success stories —



libraries

Oak Lawn, Illinois

The village library board voted 4-1 October 16 to renew a book selection policy that affirms Director Joy Kennedy's right to select all library materials. Trustee Nancy Czerwiec, who gained national attention last June after proposing a limited access card for children that many residents labeled a form of censorship (see *Newsletter*, September 1990, p. 179), was the lone member to oppose the policy.

Czerwiec said she opposed the policy because it puts the board on record as a supporter of the American Library Association's *Library Bill of Rights* and *Freedom to Read* statement. Because all library materials have been selected by a staff member, patrons never have true "freedom to read" because they do not have access to all information that is available, Czerwiec argued.

Library board president Carol James said the policy gives librarians the right to select materials, yet also provides the trustees with the final say over any potentially offensive material. "It should be that way. After all, we're not the librarians," she said. Reported in: *Southtown Economist*, October 18.

Howard County, Maryland

The Howard County school system, which the previous month took a book on the occult out of elementary school libraries, declined November 5 to remove *The Lion, the Witch and the Wardrobe*, by C.S. Lewis, from elementary school libraries, and a book on unwed teenage mothers from the middle schools. Associate superintendent Joan Palmer agreed with a committee recommendation that the Lewis book, the first in his well-known "Chronicles of Narnia"

series, was not inappropriate. She also agreed that *Kids Having Kids: The Unwed Teenage Parent*, by Janet Bode, should remain in middle school libraries. Just weeks before, Palmer had accepted a committee recommendation to remove *Curses, Hexes, and Spells*, by Daniel Cohen, from elementary school libraries (see page 12).

A parent has said she was "shocked" to find fifth-graders reading the Lewis book in class, claiming it depicted "graphic violence, mysticism and gore." "I can't believe such a book would be given to schoolchildren, especially elementary. If elementary school children are exposed to this, think of the effect it will have," she wrote in a written complaint.

Another parent found Bode's book, which outlines options for pregnant teens, including abortion and adoption, to be inappropriate. "It is not fit for a young girl or boy to be reading this book," the parent concluded.

The recent requests to remove books from school libraries and the curriculum had prompted 99 parents to take a stand against censorship in a petition sent to Palmer. The petition was considered by the advisory committee. The parents who signed it said they were "alarmed at the recent requests for censorship of books in the Howard County public schools," and added, "We feel that exposure to a wide variety of knowledge and opinion is necessary for our children to develop into educate and well-informed adults."

The petitioners agreed that parents have a right to monitor the books their children read. However, they declared, "We do not feel that a parent has the right to ask for removal of a book so that other students may not avail themselves of it." The petition expressed the concern that "we could end up with a very diluted curriculum and reference library in our schools."

Members of the advisory committee said they considered the complaints about "graphic violence" and witchcraft in the Lewis book to be "taken out of context." The book on teenage pregnancy was found to be a fair presentation of the issues. Reported in: *Baltimore Sun*, October 23, November 6.

North Hills, Pennsylvania

The Pine-Richland school board returned two controversial novels to the library shelves at Pine Middle School September 25 and asked a board member to apologize for remarks he made about a librarian. The board voted to rescind a decision it made a month before to keep the books out of the library because of concerns about their content (see *Newsletter*, November 1990, p. 209).

The board also sought an apology from Director Edwin R. Brown for remarks he made at the August 28 board meeting questioning the integrity of the middle school librarian for allowing the books, *Stage Brat* and *Alice with the Golden Hair*, to be in the library in the first place. Brown, who voted against returning the books, refused to apologize.

Without mentioning librarian Deborah Sakelhide by name, Brown said he "personally would not trust anyone with children" who would make such books available. Sakelhide filed a grievance through her union against the administration and the school board. The board voted 7-1, with Brown dissenting, to ask Brown to make a public apology to Sakelhide and her union.

The board then voted 6-1 to return the books to library shelves. The decision came in response to demands by members of the community to reverse the board's August vote. Reported in: *North Hills News Record*, September 28; *Pittsburgh Post-Gazette*, September 27.

schools

Barrington, Illinois

The school board of Barrington Unit School District 220 decided October 15 to keep in the fifth grade curriculum a book that has a chapter on incest, despite the objections of some parents. In September, three parents complained when they learned that the book, *Your Relationships*, a text used in health studies, had information on incest.

In a recommendation presented to the school board, a review committee said that the information was appropriate if fifth graders chose to read the chapter. The chapter is not required, however, for the course.

"In view of the increasing incidence of neglected and abused children in today's world, learning about sexual abuse, including incest, and about ways a child can protect himself, is necessary, if not essential," said Superintendent Clyde Slocum. School officials also noted that parents have the opportunity to review the material before it is presented and to withdraw their children if they desire.

Anna Chinnock, a mother and nurse who led the opposition, said the book created "ugly imagery for innocent minds." She and two other mothers had removed their children from the sex education class at Arnett C. Lines School. While Chinnock agreed incest was a serious problem, she said, "I don't think a child needs to read about it. And I'm strong enough where you don't teach my child anything I'm not thrilled with."

"In summary, the topic of incest for parents and teachers is not an easy one to read about or discuss," concluded Superintendent Slocum, "and, consequently, the subject is often ignored. But the difficulty in reading and talking about incest even at a young age cannot compare to the pain and confusion that a molested child may have been compelled to endure. For this reason alone, I believe information about various forms of child abuse, including incest, should be available to fifth-grade students." Reported in: *Daily Herald*, September 28, October 16, 18; *Barrington Courier*, October 18; *Chicago Tribune*, October 16.

Santa Fe, New Mexico

School districts around New Mexico will be able to use state money to buy the controversial *Impressions* reading series. State school board members voted 12-2 October 11 to include the series on the state's approved list of textbooks, despite widespread complaints that it contains too many scary stories.

Most of the more than eighty people at the board's meeting appeared to agree with Bill Redmond, a Los Alamos educator, who told the board the books were religiously biased because they contain references to witchcraft and Satanism. "War! This means war," one person shouted, as at least forty parents stormed out of the meeting following the vote. The state's Instructional Materials Committee — after a lengthy hearing in Albuquerque on September 28 — had recommended that the *Impressions* titles be left off the list.

Millie Pogna, a member of the Instructional Materials Committee, said the board "trampled on the rights of parents. You have just unleashed 2,000 angry parents on the school districts and the legislative system." Citizens had submitted to the board 654 affidavits opposing the series and but 49 in its favor.

But Darlene Chilton, a Las Cruces teacher and parent who served on the state's screening committee, said the criticism of "Impressions" is not truly representative of the majority of parents in New Mexico. "The series sparks excitement and a desire to read," she said. A representative of the publisher pointed out that only 22 of the 822 reading selections in the series even mention ghosts, goblins or witches.

Douglas Booth of the ACLU told the board: "If you want to see the devil in something, you are going to see it, and that is what's going on here." Board member Maria Chavez said she would not want to read some of the *Impressions* stories with her children or grandchildren. "But I cannot let my personal biases govern my actions on this board. We have to look at the big picture," she said. Reported in: *Albuquerque Journal*, October 12. □

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

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