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abortion ruling threatens speech

In a broadly worded 5-4 ruling, the Supreme Court on May 23 upheld federal regulations that bar employees of federally financed family planning clinics from all discussion of abortion with their patients. Under the regulations that will now go into effect after three years of court challenges, the 4,500 clinics serving nearly four million women each year will be barred from providing basic medical information about abortion.

The clinics will be required to refer pregnant women for prenatal care and may not help women find doctors who will perform abortions. If a woman asks about ending an unwanted pregnancy, the rules require the clinic to inform her that "the project does not consider abortion an appropriate method of family planning." The rules apply to all clinics receiving any federal aid. Clinics that want to use their own money to provide information about abortion can only do so if they set up entirely separate programs in separate buildings.

The majority opinion, written by Chief Justice William H. Rehnquist, rejected every statutory and constitutional objection raised against the regulations in lawsuits brought by Planned Parenthood and by the City and State of New York. The plaintiffs had argued that the regulations were not authorized by Congress and that they violated the free speech rights of clinic employees as well as the constitutional rights of the clinics' patients to choose whether to end a pregnancy.

The opinion in *Rust* v. *Sullivan* was joined by Justices Byron R. White, Anthony M. Kennedy, Antonin Scalia, and David H. Souter. Justices Harry A. Blackmun, Sandra Day O'Connor, Thurgood Marshall, and John Paul Stevens dissented. (Excerpts from the majority opinion and the dissents begin on page 117).

The constitutional status of abortion itself was not directly an issue in the case, and legal observers noted that the enduring legacy of the decision was far more likely to be its impact on freedom of speech than on the abortion controversy. In upholding restrictions on abortion counseling at clinics that receive federal funds, the court made clear that the federal government has broad power, when it decides to spend money, to impose conditions on the speech of those who accept the funds. If applied beyond the abortion context, the ruling has significant implications for a wide range of government funding decisions.

In the majority opinion, Chief Justice Rehnquist referred to abortion as a "protected right" only in passing. He did refer extensively, however, to a series of Supreme Court

(continued on page 115)

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in this issue

targets of the censor

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in the wake of a censored war

In the wake of America's most censored war (see *Newsletter*, May 1991, p. 69), editors, reporters, and media critics have begun to assess the damage wrought to a free and adversarial press. The Gulf War left the media with two serious problems to face. The first is censorship. The second is self-censorship and, perhaps more frightening, the tendency of much of the media to adopt the role of cheerleader rather than that of dispassionate reporter.

With respect to censorship, it was clear that the Pentagon had "created a system of enormous control," according to Clark Hoyt, Washington bureau chief for the Knight-Ridder Newspapers. "It was not security control; it was image control."

During the war, the Pentagon restricted access to the battlefield to only a small number of the hundreds of reporters in Saudi Arabia, and it allowed them to travel to the front lines only under the supervision of military officers. These "pool" reporters turned their copy over to the officers, who reviewed it for what they deemed security violations.

Journalists said the pools severely limited access to U.S. forces and reduced most correspondents to covering the deployment and war from hotel rooms. They also said that military escorts made candid interviews impossible.

Moreover, the Pentagon proved adept at providing selective access. Nearly 1,000 reporters from local newspapers and television stations were flown to the gulf at government expense and allowed to spend as many as four days before the start of combat with their local units. This produced a spate of upbeat feature stories at a time when pool reporters from the national media were complaining that they had not been with the troops in weeks.

News executives, convinced that they were routed as much as the Iraqis during the Gulf War, have vowed not to accept similar restrictions on their freedom to cover future conflicts. In a letter delivered April 29, fifteen Washington news bureau chiefs told Defense Secretary Dick Cheney that the Pentagon "blocked, impeded or diminished" the flow of news from the war. They insisted that the rules for covering future conflicts be changed.

"We are apprehensive that, because this war was so successfully prosecuted on the battlefield, the virtual total control that your department exercised over the American press will become a model for the future," said the letter, which was signed by fifteen executives of major newspapers, television networks, magazines and wire services. The bureau chiefs asked for a meeting with Cheney, at which they said they would seek to confirm the concept of pools as a temporary arrangement at the outset of hostilities until independent reporting is possible.

"Clearly, in Desert Storm, the military establishment embraced pools as a long-term way of life," the letter said. "The pool system was used in the Persian Gulf war not to facilitate news coverage but to control it. . . . We are intent upon not experiencing again the Desert Storm kind of pool system. In fact, there are many who believe no pool system should be agreed to in the future. We cannot accept the limitations on access or the use of monitors to chill reporting."

The bureau chiefs also requested elimination of the Pentagon's pool escorts — the military officials who determined whom the pool reporters could interview and then monitored the exchanges between the troops and the only reporters allowed near the battlefields. The news chiefs also protested extensive delays in the Pentagon's review of copy for security breaches and its transmission to the outside world.

"We are seeking a course to preserve the acknowledged need for real security without discarding the role of independent journalism that is also vital for our democracy," the letter said.

Signing the letter were representatives of the Associated Press, the *Chicago Tribune*, Cox Newspapers, Hearst Newspapers, the *Los Angeles Times*, the *New York Times*, *Newsweek* magazine, the *Philadelphia Inquirer*, *Time* magazine, the *Wall Street Journal*, the *Washington Post*, and the ABC, CBS, NBC, and CNN television networks.

Stan Cloud, bureau chief for *Time*, said: "The issue at this point is not so much what we would do to correct it, but to alert the Pentagon to the virtually unanimous opinion that the system as it currently exists and as it was put into place in Saudi Arabia does not and will not work."

But despite such unanimity, media organizations were by no means in agreement on how best to respond to Pentagon censorship. Previously, the major media recoiled from supporting a lawsuit challenging the Pentagon's media restrictions, which was dismissed by Judge Leonard Sand (see page 116). News executive said that signers of the letter to Cheney were divided into "moderates," who believe that the pool system can be made to work, and "radicals," who say almost any attempt to cooperate with the Pentagon will be fruitless.

Among the more radical editors is *Time*'s Cloud, who said the best course might be for editors simply to tell the Pentagon: "You go in and invade some Third World country, and we don't play. We'll get there on our own and somehow we'll cover it. We don't need these pools; they need us as much as we need them. We made Gen. Schwarzkopf what he is today, and the next Gen. Schwarzkopf would like to have similar treatment."

But some media representatives said such a course could be unrealistic, given the industry's natural competitiveness, which might sabotage resistance to censorship in the future. "We're all naturally competitive," said Knight-Ridder's Hoyt. "If significant numbers of news organizations decide to play the game with the Pentagon, it puts anybody who won't do it at a tremendous competitive disadvantage."

In addition, many media critics have pointed out that censorship only succeeded because the media seemed to want

it to succeed and that the real problem was not with the Pentagon but with the press itself. *Newsday* columnist and prize-winning Vietnam War correspondent Sydney Schanberg said "the press behaved like a part of the establishment" and now is "feeling embarrassed and humiliated and mortified" over its performance.

"Blaming the Pentagon for the quality of war reportage is convenient for journalists who may feel embarrassed that reporters more often resembled Government stenographers than news-gatherers," wrote Norman Solomon, co-author of *Unreliable Sources: A Guide to Detecting Bias in News Media* and an associate of Fairness and Accuracy in Reporting (FAIR), a media watchdog group, in an op-ed article for the *New York Times*. "In reality, albeit with some grumbling, the big media went along with the warmakers.... Press complaints about Pentagon censorship have served as a lighting rod to draw attention away from the media's self-censorship."

"No federal agency forced the news media to rely on the narrow range of pro-war analysts that dominated the networks and news pages nor made correspondents mouth the sanitized military lingo that routinely obscured the war's human impact," Solomon continued. "Nor were journalists compelled to follow mentions of civilian casualties with immediate denial of responsibility, as when Tom Brokaw declared on NBC: 'We must point out again and again that it is Saddam Hussein who put these innocents in harm's way.' No Pentagon restriction forced the network anchors to keep speaking of the U.S. Government as 'we,' thereby narrowing the separation between press and state to the vanishing point."

"If top editors really want to change wartime reporting, they should probe their own abdication of journalistic responsibility and send their next complaint letter to themselves," Solomon bitterly concluded.

Indeed, a number of critics have pointed out that during the war much reporting seemed to verge on jingoism. As the war progressed full tilt, a San Francisco Bay Area reporter wandered through the newsroom of NBC affiliate KNBR radio. The television was tuned to CNN, keeping the staff current, and an injured American soldier was being attended to on the screen. "They shouldn't show this on TV," the reporter muttered. "This is what lost us the Vietnam War, showing the wounded. They shouldn't show this stuff."

At another San Francisco "news radio" station, the host of a call-in show responded to an Arabic-accented antiwar caller by angrily and abruptly cutting him off and playing the closing theme from *Looney Tunes* to mock him. And the problem was hardly local. According to FAIR, only one of 878 on-air sources who appeared on ABC, CBS and NBC nightly news represented a peace organization.

Given the press's role as cheerleader for war, it was little wonder that, according to a survey by the Times Mirror Company, a majority of Americans not only approved of media coverage of the conflict but also favored government censorship. According to the survey, released March 25, nearly nine in ten Americans expressed a "great deal or fair amount" of confidence in the accuracy of the military's reports of the war.

The survey found that a majority of nearly two to one thought that military censorship is more important than the media's ability to report important news. A 58 percent majority also thought journalists went "too far" when they struck out on their own to cover the war rather than remain with their military chaperones. Overall, eight in ten approved of military restrictions on the press, despite the fact that 36 percent thought the military kept a lot hidden and another 36 percent said the military kept at least some information hidden.

Still, the public continued to think that press criticism of the military does more to strengthen the nation's defense than weaken it, the survey found. And a three to one majority said they would prefer coverage of war to be neutral rather than pro-American.

Significantly, the survey also suggested that the military's use of what Solomon called journalistic "linguicide" was effective. Half of those surveyed were asked if they were concerned about the amount of "collateral damage" caused by allied bombing. When the question was asked using this euphemism for civilian casualties — during the war *Time* defined it as "a term meaning dead or wounded civilians who should have picked a safer neighborhood" — 21 percent responded that they were very concerned and 34 percent that they were fairly concerned.

But the wording was changed for the other half of the sample, and the contrast in response was striking. Asked if they were concerned about "the number of civilian casualties and other unintended damage" in Iraq, 49 percent reported being very concerned and 33 percent fairly concerned. Reported in: *Los Angeles Times*, March 25; *New York Times*, May 24; *San Francisco Weekly*, March 20; *Philadelphia Inquirer*, May 2; *Washington Post*, May 14. □

corrections

A review of *The Right to Know*, Volume 3, in the March, 1991, issue of the *Newsletter* incorrectly listed the publication as 65, not 265, pages long. This, unfortunately, made this useful work appear outrageously expensive.

In the July, 1990, issue of the *Newsletter*, in an item in "Success Stories" on the denial of a request to remove *My Sweet Audrina* from a middle school library, the town of Pullman was incorrectly located in the state of Idaho. Pullman is in Washington state.

voters send library censors a message

Voters in Oak Lawn, Illinois, sent a message of support for free access to all library materials by voting library board President Carol James out of office, library observers and James herself acknowledged in early April. James, who was seeking a second six-year term, embraced two measures in the last nine months that would have allowed restrictions on children's access to the library or their ability to check out books. She finished third in a race for two library board seats, losing to two newcomers who supported unrestricted access to all library materials.

"For anyone on the board to believe they have the ability to decide what's appropriate for children, adults or anyone else is totally inappropriate," said former library board President Harriet Murphy, who chaired the winners' campaign. "And I think the community feels the same way. They don't want anybody restricting their materials."

The election winners were Lois Gasteyer, who got 6,947 votes, and Robert Honkisz, who got 4,978. Both said their support for an open-access policy played a major part in their victories. James, who got 3,411 votes, said her opponents used the access issue to portray her as a censor. The approach worked, she said.

"We'd like to have the library be an open place, but we'd also like to protect the child. Unfortunately, Oak Lawn doesn't care. It's their loss," James said. "I feel sorry for the people in this town because I think our children are not being protected. We're buying trash."

James embraced a measure last year that brought national attention to the library. The policy would have forbidden children younger than 14 from entering the adult section of the library without a parent's written permission (see *Newsletter*, September 1990, p. 179). The policy was approved during a June meeting when three board members were absent, but was overturned a month later.

Then, on the eve of the election, James proposed that parents register their children for either juvenile cards or adult cards. Children with juvenile cards would have been able to check out items from the children's section. That measure was defeated in a 2-2 vote March 26, with three trustees absent. James vowed to reintroduce the plan if reelected.

"I think the main issue is people want the library to be left alone," said Gasteyer. "I think everyone has to do their own censorship."

Trustee Nancy Czerwiec, the author of last year's limited access policy, who first gained notoriety for her unsuccessful 1980 campaign to ban the children's sex education book *Show Me*, may have less of a voice now that James is gone, some observers said. But Czerwiec said she would not abandon efforts to make trustees see things her way.

"I want to further educate board members that librarians pick and choose materials. But if something should occur to a child because of our materials, we're going to be looking at it," Czerwiec said. "Ideas do have consequences, and children cannot handle all ideas."

But former board President Murphy said James' defeat would put an end to bickering among the trustees. "I just think the library can look forward to a much more constructive leadership that's much more interested in furthering the community's interests and much less interested in further restrictions," she said. "You have no idea what a relief this has meant. No one's happier than I am." □

school book censorship in north Florida

A series of school book controversies in recent years has made north Florida a hotbed of censorship battles. Even books that have passed the test of time and are considered literary classics have been subjected to new tests, as some critical parents and teachers in the area try to control what children may read.

In the last year, parents clashed with school officials over book censorship in Duval, Bradford, Clay, Nassau, Alachua, and Levy counties. Among the more notable incidents:

- *My Friend Flicka* was removed temporarily from classrooms in Clay County, after several angry parents complained about the words "bitch" and "damn." Karen Wacha was among those who objected to the words: "None of you have the right to put that word before my child," she told school board members. "It's not acceptable to me." Another book, *Abel's Island*, was also a recent target of criticism in the county schools.
- The Grimm Brothers fairy tale, *Little Red Riding Hood*, more than two centuries old, was pulled from Bradford County schools after teachers questioned a passage in which the young girl takes her grandmother wine to make her feel better. The district switched to a "nonalcoholic" version of the story. In Levy County, the fairy tale also was challenged by teachers, but it was retained after a review by a committee of educators and parents.
- In Duval County, three books — *Jogging*, for its sexual references; *Schmucks*, for profanity; and *There's a Pig in Every Crowd*, for an adult cartoon — were banned. In addition, 52 other books — including *Of Mice and Men*, by John Steinbeck, and *Catcher in the Rye*, by J.D. Salinger — were restricted to students who obtain written parental permission.

Some north Florida counties reported no challenges to schoolbooks over the last three years, but school officials acknowledged that this was partly because they have become more cautious about the books they acquire, in some cases going so far as to quietly remove books challenged elsewhere,

even if there is no local complaint. For instance, when a textbook containing two classics — *Lysistrata*, by Aristophanes, and Chaucer's *The Miller's Tale* — was removed from classrooms in Columbia County in 1986, Putnam County school officials also dropped the book and ordered a new text, although they had not received any complaints about the old one. Some schools order few books because of financial restraints.

Although the censorship movement is national in scope, it operates locally, said John Simmons, professor of English education at Florida State University and chair of the National Council of Teachers of English. "The point I want to emphasize is that this is a local issue," Simmons said. "Freedom of expression and control by the school board are on a collision course. Censorship in itself is like a cancer. It can hit any school, teacher and district at any time. There is no way to sanitize something so that it won't be challenged. Everybody has an ax to grind." Reported in: *Florida Times-Union*, March 31. □

the Bush administration and freedom of the press

Restrictions imposed by the armed forces on the media in the Persian Gulf were not an aberration, but rather typified the Bush administration's overall approach to the press. That was the conclusion of *The Bush Administration and the News Media*, a report issued in March by the Reporters Committee for Freedom of the Press. Discussing the committee's report, Executive Director Jane Kirtley pointed out that the Bush administration's approach "is no different from the Reagan administration's, but it may be outdistancing the Reagan administration in creativity."

The report listed 235 actions that it said were taken by the administration to restrict access to government information and to intrude on editorial freedom since President Bush took office. More than 135 actions took place since an initial report was published a year earlier, with over half of the new entries involving restrictions on coverage of the gulf war.

While the "Persian Golf policy is certainly the most disturbing," Kirtley said, it should not "blind people to the other issues," such as Federal Communications Commission policies on indecent expression and a proposed bill that would prosecute journalists and whistle-blowers for espionage for unauthorized electronic reception of classified information.

Citing "echoes of the Nixon era," Kirtley found the "us versus them" mentality of the government troubling. The media, however, "have only ourselves to blame" for not reporting on the issue, she continued, noting that the media must not abrogate the responsibility to question the government in order to be popular.

The report listed items chronologically and by categories, including Disinformation, Freedom of Information-Records, Plumbing Leaks, Policing Thought, Prior Restraint, Secret Government, Stop the Press, and War in the Gulf. The following are some of the incidents reported by the Reporters Committee, excluding those related to the war:

January: The Energy Department is told by the U.S. archivist that it must respond to year-old findings that serious weaknesses in its record keeping must be addressed. Archivist Don Wilson says DOE personnel treat historical records as personal property.

Access is denied by the Pentagon and the U.S. Army Center of Military History to reports on the U.S. invasion of Grenada, seven years after the mission ended.

Although invited by one of the participating foundations, a Greenpeace worker who had earlier expressed concern over pesticides banned in the U.S. being shipped to Poland is denied an invitation to a symposium on the subject by the White House.

It is revealed that the FBI ran background checks on 266 people connected "in any way" to FBI investigations of library patrons during the Reagan administration.

February: White House Chief of Staff John Sununu orders changes in a Bush speech to underscore the problem of global warming; original speech emphasis had been on administration efforts to solve the problem.

Rep. Charles Rangel (D-NY) files a FoIA request after the Pentagon refuses to release combat footage taken by military personnel during the invasion of Panama. Rangel receives some tapes, excluding footage of Apache helicopters, and ABC, CBS, CNN, and NBC are denied tapes and index of the tapes that exist.

Canadian James Hunter, who has been involved in National Federation of Labor Youth League baseball, is detained at the border by U.S. immigration officials, who say while they cannot deny visas for ideology, they can still question him about his political beliefs.

March: The FBI's freedom of information officer tells Congress the average FoI request is granted or denied in 320 days; the act requires notice of refusal or acceptance in ten days.

The chair of the State Department Advisory Committee of Outside Scholars, Warren Cohen, resigns in protest over deletions from the department's volumes of U.S. foreign policy, which the committee had reviewed in the past to ensure deletions did not distort historical accuracy.

April: Although Defense Secretary Dick Cheney tells of the bombing accuracy of two Stealth fighter planes during the Panama mission, in actuality one of the planes missed its target by 160 yards.

A group of U.S. scientists are told they cannot attend a White House seminar on global warming because their presence would "inhibit discussions."

The FCC fines a Cleveland radio station $8,000 for inde-

cent dialogue and a Las Vegas station is fined $2,000 for broadcasting indecent songs.

June: The Nuclear Regulatory Commission finds that a senior Energy Department official made statements to Congress "contradictory to the facts" about an investigation of safety problems at a New York nuclear power plant.

A San Jose radio station is fined $20,000 for a series of broadcasts termed indecent by the FCC, although the station had fired the "shock jock" involved before the FCC action began.

July: Paragraphs recommending low frequency radiation fields be classified as "probably human carcinogens" are deleted by the White House from a two-year Environmental Protection Agency study.

An Indianapolis radio station is fined $10,000 by the FCC for broadcasting in 1987 four songs termed indecent.

Despite a new law prohibiting deportation or exclusion of aliens for their political beliefs or associations, those seeking visas must still tell the Immigration and Naturalization Service whether they have ever had any Communist affiliations.

September: The National Transportation Safety Board decided to withhold from the news media the release of cockpit voice recordings in plane crashes until they are less newsworthy, citing an overemphasis by the media on the cockpit transcripts.

The Federal Aviation Administration refuses to release information on the performance of machines installed at airports to detect explosive devices, saying withholding the information will keep it out of the hands of potential terrorists.

October: The House Committee on Government Operations is dissatisfied with the quality and objectivity of Justice Department guidance to other federal agencies on FoIA issues. A paperwork reduction bill passes the House, which would have removed the oversight role of Justice on FoIA matters in the executive branch, but the measure is not adopted by the Senate.

FCC commissioner Ervin Duggan tells a luncheon audience he wants the FCC to be able to meet in private, and is agreed with by another commissioner who says sunshine law requirements discourage candor in discussions.

November: A GAO report on *Pacific Stars and Stripes* finds a pattern of censorship at the newspaper, and Pentagon officials announce plans to rewrite the paper's directive to give its reporters the same treatment as non-government reporters.

December: Staffers at the Consumer Product Safety Commission are directed to refer all media questions to public affairs officers, and interviews are to be tape recorded. The policy is rescinded the day after a newspaper story on it appears. Reported in: *Editor & Publisher*, March 23. □

in review

Libraries, Erotica & Pornography. Martha Cornog, ed. Oryx Press, 1991. pap. 314p. Index.

This collection of essays was inspired by Sanford Berman in 1985, when he wrote that "...there is no reasonably current book that fully and fairly covers the topic...but the need is tremendous..." (p. 21). Cornog took up the challenge and the result might well be subtitled "Everything you ever wanted to know about sex in libraries but were afraid to ask." The 17 chapters by 14 contributors cover seemingly every imaginable aspect of the pornography-erotica question from the open vs. closed shelf dilemma to descriptions of the holdings of erotica and pornography collections in major research libraries.

Cornog has chosen specialists who represent several points of view from full-access proponents to one (Will Manley) whose short essay, "Pornography in the Library? No!," culminates with this fascinating logic: "Deep down inside, many Americans think that sex is sinful. It is for this reason and this reason alone that libraries should exclude pornography." (p 37). And further, "The truth is that today keeping pornography out of the library is good public relations. Who wants to fly in the face of a strong alliance of parents, right-wing fanatics and left-wing feminists? Only a fool." (p. 98). Apparently quite a few librarians and others dedicated to freedom of expression, many represented in this volume, must be fools, then.

When Manley uses the word pornography, he is referring to something that is several steps beyond *Playboy*—which is given quite a bit of play in this volume, including a fine discussion of the Library of Congress braille case and the results of a *Playboy* questionnaire to libraries, both by the editor. Manley is talking about what sells in the local adult book store, material which for most librarians defuses his argument.

The problem of defining erotica and pornography permeates the volume with the expected result; one person's erotica is another's pornography. Both sides of the feminist position are covered, as well as gay and lesbian literature. There are several outstanding, informative bibliographies. It all makes fascinating reading and is a valuable contribution to the literature, but even before the culminating or climactic essay by Cornog's husband, Timothy Perper, a sexuality expert and the former Associate Editor and Book Review Editor of the *Journal of Sex Research*, this reader, at least, felt that freedom of expression had come out on top.

Perper's very long disquisition is a point-by point refutation of all the arguments against the diversity and openness of library collections. It is a beautifully written plea for the "everything-should-be-on-the-open-shelf" position. But even he, after strongly supporting such a stance, says, "I suspect that it will take time—who knows? Another half century?—

before it is widespread library practice to exhibit publicly the books about sex and erotica that have only very briefly been summarized." (p. 285) And he is surely right that such an openness, if it ever occurs, will take a very long time indeed. But as I look back to Libraryland of the 1960s and 70s—Cornog looks back even further in her introductory essay—I see a change, as she does. Today, because of Court decisions, a more sexually 'aware' society, and the efforts of many librarians, with the backing of the Library Bill of Rights and the *Intellectual Freedom Manual*, to collect with diversity against varied complaints, collections are more open. Much explicit fiction and much sexually oriented nonfiction that was hidden or not even purchased in past years is now more readily available. But 'true' erotica and pornography of the types discussed at length by Perper? Not yet. And in fifty years? Maybe, if librarians in the 21st Century are willing to put themselves on the cutting edge.

In sum, if you want to go beyond the *Manual* into the thorny tickets of one of the most prickly problems of collection development, read what Cornog has brought together in response to Berman's proposal; if nothing else it will make you think about your own responses to that age-old question: How do I justify this (or that) in my collection? — *Reviewed by Richard M. Buck, Assistant to the Executive Director, The New York Public Library for the Performing Arts.*

Pornography: The Other Side by F. M. Christensen. New York: Praeger, 1990. $19.95. 188p.

Recent historians of prostitution are calling for the inclusion of the history of sexuality and desire as an integral part of understanding not only prostitution, but the historian's attitude *toward* sex work. So, too, philosopher F. M. Christensen states that "objections to pornography are basically just objections to certain types of sexual attitude and behavior; so are defenses of it" (p. 3). Christensen asks us to think in clear, analytical terms about pornography.

And while I find his arguments persuasive, Christensen does begin his admittedly clear analysis with some basic assumptions. The first is that because men and women differ physiologically and psychologically, they experience desire and satisfaction in different ways. The second is that pornography is related to sexuality; many recent feminist critics have argued that it is related to violence. Because Christensen believes pornography to be a "natural and healthy," albeit imperfect, way to satisfy sexual desire, he labels opposition to pornography as "anti-sexualism." He then refutes or clarifies, *within this context* of Western "prudishness" toward sexuality, the controversial claims that pornography degrades women, promotes violence and aggressive behavior, and causes emotional harm to the viewer.

Christensen relies on biological and anthropological thought for his view that "natural" sexuality of pretechnological cultures is "good" and includes pornography. Contemporary Western society's more reserved sexual attitudes stem from a belief that primitive sexual systems lack that moral overlay achieved by the "civilized" cultures. He is incredulous that so many assume that our society has achieved moral perfection in sexual standards. He challenges us to question the validity of our progenitors' sexual attitudes and to learn from our own experience—to question beliefs and "demand justification for every knowledge claim" (p. 17).

The "double whammy" of high-minded Christian sexual morality, together with the practice of monogamy so unnatural to most animal and human societies, leads to a "vicious circle" of jealousy and repression. Christensen takes the reader through the example of the "gut-level" disgust of a racist seeing a mixed racial couple walking down the street. By analogy, he asks us to understand that just as this couple's relationship is not harmful by nature, neither is pornography. Both will cause a deep reaction respectively for a racist and a person socialized to believe that pornographic fantasies are evil. Further, the "intolerance traditionally heaped upon those who feel a need for such fantasies is itself morally wrong" (p. 23). In old-fashioned terms, pornography is truly in the eyes of the beholder, who can often say no more than "I know it when I see it." Using the same logical approach, Christensen walks us through the fuzzy thinking behind such statements as "pornography treats people like objects."

In some fascinating "reversal" exercises, Christensen asks us to look at sexually suggestive entertainment that is degrading to men (ex: Michael J. Fox risking his life in the rain to deliver a Diet Pepsi to his desirable female neighbor). He also uses a study of hard-core videotapes to prove that in 86% of the cases, the sexual activity involved mutual consent and desire. He challenges the assumption that a woman lying on her back in the nude is "submissive." In regard to the relationship between sex and violence, he reminds us that aroused emotions and violence have always been linked; religious fervor can cause violence, too!

Christensen's appeal to our analytical thinking is especially skillful in his chapter, "Violence and the Evidence." He takes us through the three common arguments—anecdotal, statistical, and experimental evidence—and demonstrates how to "think through" such statements as "a high proportion of rapists use pornography." As Christensen points out, many rapists drink coffee, too! A correlation does not reveal a cause. And, for the argument that pornography causes violence, he appeals to our common sense; other sources of violent behavior are dysfunctional family life, poverty, and drug use.

(continued on page 134)

censorship dateline

library

Wake Forest, North Carolina

A motion that could result in the banning of some books from the library of Southeastern Baptist Theological Seminary was passed by the school's trustees at their semiannual meeting March 12. Trustee Dade Sherman made a motion that the seminary's president, Lewis Drummond, appoint a committee to review books in the school's library pertaining to human sexuality.

"A student contacted me and made me aware of some books dealing with homosexuality that are in our library," Sherman said. The trustee brought several books on homosexuality to the meeting and read an excerpt from one.

Several trustees voiced opposition to the books. "I am dismayed these books are allowed in the library," said trustee Walter Lonis. "God did not create Adam and Sam but Adam and Eve. I cringe to think any money I have given to the school went to buy these books. Let's remove them."

Drummond urged the trustees to exercise caution, however. "I find myself in revolt of this kind of stuff as you do," he said. But he added, "If this gets into the area of censorship you might get into trouble. It's walking a thin line."

The seminary's librarian, Eugene McLeod, who was present at the meeting as a faculty observer, said the books had been selected over a number of years for student and faculty research. "It is extremely difficult to find books on human sexuality that might not be offensive to some people," McLeod said.

The motion passed by a 12-9 vote.

Fred Grissom, president of the seminary's chapter of the American Association of University Professors, said he was unsure of what the outcome of the action would be. "It sounds like the possibility of censorship of some of the books in the library."

"Pastors are going to leave here and go to churches where they are going to have to deal with all manner of problems. They are going to need to be aware of these things in order to effectively deal with them," Grissom said. "The idea that we need to remove these books is best termed 'perilous.'" Reported in: *The Wake Weekly*, March 14.

schools

Grass Valley, California

Efforts to take the controversial *Impressions* series of reading textbooks out of Grass Valley elementary schools gathered steam March 10 when more than 250 people showed up for a seminar on the materials. Parents started opposing the series in February when they reportedly saw controversial themes expressed in the books. The series has been challenged in about forty districts across the country, according to its publisher, Harcourt, Brace & Jovanovich (see page 30).

According to Mike Bratton of Parents and Educators for Academic Excellence, more than 200 people at the seminar signed a petition that already had more than 500 signatures. The group's main goal is to get school boards in the Sierra foothills to stop using the books.

Bratton charged that the books downplay Christian traditions. "We must send these books back and send a message back to the publisher that a little of this stuff is too much," he said. "In my opinion, my fourth graders don't need to be taught deception and the ways of the world — they need to be taught honesty." Reported in: *Grass Valley Union*, March 11.

Dover, Delaware

An eighth-grade history teacher at Central Middle School in Dover wants a federal court to force the Capital School District to let him show the R-rated movie *Glory*. The suit, filed by Daniel W. Pritchett and the Capital Educators' Association, also asked the court to declare that a new district policy banning the showing of R-rated movies is a violation of the contract with the school district.

The suit grew out of a class trip Pritchett planned for his class in February 1990. He had seen *Glory*, which is about black soldiers in the Civil War, and thought it would be appropriate for his class, which was studying the Civil War. The principal and assistant principal had approved the trip, and permission slips had been sent home to the parents. The slips noted that the movie was R-rated, and explained that the rating was because of language and violence. On February 26, 1990, the principal canceled the trip and announced a new policy banning the showing of R-rated films under school auspices.

Pritchett filed a grievance and in December 1990, an arbitrator ruled that the district had indeed violated the academic freedom provision of the contract. The provision recognizes the need to protect teachers from censorship or restraints that will interfere with their teaching. After winning the grievance, Pritchett tried to show the movie to his class the next year. But, the suit charged, "the district told teachers they couldn't show the movie on videotape and it had rejected the advisory arbitration opinion." Reported in: *Wilmington News Journal*, March 28.

Charlotte Harbor, Florida

A book being read by students in a fourth-grade class at Deep Creek Elementary School came under criticism from Teresa Calitri, mother of one of the pupils, who said it is not appropriate reading material for young children. But Deep Creek Principal Peggy M. Jividen and Charlotte County Director of Special Projects Janet A. Williams said the book, *James and the Giant Peach*, by Roald Dahl, is a classic.

Calitri complained about passages such as: "Crocodile tongues! One thousand long slimy crocodile tongues boiled up in the skull of a dead witch for twenty days and nights with the eyeballs of a lizard!" and "Of course I'm not talking to you, you ass!"

Calitri, who said she skimmed over the book when her daughter brought it home, said, "The whole book is strange if you ask me." She then wrote a letter to the editor saying, "I know there are people who agree that this is not an appropriate reading lesson for children. So have an influence in the shaping of their lives by calling the school and telling them."

Calitri said she wrote the letter because "there's not much else I could do except to complain to the principal or the teacher, but no one else would have heard anything about it. If they're going to teach witchcraft, I think they should teach the whole thing. Witchcraft is no joke."

Jividen said neither she nor the teacher had heard from Calitri. But Calitri's daughter wrote the teacher a letter saying she could not read the book and was given an alternative assignment.

"Literature exposes students to a variety of ideas. That's what democracy is all about," Williams said. "The purpose of education is not only to communicate factual information, but to develop in the young the ability to discriminate and choose." Reported in: *Charlotte Sun Herald*, April 26.

Hollywood, Florida

Sparking cries of censorship from students, administrators at Hollywood Hills High School on April 29 removed a student's work depicting a punked-out Jesus Christ from the school's art fair. The pencil-and-acrylic work, "Jesus Was a Punk!", by Brett Perlman, featured Christ with a mohawk haircut and hanging from a cross decorated with a small symbol of anarchy.

"A couple kids mentioned that it was offensive," Principal Larry Insel said. "We went over and looked at it and thought it might be offensive to some people." Insel had the work removed from the display. He said he thought that was the end of the matter.

But students scrawled anti-censorship messages where Perlman's picture had hung. They urged other students, who vote to choose the best works in the art fair, to write in Perlman's piece. One senior was reprimanded after he confronted a girl who had complained about the picture and argued with her in front of a class.

"You can't take an artist's work off display because of a couple people's opinions," said Richard Linthicum, another art student. "If you don't like the subject matter, don't look at it."

Perlman, who used to wear his own hair in a mohawk and was teased about it, said he never meant to cause a stir. The painting was not intended as serious commentary, just a poke at religion, he said. "I really don't agree with religion that much," Perlman commented. "I kind of knew I was going to get people offended, but those are the religious people who I don't really care for."

Insel said he had no idea the painting's removal would create a controversy, and he said he wished students had discussed the problem with him. But, "sometimes as a principal you're put in a position to make a decision," he said. "As you're aware, a Supreme Court ruling allows principals to censor." Reported in: *Fort Lauderdale Sun-Sentinel*, April 30.

Ketchum, Idaho

High school actors in the play *One Flew Over the Cuckoo's Nest*, based on the novel by Ken Kesey, were told they'd be learning a few new lines after school officials stepped in. A letter from an unnamed citizen led Wood River High School administrators to alter the script after students had been in rehearsal for more than a month. "We try to be very careful about censorship and about what we expose kids to," said Phil Homer, Blaine County Superintendent of Schools.

"The cast is very upset," said Amber Vincent, the female lead and president of the school's senior class. "None of us knew if there was anything we could do about it."

"Our principal came and watched," said actor Chris Foster. "We've had to change a lot."

"You just don't say 'goddamn' on the stage," said Principal Bill Resko. "Yeah, you're changing a word in a play but this is a public place."

According to Bob Kesting, Wood River English teacher and drama director, the play had already been altered before Homer received the letter suggesting that the play was improper for high school students. "It's a great story and I wanted to do it," Kesting said. "I cut out those things that I thought were inappropriate for high school." Although the

cast accepted Kesting's original changes, they didn't like the second round imposed by Resko.

"Mr. Kesting said you can have the same effect without using those words," said Foster, "but I don't see how you can. It's a play, it's part of their character. We really like the script in its original form. It's not because we're a bunch of vulgar kids. That's the way it was written." Reported in: *Idaho Mountain Express*, March 20.

Gardiner, Maine

The curriculum director of the SAD 11 schools said that efforts by local parents to remove the *Impressions* series of reading textbooks from elementary schools was an attempt at censorship. "I'll use the word censorship," said Eleanor Tracy, who appointed a committee to review the series. "They may not like that word. [However,] we see it as censorship, or leading to censorship issues."

But to Barbara Sirois, who along with other parents filed formal complaints about the series, the issue was "the betterment of children." Sirois and her supporters reiterated the claims of other groups throughout the country that *Impressions* promotes the occult and is dangerously violent.

More than 70 parents and others opposed to the series attended a meeting April 16. They argued that the review committee should focus on efforts to ensure that materials used by schools neither promote nor condone anti-social values and behaviors, rather than dismissing such efforts as "censorship."

Speaking to the meeting as an expert in criminal activity relating to satanism and cults, Carl Andrews, chief deputy of the Penobscot County Sheriff's Department, said that while not all — or even most — of the *Impressions* material is negative, the overall impression left by the series may lead to psychological harm.

Tracy said she had little doubt that the group of critics in Maine was following the lead of other groups across the country. "There seems to be a very systematic approach, not just locally, but nationally, to have it removed from schools," she said.

Noting that *Impressions* was introduced to SAD 11 four years ago, Tracy said the series, which is an optional tool for all language arts teachers in grades 3-6, gives instructors and students more flexibility to use stories, ideas and activities that stimulate youngsters, rather than offering a uniform text for all pupils.

"The content and strategies of *Impressions* allows for critical thinking, creative analysis and interactive participation by children on all levels of achievement," Tracy wrote in a curriculum outline. Reported in: *Kennebec Journal*, March 30, April 18.

Hudson, Massachusetts

A Roman Catholic bishop, citing Massachusetts Lt. Gov. Paul Cellucci's position in favor of abortion rights, in late April rescinded an invitation for Cellucci to speak at the Hudson Catholic High School commencement. The invitation was withdrawn even after Cellucci made it clear that his speech would have nothing to do with abortion.

Cellucci, a Hudson resident, is a 1966 alumnus of Hudson Catholic. His goddaughter is a graduating senior, and her class had asked him to be its commencement speaker earlier in the spring.

John Walsh of the Boston Archdiocese said that despite Cellucci's expressed intention not to discuss abortion, Bishop Roberto O. Gonzalez said that the fact that the lieutenant governor supports abortion rights was sufficient cause to exclude him from the ceremony.

"The lieutenant governor has taken a very public position on the abortion question and that position is at variance with the teaching of the church," said Walsh, who said Bishop Gonzalez thought that allowing Cellucci to speak "might cause some confusion in people's minds about the church's teaching because he has taken a very public position and is identified with that position.

"A Catholic school shares in the teaching mission of the Archdiocese of Boston," the bishop wrote in a statement issued May 2. "For a school to invite as a speaker a Catholic who has been publicly and consistently in favor of abortion is to run the risk of seeming to endorse the view that the teaching of the church on abortion is not binding."

The incident was the second time in weeks that church officials objected to the presence of people favoring abortion rights at schools with a Catholic affiliation. In a late-April column in *The Pilot*, the weekly newspaper of the archdiocese, Cardinal Bernard F. Law criticized Boston College for allowing Faye Wattleton, president of Planned Parenthood, to speak at a student-sponsored event. Bishop Gonzalez quoted that column in his statement. Cellucci is a graduate of Boston College and of Boston College Law School.

Jan Yesue, mother of Cellucci's goddaughter and a longtime friend of the lieutenant governor, said parents and students were dismayed at the decision. "I know the children were very upset, and everybody is just very disappointed," she said. "I think people are upset that the church can be so narrow-minded. We are all here on this earth and we all have different views on things." Reported in: *Boston Globe*, May 3.

Beaver City and Elkhorn, Nebraska

A group of parents filed suit in March against the Elkhorn and Beaver City school districts to prevent the teaching of the popular drug-prevention program called Quest. The suit also named Quest International of Newark, Ohio, the organization that developed the program. A week earlier attorney Scott Phillips filed the suit against six other school districts as well, but the action was refiled after several of the original plaintiffs said they had not given approval for their names to be included.

The Quest program takes a "humanistic" approach to teaching children and violates the rights of parents while encouraging "occultism, values clarification, eastern mysticism, and psychotherapeutic techniques," the lawsuit said. "Students have also been known to be required to keep journals in which they are to expose their innermost feelings, their activities and their family's activities," the suit said.

Quest International's vice president of programs, Joyce Phelps, said the not-for-profit organization, formed in 1975, developed and distributes two programs, "Skills for Growing" and "Skills for Adolescence," in conjunction with the Lions Club International. She said the programs, which are intended to build students' self-esteem and decision-making skills, are used in about 17,000 schools nationally, including 500 in Nebraska. Reported in: *Kearney Hub*, March 4; *McCook Gazette*, March 4.

Amherst, Ohio

About sixty parents from Amherst, Lorain, Vermillion and Firelands school districts met March 5 at an Amherst church to discuss the Quest anti-drug program, which has been accused of encouraging drug use and the occult. Quest attempts to build the self-esteem of students. But Firelands parent Joseph Kovacs charged that schools teaching Quest ignore research showing that children with more self-esteem are more apt to try drugs or alcohol. "The last thing we need to be doing is to pump these kids up," he said.

Kovacs and other Firelands parents helped convince school officials there to suspend Quest from elementary and middle schools pending further review. Reported in: *Lorain Morning Journal*, March 6.

Carroll Township, Pennsylvania

A committee was formed in April to study a request to exclude John Steinbeck's *Of Mice and Men* from the curriculum at Ringgold High School. The request came from two black faculty members who complained that the novel contains terminology offensive to blacks.

"We're not asking for censorship," said Ida Belle Minnie, a reading specialist for the district who, along with guidance counselor Mary Ann Baker, submitted a letter protesting the book to principal Gary Hamilton. "We want it kept on the library shelf, but we don't want it to be required reading." Minnie said she and Baker believe books by black writers can be used "to bridge the communication gap between blacks and whites."

According to Minnie, *Of Mice and Men* contains terminology referring to blacks that is derogatory and insulting. "We don't feel this is appropriate for the classroom," she said. "These children may not be mature enough to handle this — to take it in the proper context." The novel is used as part of the eleventh grade English curriculum.

Superintendent Charles Stacey said a panel of faculty and community members must review the request and make a recommendation to the administration and school board. "This book has been used in our classrooms for a number of years," the superintendent said. "I'm afraid we'd be leaving ourselves open to civil rights suits from students who feel they should be able to use this book in the classroom. This will have to be looked into very closely." Reported in: *Valley Independent*, April 13.

student press

Metuchen, New Jersey

The Metuchen Board of Education recommended May 7 that high school administrators review their policy of prepublication review of a student newspaper following charges of censorship. The administrators should then come back to the board with their findings, said board member Joseph Sprunger. But other board members suggested that the school district should develop a set of criteria on what could be printed in a school newspaper. This could help protect students from reading material that could be abusive or result in harassment, said board member Eileen Dyas.

Two Metuchen High School students asked the board to stop what they said was censorship of their alternative newspaper, *The Awakening*. Brian Glassberg and Howard Mergler, coeditors of the paper, accused high school Principal John Novak and Superintendent of Schools Gennaro Lepre of censoring the paper. "We don't mind their looking at the newspaper" and checking it for profanity, said Glassberg. "The problem comes when they try to censor it."

"We have the responsibility, as well as the right, to clear any printed material before distribution," said Lepre. "I feel the boys had a right to appeal [to the board] and I assisted them in the process," he added. Nevertheless, "the principal's position is supported by the law as our attorney saw it."

Edward Martone, executive director of the New Jersey chapter of the ACLU, said the school's attorney was "terribly wrong." Martone said there has to be a set of established criteria that the students can follow, for instance, on libel and obscenity. "The students' newspaper is not obscene and libelous," Martone said. "[It] does not encourage illegal acts and doesn't interfere with the educational process."

About 300 students and 25 teachers and guidance counselors signed a petition saying the newspaper should be allowed to be distributed without prior censorship.

The paper's January issue featured three stories that were not approved. The articles were on cheating, racism and Robert Mapplethorpe. According to Mergler, Novak threatened to suspend the students if they published another issue without his permission. Reported in: *Garden State Press*, May 8.

New York, New York

In one week, school officials at the prestigious Horace Mann School, a private school in the exclusive Riverdale section of the Bronx, censored the student newspaper twice: first, by holding an article describing drugs on campus from publication, and then by hiding all 1,000 copies of the newspaper after an article on censorship was substituted in its place.

The first article, which would have appeared in the April 26 issue of *The Record*, described a survey taken last spring polling about 130 sophomore health students on their drug use. The survey and accompanying interviews with some of the school's 925 students concluded that drug use existed but was not widespread. The school's dean of students denied that the article had been removed for any reason but its quality. He said it was "poorly written and contained inaccuracies."

But Samantha Averbuck, a coauthor of the article, said faculty advisor Adam Kenner had told her that the article would be held for a week so it would not appear on a weekend that parents of prospective students were to visit. "He said it would give some people the wrong impression," she said.

"The content determined my decision." said Kenner. "I thought that the nature of the piece was not one which should be discussed first outside the school. I felt that given the timing of this, [students] weren't being sensitive to the needs of this school."

Emily Straus, the newspaper's editor, said she had initially argued with Kenner's decision. But she pulled the article after he told her she would be suspended if she ran it over his objection. "It was scary," said Straus. "First we're getting censored. Then there was a personal threat against me and I wasn't allowed to defend myself."

Instead, she ran a piece discussing censorship and the story that was pulled. Kenner, who usually reviews all articles, did not see the censorship piece before it went to press. The next day issues of the paper could not be found. They were then located in an administrator's office and were distributed several hours late.

The issue created a stir as alumni, particularly past editors and writers on the newspaper, rallied to the students' defense. The 105-year-old school — whose alumni include the late *New York Times* publisher Arthur Hays Sulzberger, *Times* columnist Anthony Lewis, and Pulitzer Prize-winning author Robert Caro — historically has granted students free rein over *The Record*. Simon Lipskar, a former *Record* editor now a sophomore at Yale University, said he could not recall an article's being censored during his years at Horace Mann. "We always had free rein," he said. "I think this indicates a shift in the administration."

In addition, a letter "to the Horace Mann community" by 27 alumni dating to the class of 1973 called the administration's tactics unsavory and said the decision not to run the article "radically endangers the kind of education the students receive." Reported in: *New York Times*, May 3; *New York Post*, May 2.

Raleigh, North Carolina

After learning in April that peace symbols had been banned from Carroll Middle School's literary magazine, some North Carolina peace advocates took offense. Representatives of the Wake Interfaith Peace and Justice Group, composed of 32 peace groups, met with Principal Leon W. Herndon April 19 to voice their concerns.

The controversy began in March when the literary magazine, *Paw Prints*, selected eighth-grader Kathleen Lloyd's drawing of a peace sign decorated with flowers to be on its cover. Herndon decided not to allow the symbol in the magazine after hearing that some Christians consider a circle around an inverted Y with a bar extended to be a symbol of the Antichrist. The drawing was scrapped in favor of a picture of a tree with a paw print on it.

"The decision was based on people being offended," said Ann Thompson of the Episcopal Peace Fellowship. "Where is the separation of the state and religion?"

"We think it's a matter of serious import, not just the rejection of the peace symbol as it is universally accepted now, but also the rejection of the creative expression of the children," said Carolyn S. King, an officer in Wake Interfaith. "We felt that was a form of censorship that should not be part of our educational system." Reported in: *Raleigh News and Observer*, May 9.

Dallas, Texas

The issue of how free Southern Methodist University's student newspaper is to report campus rape investigations was put on hold May 10 when student code of conduct charges against the editor were dropped. Charges of "irresponsible conduct" against outgoing Editor Mitch Whitten were filed May 2 by student body president Jonathan Polak after *The Daily Campus* reported on an ongoing campus investigation.

After consulting with university officials, Polak dropped the charges shortly before Whitten was to go before a university panel for running the story despite rules against reporting on campus judiciary cases still under appeal. "The student judicial system is not the proper forum for the issue," Polak said, "but I personally believe the university has the right to regulate the press because this is a private school. The extent is what will come into question."

"I don't think this solves anything," agreed Whitten. "It gets me off the hook, but *The Daily Campus* is still under the specter of censorship." A committee of faculty, administrators and students will be convened by the fall semester to determine what the code policy toward the newspaper should be. School officials said the complaint against Whitten was dropped after "investigation of the matter revealed conflicting language within the code and several broader issues between the student media and the university."

The issue centered on an alleged rape at a fraternity house last November. The *Daily Campus* reported that a suspect had been found guilty of the crime by a university judicial panel. The accused student, who could face expulsion, filed an appeal. No criminal charges were filed. The story was based on interviews with the victim and independent corroboration, since the university would not even acknowledge the existence of an inquiry.

Unlike many student newspapers, *The Daily Campus* is not owned by the university. Student Media Company Inc., a non-profit corporation, publishes the newspaper and leases its campus offices. The paper is supported entirely by advertising and circulation revenues. Company officials said the code's restrictions on press coverage blatantly abridge its constitutional rights. Reported in: *Ft. Worth Star-Telegram*, May 11.

El Paso, Texas

Staff members of the University of Texas at El Paso (UTEP) student newspaper said the university's publications board wrongfully stopped publication of a story alleging sexual harassment on campus, but campus officials said the story was killed because it was potentially libelous. It was apparently the first time in UTEP history that the board killed a story planned for the *Prospector*, the campus paper.

Prospector writer Kevin Keich and editor Charles Fensch said the story was killed because it contained allegations against university administrators. Reported in: *El Paso Times*, May 2.

Madison, Wisconsin

Madison Memorial High School principal Carolyn Taylor, responding to controversy sparked by an issue of the school's student newspaper, announced in April that she would screen future issues before they go to press. Taylor's decision upset the paper's staff, which expressed fear of censorship.

Taylor said she wants to ensure a stable school environment, not prevent criticism of herself or other school staff. But Sarah Ford, news editor of the award-winning *Sword & Shield*, said Taylor was attempting to suppress information that she doesn't like — such as Ford's recent report that the average grade point average for Memorial's black students is a D-plus.

Indeed, Taylor said the article and its prominent display in the paper hurt many black students, who felt singled-out and demeaned. "Everybody was looking at them as D-plus students and many of them aren't," she said.

Taylor's move was applauded by Eugene Johnson, president of Memorial's Parents of Minority Students Council. "She's showing us that she's going to make a good-faith effort to be sensitive to all groups," he said.

Ford defended the story, saying it "did a service to the black community in exposing the ways the school has failed to help these struggling students."

Art Camosy, faculty advisor for the paper, said he had no problem with letting Taylor look at paste-ups of the paper before it went to press. "What I have a problem with is if she wants to remove something," he said. "If she wants to censor the newspaper, we'll have to resist that." Camosy said such action would violate district policy and student rights and said he might seek a court injunction against any censorship. Reported in: *Wisconsin State Journal*, April 26.

television

Los Angeles, California

In the opening teaser — otherwise known as an opening vignette or setup — for the television drama *Sisters*, which premiered on NBC Television May 11, four sisters meet every week in a steam bath, offering catty chitchat and other bits. The first episode was to have opened with them comparing notes on the topic of multiple orgasms. But in a move that probably generated more publicity than concern about censorship, NBC had that portion of dialogue deleted, and issued a release that said the network was responding to "certain constituencies" that "would find elements of the opening dialogue offensive."

In response to NBC's action, Lorimar Television, which produces *Sisters*, stated, "We believe in the integrity of our show and stand behind the specific scene in question." Lorimar executives expressed concern that NBC had initially cleared the show and then recanted, apparently under pressure from sponsors.

In fact, previously the network had allowed the scene to be aired on the Johnny Carson show when one of the series' stars appeared as a guest. Moreover, several months earlier Warren Littlefield, president of NBC Entertainment, defended the teaser, declaring, "Corporately, we believe in orgasms."

Ron Cown, a cocreator of *Sisters*, said, "Apparently, the advertisers are not comfortable with the fact that four grown women can have an intimate and humorous conversation about a normal bodily function." Reported in: *New York Times*, May 6.

art

Phoenix, Arizona

A sculpture attacking censorship has made its point — by getting censored.

Managers of an office building in Phoenix removed a piece by artist Gary Benna from its art exhibit in the lobby because a tenant found it offensive. "St. Helms Saving U.S. from Us," was an 8-foot clay figure of a nude man who is pointing and covering his face. Carved into his chest is a urinal that resembles a church niche containing the Bill of

Rights emblazoned with a "NO" sign and a picture of the late Sen. Joseph McCarthy. Tiny soldiers represent jingoism and a Barbie doll represents the exploitation of women. The title refers to Sen. Jesse Helms (R-NC).

The sculpture was part of a Southern Arizona Clay Artists exhibit. Benna's sculpture stood near the offices of Thunderbird Bank. Bank officials complained that it clashed with the bank's conservative image, said Allene Pierce, the building's property and leasing manager. She covered the art with a sheet, which provoked outcry from another tenant, a law firm that collects art. The sculpture was eventually moved to a nearby art gallery, which was also showing part of the same exhibit.

Benna said the incident still amounted to censorship. "They didn't even look at the content of the piece," he said. "The only thing they reacted to was a very narrow puritanical view. Reported in: *Phoenix Gazette*, April 10.

Rocklin, California

On March 14, Sierra Community College student Tullia Natalia and three fellow artists were told that their works could not be displayed at a candlelight vigil service in memory of troops killed in the Persian Gulf. The college administration said the paintings weren't "censored," but were omitted because they blocked the view of the podium.

"I had seen the paintings before the ceremony and saw no problem in allowing them at the vigil," said college public information officer Nancy Ackley. "But, at the site, they blocked the podium and would block the speakers." However, the artists said the college was abridging their rights. Natalia maintained that the paintings were removed because of what she called the anti-war sentiments exhibited in her work.

"Isn't college supposed to be a place of growth, a place to follow your dreams and expand your horizons?" asked Natalia. "Or, is it a place for an authoritarian to try and stuff your personality and ideas?" Reported in: *Auburn Journal*, March 22.

Alexandria, Virginia

The owner of a new Alexandria nightspot catering to gay diners was asked by state officials to paint pants on four male nudes adorning a mural in the cafe's upstairs lounge before it opened for business May 16. Agents of the Virginia Alcoholic Beverage Control Board visited the French Quarter Cafe on King Street and examined the mural. They informed owner Murray I. Greenberg that the mural would have to be reviewed by the board to determine whether it violated a statute prohibiting lewd pictures in restaurants. Greenberg volunteered to dress up the mural, and said he actually preferred the new look.

"The irony is that they are reproductions of Michelangelo's sketches, and really they look much better with shorts on," said Greenberg, explaining that the rear-view nudes were too much like "boring museum pieces." The cafe is the first to promote itself as a gathering place for northern Virginia's gay community.

The new night spot met with little community resistance. The ABC board received only one complaint from a man who was said to have described Michelangelo as a pornographer, officials said. Greenberg said his cafe received an unexpected windfall when local newspapers played up the complaint that the board received about the nude mural. "The publicity I'm getting I couldn't buy for $50,000," Greenberg said. Reported in: *Washington Post*, May 17.

Reston, Virginia

An art exhibit featuring several prints of nudes at the Reston Community Center sparked complaints in April from the pastor of a church and a member of his congregation. Community center officials, responding to an earlier objection, removed a brown and tan pastel drawing that shows a man's genitals. Two female nudes remained hanging. The center is operated by Fairfax County.

Pastor Tad C. Bundy of the Christian Worship Assembly called the nudes "pornographic" and criticized officials for displaying the works in a prominent public place. Bundy's wife, Wanda, said children attending events at the center were exposed to obscene works. "They have a lot of wonderful things here for kids," Wanda Bundy said. "That's why we're frustrated that they'd have something here that hurts kids."

Tad Bundy said he defined pornography as "any naked person. Pictures of naked people — that's pornography. There's been a smokescreen for the last twenty years over the definition of pornography."

The drawing that most offended the Bundys and parishioner Brenda Bell, "Male Nude," was part of a 32-piece exhibit by artist Marilyn J. Dizikes and Fay Aufrecht. "I'm a serious artist and a Christian and the last thing I wanted to do is offend anyone," said Dizikes, an art teacher who expressed confusion about the controversy. "It's hard to understand what was objectionable since the painting was impressionistic and in the tradition of Western art from the ancient Greeks to Edgar Degas."

Richard J. Enrico, head of Citizens Against Pornography, said he also asked community center officials to remove the "Male Nude" after examining the picture at the request of the Bundys. He said the painting was removed after he filed a formal complaint.

However, community center director Bryn Pavek said she removed the picture after an unnamed Reston resident said she would hesitate to walk her children past the exhibit. "Believe me," she said, "I didn't take that picture down guilt free. This is the kind of discussion that should take place in the community."

Bundy also complained about two Aufrecht abstract pastel prints entitled "Witchcraft I" and "Witchcraft II." "If there

was a picture of the Bible here, it'd be illegal because this is a public facility," he said. "But if it's witchcraft, it's OK." Reported in: *Fairfax Journal*, April 12.

foreign

Jakarta, Indonesia

Indonesia banned a calendar illustrated with political cartoons May 6, along with five books on politics and religion, and said it would maintain its ban on foreign travel for 17,000 dissidents. The calendar and books were banned because the Government feared they could cause public unrest, the Attorney General's office said. Two of the banned books criticized government actions in 1989 clashes between soldiers and Muslim militants, which left 38 people dead by official count. Reported in: *New York Times*, May 7. □

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fighting AIDS — and free expression?

The two young men in the poster are naked save for a prominent and appropriately placed condom. One holds the other in his arms, kissing him. "Get Carried Away With Condoms," advises the slogan at the top.

Distributed by the San Francisco AIDS Foundation, the poster illustrates everything that many public health experts say works best in persuading gay men at risk of contracting AIDS to practice safer sex. But the same things that experts say make the poster effective, make it unacceptable to the U.S. government.

Under pressure from Congressional conservatives, the Center for Disease Control (CDC) — which last year spent close to a quarter billion dollars funding AIDS prevention efforts — has rules stating that it will not support any campaign that eroticizes or promotes homosexuality or otherwise might offend "community standards" — by which it does not mean the standards of the gay community, where the campaign would appear.

Among AIDS activists and public health groups, many of whom are under contract by the CDC to run grass roots AIDS prevention campaigns these restrictions have become a source of frustration. "To require AIDS educators to do their job without using certain language or using certain images is like asking us to do our job with our hands tied behind our backs," said Nick Freudenberg, professor of communications and health education at Hunter College in New York.

With Congress poised to consider whether to reauthorize the CDC's AIDS budget, the restrictions also have spurred a larger debate about how much the government's effort to prevent AIDS should be influenced by considerations of taste and community values. "There has to be a balance, and this may be one of the prices we pay," said Gary Noble, director of the CDC's AIDS program. "We believe in a democracy you don't spend taxpayers' money without taking into account community standards."

"Eventually we will have a situation where we have close to 400,000 cases of diagnosed AIDS," countered William Bailey, AIDS policy officer at the American Psychological Association. "People will start to ask then why haven't we done more to prevent the spread of this virus. And they will realize that we had the knowledge and we had the tools but we were prevented from using them by small and reactionary forces in the land."

The basis of AIDS prevention is what educators call a "sex positive" message. Safer sex must be made attractive, they say. At the same time, a campaign cannot judge the behavior of its audience. An effort aimed at gay men, for example, that isn't "gay positive" would be ignored.

In 1987, in the bill providing appropriations for the CDC, a coalition of conservatives led by Sen. Jesse Helms (R-NC) attached an amendment saying that none of the money can be used to promote homosexuality. At about the same time, the CDC, under political pressure, wrote regulations requiring every grant proposal submitted by AIDS groups to be approved by a local "community standards" review board. The boards, to be set up by local public health departments, were to be comprised of representatives of the entire community and their instructions were clear.

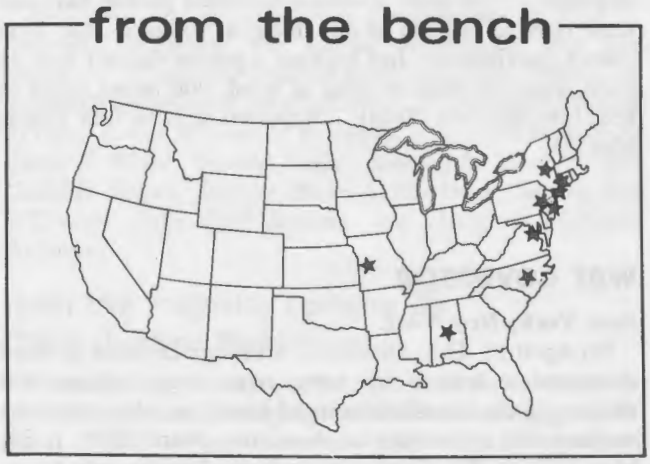
"Written materials," the CDC guidelines said, "should not include terms, descriptions or displays which will be offensive to a majority of the intended audience or to a majority of adults outside the intended audience."

"It has a chilling effect," said David Prybylo, director of an AIDS group in North Carolina, who tried and failed to get funding in Charlotte for a safe-sex brochure. The restrictions, he said, "touch on pretty much everything we do considering that what we are talking about is putting something in print that will instruct men who have sex with men. We have to talk about sex, and people are squeamish about sex."

Another AIDS group, based in Iowa, was told late last year by the local health commission not even to bother taking their plans for a campaign aimed at gay men entitled "Hot, Horny and Healthy" to the local review board.

"They simply found the advertising and publicity materials offensive," said Suzanne Watson, chair of the Johnson County AIDS coalition. "It showed a picture of a bare-chested male. In Iowa you can only use bare-chested males to sell milk."

"People tell me that in some parts of the country it takes months to get a campaign or brochure out," said Freudenberg, who wrote a book on AIDS education. "Or they say, 'We didn't do it. We used something that someone else had produced that we knew wouldn't be as effective just so we could get it funded.' There is a climate that groups who want to continue getting government support, you just don't take risks." Reported in: *Washington Post Weekly Edition*, March 25-31. □



U.S. Supreme Court

(from page 99)

rulings in which the Court held that the government was not constitutionally required to pay for abortion, even if they chose to subsidize childbirth.

The plaintiffs' arguments "ultimately boil down to the position that if the government chooses to subsidize one protected right, it must subsidize analogous counterpart rights," the Chief Justice said, adding: "But the court has soundly rejected that proposition."

"When Congress established a National Endowment for Democracy to encourage other countries to adopt democratic principles," Rehnquist said with reference to the plaintiffs' free speech arguments, "it was not constitutionally required to fund a program to encourage competing lines of political philosophy such as communism and fascism."

"Within far broader limits than [the clinics] are willing to concede, when the government appropriates public funds to establish a program it is entitled to define the limits of that program," the Chief Justice concluded.

In a dissenting opinion, Justice Blackmun said the majority had mischaracterized the case before the court so it would fit within the abortion-financing precedents. He said the challenged regulations were not aimed at financing for abortions — which the clinics have never been permitted to perform with their federal money — but rather amounted to an "intrusive, ideologically based regulation of speech."

"While suppressing speech favorable to abortion with one hand, the Secretary compels anti-abortion speech with the other," Blackmun wrote. His reference was to the Secretary of Health and Human Services, whose department issued the regulations in 1988. "Until today, the Court never has upheld viewpoint-based suppression of speech simply because that suppression was a condition upon the acceptance of public funds," Blackmun asserted.

He said the regulations both violated the free speech rights of clinic employees and amounted to "coercion" of impoverished women to continue unwanted pregnancies by withholding information and erecting obstacles like referrals for prenatal care. Justices Marshall and Stevens joined this part of Blackmun's dissent. Justice O'Connor wrote a separate dissent, in which she said the Court should have avoided reaching the constitutional issues in the case by ruling that the regulations were not a proper interpretation of the federal law they were designed to carry out.

For the Bush administration and others who backed the regulations restricting counseling, the court's approach was common sense. According to Solicitor General Kenneth W. Starr, the decision "reiterated the basic principle that when it is funding programs, the government is able as a general matter to make policy choices. The government is able to take sides, it is able to have viewpoints, when it is funding."

But others saw the decision as one that threatens to give government a dangerous amount of control over speech, particularly because government funding has become such a pervasive aspect of modern life.

"This says he who takes the king's shilling becomes the king's mouthpiece," said Harvard Law School professor Kathleen Sullivan, one of the lawyers who challenged the regulations. "That really is a step backwards toward a day when the government could use its leverage to bribe people to say . . . things that it couldn't bludgeon them into saying."

"The court has adopted the principle that he who pays the piper calls the tune," said Duke University law professor Walter Dellinger. That approach to federally funded speech "is especially alarming in light of the growing role of government as subsidizer, landlord, employer and patron of the arts."

Dellinger said the ruling could strengthen the government's hand in, for example, imposing restrictions on federally funded art. "The case against these regulations should have been even stronger than the case in the arts funding area," he said. "Those are aesthetic judgments. Here the government is taking an ideological position and imposing a politically correct view on a doctor-patient relationship."

In his opinion Rehnquist acknowledged that the government's power to impose conditions on its grants was not unlimited. For example, he said, "the university is a traditional sphere of free expression so fundamental to the functioning of our society that the government's ability to control speech" by attaching conditions to its funds is limited by the First Amendment.

But that appeared still to leave the government with con-

siderable power. In President Bush's proposed school choice program, for example, could the government support vouchers only for those schools that agree not to discuss abortion in their sex education classes? Following the clinic regulations, teachers could be instructed to tell inquiring students only that the school "does not consider abortion an appropriate method of family planning."

"The court is indirectly threatening the recipients of grants in a great many areas," said Harvard Law School professor Laurence H. Tribe, who argued the case before the Supreme Court on behalf of clinics challenging the regulations.

The decision in *Rust* v. *Sullivan* upheld a 1989 ruling by the U.S. Court of Appeals for the Second Circuit in New York. The regulations were later declared unconstitutional by the First and Tenth Circuits, in Boston and Denver respectively. Reported in: *New York Times*, May 24; *Washington Post National Weekly Edition*, June 3-9.

libraries

Morristown, New Jersey

A federal judge ruled May 22 that public libraries cannot bar homeless people because their presence, their staring or their hygiene annoys or offends other library patrons. At a time when libraries are increasingly used as a refuge by homeless people, however, U.S. District Court Judge H. Lee Sarokin did not dispute the right of public libraries to draft rules governing their patrons.

"Libraries cannot and should not be transformed into hotels or kitchens, even for the needy," he said. But he said the regulations must be specific, "their purposes necessary and their effects neutral."

Judge Sarokin ruled in a case involving the Free Public Library of Morristown and Morris Township, which adopted a set of rules in July, 1989, specifically to keep out a 41-year-old homeless man, Richard R. Kreimer. While upholding the library's rules banning patrons without shirts or shoes, he said that other rules were too vague or broad, including ones barring patrons who are not reading, studying or using library materials, who harass or annoy others through noisy activities or by staring, or whose "bodily hygiene is so offensive" that it is a nuisance to others.

"If we wish to shield our eyes and noses from the homeless, we should revoke their condition, not their library cards," wrote Judge Sarokin. He said the unconstitutional regulations violated the First Amendment rights of the homeless by denying them access to the ideas in the books and newspapers in the library. "The First Amendment protects the right to express ideas and the right to receive ideas," he said.

"Society has survived not banning books which it finds offensive from libraries; it will survive not banning persons whom it likewise finds offensive from its libraries," Judge Sarokin wrote.

Kreimer called the decision a "great ruling." He told reporters: "The issue is does a homeless person have the same right to read, to sit and think, as someone else. You cannot discriminate. Just because a person doesn't look as good, smell as good or dress as good, you're not going to keep him out of the library." Reported in: *New York Times*, May 23.

war coverage

New York, New York

On April 16, U.S. District Court Judge Leonard B. Sand dismissed a lawsuit by some news organizations that challenged the constitutionality of Pentagon rules governing media access to combat (see *Newsletter*, March 1991, p. 33; May 1991, p. 69). Sand said the media had the right to sue the government, but he ruled he did not have enough information to decide the case once the Persian Gulf War ended. Pentagon rules in the war established pool coverage, restricted descriptions of combat, and required military review of combat dispatches.

"Prudence dictates that a final determination of the important constitutional issues at stake be left for another day when the controversy is more sharply focused," he said in a written decision granting the Defense Department's request to dismiss the case. "In a case of such moment, involving significant and novel constitutional doctrines," he wrote, "the Court must have the benefit of a well-focused controversy."

Sand said the case raised new and important questions about the relationship between the First Amendment and national security, especially about the role of American journalists in wars abroad. But he said he could not decide the issues because he had no way of knowing what future military conflicts would bring.

Responding to the Defense Department's contention that the plaintiffs had no standing to sue, Judge Sand said that the harms alleged were "distinct and palpable," and thus sufficient to grant standing. Moreover, he found "unpersuasive DOD's primary argument that the political question doctrine [that the judiciary should not get enmeshed in "political thickets"] bars [the] Court from adjudicating any claims that involve the United States military."

But the judge complained that the news organizations never responded when he asked for alternatives to the Pentagon regulations that they thought would be constitutional. "Plaintiffs' only response was that the press be allowed unlimited, unilateral access," he said.

The lawsuit was filed on behalf of *The Nation, Harper's, In These Times*, Pacific News Service, *The Guardian, The Progressive, Mother Jones, The L.A. Weekly*, and the *Village Voice*. Journalists who joined the suit were Sydney H. Schanberg of *Newsday*, Michael Klare of *The Nation*, and

Rust v. Sullivan

Following are excerpts from the opinions in Rust *v.* Sullivan, *upholding the federal regulations that bar employees of federally financed family planning clinics from providing information about abortion. The majority opinion by Chief Justice William H. Rehnquist was joined by Justices Byron R. White, Antonin Scalia, Anthony M. Kennedy and David H. Souter. Justices Harry A. Blackmun, Sandra Day O'Connor, John Paul Stevens, and Thurgood Marshall dissented.*

from the majority opinion by Chief Justice Rehnquist

We begin by pointing out the posture of the cases before us. Petitioners are challenging the facial validity of the regulations. Thus, we are concerned only with the question whether, on their face, the regulations are both authorized by the Act, and can be construed in such a manner that they can be applied to a set of individuals without infringing upon constitutionally protected rights. Petitioners face a heavy burden in seeking to have the regulations invalidated as facially unconstitutional....

We need not dwell on the plain language of the statute because we agree with every court to have addressed the issue that the language is ambiguous. The language of Sec. 1008 — that "none of the funds appropriated under this subchapter shall be used in programs where abortion is a method of family planning" — does not speak directly to the issues of counseling, referral, advocacy, or program integrity. If a statute is "silent or ambiguous with respect to the specific issue, the question for the Court is whether the agency's answer is based on a permissible construction of the statute."...

The broad language of Title X plainly allows the Secretary's construction of the statute. By its own terms, Sec. 1008 prohibits the use of Title X funds "in programs where abortion is a method of family planning." Title X does not define the term "method of family planning," nor does it enumerate what types of medical and counseling services are entitled to Title X funding. Based on the broad directives provided by Congress in Title X in general and Sec. 1008 in particular, we are unable to say that the Secretary's construction of the prohibition in Sec. 1008 to require a ban on counseling, referral, and advocacy within the Title X project, is impermissible.

When we find, as we do here, that the legislative history is ambiguous and unenlightening on the matters with respect to which the regulations deal, we customarily defer to the expertise of the agency....

While we do not think that the constitutional arguments made by petitioners in this case are without some force, we hold that they do not carry the day. Applying the canon of construction under discussion as best we can, we hold that the regulations promulgated by the Secretary do not raise the sort of grave and doubtful constitutional questions that would lead us to assume Congress did not intend to authorize their issuance. Therefore, we need not invalidate the regulations in order to save the statute from unconstitutionality....

There is no question but that the statutory prohibition in Sec. 1008 is constitutional. In *Maher* v. *Roe* (1977), we upheld a state welfare regulation under which Medicaid recipients received payments for services related to childbirth, but not for non-therapeutic abortions. The Court rejected the

(continued on page 123)

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novelists E.L. Doctorow and William Styron, who wrote about the war for *The Nation*. Reported in: *Washington Post*, April 17; *The Nation*, May 6.

schools

Raleigh, North Carolina

The North Carolina Supreme Court upheld local schools' contracts with Channel One, producer of a news show for students with commercials, in a ruling April 3 that emphasized the right of local school boards to choose instructional materials. In a 5-2 decision, the justices said that the State Board of Education had no authority to stop local boards from contracting to show the program. The majority rejected the state board's arguments that Channel One violated the state constitution and ran counter to state public policy because its advertising could imply that public institutions were endorsing commercial products.

With Justice Henry E. Frye writing for the majority, the court said that state law since 1969 had given local boards the power to select supplemental instructional materials without the state board's interference. The state board, therefore, overstepped its authority when it adopted a rule in 1990 that banned use of Channel One.

Legislation enacted last year by the North Carolina General Assembly, Justice Frye wrote, "made clear what the statutes already provided — that decisions concerning the procurement of supplementary instructional materials, including those which involve commercial advertising, are to be made exclusively by their local school boards without having to seek approval of the state board.

The ruling was the first by any state supreme court on the validity of Channel One contracts, a controversial issue among educators. But because the court focused narrowly on North Carolina law, it probably will not have much impact in other states. Reported in: *Raleigh News & Observer*, April 4.

student press

Woodbury, New Jersey

The New Jersey Constitution grants students greater protection from censorship than the U.S. Constitution, a Gloucester County Superior Court judge ruled May 7. Judge Robert E. Francis ruled that Clearview Junior High School officials violated the rights of Brien Desilets when they refused to publish two reviews of R-rated movies he wrote for the school newspaper, the *Pioneer Press*, in January 1989.

The school argued that the U.S. Supreme Court's 1988 decision in *Hazelwood* v. *Kuhlmeier* gave school officials greater rights to regulate what students publish in school-sponsored publications. Francis agreed with the school's interpretation of *Hazelwood*, but said the New Jersey Constitution provides greater free speech protection for students than the Supreme Court did.

In issuing his decision, Francis said, "Censorship of school newspapers can only be justified if the proffered speech substantially interferes with the class work, the order in school and affects rights of others." He said Desilet's reviews did none of these. "Neither of the reviews contained any vulgar or profane language. Neither were offensive. In fact, both were innocuous and inoffensive."

Francis said school officials had other options to consider before resorting to censorship. He said a disclaimer could have satisfied "the reaction and fears of parents and the community." The judge ordered the district to allow Desilets to publish a story about the legal battle.

"I predict if the New Jersey Supreme Court gets this case for consideration it will adopt a test more expansive [of student rights] than the test enumerated by the U.S Supreme Court," Francis said. He declined, however, to set out a New Jersey standard saying that was a matter for a higher court. William H. Buckman, an attorney hired by the ACLU to represent Desilets, said he might appeal the decision to try to get such an explicit standard.

"This is a very dramatic step," commented Mark Goodman of the Student Press Law Center in Washington. "It's the first decision of its kind anywhere in the country, and it will prompt other cases in other states where students claim their rights under their state constitutions." Reported in: *Philadelphia Inquirer*, May 8; *Today's Sunbeam*, May 8.

academic freedom

Birmingham, Alabama

A ruling by a federal appeals court may set a new precedent for limiting the academic freedom of faculty members. The ruling also may help define the obligations of public universities to protect students on their campuses from unconstitutional religious influences. The decision by a three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit came in a dispute between the University of Alabama and one of its faculty, Phillip A. Bishop.

The court upheld a 1987 demand by the university that Bishop stop injecting religious beliefs into classes. The university, which had received complaints from some of Bishop's students, also ordered him to stop holding optional class in which he taught from a "Christian perspective." In addition, the university wrote to "remind" him that religious beliefs could not be a factor in deciding whether to admit students to graduate programs.

In 1988, Bishop sued the university, claiming that its order violated his right to free speech. In 1990, the U.S. District Court ruled in his favor and the university appealed. The appeals court, ruling in the university's favor, used language that legal experts said was unusually broad for disputes between faculty members and institutions.

"The university's conclusions about course content must be allowed to hold sway over an individual professor's judgments," the court said. The ruling acknowledged "the invaluable role academic freedom plays in our public schools, particularly at the post-secondary level." But it added, "We do not find support to conclude that academic freedom is an independent First Amendment right. And in any event, we cannot supplant our discretion for that of the university. Federal judges should not be ersatz deans or educators. In this regard, we trust that the university will serve its own interests as well as those of its professors in pursuit of academic freedom. University officials are undoubtedly aware that quality faculty members will be hard to attract and retain if they are to be shackled in much of what they do."

Robert M. O'Neil, general counsel for the American Association of University Professors, said that while the court might have been correct to affirm the university's right to prevent religious intrusion, the judges had given university administrators too much discretion." He called the decision's wording "dangerous and very sweeping," adding that it "could represent an invitation for intrusion into the core of academic freedom — what goes on in the classroom."

O'Neil said it was possible for universities to prevent improper religious intrusion without endangering academic freedom. He said faculties should adopt "professional norms" stating that religious views should not determine the content of courses or the treatment of students. "I think there is general agreement within the academic community that faculty ought not intrude their own religious views into the teaching of secular material," O'Neil stressed. Reported in: *Chronicle of Higher Education*, April 17.

broadcasting

Washington, D.C.

On May 17, the U.S. Court of Appeals for the District

of Columbia struck down a government rule that would have completely banned so-called indecent material from radio and television broadcasts. In a decision hailed by the broadcasters, news organizations, and public interest groups that had challenged the rule, the court said the Federal Communications Commission's attempt to impose the ban to protect children from such material was unconstitutionally vague.

The rule, which the FCC adopted in 1988 at Congress's order, had not actually taken effect, pending the court's decision. Broadcasters and journalists have long complained that an indecency rule that now bans such programming at certain hours already violated their First Amendment rights. Conservatives led by Sen. Jesse Helms (D-NC) rallied behind the broader restrictions.

In approving the total ban in 1988, the FCC said that children are in the audience at all hours and need protection. Under the earlier FCC policy, broadcasters are prohibited from airing material the commission deems indecent between 6 a.m. and 10 p.m., when children are considered most likely to be in the audience. The FCC has fined 14 radio stations for defying that prohibition in recent years.

In its ruling, the three-judge panel acknowledged that the government has an interest in protecting children and directed the FCC to find a time period in which adult-oriented material could be broadcast without penalty.

The government defines indecent material as "language that describes in terms patently offensive measured by contemporary community standards...sexual or excretory activities or organs." Reported in: *Washington Post*, May 18.

press and privacy

Kansas City, Missouri

A federal judge ruled in March that a 1974 privacy protection law does not bar colleges from releasing information about crimes committed by students. The decision, which is believed to be the first federal court ruling on the topic, contradicted the interpretation of the law used by the Education Department and most colleges and universities. Student newspaper editors and other journalists said they would use the decision to press colleges to release more information about campus crime.

U.S. District Court Judge Russell G. Clark issued the decision in a case brought in 1990 by Traci Bauer against Southwest Missouri State University. Bauer, editor of the student newspaper, the *Southwest Standard*, sued after the university refused to release complete reports about campus crime.

The university defended its position by citing the 1974 law, known as the Buckley Amendment, which grants a student the right to see his or her records and in most cases bars a college from releasing those records without the student's permission.

The Education Department has interpreted the law to prohibit the release of campus crime reports to journalists. In February, the department sent letters to fifteen colleges that it said might have been violating the law by releasing crime reports to campus journalists. The department obtained the names of the colleges after their student newspapers reported to a survey by the Student Press Law Center that they routinely received campus crime reports. The survey results were used in testimony at the trial of Bauer's suit.

In this ruling, however, Judge Clark reviewed the history of the 1974 law and concluded: "Congress did not intend to treat criminal investigation and incident reports as educational records." He said Congress had clearly intended the student privacy law to cover "information which a student is required to submit as a precondition to enrollment" and "information created in the natural course of an individual's status as a student."

The ruling also said that the university's view of the privacy law created an inappropriate distinction between students arrested by campus police, who would have their identities protected, and those arrested by city police, whose names could be released to the public.

"A student should not be denied information concerning student criminals, victims, or witnesses merely because of his or her status as a student," Judge Clark wrote. "In addition, the plaintiff as a reporter and a member of the general public, is entitled not to be singled out as a student with the result that she receives neither the same access to crime reports as the general public, nor the same level of police protection."

The impact of the decision was not immediately apparent. On March 15, the regents of Southwest Missouri State University voted unanimously not to appeal the decision. However, a representative of the Department of Education hinted that the agency itself may appeal. Meanwhile, student journalists were encouraged by the ruling to move forward with the efforts to get more information from college and university officials. Mark Goodman, executive director of the Student Press Law Center, said his organization was in contact with many student newspapers that would sue their universities if the institutions did not change their policies and start releasing more information. Reported in: *Chronicle of Higher Education*, March 20; *Editor and Publisher*, March 23.

shield law

Trenton, New Jersey

The New Jersey Supreme Court ruled April 23 that the state cannot force members of news organizations to turn over photographs or testify about what they saw in the wake of a crime. The ruling came in the court's first interpretation of a section of the state's shield law, which is intended

to protect reporters from disclosing sources or turning over material collected in gathering news.

The section, known as the "eyewitness exception," says that news employees who witness "any act involving physical violence or property damage" may not claim immunity from disclosing that information. The court ruled that the state could compel the cooperation of reporters and photographers only if they witnessed or photographed a criminal act, not its aftermath.

The ruling upheld the right of the *Asbury Park Press* to refuse to turn over photographs of a 1989 fire at the Woodhaven Lumberyard in Bricktown to the Ocean County Prosecutor's office. The prosecutor subpoenaed the photographs and negatives under the eyewitness exception.

In his appeal to the State Supreme Court, the prosecutor argued that the act of setting the fire could not be separated from its results or consequences. But the court, in a 7-0 opinion upholding lower court rulings and written by Justice Marie L. Garibaldi, stated: "Without some conceptual separation of the 'act' from the 'result' we would be hard pressed to identify a situation in which a reporter on any crime-related beat would not fall within the eyewitness exception and therefore be prevented from claiming Shield Law protection."

"Compelled disclosure of any information chills the free flow of information from the press to the public," the Court concluded. "The perception created through the use of a newsperson as a prosecution witness causes some reporters and their sources to become apprehensive, regardless of whether the information sought is confidential." Reported in: *New York Times*, April 24.

libel

New York, New York

Authors and publishers won an important court victory in April when a judge dismissed a lawsuit that charged novelist Terry McMillan with libel and defamation because there were striking similarities between her ex-boyfriend and a character in her book, *Disappearing Acts*. McMillan's former companion, Leonard Welch, sued the author and the publishers of her book — Penguin USA and Simon & Schuster's Pocket Books — for $4,750,000.

"This is another nail in the coffin of libel-in-fiction claims," said Russell Smith, a lawyer who represented the novelist and her publishers. "Authors and publishers can breathe easier because the trend, at least in New York, is definitely in favor of dismissing these sorts of claims." The victory is more significant than some previous cases, Smith explained, because the earlier ones involved minor characters, and this one involved one of the novel's two main characters.

Judge Jules L. Spodek of the New York Supreme Court wrote in his decision that "a reasonable reader couldn't possibly attribute the defamatory aspects of the character" to Mr. Welch, even though the character seems to be modeled on him. Indeed, the judge wrote, the fictional character and the real man share the same occupation and educational background and even like the same breakfast cereal. But the man in the novel is a lazy, emotionally disturbed alcoholic who uses drugs and sometimes beats his girlfriend, said Spodek, while "Leonard Welch is none of these things."

In his suit, Welch said that the realistic portrayal of his three-year relationship with McMillan and the fact that she dedicated the novel to their son caused emotional distress because their son might read the book some day and believe the defamatory portions were true.

In dismissing Welch's claim, the court held that "the biggest hurdle for the plaintiff, however, must be the task of overcoming a fictional work's presumption that all the material is untrue. In order for the reader to believe its contents are truthful and, as claimed in this case, libelous, the presumption of invention must be overcome." The court noted that witnesses who knew the plaintiff did recognize the central character as Welch; however, they disassociated him from the fictional character's drinking, homophobia and irresponsibility.

Judge Spodek added: "In this book the allegedly defamatory aspects of the character become fundamental to the character. No one who knows the plaintiff can confuse him with the fictional [character] in these essential aspects. In fact, the self-destructive motif of the character winds up overwhelming and trivializing the claimed similarities."

The court concluded that although Welch may indeed have been the model for this fictional counterpart, "a reasonable reader could not possibly attribute the defamatory aspects of the character to the plaintiff, then the plaintiff cannot be damaged thereby and his libel claim must fail."

Publishers have taken libel-in-fiction claims seriously since Doubleday lost a major case in California in 1979. In that case, a novelist was sued by a therapist who claimed the author attended a nude encounter session he conducted and then described the session and him in her novel. The court upheld the therapist's libel claims partly because the writer had signed a paper promising to keep the session confidential.

In 1982, a former Miss Wyoming sued *Penthouse* over a short story. She claimed that a character in the story resembled her but defamed her because of the character's exaggerated sexual practices. A jury awarded her about $28 million in damages, but a federal appeals court overturned the verdict, ruling the sexual exploits were so fantastic nobody would believe a real person had performed them. Reported in: *Wall Street Journal*, April 11; *Publisher's Weekly*, April 26.

copyright

New York, New York

A federal judge ruled March 28 that Kinko's Graphics Corporation violated copyright laws by copying excerpts from books used in college courses and selling them to students. In a victory for book publishers, U.S. District Court Judge Constance Baker Motley ordered that Kinko's, which has some 200 stores nationwide, mostly near college campuses, stop the practice and pay damages of $510,000 as well as attorney fees and costs.

Kinko's, like many other photocopy firms, copies excerpts and articles based on orders placed by professors and compiles them into course "packets" or "readers" for sale to students. In this case, the packets were ordered by professors at Columbia University, New York University, and the New School for Social Research. The suit was filed by Basic Books, Harper & Row (now HarperCollins), John Wiley & Sons, McGraw-Hill, Penguin Books, Prentice Hall, Richard D. Irwin, and William Morrow Publishers.

Judge Motley ruled that such copying does not fall within the educational fair use exemption contained in Section 107 of the 1976 Copyright Act. Among the "fair uses" recognized in Section 107 are "teaching (including multiple copies for classroom use), scholarship, or research."

The section also lists four factors to be used in determining whether a particular use is fair use. Applying the four factors, the court noted that Kinko's made a profit by copying portions of the copyrighted books, without adding any productive value to them, and without paying the customary price. Moreover, Judge Motley said, Kinko's copied important parts of the books and disseminated them in a large market, this adversely affecting the market for the original works.

The court also found that Kinko's status as a for-profit corporation and its profit-making intent put it outside the "classroom guidelines" enunciated during the legislative history of the act. "The extent of [Kinko's] insistence that theirs are educational concerns and not profitmaking ones boggles the mind," the judge wrote. Reported in: *Chicago Tribune*, March 30; *U.S. Law Week*, April 9.

"Son of Sam" law

Albany, New York

New York's landmark "Son of Sam" law, intended to deter criminals from reaping profits when they sell their stories to publishers or movie producers, was upheld by the state's highest court May 7 in a ruling that denied Jean Harris, who was convicted of murder, the proceeds of an autobiography she wrote in prison. In a 5-0 decision, the court rejected assertions by a charity to whom Harris planned to donate the money that the law violated constitutional free speech rights.

The judges concluded that the law did not interfere with a felon's prerogative to talk or write about crimes, but simply represented "a codification of the fundamental equitable principle that criminals should not be permitted to profit from their wrongs."

The law still faces another challenge on similar legal grounds in the U.S. Supreme Court, which decided earlier this year to hear a case involving a career criminal who collaborated on a book about the Mafia (see *Newsletter*, May 1991, p. 82).

In the New York case, lawyers representing Harris and the New York Civil Liberties Union said that the statute would chill free speech by discouraging some important projects from coming to fruition. They argued that rather than just barring people from profiting from crimes, it unfairly stopped them from profiting from their writings or other creative expression.

But the court specifically rejected this argument, saying the crime could not be divorced from the book or movie about it. "Criminals covered by the statute had no marketable asset before the crime," wrote Judge Richard D. Simons. "They create by illegal activity, a new product — a story — which becomes profitable in the retelling." Reported in: *New York Times*, May 8.

public forums

New York, New York

In cases involving airports and stadiums, different panels of the U.S. Court of Appeals for the Second Circuit reached seemingly different conclusions about the current status of public forum law under the First Amendment. One panel, rejecting the views of other circuits, held on February 8 that airport terminals are not public forums because they are remote from pedestrian thoroughfares and are intended solely to facilitate air travel. Relying on the U.S. Supreme Court's 1990 ruling in *U.S.* v. *Kokinda*, the court concluded in *International Society for Krishna Consciousness* v. *Lee* that solicitation of funds may be banned in the terminals, but distribution of literature must be permitted.

Because airport authorities have not designated the terminals as forums for expression, the court said the only issue was whether they are traditional public forums. It noted that *Kokinda*, which involved post office sidewalks, distinguished passageways used for a particular endeavor from those used for multitudinous purposes, such as "the typical Main Street." Only the latter are traditional public forums, the Supreme Court said.

The appellate panel thus concluded that the air terminals' limited purpose of enabling air travel was analogous to the limited access afforded by the sidewalk between the post office and its parking lot in *Kokinda*. Nevertheless, citing Justice Kennedy's *Kokinda* concurrence and the dissenting

opinion, as well as hints in the plurality opinion, the court concluded that leafletting must be permitted in the terminals because it is a "lesser inconvenience" than funds solicitation.

A different Second Circuit panel on February 4 found a reasonable likelihood that the grounds of the Nassau Coliseum on Long Island are a government-designated (or limited) public forum on which distribution of non-commercial literature must be permitted. The court reasoned that once the county opened the stadium grounds to various non-commercial activities, it could not constitutionally ban speech activities such as leafletting. Reported in: *U.S. Law Week*, February 26. □

survey finds weak support for free expression

Americans "believe they believe" in free expression but, on close inquiry, "it is obvious that they don't," according to a national survey released April 12. "It is unlikely that voters would support freedom of the press," if it was put on the ballot today, said John Seigenthaler, publisher of the *Nashville Tennessean*, as he outlined the survey's results at the annual meeting of the National Society of Newspaper Editors.

"After nearly a year of surveying, it is apparent that free expression is in very deep trouble," states the 281-page report done for the editors by Robert Wyatt, a journalism professor at Middle Tennessee State University and David Neft, research chief for Gannett, Inc.

One of the many dispiriting findings for editors in the survey of more than 2,500 adults was that just 36 percent would allow journalists to keep sources confidential even if authorities wanted to know. Also, 34 percent would not allow reporters to even report mistakes made by a politician 20 years earlier.

Only about one-third of those asked would protect absolutely a citizen's right to buy magazines with nude pictures, and only about one-fifth said they would protect at all times the use of slang words referring to sex, or what the survey tagged, "a right exercised by many Americans every day."

Those asked repeatedly said they supported free speech but would give the press far less protection than, for example, political speech. Those same people displayed what Wyatt called an inability to distinguish between what the law protects and what they dislike personally.

Dozens of questions were asked about protecting specific actions, with respondents being queried as to whether they would protect such acts all the time, sometimes, or not at all. Fairly sizable numbers would not protect many acts at all. That included keeping sources confidential (16 percent), allowing newspapers to editorialize about an ongoing political campaign (28 percent), reporters criticizing the military (23 percent), reporting classified material (48 percent), reporting national security stories without government approval (45 percent), and reporting "sexual habits of public figures" (42 percent).

The survey discerned sharp demographic differences from the results. Males are more tolerant of most free expression rights than females, and blacks are less protective than whites. The well-educated and well-to-do economically tend to be the most tolerant.

The study reiterated that a large plurality, and frequently a majority, oppose protection for freedoms of expression that "do not remotely affect the national security but merely represent things members of the public disagree with or dislike." Americans display "an alarming willingness to remove legal protection from forms of free expression they disagree with or find offensive," the report concluded. "That is, they only believe that they believe in free expression."

"This is a predicament," the study noted, "that would have made James Madison and Thomas Jefferson shudder." Reported in: *Chicago Tribune*, April 13. □

Rep. Edwards honored

Rep. Don Edwards (D-CA) is the 1991 winner of the James Madison Award for his leadership in the protection of civil liberties and privacy. Established in 1989, the award is presented annually to honor champions of the public's right to know. The award was presented on March 14 by the Coalition on Government Information, which is comprised of fifty public interest groups and library associations and was the first initiated by the American Library Association in 1986.

Edwards, who chairs the House Judiciary Subcommittee on Civil and Constitutional Rights, was particularly lauded for his role in criticizing the FBI's Library Awareness Program, in which the FBI sought to enlist librarians to report library reading habits of patrons. Reported in: *Library Journal*, April 1. □

Christopher Merrett wins Immroth Award

Christopher Merrett, Deputy University Librarian at the University of Natal Library in Pietermaritzburg, South Africa, is the 1991 recipient of the John Phillip Immroth Memorial Award for Intellectual Freedom. The award honors individuals or groups who have demonstrated extraordinary courage in defense and support of intellectual freedom.

Sherry Carrillo, Chair of the Immroth Award Selection Committee, said, "Christopher Merrett has shown remarkable courage and endurance in his steadfast support of intellectual freedom for all people. Under difficult and often dangerous circumstances, he has never hesitated to speak out about the importance of the freedom to read." □

(Rust v. Sullivan . . . from page 117)

claim that this unequal subsidization worked a violation of the Constitution. We held that the Government may "make a value judgment favoring childbirth over abortion, and . . . implement that judgment by the allocation of public funds." . . . The Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternate program which seeks to deal with the problem in another way. In so doing, the Government has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of the other. . . .

To hold that the Government unconstitutionally discriminates on the basis of viewpoint when it chooses to fund a program dedicated to advance certain permissible goals, because the program in advancing those goals necessarily discourages alternate goals, would render numerous government programs constitutionally suspect. When Congress established a National Endowment for Democracy to encourage other countries to adopt democratic principles, it was not constitutionally required to fund a program to encourage competing lines of political philosophy such as Communism and Fascism. Petitioners' assertions ultimately boil down to the position that if the Government chooses to subsidize one protected right, it must subsidize analogous counterpart rights. But the Court has soundly rejected that proposition. . . . Within far broader limits than petitioners are willing to concede, when the Government appropriates public funds to establish a program it is entitled to define the limits of that program.

This is not to suggest that funding by the Government, even when coupled with the freedom of the fund recipients to speak outside the scope of the Government-funded project, is invariably sufficient to justify government control over the content of expression. For example, this Court has recognized that the existence of a Government "subsidy," in the form of Government-owned property, does not justify the restriction of speech in areas that have "been traditionally open to the public for expressive activity," or have been "expressly dedicated to speech activity." Similarly, we have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government's ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment. It could be argued by analogy that traditional relationships such as that between doctor and patient should enjoy protection under the First Amendment from government regulation, even when subsidized by the Government. We need not resolve that question here, however, because the Title X program regulations do not significantly impinge upon the doctor-patient relationship. Nothing in them requires a doctor to represent as his own any opinion that he does not in fact hold. Nor is the doctor-patient relationship established by the Title X program sufficiently all-encompassing so as to justify an expectation on the part of the patient of comprehensive medical advice. . . . The doctor is always free to make clear that advice regarding abortion is simply beyond the scope of the program. In these circumstances, the general rule that the Government may choose not to subsidize speech applies with full force.

from the dissent by Justice Blackmun

Casting aside established principles of statutory construction and administrative jurisprudence, the majority in these cases today unnecessarily passes upon important questions of constitutional law. In so doing, the Court, for the first time, upholds viewpoint-based suppression of speech solely because it is imposed on those dependent upon the Government for economic support.

Under essentially the same rationale, the majority upholds direct regulation of dialogue between a pregnant woman and her physician when that regulation has both the purpose and the effect of manipulating her decision as to the continuance of her pregnancy. I conclude that the Secretary's regulation of referral, advocacy, and counseling activities exceeds his statutory authority, and also, that the regulations violate the First and Fifth Amendments of our Constitution. Accordingly, I dissent and would reverse the divided-vote judgment of the Court of Appeals. . . .

Until today the Court never has upheld viewpoint-based suppression of speech simply because that suppression was a condition upon the acceptance of public funds. Whatever may be the Government's power to condition the receipt of its largess upon the relinquishment of constitutional rights, it surely does not extend to a condition that suppresses the recipient's cherished freedom of speech based solely upon the content or viewpoint of that speech. . . .

It cannot seriously be disputed that the counseling and referral provisions at issue in the present cases constitute content-based regulation of speech. . . .

The regulations are also clearly viewpoint-based. While suppressing speech favorable to abortion with one hand, the Secretary compels anti-abortion speech with the other. . . .

The Court concludes that the challenged regulations do not violate the First Amendment rights of Title X staff members because any limitation of the employees' freedom of expression . . . is simply a consequence of their decision to accept employment at a federally funded project. But it has never been sufficient to justify an otherwise unconstitutional condition upon public employment that the employee may escape the condition by relinquishing his or her job. It is beyond question "that a Government may not require an individual to relinquish rights guaranteed him by the First Amendment as a condition of public employment."

In the cases at bar, the speaker's interest in the communication is both clear and vital. In addressing the family-planning needs of their clients, the physicians and counselors who staff Title X projects seek to provide them with the full range of information and options regarding their health and reproductive freedom. Indeed, the legitimate expectations of the patient and the ethical responsibilities of the medical profession demand no less....

The Government's articulated interest in distorting the doctor/patient dialogue — insuring that federal funds are not spent for a purpose outside the scope of the program — falls far short of that necessary to justify the suppression of truthful information and professional medical opinion regarding constitutionally protected conduct....

from the dissent by Justice O'Connor

"Where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." Justice Blackmun has explained well why this longstanding canon of statutory construction applies in this case, and I join Part I of his dissent [which argued that the regulations were not mandated by the statute. This part of the dissent was also joined by Justice Marshall, but not by Justice Stevens]. Part II demonstrates why the challenged regulations, which constitute the Secretary's interpretation of Sec. 1008 of the Public Health Service Act "raise serious constitutional problems": the regulations place content-based restrictions on the speech of Title X fund recipients, restrictions directed precisely at speech concerning one of "the most divisive and contentious issues that our Nation has faced in recent years."

One may well conclude, as Justice Blackmun [joined by Justices Marshall and Stevens] does in Part II, that the regulations are unconstitutional for this reason. I do not join Part II of the dissent, however, for the same reason that I do not join Part III, in which Justice Blackmun [and Justices Marshall and Stevens] concludes that the regulations are unconstitutional under the Fifth Amendment. The canon of construction that Justice Blackmun correctly applies here is grounded in large part upon our time-honored practice of not reaching constitutional questions unnecessarily. "It is a fundamental rule of judicial restraint...that this Court will not reach constitutional questions in advance of the necessity of deciding them."...

This Court acts at the limits of its power when it invalidates a law on constitutional grounds. In recognition of our place in the constitutional scheme, we must act with "great gravity and delicacy" when telling a coordinate branch that its actions are absolutely prohibited absent constitutional amendment.... In this case, we need only tell the Secretary that his regulations are not a reasonable interpretation of the statute; we need not tell Congress that it cannot pass such legislation. If we rule solely on statutory grounds, Congress retains the power to force the constitutional question by legislating more explicitly. It may instead choose to do nothing. That decision should be left to Congress; we should not tell Congress what it cannot do before it has chosen to do it. It is enough in this case to conclude that neither the language nor the history of Sec. 1008 compels the Secretary's interpretation, and that the interpretation raises serious First Amendment concerns. On this basis alone, I would reverse the judgment of the Court of Appeals and invalidate the challenged regulations. □

Oregon clearinghouse named IFRT state program winner

The Oregon Intellectual Freedom Clearinghouse is the 1991 recipient of the ALA Intellectual Freedom Round Table State Program Award. The $1,000 award, sponsored by the IFRT and funded by Social Issues Resources Series, Inc. (SIRS), recognizes the most creative and successful intellectual freedom program or project produced by a state library association intellectual freedom committee or state intellectual freedom coalition.

The Intellectual Freedom Clearinghouse was established in 1987 through a cooperative effort of the Oregon State Library, the Oregon Department of Education, the Oregon Library Association Intellectual Freedom Committee, and the American Association of University Women. The goals of the Clearinghouse are to uphold the principles of the *Library Bill of Rights* in all types of libraries by improving communication between librarians, board members, professional associations, and other concerned groups in Oregon about challenges to intellectual freedom, and by increasing awareness about how threats to intellectual freedom can be overcome.

Sylvia Turchyn, chair of the IFRT State Program Award Committee, said, "The committee selected the Oregon Intellectual Freedom Clearinghouse because of its outstanding accomplishments, including successfully promoting intellectual freedom events and workshops. Each year, the Clearinghouse prepares an annual report which summarizes and analyzes the challenges reported during the previous year. The Clearinghouse has become a powerful force for the advancement of intellectual freedom in the state of Oregon. It provides a exceptional model of successful coalition building for all groups that embrace the principles of intellectual freedom." □

is it legal?

child pornography

Washington, D.C.

The Justice Department agreed February 26 temporarily not to enforce a controversial new federal child pornography law that has been challenged in court. The agreement not to enforce the new statute — which was passed by Congress in the waning days of its 1990 session last October — was accepted in Washington by U.S. District Court Judge Stanley Sporkin. Earlier, Sporkin had indicated he would issue a restraining order prohibiting enforcement of the new law if the Justice Department did not voluntarily agree to refrain from filing prosecutions under its provisions.

The court action came after a coalition of publishers, artists groups and the American Library Association filed suit to challenge the law, which requires the keeping of records listing the ages and names of any models or actors used to depict sexual activity in books, films or videos. Also joining the suit were the American Booksellers Association, the National Campaign for Freedom of Expression, the National Association of Artists Organizations, Penthouse International, the American Society of Magazine Photographers, and the International Periodical Distributors Association.

The plaintiffs contend that the legislation, a revision of a law that was struck down last year, was unconstitutional and would do nothing to reduce child pornography. Rather, the suit contends, it would become an onerous burden on publishers and artists who deal with sexually oriented material involving adults. The law would require, for example, that any material containing sexual illustrations state that the producers have records with the ages and identities of the models or actors shown and that they say explicitly where the records can be inspected. Failure to maintain the records would be a felony.

The law applies only to "actual" sexual activity and exempts "simulated" sex, but lawyers challenging it argued in court papers that, in many artistic settings, only the model knows if such behavior is real or faked.

"This law creates a body of work that is exempted from the First Amendment," said Oren Teicher, associate executive director of the American Booksellers Association and president of the American Booksellers Foundation for Free Expression. "If a photograph, book or video does not carry [this label], it no longer has First Amendment protection, even though it may not be obscene."

David Ogden, an attorney for ALA, contended that the new law could have been brought to bear against artists and photographers whose images were caught up last year in the nationwide controversy over grants made by the National Endowment for the Arts. Specifically, Ogden asserted, several homoerotic images by the late Robert Mapplethorpe could have been targeted if they were not properly labeled, even though a jury in Cincinnati found the photos did not violate Ohio's strong child pornography and obscenity laws.

The lawsuit is the latest episode in a continuing controversy over attempts to clamp new restrictions on child pornography that began in 1988, when Congress included anti-pornography amendments in an omnibus drug law. That law would have required any photographer using nude models engaging in any form of sexual or intimate activity to prove every model included in such images — beginning at a date twelve years before the law was enacted — was not a minor.

The original law was challenged by many of the same groups involved in the current action. In 1989, U.S. District Court Judge George H. Revercomb in Washington, D.C., threw out key provisions for violation of the First Amendment and the Justice Department appealed. The appeal was still pending last year when Sens. Strom Thurmond (R-SC) and Dennis DiConcini (D-AZ) introduced a revised version that, they said, was intended to remedy constitutional flaws. No hearings were ever held on the bill and it was enacted as a result of negotiations in a Senate-House conference committee over a larger crime bill. Reported in: *New York Times*, February 24; *Los Angeles Times*, February 27.

university

Austin, Texas

When administrators at the University of Texas postponed a revised freshman writing course, did they cave in to pressure from outside critics, or did they act responsibly to insure healthy debate? That question was at the center of a dispute that attracted the attention of national higher education groups and those concerned about the issue of free expression on the nation's campuses.

The Modern Language Association and the American Association of University Professors said they were concerned about the way the university handled the issue. They questioned whether people outside the English department were given too much authority to dictate whether and how the course would proceed.

At issue was a freshman writing course, taught mostly by graduate students and required of some 3,000 students annually. In May, 1990, a department committee, concerned that the course was not meeting its goals of teaching students how to write clearly and compose effective arguments, prepared a revised syllabus that focused on the theme of "difference." The new course would ask students to read anti-discrimination court cases and related essays and, after examining all the arguments, write their own analyses of the arguments.

Opponents of the course contended that students in such a class would feel pressured to take liberal stances on such controversial issues as gay rights and affirmative action. The critics took their case to the news media. In a paid advertisement in the university newspaper, they charged that the English department had decided "to turn the university's only required English composition class into a course on racism and sexism."

After a number of national news reports and editorials — in which the course was called everything from radical to an example of "political correctness" — the dean of the college and liberal arts, historian Standish Meacham, announced in July that the course revisions would be postponed a year. Since Meacham had been a staunch supporter of the course, several members of the English department speculated that he had been pressured by the university. In any case, Meacham announced in January that he was resigning for personal reasons.

Faced with the task of having to persuade a skeptical campus — they would call it misinformed — the entire committee that revised the course resigned in February. The members also asked that AAUP and the MLA to look into what they charged was unwarranted interference in a departmental curricular matter.

In the spring, 1991, issue of the MLA newsletter, Frances Smith Foster, who heads that association's Committee on Academic Freedom, Professional Rights, and Responsibilities, wrote that the Texas case raised "serious issues of academic procedure and freedom."

"Clearly, faculty members have the right to speak out publicly on university issues," she wrote. "Clearly, too, citizens have the right to comment on the work conducted in a public university. Unfortunately, the character of the debate on the Austin campus and throughout the state suggests that incomplete, inaccurate, and distorted information may well have contributed to decisions affecting the course."

Linda Brodkey, an associate professor of English who headed the revision committee, agreed. She said that although the course is required of all freshmen, the committee should not have had to report changes in the syllabus outside the department if the purpose of the course remained unchanged. "What concerns me is that people were so distracted by the topic that they lost sight of the fact that this is a writing course, not a course in racism and sexism, and a better writing course at that," she said.

Robert Kreiser, associate secretary of AAUP, said "there are definitely grounds for concern" about the way the course has been handled. He said the association was waiting to see what the Texas English department did before it took further action. "It becomes impossible to run a university when every course revision is subject to second-guessing by people outside the areas of specializations," he said. Reported in: *Chronicle of Higher Education*, February 20.

blacklisting

New York, New York

The leadership of Actors Equity decided in March to file a formal grievance with the League of American Theaters and Producers on behalf of actress Vanessa Redgrave. Redgrave was to have starred in a tour of *Lettice and Lovage*, but the tour was canceled after the actress was widely quoted voicing opposition to the U.S. war against Iraq.

The grievance claims that by canceling the tour, the Shubert Organization violated an anti-blacklisting proviso of the collective bargaining agreement between the union and the league. Rule 23(a) prohibits discrimination against any actor on the basis of, among other things, political belief. Redgrave has charged that her agent was told in a meeting that the tour was canceled because her political statements would make it difficult to sell tickets.

Redgrave is not alone. Woody Harrelson of the television series *Cheers* was pulled as grand marshall of the New Orleans Mardi Gras because of his opposition to the war. Actress Margot Kidder apparently lost an engagement in *Love Letters* for the same reason. Kidder was also fired as spokesperson for the Foster Parents Plan. Reported in: *Variety*, March 25; *Village Voice*, March 26.

press and privacy

Palm Beach, Florida

The decision by the Palm Beach County state attorney to prosecute a Boca Raton-based tabloid for revealing the name of a rape victim has fueled an already fierce debate about the right of the media to publicize the names of such victims. Newspaper editors and media lawyers said the May 9 action by State Attorney David Bludworth bordered on censorship, and they doubted courts would uphold the two criminal misdemeanor charges against *The Globe*. The tabloid, the first American paper to identify the woman who said she was raped by William Kennedy Smith, was followed

by NBC, the *New York Times*, and several other news organizations. No other Florida newspapers printed the woman's name.

Bludworth said *The Globe* violated a 1911 Florida law barring the identification of rape victims. He said he planned to prosecute only *The Globe*. "I think we need people to report these things without being stamped across the forehead," he said. "Our statute is there, these people have printed this and this statute hasn't been ruled unconstitutional." No criminal prosecution has ever before been pursued under the law. In a narrowly focused 1989 decision, the U.S. Supreme Court overturned a Florida court decision in a civil suit that awarded damages to a rape victim who claimed protection of the statute.

Some members of the media, while opposed to identifying the woman, argued that decisions on what to publicize should remain out of the state's hands. The *Orlando Sentinel* has a longstanding policy not to disclose the names of rape victims without their consent. But editor John Haile added, "We have long opposed the state's attempt to regulate these things." Sandy Bohrer, attorney for the *Miami Herald*, said the statute did not "stand a prayer of a chance" of surviving in court. "Courts have upheld the truthful publication of lawfully obtained information," he said. "This stuff is unconstitutional."

"This would be a terrible precedent if upheld," commented Jonathan Kotler a media law professor at the University of Southern California. "I would rather trust the good judgment of editors than reactive state officials to tell me what to publish." Reported in: *Orlando Sentinel*, May 10.

reporters' rights

Fairfield, Iowa

An editor and reporter, active in the anti-abortion movement, have filed a federal suit against their former employer alleging religious discrimination under the Civil Rights Act. Filed against the *Fairfield Daily Ledger*, the action was expected to pit the right of reporters to freedom of religious activity after hours against the interest of news organizations in avoiding the appearance of conflict of interest.

John Kennedy and Terri Lambertsen allege that they were dismissed from the news staff of the *Ledger* April 9, 1990, as a result of their refusal to cease their anti-abortion activities. The two held leadership positions in the Jefferson County Right to Life group established in response to the opening of a Planned Parenthood office in Fairfield. The newspaper ordered them to withdraw from membership to preserve the paper's commitment to neutrality. Lambertsen offered to become merely a silent member of the group or to withdraw and join a statewide organization with similar goals, but these were refused.

On the day of his dismissal from the paper, Kennedy reportedly told publisher Byron Kimble that his participation in the group arose out of his religious convictions. According to Kennedy's lawyer, Kimble responded, "Your religious beliefs and convictions are irrelevant."

Journalism schools and news organizations have long been conscious of a "need to maintain credibility and objectivity," said Kasey Kincaid, attorney for the *Ledger*. As a result, newspapers generally have policies prohibiting affiliations that would create the appearance of a conflict of interest. The *Ledger*, he admitted, had no written policy.

The primary issue in the case, Kincaid said would be whether a conflict-of-interest policy "can or should be negated" by a reporter's claim to belong to an organization and to hold leadership in it out of religious motivations. Reported in: *Editor & Publisher*, March 9.

church and state

Morton, Illinois

Biology students in a small Illinois school district must be told that there are alternative explanations for the origin of life, under a new policy adopted by the local school board. "If evolution is brought up, then the teacher will inform the students that there is another theory called creationism," said Norman Durflinger, superintendent of the 2,900 student Morton Community Unit School District 709.

Durflinger said information about creationism would be approved by a curriculum review board and made available to students in the library of the district's high school. He said the new policy does not put the teaching of creationism on a par with instruction in evolutionary biology.

The policy was adopted after a school board member, Jim Widerkind, argued in February that three evolution-based high school biology textbooks adopted by the district slighted the religious views of the majority in the community.

Eugenie C. Scott executive director of the National Center for Science Education, said the development was troubling. She noted that one of the textbooks adopted in Morton, *Biology*, published by Prentice Hall, also was adopted last fall by the Texas Board of Education, which sought to encourage the presentation of evolution as an inextricable strand of modern biological science. "What I'm really watching is the effect on textbook publishers," she said. "Will they look at all the little Mortons out there and conclude that they will not be able to sell such a book?" Reported in: *Education Week*, February 20.

Athens, Tennessee

The McMinn County Board of Education agreed April 18 to eliminate Bible classes from its elementary schools at the end of the current school year. The vote was 5-1 with one member absent. The action had been recommended by the board's attorney, who described the classes as unconstitutional.

But the vote was not taken until after the board heard several emotional pleas to keep the classes, which have been taught for about twenty years. "You wouldn't take a fascinating history book out of the schools," said Mike Cash, a Niota Elementary school teacher and a teacher at Fairview Christian Academy. Reported in: *Chattanooga Times*, April 19.

nude dancing

South Bend, Indiana

A new Indiana regulation that prohibits nude dancing in bars became the latest twist in a lengthy legal battle that began at a South Bend nightclub when it was adopted in January by the state Alcoholic Beverage Commission. An Indiana public indecency law banning nude dancing was overturned by a federal appeals court as an unlawful restriction on free speech. The U.S. Supreme Court heard arguments in the case earlier this year.

But state Attorney General Linley E. Pearson said the beverage commission's regulation would not be affected even if the high court strikes down the indecency law. He said the new rule is protected by the Twenty-first Amendment to the Constitution repealing Prohibition. The courts have upheld states' rights to regulate liquor sales under the amendment.

Arthur "Junior" Ford, owner of the Kitty Kat Lounge in South Bend, said he had expected another state attempt to control nude dancing. "They figure they've already lost it in the Supreme Court, so they're trying this," he said.

Local authorities raided the Kitty Kat — which featured nude female dancers — in the mid-1980s, beginning the legal challenge that reached the Supreme Court. Ford said the lounge's dancers have worn pasties and g-strings since police warned the Kitty Kat on January 8, the day the case was argued in Washington. Reported in: *Fort Wayne Journal-Gazette*, March 23. □

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success stories

libraries

Gainesville, Florida

The Alachua County School Board unanimously rejected the appeal of a Glen Springs Elementary School parent who had asked that a book be removed from the school library because of its use of black dialect. Joyce Conners went before the board April 23 to appeal an earlier decision by Glen Springs Principal Patsy Kinney, who denied a request to remove *Miranda and Brother Wynn* from the school's library and its suggested reading list.

"The book is written by a black author in what I'll call 'black slang' for lack of a better word," Conners said. "It has fifteen pages of written text. I feel like children in elementary school are in a vulnerable state . . . and books like this promote illiteracy, not literacy, and shouldn't be in elementary schools."

But school board members said the book was an example of what they were striving for in their multicultural education program. Some members also said taking the book off the shelf would be a form of censorship.

"I get very uncomfortable when people start talking about any kind of censorship," board member Carolyn Kitchens said. She said she found the book to be "an absolutely beautiful story that children should have the opportunity to hear and participate in."

"I would hate to see any book taken off the shelf because of the dialect in it, because it is a reflection of the way people talk," added board member Barbara Gallant. "If we start censoring one book because we don't like the words in it, the next thing we do is take one off the shelf because we don't like something else about it. It's a matter of intellectual freedom."

Last year, an effort to remove *That's My Baby*, by Norma Klein, from the library at the district's Santa Fe High School was also unsuccessful. Reported in: *Gainesville Sun*, April 24.

Waldorf, Maryland

Passages about cooking babies, decapitations and other brutal murders prompted the parent of a Charles County middle school student to try this spring to censor a popular children's book. *Southern Fried Rat and Other Gruesome Tales*, by Daniel Cohen, is a collection of folktales, many of which have been rewritten in a modern setting. Although many of the stories are common folktales, the Matthew Henson Middle School parent objected to several which involved unusual violence or relate humorous anecdotes of drug use in school and of ways for students to cheat on exams.

After reviewing the book, however, a committee made up of the library supervisor, three librarians, a reading resource teacher, a psychologist and a parent determined that the book was acceptable for middle and high school students.

In accepting the book, the review committee cited the need to provide variety in the selection of books in order to meet the needs of all students. *Southern Fried Rat* is most popular among boys and has proven successful in piquing the interest of "reluctant readers." The committee said the book was consistent in content with similar books of the same horror genre.

"The tales are similar to Grimm Brothers' tales except that the settings are not castles or forests but backyards, fast-food restaurants, modern office buildings and schools," the committee reported. "As in the Grimm tales, there is violence, but the violence is not dwelled upon nor is it described in any amount of detail." Reported in: *Maryland Independent*, April 12.

schools

Lake Villa, Illinois

The Catcher in the Rye and other controversial materials will remain a part of Grayslake Community High School's curriculum, the District 127 School Board decided in late March. Members of a group called Parents for Integrity in Education (PIE) objected to the J.D. Salinger novel and to school plays *Greater Tuna* and *Brighton Beach Memoirs*, as well as to an assignment requiring students to write about making a pact with the devil.

"The board steadfastly refuses to censor the materials offered to students, believing the shadows of book banning often imperceptibly become the early morning hues of book burning," said Board President John Harnagel. Because PIE members suggested the district might be vulnerable to a lawsuit, Harnagel said the board would not comment further.

"I'm disappointed," said Janice Webb, a parent and PIE leader, of the decision. At the school board meeting Larry Webb, another parent and PIE member, read a prepared statement saying that responsible speech doesn't include mockery, ridicule, contempt or slander. "Freedom without responsibility and accountability is not victory, it is anarchy," Webb said.

In response to PIE, students at the high school formed a group called Students for Education Freedom. Missy Thompson, a senior who headed the group and spoke on behalf of its 120 members, told the board: "We're just here to defend our education should the threat arise."

"If I'm going to see evil in this world, it won't be from reading a book. It will be from looking out the back door," added another student, junior Shannon Brown. Reported in: *Lake Villa Review*, March 28.

Annville, Pennsylvania

A children's story about a clergyman's moral struggle prompted calls this spring for its removal from Annville-Cleona School District's required reading list. Arlene Capriotti thought that the fourth-graders reading *The Imp in the Basket*, by Natalie Babbitt, will have difficulty understanding the story's references to demon possession.

School officials, however, argued that the story, one of twelve included in a junior great books collection, is a valuable teaching tool. A standing committee of teachers, librarians, a school principal and the district superintendent recommended that the book remain on the fourth grade reading list and the school board supported that recommendation on April 9.

The Imp in the Basket is the story of a minister who finds a baby abandoned on the doorstep of his church. After taking the infant in, the minister discovers that the child looks like an imp, a child of the devil. The minister's problems grow when the townsfolk become frightened of the child and threaten it and their pastor. Despite the threats, the clergyman protects the infant, arguing that it may possible to raise it in the "ways of goodness."

"We're concerned about the impression it will leave with fourth grade students," said Capriotti, a mother of four children. "Especially with the demon possession part. We don't think they can handle it right now." School officials told Capriotti that the story is discussed as folklore, and that, too, she objected to. "We believe demon possession is a real thing," she said. Reported in: *Harrisburg Patriot*, April 9.

Greenville, South Carolina

After a heated debate that made at least one trustee say he felt like his Christianity was being "put on the line," the Greenville County School board voted April 9 to affirm a policy that some parents say allows objectionable books to be taught in district schools. The 4-2 vote did not mean the board approved teaching of three books called into question by Simpsonville parent Bill Johnson, said Board Chair James Blakely. He said approving or disapproving individual books was not the board's function. Trustees Joe Dill and Ann Sutherlin voted against affirming the policy.

But Johnson said the vote did exactly that. "There is no question that that decision means [the board] approved the three books," Johnson said after the board meeting, during which one woman speaking against the books broke into sobs. In January, Johnson submitted a petition signed by 864 people asking the board to take five books off the district's approved reading list. He said the books use the name of God and Jesus in a "vain and profane manner along with inappropriate sexual references."

The books included *Second Heaven*, by Judith Guest; *The Grapes of Wrath*, by John Steinbeck; and *My Brother Sam is Dead*, by James Collier. All three were reviewed by the school district's materials review committee, which decided to keep them on the approved list. Johnson also objected to *East of Eden*, by Steinbeck, and *The Water is Wide*, by Pat Conroy, but those books were not reviewed by the committee.

The policy upheld by the board allows parents to take concerns about books to the review committee, which is empowered to decide whether or not the books are appropriate. The policy also allows parents to request that different books be assigned to their children if the parents have objections to those assigned by teachers.

Trustee Tamara Mitchell said the policy should be changed so parents would be provided with a book list that pointed out which books could be offensive. But Pat Scales, a librarian at Greenville Middle School, said if the district does that, it might as well remove the books. "Labeling books in any way is censorship," she said. "I do in my heart believe parents should be able to select reading material for their children. But our calling attention to [the fact the book may offend some] relieves them of that responsibility."

Norman Mullins, associate superintendent for instruction and educational development, said the vote supported educators and the jobs they do. "I am encouraged that the board of trustees overwhelmingly supported teachers and administrators who struggle every day to provide the very best education," he said.

Trustees were told by two speakers that they would stand in judgment before God for any decision they made. "I know you don't want to, in any way, be responsible for turning our nation away from God," said Evelyn Nowell.

Trustee Steve Patton said he was frustrated if that meant people would judge his Christianity based on his vote. "From *Hustler* magazine to the Bible, people are going to disagree," he said. "I don't want my Christianity put on the line because of where I fall on that." Reported in: *Greenville News*, January 30, March 13, April 10; *Greenville Piedmont*, April 10.

Impressions

Fairbanks, Alaska

The *Impressions* reading series will remain in use in Fairbanks classrooms, the school board decided February 19. Board members voted 5-2 to uphold Superintendent Rick Cross' decision to retain the books. Board members Gene Redden and Mike Kramer cast the two votes against the series. Both said they don't believe the books teach witchcraft or Satanism as some opponents claim, but said the books contain too much violence and parents should have more alternatives. Opposition to the series was led by Citizens for Quality Education, which expressed disappointment with the decision and vowed to continue efforts to remove the series from schools.

The decision ended four months of vigorous public debate over the controversial textbook series that has been under attack across the country since 1987 (see *Newsletter*, January 1991, p. 14). The entire series consists of 15 books with 822 selections. Published by a division of Harcourt Brace Jovanovich, it is used in more than 1,500 schools in 34 states, according to Anson C. Franklin, a Harcourt officer.

"We continue to stand behind the books," Franklin said. "We think it's an innovative, excellent series to teach children with."

Stoking controversy over the books was an article that appeared last year in *The Citizen*, a newsletter published by Focus on the Family, a conservative religious group. The article, "Nightmarish Textbooks Await Your Kids," suggested that *Impressions* books torment happy, well-adjusted children and promote the occult and parental disrespect.

The ensuing clamor resulted in complaints against the series in about 40 school districts, according to Franklin. There have been 34 formal challenges brought against the books and in 32 cases they were retained, the publisher said. But three states — Mississippi, North Carolina and Georgia — last fall voted to exclude *Impressions* from state textbook lists.

"This is probably the largest concerted effort to ban a book ever made," Franklin claimed. "But people are starting to realize that special interest groups wanting to impose their own views are a threat."

Much of the testimony against the books in Fairbanks, which was taken in a series of three public hearings, including testimony from self-proclaimed occult expert Doc Marquis, claimed that the series teaches witchcraft as a religion. The board dismissed that claim, however, with little discussion.

"Certainly there's no plot to instill witchcraft or Satanism in our children," board member Walt Schlotfeldt said. "Perhaps we can find another way to provide alternatives, but I think it would be wrong to throw out the books."

During the discussion, the board defeated four attempts to find other ways to provide parents with alternatives. Superintendent Cross said any of the recommended changes would be "totally unreasonable." He said that providing parents with alternatives when requested would mean taking parents a step beyond an advisory role and into the decision-making process of the school board. Reported in: *Fairbanks Daily News*, February 20.

Kodiak Island, Alaska

The Kodiak Island Borough School board voted unanimously December 10 to uphold superintendent John Witteveen's decision to continue the *Impressions* reading series in area elementary schools.

Carol Shaw, a leader of Concerned Parents of School Education, who fought to have the series removed from Kodiak schools, told the board the books promoted witchcraft. She charged that they did not see the "ramifications" of their decision.

However, board member Bill Oliver said the stories in *Impressions* are no more scary than Hansel and Gretel. He said parents should remember that they are the most important teachers in their children's lives. Acting Board President Alice Knowles concluded that the wishes of a few should not control the actions of many and that it would be impossible for the board to cater to every individual. Reported in: *Kodiak Daily Mirror*, December 14.

Arlington Heights, Illinois

For Denise Pittas, a mother of two children in Arlington Heights Elementary School District 25, the *Impressions* reading series is as "controversial as Hansel and Gretel." But for Donald Mitroff and members of EXCEL 25, the series promotes "dangerous themes" of occult and satanic behavior that should be banned from classrooms.

The two viewpoints battled March 7 before a packed school board meeting. But after weighing a committee's evaluation of the series, the board decided against removing the books.

"I have read the books from cover to cover and while not every story is a literary masterpiece, you have to look pretty hard to find an objectionable story," said board president Martin S. Mulkerrin.

"After reviewing the committee's report and reviewing concerns, I can say that overall the series does not violate community standards," added district superintendent Daniel B. Keck. Reported in: *Arlington Heights Daily Herald*, March 8.

Wheaton, Illinois

The Wheaton-Warrenville Unit District 200 school board voted 6-1 in March to join a growing list of school districts that use the *Impressions* reading series despite protests from some parents and community members. The board voted to retain the books with several conditions:

- The district will develop programs to make teachers aware of the concerns raised about the books.

- Principals, teachers and parents will work together to solve individual problems parents have with the books.
- The district will review elementary level books and anthologies and possibly replace *Impressions* for the 1993-94 school year.
- The board will develop a policy on teaching culture and values, and review the current textbook selection policy.

The books, used as supplementary material in the district's elementary classrooms for four years, had been under fire since last fall. Parents charged that the series contains stories that are depression and frightening, and encourage children to defy their parents. More than 250 Wheaton residents appeared before the school board November 7 to complain about the books. Another 500 jammed into the board's November 28 meeting to discuss them.

According to the decision, parents will not be allowed to remove their children from *Impressions* lessons, but will be able to ask for exemptions from studying specific selections. Superintendent Richard R. Short said students would not be able to skip all lessons in the series because reading is an integral part of elementary education.

Although some Wheaton supporters of the readers expressed concern that the issue was left open for future review, anti-censorship groups were generally pleased. "We're simply delighted with the [Wheaton] board's decision," commented Roz Udow, director of public affairs for the New York-based National Coalition Against Censorship. "We had been watching the situation very closely and we're glad the materials will continue to be used." Reported in: *Wheaton Daily Journal*, March 23; *Arlington Heights Daily Herald*, March 21.

Lakewood, New York

On February 11, the Southwestern Central School board approved a committee's recommendation to keep the controversial reading series *Impressions*. About 160 people attended the meeting at which the board rendered its unanimous decision. "I think that both sides had time to be heard," said Superintendent Edmund J. Harvey. "I felt the board had the opportunity to hear the issue."

The series was being piloted at Southwestern in the second and third grades. Parents who wanted it removed claimed it deals with the occult and is too morbid. "It's been said this series has no particular religious bent, but a study has shown that 52 percent of the stories deal with witchcraft," noted Robert Edington, a leader of the drive to remove the books.

Edington complained specifically that the teacher's resource guide to the series suggests that before reading "Witch Goes Shopping," students discuss spells and create chants based on additional items to the witch's shopping list. "We believe there is a desensitizing effect here," he said. "Pretty soon, casting and chanting spells will seem so commonplace to the kids that, when they're confronted with the advances of satanic groups on a darker level, it will seem more acceptable. There's no shock value that would deter them."

Superintendent Harvey said he found nothing objectionable in the books. "I don't see the series teaching anything about witchcraft or the occult," he said. "I just don't see that. I consider it a good literature-based children's reading series."

After the Edingtons and a dozen other parents filed complaints about the series last November, Harvey appointed a committee of two elementary principals, two reading teachers, two classroom teachers, and a librarian to review the material. The committee recommended retention of the reading series because it "allows the students to read about the beliefs of many groups without promotion or instruction of one particular way of life," said Elsa Hern, a committee member and reading teacher at Celoron Elementary School.

Although the board accepted the committee's recommendation, the district has yet to decide whether to adopt the series — still used on a pilot basis — permanently. Reported in: *Jamestown Post-Journal*, February 12; *Buffalo News*, March 10.

Sioux Falls, South Dakota

The Sioux Falls School board voted unanimously March 14 to continue using the controversial *Impressions* reading series. But the board also directed the administration to examine concerns about lessons in the books that might coerce students to practice activities normally associated with witchcraft or the occult or that might be interpreted as an affirmation of a religious belief. Board members said they hoped that the vote would end a controversy that began last September (see *Newsletter*, March 1991, p 48).

"We all want the best for our children. We are all striving for the same goal and we need to come together," board president John Sorenson said.

Thane Paulsen, chair of Parents for a Balanced Curriculum, the group that opposed the series, said the controversy might come to an end, depending on what the administration recommends. "I think we'll have to wait for the results of the board handling of those two concerns," he said. "Personally, the thing I've got the most problem with is my children being instructed to call on the supernatural to make things happen.'

Rick Traw, reading curriculum supervisor for the Sioux Falls School District, called the vote a victory for academic freedom. "We are convinced as we can possibly be about the rightness of this curriculum," he said. "At the same time, we understand parents have concerns."

The Sioux Falls dispute over the nationally controversial series began when parents complained that the books were too violent, filled with references to witchcraft and the occult, and encouraged a disrespect for authority. The district adopted the series in September, 1990, when it moved to a whole-language approach to teaching reading.

After twenty formal complaints were filed asking that the series be removed, the board named an eight-person committee to review it and make a recommendation. On March 11, that group unanimously recommended that the series be retained.

The committee's 61-page report concluded that any other whole-language series would likely face the same opposition; that elements of violence and fear found in *Impressions* are not overdone; that stories do not contain occultism; that encouraging disrespect is not the intention of *Impressions* and that, in fact, most stories do encourage respect for elders, teachers, parents and peers; and that *Impressions* does not violate religious freedom.

The committee did suggest, however, that teachers avoid asking students to take part in any activities pertaining to witchcraft or casting spells. The report also acknowledged that a few activities in the teacher resource materials that accompany the series may have religious connotations and should be avoided. Reported in: *Sioux Falls Argus Leader*, March 12, 15.

student press

Tucson, Arizona

The principal of Amphitheater High School on April 12 rescinded her April 1 order that had required the school's newspaper to submit copy to her before publication. Principal Mary Jeanne Munroe had originally said she wanted to review the *Desert Gazette*'s contents before publication because she was "appalled" at a story in the March 22 issue concerning the school's drug-free zone. She had reprimanded the paper's faculty adviser, declaring that prepublication review was essential to preserve "quality journalism and accurate reporting."

The reversal was announced in a press release which said, in part, that "based on further analysis of the situation she [Munroe] has rescinded that directive effective immediately. At no time has there been an intent to restrict the ability of student journalists to investigate and report on issues of controversy, interest or importance."

The announcement also said that legal counsel for the school district had advised the governing board that the district is the legal sponsor of the paper and could be held liable for any judgment brought about from defamation of character suits.

"The district reaffirms that the purpose of the school newspapers in the district is one of education and is to teach students responsible, ethical journalistic skills, just as math teachers are to teach mathematics, science teachers are to teach science, etc."

"The responsibility for ensuring the students are taught appropriate journalistic skills as well as protection of the school district's legal interests and compliance with district policies regarding written publications rest primarily with the teacher adviser of the paper," the announcement said.

Student editors of the paper had reacted strongly against Munroe's initial plan to exercise prior review. "By censoring our newspaper, our education rights are being restricted and we feel that rather than being punished we should be rewarded for continuing to strive to meet the standards that the *Desert Gazette* has set in the past," the editors said. Reported in: *Arizona Daily Star*, April 6, 13. □

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millions of new U.S. secrets

The U.S. government thinks it created about 6.8 million official secrets in fiscal year 1990, but it can't be sure, due to government secrecy.

The Pentagon created more than half of last year's secrets, the CIA a third, and the State and Justice Departments almost all the rest, according to an annual review of the government's secrecy-making released April 2. The Information Security Oversight Office, a branch of the General Services Administration, reported that the overall level of government secrecy rose slightly last year, but remained significantly below its zenith in 1985. In that year, the Reagan administration produced an estimated 15 million official secrets.

"A constant drumbeat on this subject" from Congress has slowly eroded official secrecy, said Jim Currie, a staff member for the Senate Intelligence Committee. Members of Congress overseeing the military and intelligence agencies think "the executive branch keeps too many things classified, and classified at too high a level, and classified for too long," he said.

The office estimated that the government produced 6,797,720 secrets in the twelve months ending last September 30. That represented an increase of 1,219 from fiscal 1989. The figure includes government decisions to classify information, and classified documents generated by those decisions. The report largely excluded the effects of Operations Desert Shield and Desert Storm. The report noted that the buildup for the war with Iraq and the war itself would send the reported number of secrets soaring in next year's calculations.

The office's figures are intelligent guesses, based on statistical samples. The bureaucracy of secrecy is so extensive that a full accounting was deemed impractical when the oversight office was set up eight years ago.

The report covers material stamped "classified," "secret," or "top secret." Several levels of secrecy about "top secret" exist, but the report made no note of them. These ranks are known as "sensitive classified information" or "special access required." They are isolated into separate compartments of information and identified by classified code words. The number of code words and compartments is classified. Reported in: *Philadelphia Inquirer*, April 3. □

(in review . . . from page 106)

Pornography: The Other Side is a short, readable guide to clear thinking about this issue and, in fact, could be applied to other controversial subjects as well. Some arguments to use in library book challenges could be easily derived from Christensen's thought. He would probably treat the challenged book's content as an entity with moral meaning imposed upon it by the person objecting to it. He would probably argue that as such, the book should be available to a wide group of readers, not all of whom would interpret it the same way.

However, as much as I enjoyed the intellectual exercise and agreed with Christensen's conclusions, I was distracted by his all-too-frequent sweeping generalizations, often not footnoted. (He warns us in the preface that this is a stylistic choice.) Example: "Fearful of a [woman's] infidelity, [men] unconsciously feel that a positive view of sex is a threat to their own security" (pp. 51-52).

On the whole, however, I highly recommend *Pornography: The Other Side* as a way to approach this and other emotionally-laden issues with an analytical, critical mind rather than with the "politically correct" rhetoric of the day, only to end up with a fuzzy argument.—*Reviewed by Barbara M. Jones, Minnesota Historical Society and member, ALA Intellectual Freedom Committee.*

The Freedom to Publish. Haig A. Bosmajian, ed. Neal-Schulman Publishers, Inc., 1989. 230 p.

The Freedom to Publish is the fifth in a series of books on first Amendment rights of students in schools, colleges and universities (*The First Amendment in the Classroom*). The previous editions have addressed censorship of books, films and plays, religious rights, freedom of expression, and academic freedom. This fifth book is a compilation of federal case law pertaining to student journalism and the creation or distribution of student newspapers. All cases of significance to this topic adjudicated in Federal district or appeals courts and the U.S. Supreme Court since 1967 are rendered here in chronological order, beginning with *Dickey* v. *Alabama State Board of Education*, 273 F. Supp. 613 (1967 U.S. District Court case) and ending with the landmark case of *Hazelwood School Dist.* v. *Kuhlmeier*, 108 S. Ct. 562 (1988). Each case is introduced by a brief synopsis of the argument, which is followed by the court's opinion, and any relevant dissenting opinion.

This review must be understood in light of the stated purpose of this book — that it is designed to show students, parents and teachers the arguments that can be used to persuade school boards and school authorities that the rights of student journalists need protecting. However, the emphasis of the book is on reaching students and other laymen, particularly. This text meets its purpose in a number of ways. First and foremost, it provides a single source for substantial federal case law on the rights of student journalists. Not only does the book include the cases that matter, but it also collects them in this one volume, giving the reader a sense of the weight of reasoning made by the courts and a feeling for the trends in the courts' arguments. Second, Bosmajian's introduction enriches the concepts of the rights of student journalists. His discussion of *Tinker* v. *Des Moines Independent Community School District* provides substantial background to the courts' motives for the defense of student rights prior to the *Hazelwood* case and lays the groundwork for the most basic legal concepts used by the principals in his debate. Bosmajian relates the *Tinker* decision to student publication cases, and his argument then links the logic of *Tinker* to the courts' reasoning in the publication cases. He interweaves exemplary cases into the discussion of both *Tinker* and *Hazelwood*, demonstrating how the courts adhered to the *Tinker* test until the *Hazelwood* reversal. In the discussion of the *Hazelwood* case, Justice Brennan's dissent is deftly used to point out the inconsistencies of the Court's majority and this reveals why this case might be considered bad case law. The Brennan quotes are eloquent and serve to remind all readers of our basic rights and freedoms. Brennan's most biting criticism is that instead of "teach(ing) children to respect diversity of ideas that is fundamental to the American system" and "that our Constitution is a living reality, not parchment preserved under glass" the Court "teach(es) youth to discount important principles of our government as mere platitudes."

Third, David W. Kennedy, President of the American Society of Journalists and Authors, reminds the readers of the historical reasons for the need to defend the freedom to publish. Kennedy relies on more recently reported incidents of suppression, which at first seems to be pandering to the popular; however, this very tack will pique student interest in this topic and draw them into the argument more readily. Kennedy's comments will give students who have never read any intellectual freedom principle a solid foundation in the most basic First Amendment rights.

The layout of the book is designed to impress upon the reader fundamental intellectual rights. The inclusion of the texts of the First and Fourteenth Amendments prominently displayed as a preface is impressive and serves as an excellent reminder of our freedoms. The layout of each case's introduction helps to highlight the basic argument and principle of each case.

Finally, each case is unexpurgated. To have edited the cases would not have done them or their arguments justice. The real utility of a single source for this case law is that it allows the reader to cull out of any particular ruling what he or she finds useful. The introductions also alert the reader

to the basic legal concepts which may be examined more carefully in the full text.

However, it is not clear why a list of the Federal Circuit Court jurisdictions is given such prominent attention. This inclusion seems more appropriate for an appendix. Instead, to help the student and the layreader, a glossary of basic legal terms and concepts would have contributed to improved understanding. Also, the inclusion of the *Tinker* case in the same format as the other cases would have added to the vitality and utility of the book. Since many of the potential users of this book may be experiencing the legal concepts which are woven throughout both the introduction and case histories for the first time, some attempt to define them as they are used within the legal system would contribute immensely to their understanding, more so than a reliance on the reader's capacity to grasp the argument buried in the text. What is the legal definition of "prior restraint" or "material and substantial interference," for example? Although these concepts are admittedly hard to define, an attempt, prominently displayed before the introduction, could alert the reader to look for these issues. Furthermore, it is clear that the *Tinker* case plays a fundamental role in the foundation of all the cases and arguments made by the editor. The failure to include this case, at least in the appendix, decreases the utility of the book.

This text is essential to any secondary school, college or university library and student publication office. Its strengths as a single source and the excellent layout of its components make it extremely readable and useful. Criticisms mentioned above do not detract from the work substantially; these are meant mainly as recommendations for future improvements. The book is highly recommended for all libraries and student journalists. *Reviewed by John B. Harer, Head, Circulation Division, Texas A&M University Library, College Station, TX. Member, ALA, Intellectual Freedom Committee.*

Privacy and Publicity: Readings from Communications and the Law, 2. The Honorable Theodore R. Kupferman, editor. Meckler Corporation, 1990. 262 pages. $45.00

"The right of the individual to privacy generally has been accepted as an implied Constitutional right since the earliest days of the Constitution. That right was best stated by the U.S. Supreme Court in 1968 in *Griswold* v. *Connecticut*. This implied right recognizes the personal privacy of the individual, not the privacy of government agencies." (p. 83)

So begins "The Freedom of Information Act Privacy Exemption: Who Does It Really Protect?", one of 14 articles examining various aspects of privacy collected in this anthology. This article by Kimera Maxwell and Roger Reinsch will be of particular interest to librarians because of the on-going struggle of ALA to obtain information about the FBI Library Awareness Program and related information through action brought under the Freedom of Information Act.

Central to the thesis of Maxwell and Reinsch is a crucial distinction regarding the intent of the Freedom of Information Act. As they point out, the Act was to provide citizens access to the workings of government. In an ironic citizens twist, however, government agencies are using the act to protect their own privacy. A review of federal court cases clearly indicated that government agencies are using the act to restrain dissemination of information by indicating that providing such information would violate the privacy of individuals whose names may be included in documents released.

The crux of the article details some of the infringements to the intent of the Freedom of Information Act which have occurred as a result of such a revisionist view of the law. The authors contend that a simple solution to the abuse would be for government agencies to contact individuals named in documents "to ask their permission to release information that may be protected by this exemption." (*Ibid.*) They offer, among other examples, that of the CIA which, under court pressure, contacted 80 institutions asking for permission to release information.

This article probably is the one most related to library issues, although "Press and Privacy Rights Could Be Compatible," by Deckle McLean, certainly arouses some interesting speculation. The article reviews the historic attempts by the late Alexander Meiklejohn to distinguish between two types of free speech. Meiklejohn was a political scientist and academician who spent half a century arguing with such judicial greats as Oliver Wendell Holmes and Louis D. Brandeis in his effort to obtain judicial legitimacy for his point of view. He suggested that free speech pertaining to issues which the public must address in order to govern itself should properly be protected by the First Amendment. All other speech cannot be considered absolute and is protected by the Fifth Amendment. As libraries struggle with censorship issues one cannot avoid wondering what effect Meiklejohn's distinctions might have had on the outcome of attacks by citizens complaining that materials are pornographic or harmful to juveniles.

This volume is the second in a four volume series devoted to discussion of issues of law affecting communications. It concentrates on the conflict between privacy rights of individuals and the First Amendment rights of the media.

Three articles deal with privacy rights and docudrama. The first asks the question, "Do public figures have the right to prevent docudrama depiction of their lives on the grounds that it deprives them of sole use to a commercial property — themselves?" The second explores the various bases in law open to persons who feel they have been falsely portrayed in a docudrama. A third discusses the remedies at law

available for heirs or other representatives to bring action not only against creators of docudramas, but also against the advertisers who would use the name or personage of the deceased without permission.

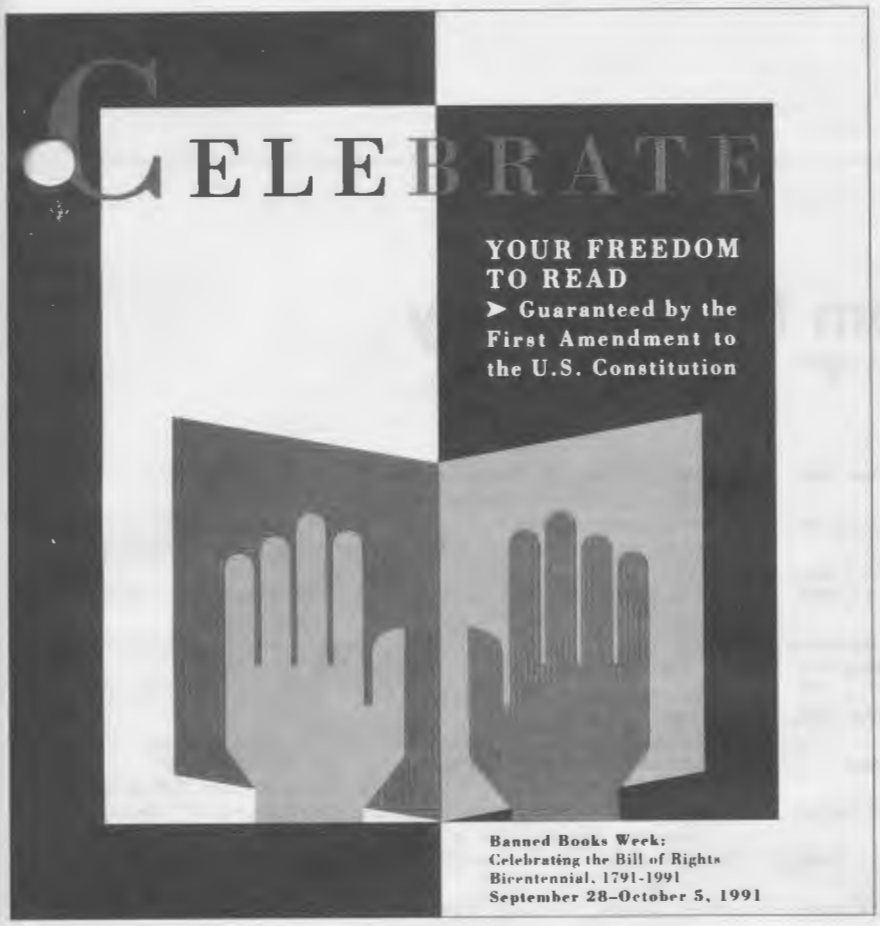
Other articles involving the media cover a variety of topics. One discusses the issue of cameras in the courtroom in light of the over zealous reporting during the Big Dan's rape trial which jeopardized the victim's right to privacy. Others explore the definition of "newsworthiness" as applied to legitimate press functions when media coverage seems to violate individual personal privacy; another addresses recent increases in court cases filed against photojournalists, charging emotional distress as a result of the photographers' work; and another raises concerns about corporate and governmental agencies attempting to prevent press coverage of public demonstrations on private property by invoking trespass laws.

The remaining works in this anthology are related to privacy in regard to credit reporting, motor vehicle records, subpoena of financial information from financial institutions by law-enforcement agencies, and two discussions of the meaning of privacy in tort law.

It is evident that this volume brings together a variety of substantive articles related to privacy issues and addresses them from several distinct points of view. The brief resumes of all the authors indicate that the writers come to their individual topics from a background of experience and interest. The book may be a useful addition to a law or business collection, if the value to the collection outweighs the cost. It provides in a single source, a variety of information on issues and cases related to privacy and First Amendment rights. It would be especially helpful to students doing research on this topic.—*Reviewed by Patricia H. Latshaw, Director of Community Relations, Akron-Summit County Public Library, Akron, Ohio.*

Gauntlet, No. 2, 1991. 402 p. ISSN: 1047-4463. Dept. GA1, 309 Powell Rd., Springfield, PA 19064. $8.95, less by subscription.

The second annual issue of this magazine devoted to the topic of censorship and free expression (for a review of the first issue, see *Newsletter on Intellectual Freedom*, March 1991, p. 41), is three times as long as the first, trade paperback in size with a perfect binding, and even more challenging than the first. The new NC-17 MPAA rating, 2 Live Crew, kiddie porn, publishing the names of rape victims, and prison writings are among the current topics debated. The fiction here is unlikely to be anthologized elsewhere. There is more news about censorship, including an article on Banned Books Week. *Gauntlet* continues to offer authors and intellectual freedom advocates an opportunity to test their limits.—*Reviewed by Carolyn Caywood, Virginia Beach Public Library, VA.*



...are not afraid to entrust ... American people with unpleasant fact..., foreign ideas, alien philosoph... and competitive values.

For a nation that is afraid to ... its people judge the truth and falsehood in an open market is a ...ion that is afraid of its people.

John F. Kennedy–Remarks made on the 20th anniversary of the Voice of America at H.E.W. Auditorium on February 26, 1962.

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BANNED BOOKS WEEK–CELEBRATING THE FREEDOM TO READ

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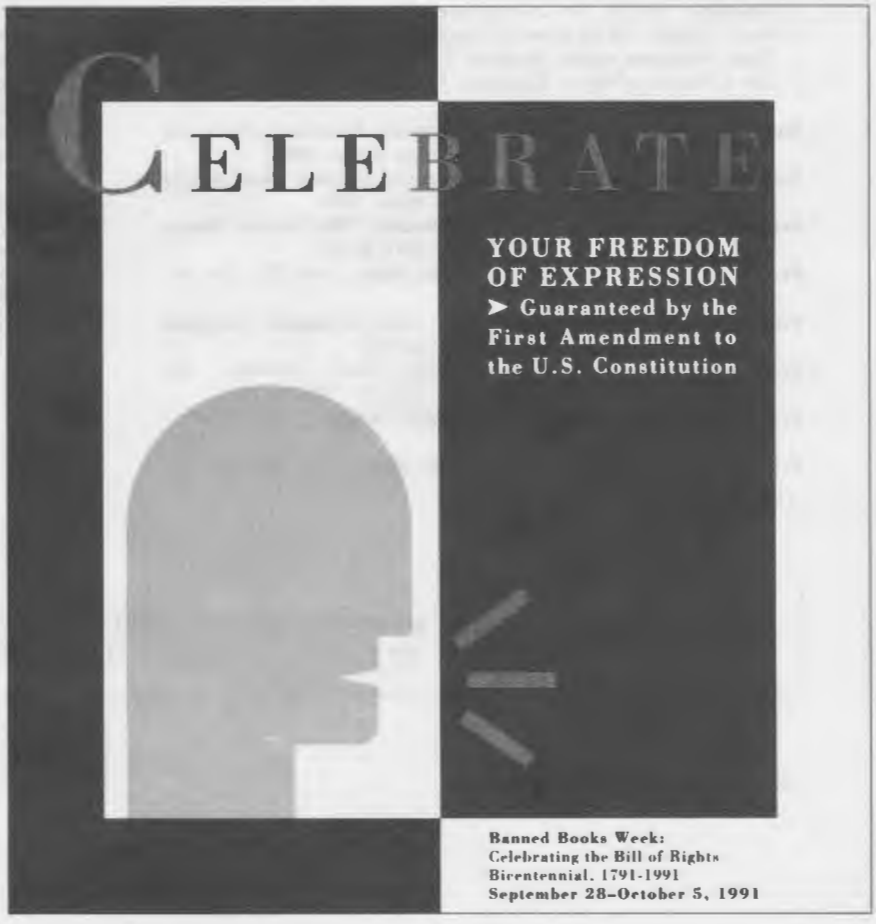

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(continued on page 128)

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