newsletter on
intellectual freedom
IFC ALA

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The following is the text of the Intellectual Freedom Committee's report to the ALA Council, delivered in two parts on July 2 and 3, at the 1991 Annual Conference in Atlanta, Georgia, by outgoing Chair Gordon M. Conable. At the Conference, the IFC proposed and the Council approved revisions of three interpretations of the Library Bill of Rights: Free Access to Libraries for Minors; Regulations, Policies and Procedures Affecting Access to Library Resources and Services; and Restricted Access to Library Materials. *The IFC also proposed and the Council approved two new Interpretations:* Meeting Rooms *and* Exhibit Spaces and Bulletin Boards. *The texts of all five interpretations and of a new policy on confidentiality begin on page 141. The full texts of other documents and resolutions approved by the IFC and Council follow the report on page 184.*

IFC report to ALA council

On behalf of the Intellectual Freedom Committee, I am pleased to bring before Council several action items.

As you know, over the last two years, the Intellectual Freedom Committee has been conducting a review of all Interpretations of the *Library Bill of Rights*. This process resulted from a Minority Concerns Committee request that the *Library Bill of Rights* reflect, among its other commitments, equal access without regard to language or economic status. As a continuation of that process, this spring we circulated to all ALA Councilors and units one revised Interpretation and two newly drafted Interpretations for comment. "Free Access to Libraries for Minors" has been *revised* to specifically address current issues of access for minors, and to delete unnecessary "sociological" speculation. The new draft also adds specific examples of practices that would violate the *Library Bill of Rights* by restricting access to minors.

The two *new* Interpretations result from a split of the existing Interpretation on exhibit spaces and meeting rooms, one concentrating on meeting rooms, and the other addressing both exhibit spaces and bulletin boards.

You will recall that Council adopted a revision to "Exhibit Spaces and Meeting Rooms" as an interim measure, deleting language suggesting that it was permissible to exclude religious and political organizations from the use of meeting rooms. This was done as a result of a lawsuit brought by the Concerned Women for America against a library in Oxford, Mississippi. We have now totally rewritten the Interpretation to provide specific

(continued on page 181)

Published by the ALA Intellectual Freedom Committee, Arthur Curley, Chairperson.

in this issue

targets of the censor

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

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three revised, two new *LBR* interpretations

The following are the texts of the revised and new Interpretations of the Library Bill of Rights *and of the* "Policy Concerning Confidentiality of Personally Identifiable Information About Library Users" *adopted by the ALA Council at the 1991 Annual Conference in Atlanta.*

Free Access to Libraries for Minors

An Interpretation of the Library Bill of Rights

Library policies and procedures which effectively deny minors equal access to all library resources available to other users violate the *Library Bill of Rights*. The American Library Association opposes all attempts to restrict access to library services, materials, and facilities based on the age of library users.

Article V of the *Library Bill of Rights* states, "A person's right to use a library should not be denied or abridged because of origin, age, background, or views." The "right to use a library" includes free access to, and unrestricted use of, all the services, materials, and facilities the library has to offer. Every restriction on access to, and use of, library resources, based solely on the chronological age, educational level, or legal emancipation of users violates Article V.

Libraries are charged with the mission of developing resources to meet the diverse information needs and interests of the communities they serve. Services, materials, and facilities which fulfill the need and interests of library users at different stages in their personal development are a necessary part of library resources. The needs and interests of each library user, and resources appropriate to meet those needs and interests, must be determined on an individual basis. Librarians cannot predict what resources will best fulfill the needs and interests of any individual user based on a single criterion such as chronological age, level of education, or legal emancipation.

The selection and development of library resources should not be diluted because of minors having the same access to library resources as adult users. Institutional self-censorship diminishes the credibility of the library in the community, and restricts access for all library users.

Librarians and governing bodies should not resort to age restrictions on access to library resources in an effort to avoid actual or anticipated objections from parents or anyone else. The mission, goals, and objectives of libraries do not authorize librarians or governing bodies to assume, abrogate, or overrule the rights and responsibilities of parents or legal guardians. Librarians and governing bodies should maintain that parents — and only parents — have the right and the responsibility to restrict the access of their children — and only their children — to library resources. Parents or legal guardians who do not want their children to have access to certain library services, materials or facilities, should so advise their children. Librarians and governing bodies cannot assume the role of parents or the functions of parental authority in the private relationship between parent and child. Librarians and governing bodies have a public and professional obligation to provide equal access to all library resources for all library users. Librarians have a professional commitment to ensure that all members of the community they serve have free and equal access to the entire range of library resources regardless of content, approach, format, or amount of detail. This principle of library service applies equally to all users, minors as well as adults. Librarians and governing bodies must uphold this principle in order to provide adequate and effective service to minors.

Adopted June 30, 1972; amended July 1, 1981, July 3, 1991, by the ALA Council. □

Meeting Rooms

An Interpretation of the Library Bill of Rights

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

Librarians maintaining meeting room facilities should develop and publish policy statements governing use. These statements can properly define time, place, or manner of use; such qualifications should not pertain to the content of a meeting or to the beliefs or affiliations of the sponsors. These statements should be made available in any commonly used language within the community served.

If meeting rooms in libraries supported by public funds are made available to the general public for non-library sponsored events, the library may not exclude any group based on the subject matter to be discussed or based on the ideas that the group advocates. For example, if a library allows charities and sports clubs to discuss their activities in library meeting rooms, then the library should not exclude partisan political or religious groups from discussing their activities in the same facilities. If a library opens its meeting rooms to a wide variety of civic organizations, then the library may not deny access to a religious organization. Libraries may wish to post a permanent notice near the meeting room stating that the library does not advocate or endorse the viewpoints of meetings or meeting room users.

Written policies for meeting room use should be stated in inclusive rather than exclusive terms. For example, a policy that the library's facilities are open "to organizations engaged in educational, cultural, intellectual, or charitable activities" is an inclusive statement of the limited uses to which the facilities may be put. This defined limitation would permit religious groups to use the facilities because they engage in

intellectual activities, but would exclude most commercial uses of the facility.

A publicly supported library may limit use of its meeting rooms to strictly "library-related" activities, provided that the limitation is clearly circumscribed and is viewpoint-neutral.

Written policies may include limitations on frequency of use, and whether or not meetings held in library meeting rooms must be open to the public. If state and local laws permit private as well as public sessions of meetings in libraries, libraries may choose to offer both options. The same standard should be applicable to all.

If meetings are open to the public, libraries should include in their meeting room policy statement a section which addresses admission fees. If admission fees are permitted, libraries shall seek to make it possible that these fees do not limit access to individuals who may be unable to pay, but who wish to attend the meeting. Article V of the *Library Bill of Rights* states that "a person's right to use a library should not be denied of abridged because of origin, age, background, or views." It is inconsistent with Article V to restrict indirectly access to library meeting rooms based on an individual's or group's ability to pay for that access.

Adopted July 2, 1991, by the ALA Council. □

Exhibit Spaces and Bulletin Boards

An Interpretation of the Library Bill of Rights

Libraries often provide exhibit spaces and bulletin boards. The uses made of these spaces should conform to the *Library Bill of Rights*: Article I states, "Materials should not be excluded because of the origin, background, or views of those contributing to their creation." Article II states, "Materials should not be proscribed or removed because of partisan or doctrinal disapproval." Article VI maintains that exhibit space should be made available "on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use."

In developing library exhibits, staff members should endeavor to present a broad spectrum of opinion and a variety of viewpoints. Libraries should not shrink from developing exhibits because of controversial content or because of the beliefs or affiliations of those whose work is represented. Just as libraries do not endorse the viewpoints of those whose works are represented in their collections, libraries also do not endorse the beliefs or viewpoints of topics which may be the object of library exhibits.

Exhibit areas often are made available for use by community groups. Libraries should formulate a written policy for the use of these exhibit areas to assure that space is provided on an equitable basis to all groups which request it.

Written policies for exhibit space use should be stated in inclusive rather than exclusive terms. For example, a policy that the library's exhibit space is open "to organizations engaged in educational, cultural, intellectual, or charitable activities" is an inclusive statement of the limited uses of the exhibit space. This defined limitation would permit religious groups to use the exhibit space because they engage in intellectual activities, but would exclude most commercial uses of the exhibit space.

A publicly supported library may limit use of its exhibit space to strictly "library-related" activities, provided that the limitation is clearly circumscribed and is viewpoint-neutral.

Libraries may include in this policy rules regarding the time, place, and manner of use of the exhibit space, so long as the rules are content-neutral and are applied in the same manner to all groups wishing to use the space. A library may wish to limit access to exhibit space to groups within the community served by the library. This practice is acceptable provided that the same rules and regulations apply to everyone, and that exclusion is not made on the basis of the doctrinal, religious, or political beliefs of the potential users.

The library should not censor or remove an exhibit because some members of the community may disagree with its content. Those who object to the content of any exhibit held at the library should be able to submit their complaint and/or their own exhibit proposal to be judged according to the policies established by the library.

Libraries may wish to post a permanent notice near the exhibit area stating that the library does not advocate or endorse the viewpoints of exhibits or exhibitors.

Libraries which make bulletin boards available to public groups for the posting notices of public interest should develop criteria for the use of these spaces based on the same considerations as those outlined above. Libraries may wish to develop criteria regarding the size of material to be displayed, the length of time materials may remain on the bulletin board, the frequency with which material may be posted for the same group, and the geographic area from which notices will be accepted.

Adopted July 2, 1991, by the ALA Council. □

Restricted Access to Library Materials

An Interpretation of the Library Bill of Rights

Libraries are a traditional forum for the open exchange of information. Attempts to restrict access to library materials violate the basic tenets of the *Library Bill of Rights*.

Historically, attempts have been made to limit access by relegating materials into segregated collections. These attempts are in violation of established policy. Such collections are often referred to by a variety of names, including

"closed shelf," locked case," "adults only," "restricted shelf," or "high demand." Access to some materials also may require a monetary fee or financial deposit. In any situation which restricts access to certain materials, a barrier is placed between the patron and those materials. That barrier may be age related, linguistic, economic, or psychological in nature.

Because materials placed in restricted collections often deal with controversial, unusual, or "sensitive" subjects, having to ask a librarian or circulation clerk for them may be embarrassing or inhibiting for patrons desiring the materials. Needing to ask for materials may pose a language barrier or a staff service barrier. Because restricted collections often are composed of materials which some library patrons consider "objectionable," the potential user may be predisposed to think of the materials as "objectionable" and, therefore, is reluctant to ask for them.

Barriers between the materials and the patron which are psychological, or are affected by language skills, are nonetheless limitations on access to information. Even when a title is listed in the catalog with a reference to its restricted status, a barrier is placed between the patron and the publication (see also "Statement on Labeling").

There may be, however, countervailing factors to establish policies to protect library materials—specifically, for reasons of physical preservation including protection from theft or mutilation. Any such policies must be carefully formulated and administered with extreme attention to the principles of intellectual freedom. This caution is also in keeping with ALA policies, such as "Evaluating Library Collections," "Free Access to Libraries for Minors," and the "Preservation Policy."

Finally, in keeping with the "Joint Statement on Access" of the American Library Association and Society of American Archivists, restrictions that result from donor agreements or contracts for special collection materials must be similarly circumscribed. Permanent exclusions are not acceptable. The overriding impetus must be to work for free and unfettered access to all documentary heritage.

Adopted February 2, 1973; amended July 1, 1981, July 3, 1991, by the ALA Council. □

Regulations, Policies, and Procedures Affecting Access to Library Resources and Services

An Interpretation of the Library Bill of Rights

American libraries exist and function within the context of a body of law derived from the United States Constitution, defined by statute, and implemented by regulations, policies, and procedures established by their governing bodies and administrations. These regulations, policies, and procedures reflect the function and character of the library, define its operations, and protect its mission and the rights of its users.

"The library is one of the great symbols of our democracy. It is a living embodiment of the First Amendment because it includes voices of dissent." Libraries of all types adhere to this ideal. Publicly supported libraries serve as traditional public forums, open to the collection, use, and dissemination of all forms of recorded human expression that are expressly dedicated to the unfettered competition of the marketplace of ideas. It is essential to this purpose that the library function as neutral ground in that marketplace. Viewpoint-based discrimination has no place in publicly supported library collections or services; for the library to espouse partisan causes or favor particular viewpoints violates its mission.

"A public library is not only a designated public forum, but also a quintessential, traditional public forum whose accessibility affects the bedrock of our democratic system. A place where ideas are communicated freely through the written word" and other means of recorded expression "is as integral to a democracy and to First Amendment rights as an available public space where citizens can communicate their ideas through the spoken word." The fact of public sponsorship of a library in no way implies endorsement of any of the myriad viewpoints contained within a library's collection. Nor should a funding source dictate its contents. The United States Supreme Court has 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 expenditures of Government funds, is restricted by the vagueness and overbreadth doctrines of the First Amendment. . . ." The same principles apply with equal force to publicly supported libraries. These principles restrict any attempt to control expression within a publicly supported library or to dictate or limit the contents of its collections, programs, displays, or publications through conditions attached to funding.

Libraries serve the function of making ideas and information available to all members of the society, without discrimination. Publicly supported libraries provide access to information for all without imposing barriers which limit or prevent library users, including the indigent or the economically disadvantaged, from exercising their full constitutional rights. Publicly supported libraries' traditional commitment to free public service is integral to their nature and function. Publicly supported libraries, like public schools and universities, are supported in part from a recognition that information and education are essential components of informed self-government.

The right of free access to information for all individuals is basic to all library service. The central thrust of the *Library Bill of Rights* is to protect and encourage the free flow of

information and ideas. Article 5 protects the rights of an individual to use a library regardless of origin, age, background, or views. The American Library Association urges all libraries to set policies and procedures that reflect basic tenets of the *Library Bill of Rights*, within the framework of Constitutional imperatives and limitations.

Many libraries adopt administrative policies and procedures to govern their order and use, the comfort and safety of patrons and staff, and the protection of resources, services, and facilities. Such policies and procedures affect access, and must not become a convenient means for removing or restricting access to controversial materials, limiting access to facilities, programs, or exhibits, or for discriminating against specific individuals or groups of library patrons. Administrative policies and procedures which infringe on equitable access to library buildings, services, and resources, the privacy of the individual, or the right to read, violate the *Library Bill of Rights*. Further, if such policies have the effect of impermissible discrimination against individuals or particular groups of library users, they are likely to violate First Amendment rights. The U.S. Supreme Court has recognized that "'the right to receive ideas follows ineluctably from the *sender's* First Amendment right to send them.... More importantly, the right to receive ideas is a necessary predicate to the *recipient's* meaningful exercise of his own rights such as speech, press, and political freedom' (emphasis in original) B*oard of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853, 866-67 (1982) (plurality opinion)." Respect for these rights is central to the function of any government supported library for these rights define the library's purpose.

Because publicly supported libraries are institutions dedicated to the free flow of information, it is essential that the regulations, policies, and procedures which libraries develop and use embody the principles of free expression. Information about their operations must be made available in full compliance with confidentiality, privacy, freedom of information and sunshine laws. The application of policies and procedures for the use of library services and resources should be consistently applied to both members of the public and library employees. Policies and procedures for responding to complaints about library materials — including individual items in a collection, library programs and services, or publications and other material produced or published by the library — should be uniformly applied regardless of the source of the complaint, whether coming from a member of the public, staff, or governing authority.

Adopted January 27, 1982, as *Administrative Policies and Procedures Affecting Access to Library Resources and Services;* amended with title change July 3, 1991, by the ALA Council. □

Policy Concerning Confidentiality of Personally Identifiable Information About Library Users

The ethical responsibilities of librarians, as well as statutes in most states and the District of Columbia, protect the privacy of library users. Confidentiality extends to "information sought or received, and materials consulted, borrowed or acquired," and includes database search records, reference interviews, circulation records, interlibrary loan records and other personally identifiable uses of library materials, facilities, or services.

The First Amendment's guarantee of freedom of speech and of the press requires that the corresponding rights to hear what is spoken and read what is written be preserved, free from fear of government intrusion, intimidation, or reprisal. The American Library Association reaffirms its opposition to "any use of government prerogatives which lead to the intimidation of the individual or the citizenry from the exercise of free expression ... [and] encourages resistance to such abuse of government power...." (ALA Policy 53.4). In seeking access or in the pursuit of information, confidentiality is the primary means of providing the privacy that will free the individual from fear of intimidation or retaliation.

Libraries are one of the great bulwarks of democracy. They are living embodiments of the First Amendment because their collections include voices of dissent as well assent. Libraries are impartial resources providing information on all points of view, available to all persons regardless of age, race, religion, national origin, social or political views, economic status, or any other characteristic. The role of libraries as such a resource must not be compromised by an erosion of the privacy rights of library users.

The American Library Association regularly receives reports of visits by agents of federal, state, and local law enforcement agencies to libraries, where it is alleged they have asked for personally identifiable information about library users. These visits, whether under the rubric of simply informing libraries of agency concerns or for some other reason, reflect an insensitivity to the legal and ethical bases for confidentiality, and the role it plays in the preservation of First Amendment rights, rights also extended to foreign nationals while in the United States. The government's interest in library use reflects a dangerous and fallacious equation of what a person reads with what that person believes or how that person is likely to behave. Such a presumption can and does threaten the freedom of access to information. It also is a threat to a crucial aspect of First Amendment rights: that freedom of speech and of the press include the freedom to hold, disseminate and receive unpopular, minority, "extreme," or even "dangerous" ideas.

The American Library Association recognizes that, under limited circumstances, access to certain information might be restricted due to a legitimate "national security" concern.

However, there has been no showing of plausible probability that national security will be compromised by any use made of *unclassified* information available in libraries. Thus, the right of access to this information by individuals, including foreign nationals, must be recognized as part of the librarian's legal and ethical responsibility to protect the confidentiality of the library user.

The American Library Association also recognizes that law enforcement agencies and officers may occasionally believe that library records contain information which would be helpful to the investigation of criminal activity. If there is a reasonable basis to believe such records are *necessary* to the progress of an investigation or prosecution, the American judicial system provides the mechanism for seeking release of such confidential records: the issuance of a court order, following a showing of *good cause* based on *specific facts*, by a court of competent jurisdiction.

Adopted July 2, 1991, by the ALA Council. □

FTRF report to ALA council

The following is the text of the Freedom to Read Foundation's report to the ALA Council, delivered June 30, 1991 at the ALA Annual Conference in Atlanta by President C. James Schmidt.

ALA v. Thornburgh II

In February of this year, the Freedom to Read Foundation and the American Library Association, with several media groups as co-plaintiffs, filed a lawsuit known as *ALA v. Thornburgh II*, challenging the Child Protection Restoration and Penalties Enhancement Act of 1990. This new law was intended to correct constitutional defects in an earlier Act, the Child Protection and Obscenity Enforcement Act of 1988. Instead, the new law created new problems. Among these is that for the first time, it would be a *crime* to distribute constitutionally protected material without complying with certain record-keeping and labeling requirements. The new law also places producers and distributors of expressive material in the hopeless position of trying to determine whether certain sexual depictions are of actual or simulated sexual conduct, when the truth of such matters is often known only to the models or actors involved. The new law has the potential to burden a vast amount of library materials, including medical and artistic texts, as well as sex education materials.

After a hearing on our motion for a restraining order — during which the court indicated its willingness to enter such an order against the government — the government agreed to enter into a stipulation to delay enforcement of the Act, at least until the regulation interpreting it have been issued and have become effective. In that stipulation, the government also agreed never to prosecute based on images made prior to the effective date of the yet-to-be-released regulations. Once the Department of Justice publishes those regulations (it was reported by counsel during our June 27 board meeting that on June 26, the Attorney General had signed draft regulations which will now be published in the *Federal Register* for comments [These were published July 1. See page 173]), there will be a period of approximately 60 days for public comment before they become effective. It is at that point that our substantive challenge to the constitutionality of the law and our request for a permanent injunction may be ruled upon by the court. In the meantime, we have successfully blocked enforcement of this burdensome and, we believe, unconstitutional legislation.

As noted, the law under challenge in this new case is an amendment to the Child Protection and Obscenity Enforcement Act of 1988 which we challenged in a lawsuit known as *ALA v. Thornburgh I*. In that case, ALA and the Foundation prevailed at the District Court level on nearly all of our claim. This case is still pending on the government's appeal and our cross-appeal before the U.S. Circuit Court of Appeals for the District of Columbia. Because of the passage of the new law now being challenged in *Thornburgh II*, we have presented arguments that *Thornburgh* I is moot. The Court of Appeals has yet to rule on the mootness issue. The Foundation will now turn its attention to preparing comment on the regulations signed on June 26. Until regulations are finalized and the court disposes of our challenge, library collections are free from the burden this new statute would impose.

Rust v. Sullivan

On May 23, the United States Supreme Court issued its decision in *Rust* v. *Sullivan*, upholding Department of Health and Human Services regulations prohibiting recipients of Title X funds from counseling or otherwise providing information to women about abortion. These regulations prevent health care professionals from mentioning abortion or from referring women to services which could provide them information about abortion. In his passionate dissent, Justice Harry Blackmun pointed out that for the first time, the Court had recognized and authorized viewpoint-based discrimination in a publicly funded program. That is, the court allowed the government to condition the receipt of its funds on the surrender of fundamental First Amendment rights by requiring the recipient to discuss only a governmentally approved point of view. Among other things, the *Rust* decision goes to the very core of the confidential doctor/patient relationship.

The potential implications of this decision for any program receiving federal funds are far-reaching and chilling. The good news in this sorry affair is that legislation has been

approved by the House, and is pending in the Senate, to bar the implementation of the "gag rule" provision in the regulations for the Title X program.

The ruling in *Rust* has provoked largely negative reactions both because of prevailing public opinion on abortion rights and because the Court's general reasoning could have profound effects on the First Amendment rights of recipients of federal funds for any program. That such fears are justified is evident from two examples. First, representatives of the Office of Management and Budget have suggested to a coalition of organizations, including ALA, that it may use the *Rust* reasoning as a basis for regulations in a wide range of government programs. Second, in a supplemental brief filed by the Department of Justice in *Bullfrog* v. *Wick* (a pending case regarding certification of films as educational for export by the USIA in which FTRF is an *amicus*), the government has used the reasoning of *Rust*, to defend its draft regulations, which have been twice rejected by the courts. The Foundation believes that state and local entities will soon make attempts to extend the reasoning of *Rust*. Thus, while *Rust* and its corrective legislation relate only to the Title X programs, we clearly must be vigilant against potential extensions of the Supreme Court's newly granted license to impose restrictions on First Amendment rights of participants in programs receiving federal, state, or local public funds.

2 Live Crew

The Foundation voted to add its name to an *amicus* brief prepared by People for the American Way in the appeal of a record store owner convicted for selling the 2 Live Crew album *As Nasty As They Wanna Be*. Unfortunately, the Florida court denied permission to file our brief in *Freeman* v. *State of Florida*, but counsel for the plaintiff included arguments from our brief (with attribution) in his brief filed May 15, 1991.

FBI library awareness program

The lawsuit brought by the National Security Archive against the FBI is proceeding. Since the 1991 Midwinter meeting, the judge in the case has ordered the FBI to produce, among other things, the briefing book used to prepare the FBI official, James Geer (past Assistant Director, Intelligence Division), for a meeting with the IFC on September 9, 1988. While the judge allowed the FBI *to attempt* to withhold *portions* of the book under various exemptions of the Freedom of Information Act, his decision will allow for further argument over appropriate or inappropriate redactions and withholdings of information by the FBI.

Joseph Burkey v. Quest International

The Foundation received a request for participation in a lawsuit filed in federal district court in Omaha alleging that the *Quest* anti-drug curriculum teaches humanism, eastern mysticism and witchcraft. The Foundation has created a working group of two trustees and the unit liaison from ALTA to gather further information about the Quest product, and about the lawsuit, and recommend to the Board appropriate action.

Kreimer v. Morristown

The decision of the United States District Court in Newark, New Jersey, on May 22, 1991, that certain of the policies of the Morristown Public Library violate the First Amendment right to receive information and are unconstitutionally overboard and vague is a topic of great interest and discussion among librarians (see p. 169 and *Newsletter*, July 1991, p. 116). The Foundation Board read Judge Sarokin's opinion, and found it to be fully supportive of the First Amendment rights to receive information by all library users and unequivocal on the libraries' right to make reasonable, specific, and necessary rules capable of fair and nondiscriminating application. The Board authorized its Executive Committee to secure an immediate legal analysis of the case from its counsel, Bruce Ennis, and in the event the decision is appealed, to enter the case in support of the principles of access to information and First Amendment rights set forth in Judge Sarokin's opinion.

colloquium

The Freedom to Read Foundation is seeking grants to hold a strategic planning colloquium on First Amendment litigation in the fall of 1991. To date, we have received one grant and are encouraged that others will be approved so that our colloquium, a high priority of the Foundation, will go forward. The colloquium's primary goal is to train attorneys and librarians to recognize important legal issues and strategies for the 90's, as well as non-legal avenues of dispute resolution.

fair use

The Foundation is tracking the progress of a bill introduced by Senator Paul Simon (S-1035) to extend the definition of fair use in copyright law to unpublished materials. Recent court decisions denying such use have threatened time-honored methods of scholarship and writing in fields such as history and biography.

in re R.A.V.

The United States Supreme Court has granted certiorari in a case known as *In Re R.A.V.* (see page 166), a troubling case which involves a challenge to a St. Paul, Minnesota, ordinance prohibiting the posting or display of symbols and signs which may cause imminent and profound offense to any individual based upon race, religion or gender. A juvenile, identified only by initials, R.A.V., burned a cross on the lawn of an African-American family. The juvenile was charged with violating a so-called hate-speech ordinance. First Amendment watchers are concerned about this case because it appears to offer an opportunity to the Supreme Court to erode or abandon the overbreadth doctrine, a time-

honored method of challenging statutes on their face, on constitutional grounds. The Foundation Board voted to prepare a brief with other interested organizations, limited to the defense of the overbreadth doctrine. The overbreadth doctrine has served us well for many years as a means of going into court and challenging statutes which create a chilling effect on speech.

election of trustees and officers

The membership of the Foundation elected the following six as trustees for two year terms 1991-93: Gordon Conable, Nat Hentoff, Burton Joseph, Susan Pavsner, Russell Shank, Linda Steinman. The 1991-92 Board of Trustees held its first meeting on June 27 and elected the following trustees as officers: C. James Schmidt — President; Gordon Conable — Vice President; Roger Funk — Treasurer. Susan Pavsner and Marcia Pally were elected to serve with the officers on the Executive Committee.

other organizational matters

Judy Blume and Carrie Robinson were added to the Foundation's Roll of Honor, and were presented with citations at the opening general session of this conference. The Board authorized the appointment of a Legal Advisory Committee to assist in the review of documents, complaints, briefs, etc., in cases where the Foundation is a party. The Board received a report on the engagement of an investment advisor it had authorized at its 1991 Midwinter Meeting. At Midwinter, the Board also authorized the establishment of a Resource Development Committee and approved a charge to that Committee to plan and implement a capital campaign to increase the Foundation's membership base and endowment.

conclusion

In this, the Bicentennial year of the Bill of Rights, the Foundation has a lengthy docket of legal matters in which it is involved. While we may wish it would be otherwise, we anticipate that our docket will increase, given the emergence of a conservative majority on the Supreme Court whose dominance is likely to be reinforced by last Thursday's resignation of Justice Thurgood Marshall. With the organizational changes we have made, including the engagement of an investment advisor to facilitate the growth of our endowment and the holding of our strategic planning colloquium for litigation, the Freedom to Read Foundation is positioned to meet the challenges this decade will bring.

Thank you for this opportunity to report on the activities of the Freedom to Read Foundation. □

news executives criticize gulf war censorship

Military restrictions on news gathering during the Persian Gulf war amounted to "real censorship" and confirmed "the worst fears of reporters in a democracy," concluded a report by seventeen of the country's news executives released in late June. The report, addressed to Defense Secretary Dick Cheney, was delivered along with a statement of ten principles that the journalists said should govern future war coverage. The journalists said nothing about what they would do if the government refused to alter its rules.

"We're hoping that we will find a reasonable hearing of what we have to say," said Louis D. Boccardi, president of the Associated Press. "It wouldn't make any sense for me to speculate on what we'll do after that."

News executives have bitterly complained that the restrictions placed on reporters by the Pentagon were intended to promote a sanitized view of the war. The administration, which has called the system a model for the future, said the rules were needed to preserve military security.

At the center of the disagreement is the Pentagon's use of news pools — small groups of allegedly representative reporters who were escorted by military officials (see *Newsletter*, May 1991, p. 69; July 1991, p. 101). "By controlling what journalists saw and when they saw it, the military exercised great power to shape and manage the news," the report charged.

The report was especially critical of military escorts, accusing a majority of keeping reporters away from negative news. The report heaped criticism on what it called unwarranted delays by the military in transmitting copy. It called for abolishing the practice of reviewing reporters' copy for security reasons.

According to the report:

- The Pentagon attempted "to use the press to disseminate disinformation," such as releasing plans for an amphibious assault against Iraq that was a ruse to mislead the Iraqis.
- A senior Pentagon official sent Saudi officials a list of reporters who had been in "restricted areas" and encouraged them "to pull a few visas to make a point."
- A *Newsweek* contributor, retired Army Col. David Hackworth, said that on one occasion "U.S. troops fixed bayonets and charged us. I had more guns pointed at me by Americans or Saudis ... than in all my years of actual combat."
- Two reporters were barred from a Marine unit after their escorts complained that they had asked questions forbidden by military guidelines.
- Escorts frequently interrupted questions they deemed inappropriate. When Stephanie Glass of the *San Antonio Light* complained she was told she would be "put back on the bus" for "being a smart ass."

• ABC reporter Linda Patillo was blocked from covering a group of Marines listening to "Onward Christian Soldiers" because it might offend "Saudi sensitivities."

• Ed Offley of the *Seattle Post-Intelligencer* had information about aircraft deleted from a story on grounds that it was classified. The Air Force released the information in a press release the next day.

• "There was virtually no coverage of the gulf ground war until it was over" because of communications lapses, equipment problems and the military's refusal to assign helicopters to transport pool reporters. One editor said her reporters "might as well have been taken hostage."

The report was signed by ABC News, NBC News, CBS News and CNN, and by the *New York Times, Washington Post*, the Associated Press, United Press International, Knight-Ridder newspapers, the *Los Angeles Times, Wall Street Journal, Dallas Morning News*, Time-Warner, *USA Today, Newsweek,* Cox Newspapers, and the *Star-Ledger* in Newark. Reported in: *New York Times*, July 3; *Washington Post*, July 1. □

OIF director testifies on First Amendment implications of *Rust* v. *Sullivan*

The following is the text of testimony delivered July 30, 1991, by Judith F. Krug, director of the ALA Office for Intellectual Freedom and Editor of the Newsletter *before the Subcommittee on the Constitution of the U.S. Senate Committee on the Judiciary on the First Amendment implications of the U.S. Supreme Court's May 23, 1991, decision in* Rust v. Sullivan.

My name is Judith F. Krug. I am the director of the American Library Association's Office for Intellectual Freedom (ALA-OIF). In this capacity, among other activities, I provide support and assistance to librarians facing censorship challenges. Today, I want to bring to your attention the profound danger to the traditional services of publicly supported libraries posed by the United States Supreme Court's decision in *Rust* v. *Sullivan*. That decision, as you are well aware, upholds Department of Health and Human Services regulations prohibiting recipients of Title X funds from providing any type of abortion counseling. The Supreme Court's sanctioning of, in the words of Justice Blackmun's dissent in *Rust*, "viewpoint-based suppression of speech solely because it is imposed on those dependent upon the government for economic support," is antithetical to the most fundamental tenets of librarianship. The decision in this case approves, again in the words of Justice Blackmun, "an intrusive, ideologically based regulation of speech. . . ."

Prior to reviewing specific examples of the danger posed to libraries by this decision, I would like to tell you about the American Library Association. Founded in 1876, the American Library Association is the oldest and largest national library association in the world. ALA is concerned with issues that affect all types of libraries, including public, school, academic, and state libraries, as well as special libraries which serve people in government, business, the arts, the armed services, hospitals, prisons and other institutions. ALA's more than 52,000 members include libraries, librarians, library trustees and other interested persons from every state and many countries of the world. The Association is the primary voice for its members and for the people of the United States in support of the highest quality professional library and information services. The Association maintains a close working relationship with more than 70 other library associations in the United States, Canada, and other countries and works closely with many other organizations concerned with education, research, cultural development, recreation and public service.

ALA's Intellectual Freedom Committee (IFC) was established in 1940. The Committee's charge reads, in part, "to recommend such steps as may be necessary to safeguard the rights of library users, libraries and librarians in accordance with the First Amendment to the U.S. Constitution and the *Library Bill of Rights* as adopted by the ALA Council."

As implied in the Intellectual Freedom Committee's charge, libraries play a crucial role in the operation and preservation of our constitutional republic. In order for this form of government to function effectively, its electorate must be enlightened. But to be enlightened, the electorate must have information across the spectrum of social and political thought available and accessible. Libraries are where this information is found.

In fact, libraries are the *only* places in our society where every person can find materials representing all points of view on all of the problems and issues confronting them. Libraries make these materials available and accessible to anyone who desires or requires them, regardless of age, race, religion, national origin, social or political views, economic status, or any other characteristic. This philosophy holds in the selection of library materials, as well — that is, materials are not excluded or removed from library collections on the basis of partisan or doctrinal disapproval. These principles are embodied in ALA's primary intellectual freedom policy, the *Library Bill of Rights*. Both the *Library Bill of Rights* and ALA's *Statement on Professional Ethics* charge librarians with the responsibility of resisting censorship, so they may fulfill their mission to provide the tools of information and enlightenment.

(continued on page 172)

in review

Information Freedom and Censorship: World Report 1991. Article 19, International Centre on Censorship. Chicago: American Library Association, 1991. 471 p. $39.

Article 19 of the Universal Declaration of Human Rights provides that "Everyone has the right to freedom of opinion and expression; this includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers." *Information Freedom and Censorship: World Report 1991*, compiled by the staff of Article 19, the London-based International Centre on Censorship, provides a gripping status report on the freedom of expression worldwide as of November 1990.

As Frances D'Souza, director of Article 19, notes in the Introduction, the volume records a remarkable period of political changes affecting the exercise of free expression: somewhat lessened press restrictions in the U.S.S.R. and South Africa, resurgent nationalism in Eastern Europe, and increasing repression in the People's Republic of China. *Information Freedom and Censorship* is invaluable in covering not only these thoroughly reported events, but also developments in countries not well covered by the western media, particularly in sub-Saharan Africa and South America.

Organized geographically by continent, events in each country are summarized in a straightforward and concise chapter. Basic facts on each include not only demographic and economic information (population, life expectancy, GNP, main religions, official languages, literacy rate), but also the extent of the media, including numbers of newspapers, radios, and televisions. The narrative describes events in each country since the issuance of the volume's predecessor, *Article 19, World Report 1988*, published by Times Books. The chapter on the United States, for example, includes access to government information, the denial of entry of undesirables into the country, the FCC's rules on indecency, censorship in schools, the FBI's Library Awareness Program and other surveillance operations, and the controversy over public funding of the arts, including the exhibit of Robert Mapplethorpe photographs.

In many countries, censorship is inextricably linked with political assassination, torture, and the violent destruction of opposition media. In others, such as Great Britain, freedom of expression has been curbed by democratically constituted executive, legislative, and judicial means. Where applicable, each country's chapter covers such topics as Laws Affecting Freedom of Expression, The Media, Attacks on Journalists. Any actions taken by Article 19 in response to the events chronicled are described at the end of the country report. Ironically, although the volume is published by the British and American Library Associations, there are relatively few mentions of censorship in libraries.

The final section pulls together the major themes discussed in the volume with references to country chapters illustrating these issues. It includes the texts of international agreements governing the conduct of nations toward free expression. As Europe moves toward community in 1992, the European Convention on Human Rights adopted in 1950 may take on increased significance. Several recent episodes in Great Britain, including the injunction against *Spycatcher*, have been taken to the European Commission on Human Rights. Each country's entry indicates when or whether it has adopted the International Covenant on Civil Rights, which came into force in 1976. As of 1990, it had 90 signatories including the United Kingdom, the Soviet Union, Iran, and Iraq. Among those not yet party to the covenant are the United States, Israel, Saudi Arabia, and Kuwait.

The global picture provided by *Information Freedom and Censorship* contributes to its enormous usefulness. At once detailed and concise, it combines a hot-off-the-press quality with an evenhanded appraisal of progress and setbacks in efforts to secure the right of free expression. Its bibliography would be even more useful if it included addresses of the organizations whose publications are listed. A reference work with a point of view, the volume is recommended for public, school, and academic libraries, and for organizations interested in free access to information. Article 19 is to be commended for compiling this informative volume and the British and American Library Associations for publishing it. — *Reviewed by Jean Preer, Assistant Professor, School of Library and Information Science, The Catholic University of America, Washington, D.C.*

Intellectual Suppression: Australian Case Histories, Analysis and Responses. Brian Martin, C.M. Ann Baker, Clyde Manwell and Cedric Pugh, editors. Angus and Robertson, 1986. 304 p. Now available free to individuals and libraries from Brian Martin, Science and Technology Studies Department, University of Wollongong, PO Box 1144, Wollongong, NSW 2500, Australia.

This ground-breaking work is now a half-decade old. Because it was never formally distributed outside Australia, it has gone unnoticed in this country. Its subject, however, is all too relevant to our own society, a fact dramatized by the recent revelation of what the *New York Times* called "a Scientific Watergate." This was the formal finding by the National Institutes of Health of scientific fraud in an M.I.T. genetics lab. The report also vindicated the junior researcher, Dr. Margot O'Toole, who first spotted the faked data and then lost her job and her house, suffering five years of collective rejection by the scientific establishment, which preferred to dismiss her as a "disgruntled postdoctoral fellow," rather than examine her charges against her superior.

If not primarily about fraud, many of the incidents in this

book still share characteristics of the O'Toole case, particularly in the uses by the scientific and academic authorities of their power, defending themselves and their institutions against colleagues who dare to criticize policies and practices by isolating them and denigrating their scientific credentials. A number of these cases were widely reported within Australia. John Coulter versus the Institute of Medical and Veterinary Science, treated here in particular depth, as well as Clyde Manwell and the fruit fly controversy, and other cases of suppression and censorship centered on environmental, feminist and Cold War issues had significant impact upon the climate of scientific and intellectual freedom in Australia.

The strengths of this book go well beyond the recounting of cases. Although a number of its authors write from their own experience of suppression, they do more than nurse their own grievances. The book as a whole offers a broader perspective in order to illuminate the hierarchies of academic and governmental scientific bodies and the personalities which occupy them. Indeed, in virtually every case, the establishment is provided with an opportunity to respond to the charges and analyses given, although in only a few instances are such opportunities taken. The analyses take us well beyond mere expose' into an understanding of the organizational workings of science and the money which supports it. Most usefully, the book leads to a better understanding of science's traditional claims of disinterested objectivity, not just to puncture them, but to understand their severe limitations.

Brian Martin includes a chapter that briefly summarizes many cases in the United States, Britain, and Canada, as well as Australia. The chapters of analysis, such as "Elites and Suppression," "Who Listens when Women Speak?" and those dealing with academia and state bureaucracies also speak forcibly to the rest of the world, as do the chapters which discuss the practical responses to suppression. This is, in short, a work of great relevance to anyone who seeks to understand the sociology of science. More to the point, it should serve as a fundamental resource in the struggle for freedom of scientific inquiry. — *Reviewed by John Swan, Head Librarian, Bennington College, Bennington, Vermont.*

Surveillance in the Stacks: The FBI's Library Awareness Program. Herbert N. Foerstel. Greenwood Press, 1991. 184 p. $39.95.

Foerstel's *Surveillance in the Stacks* is an illuminating and informative discussion of the Federal Bureau of Investigation's Library Awareness Program. Following the Program's directives, the FBI interviews library staff and asks the individuals to report on the reading interests or research activities of "foreigners" who use the library.

The FBI describes the program as "a part of a national counter-intelligence effort" aimed at "hostile countries or their agents attempting to gain access to information that could be potentially harmful to (United States) national security." The FBI quickly asserts that it does not seek information on American persons — narrowly defined as citizens of the United States or aliens lawfully admitted for permanent residence. This narrow definition excludes "foreign tourists, visiting scholars, exchange students, and the overwhelming majority of foreign nationals". All of these individuals are considered appropriate fodder for the FBI surveillance program. Under the Library Awareness Program, librarians are requested to help protect U.S. technical and military superiority by reporting the "foreigners" if they browse, request, or inquire about obtaining non-classified documents.

If Foerstel's book merely informed the public about the LAP, it would be well worth the monetary investment. However, *Surveillance in the Stacks* supplies additional essential information. It provides reports on various library and information industries and their responses to FBI inquiries. A shocking indictment is made of the National Commission on Libraries and Information Science (NCLIS). NCLIS, in a closed meeting with the FBI, endorsed in deed if not in fact the FBI's program. In addition, the FBI went to private database vendors, research companies, and information suppliers seeking their aid in restricting database searches by foreign nationals. The responses of the companies serve as a clear indication of their commitments to First Amendment principles.

A particularly harrowing possibility of where library surveillance could lead is detailed by Foerstel in the section dealing with the 1988 Video Privacy Protection Act. At one point in the development of this law, libraries were included and the FBI was narrowly defeated in its attempt to establish a "national security letter" as a means of obtaining personally identifiable records. The letter would consist of a written request by an FBI official claiming national security needs and would enable the agent to obtain circulation records, database search information, reference interview records, interlibrary loan transactions, and other personally identifiable library information without requiring a court order.

The thrust of the LAP is described by Foerstel in chilling detail. "Librarians are not simply being asked to accept federal authority to withhold unclassified information from their shelves. They are themselves being asked to judge, screen, and restrict both the materials and the people already inhabiting their libraries, all on the basis of vague and arbitrary national security pronouncements. Indeed, librarians are not so much expected to implement restrictive government policy as to infer their own, acting as information vigilantes with federal sanction." Librarians, and the general public, need to read this book. Perhaps then they will realize that national security and First Amendment rights are not mutually exclusive; indeed, by violating the First Amendment we are actually weakening national security. — *Reviewed by Rhonda J. Hiebert, South Central Kansas Library System, Hutchinson, KS.* □

censorship dateline

libraries

Fayetteville, Arkansas

Just two days after the Rogers-Hough Memorial Library board rejected an effort to ban a book about homosexuality (see page 177), another complaint surfaced — this one about *Lightning Bug*, by Donald Harington of Fayetteville. Gladys Clements filed the complaint June 5. She charged that the book uses language "very descriptive of what I call perverted sex." Clements said she didn't finish reading *Lightning Bug* because she "found it so disgusting" that she couldn't continue.

"I'm all for it being banned," responded author Harington, who was recently dubbed "America's greatest unknown author" by *Newsweek* magazine. "I want them to go to the book store and buy it. I don't believe in censorship at all, but I do believe that news sells books. I can't think of any book in the history of writing that deserves to be banned."

Head librarian Alice Medin said *Lightning Bug* was the fifth book to face banning since she has been with the library in the past 3½ years. The others were *Pissing in the Snow*, by folklorist Vance Randolph, for its sexual references; *The Beast of Monsieur Racine*, a children's book by Tomi Ungerer, for violence; *Milk and Honey*, by Faye Kellerman, for sacrilegious language; and, most recently, *Intimacy Between Men*, by John Driggs and Stephen Finn because it concerned homosexuality. None of the books was removed from the library or restricted in circulation. Reported in: *Arkansas Gazette*, June 21; *Northwest Arkansas Morning News*, June 21.

Los Angeles, California

The Los Angeles City Librarian in May forbade the use of a poem by African-American writer Langston Hughes from appearing on literature promoting the library's observance of Gay and Lesbian History Month. In addition, Hughes' books were not among those of other gay and lesbian writers on special display and were deleted from the library's "Selected Bibliography for Gay and Lesbian History Month." The signs and literature, which had been distributed to over 60 branches and throughout the community, were reprinted.

The ban was first announced May 8 when all library branches received a short, unsigned memo, which stated that "The purpose of LAPL's series of monthly observances is to bring about better understanding among the diverse elements of our city. Since there has been serious objections to the quotation on the Lesbian and Gay History book trough sign, the City Librarian has directed that the signs not be displayed rather than cause a breach between important segments of the community."

The quotation was from Hughes' poem "Tell Me," and was printed over a background triangle. It read, "Why should it be my loneliness, Why should it be my song, Why should it be my dream, deferred overlong?"

City Librarian Elizabeth Martinez Smith said she had received complaints about the quote from library employees, some of whom were members of the California Librarians Black Caucus. "They felt there was objection in the African-American community to Mr. Hughes being identified as being gay and that a debate on that issue would be counterproductive," she wrote in a later memo.

Smith questioned whether Hughes was actually gay, saying there was no recorded statement from him and that his "family denies that he was homosexual. In my judgment, the use of the Langston Hughes quote was not essential to the observance of Lesbian and Gay History Month. I felt that to raise the issue of Mr. Hughes' sexual orientation would distract attention from the positive focus of the June observance. A major reason for my decision was concern for the wishes of the Hughes family," she wrote.

The decision was met with outrage from the lesbian and gay community. The library's Gay and Lesbian United Employees (GLUE) wrote to Martinez Smith: "We can imagine no objection to the inclusion of the magnificent Langston Hughes poem, 'Tell Me,' that is not either ignorant, bigoted or irrelevant."

"I have not been aware that it is the duty of librarians to protect our families," said Ruth Waters, co-chair of the National Black Gay and Lesbian Leadership Form. "Minority families have been left to themselves and have defended themselves well," she said. Waters, who as a child met Hughes when he visited her family's home, pointed out that in his era he couldn't be open about his sexuality. "It would have been death," she said.

Members of the California Librarians Black Caucus said they based their objections to use of Hughes' work and name not on their own attitudes toward homosexuality, but on concerns that many African-American patrons would be disturbed by the implication that Hughes, often dubbed the poet laureate of black America, was gay.

One black librarian, Wanda Johnson, said that when she showed the posters to her predominantly black staff at the Mark Twain branch in South Central Los Angeles, the reaction was instantly negative. "Most of the librarians had not heard he was gay," Johnson said, adding "we did not feel comfortable about trying to explain to the public why the library needs to educate people about his sexuality."

In a letter to Martinez Smith, Joyce Sumbi, an officer in the black librarians group, said use of the Hughes quotation "would be insensitive and divisive at a time when African-Americans have set unity as a major goal. We have identified our own heroes, heroines and role models. In no way do we intend insult to other groups in our celebrations and we ask that others show us the same courtesy."

Martinez Smith, completing her first year as chief of the nation's second-largest public library system, said that her intent was to avoid controversy. The administrator, who has made Los Angeles' cultural diversity a central theme of the library system, pointed out that scholarly debate over Hughes' sexuality is by no means settled. "My role is to provide accurate information and not to espouse any one cause," she said.

Hughes died in 1967 without acknowledging whether widely circulated rumors of his homosexuality were true. As with many others in that less tolerant era, it was assumed by many that Hughes feared ruin if his sexual life were revealed. Gay literary anthologies routinely include his work and the National Black Gay and Lesbian Leadership Forum produced a documentary, "We Have a Legacy," that honored Hughes and such self-proclaimed gay African-American figures as writer James Baldwin and civil rights activist Bayard Rustin. But the late George Houston Bass, Hughes' last private secretary and trustee of his estate, persistently combated the view that Hughes was gay and his papers and private correspondence, which are kept at Howard University, contain no materials that would indicate homosexuality.

Biographers have taken different approaches to the issue. In *Langston Hughes: Before and Beyond Harlem*, published in 1983, Faith Berry flatly asserted that Hughes was gay, but provided scant evidence. Arnold Rampersad's two-volume *Life of Langston Hughes*, widely considered the definitive study of the poet to date, was more circumspect. The Princeton University biographer found that the "preponderance of opinion" among Hughes' closest associates was that the poet was essentially asexual. Attempts at seduction were rebuffed. Yet Rampersad also reported that Hughes once confided to one of his secretaries "the first homosexual episode of his life" involving a ship's crewman on a voyage.

"I was quite willing to reveal that Hughes was homosexual and I certainly went looking for the evidence," Rampersad said. "But I came up with nothing. I'm not saying he was not gay. I'm saying the evidence isn't there. It's a complicated business and I don't know where people get off saying he was gay, he was gay, let's claim him."

GLUE representatives charged that Martinez Smith's decision was not only homophobic but a violation of the spirit, if not the letter, of the *Library Bill of Rights*. But Martinez Smith denied the censorship charge, declaring in her memo, "We have not withdrawn any materials from the collection or stopped people from reading anything. What we did was delete a quotation from a piece of promotional material." Reported in: *Los Angeles Times*, June 13; *Vanguard News and Views*, May 31.

Denver, Colorado

Message to school librarians: books are for kids. Denver Public Schools librarians got that message this spring from school administrators who learned that strict rules designed to protect books were actually keeping children from reading them. School board members reacted when a teacher told them about the book control policies.

Lincoln Elementary School kindergarten teacher Ann Christensen said she successfully fought for children at her school to have access to library books, but that too many limits existed at many Denver schools. "They're not book museums where the curator maintains the exhibit," she told the board.

Christensen said some schools won't allow kindergartners to check out books because they "can't write their names small enough to write them on the library cards, and they're only five so they might lose the books." At some schools, a child who lost a library book in, say, October could be denied library privileges all year. At some, kindergartners weren't even allowed inside the school library; at others, no kindergartners, first, or second graders were allowed to check out books.

Superintendent Evie Dennis said the issue was raised several years ago, and the school board at that time ordered library books made readily available to all children. "I thought we straightened it out then," she said. Reported in: *Rocky Mountain News*.

Littleton, Colorado

Some people think "Dungeons and Dragons" is a harmless fantasy game. David Lord thinks it's a dangerous diversion that lures teens away from honest schoolwork and wholesome pursuits. The seventh-grader from Powell Middle School filed a formal protest with the Littleton public schools, asking that a magazine devoted to the game be removed from the school library.

Dragon portrays "Mutazoids" slaying each other with knives, buxom women in scanty costumes delving into magic, and other Dungeons and Dragons-type role-playing fantasies. "It promotes violence, it's a bunch of gore and it doesn't belong in a school setting," said Lord. "I can see why people get obsessed. I've seen how it's changed some of my friends. It gives you power, you have magic. It takes you out of reality."

The magazine is very popular, according to school librarian Jean James. "Obviously, he has the right to object," she said. "But I am totally opposed to censorship." James said the library also carries many science fiction and fantasy paperbacks.

A district committee of teachers, librarians, and students reviewed the magazine and deemed it suitable, but Lord vowed to take the matter to the school board, whose members indicated that they were divided on the issue. Reported in: *Littleton Times Weekly*, May 16-22.

Libertyville, Illinois

A Libertyville mother asked the Cook Memorial Library in June to take a book out of the children's department because it features witches, boiling cauldrons, names of punk rockers, and a reference that she said could be interpreted as meaning "God is dead." The book, *Guess What?*, by Mem Fox, is "not appropriate reading for young children," Heidi Cissell told library officials. Cissell did not ask that the book be banned from the library altogether, but said, "I certainly would not object if it were." A reconsideration committee of two trustees and two staff members was assigned to consider the request. Reported in: *Chicago Tribune*, June 26.

LaPaz, Indiana

The book *How to Eat Fried Worms* has been a favorite of third-graders since it was published in 1973. In some editions of the book, however, the word "bastard" is used during a name-calling exchange between two boys; in other editions, the word has been expurgated. When the book was first placed in the LaVille Elementary School library, the edited version was used. But when replacement copies were ordered, "B-word" editions made their way into the school.

Robin Moore was upset when she discovered the word after her son inquired about its meaning. Moore then went to the school library and took another copy of the book to support a petition she was planning to circulate. She didn't check the book out; she just took it. The school billed her $12 for the book and withheld her children's report cards until she pays for it.

Moore said she had no plans to return the book or pay the fine, even though the school ultimately agreed to replace the books with expurgated versions. "I think the immoral majority have had their way long enough," she said.

Principal Paul Davis said that a committee reviewed the book and agreed with Moore. "We are not going to have that particular book with that particular word in it," he said. Overall, Davis added, censorship has good and bad points. "Many sources of media aren't suitable for kids, and censorship is certainly one option that the people do have." Reported in: *South Bend Tribune*, June 23.

Hubbard, Ohio

A board of education member in June asked the Hubbard Public Library to free its shelves of what he termed "watered down" versions of the Noah's ark story. Robert DeJulio claimed the library stocks children's books that alter the biblical story and make it secular. He said the books are confusing to children.

"It was alarming to me that someone would have the gall to rewrite the Bible," he said. "The public library should not carry this type of book, and I want them removed." He called the books a "slap in the face" to clergy and everyone involved in teaching the "true" story to children.

DeJulio said his wife brought home a book she believed was the Bible story and was shocked when she discovered the story was changed. "This book said Noah found out about the rain due to a weather forecast," he said. "There were no weather forecasters then. This was an act of God."

Among the fictional Noah's ark books targeted by DeJulio were:

- *Two by Two: The Untold Story*, by Kathryn Hewitt. In order to convince his family and all the animals to come aboard the ark, Noah sends out invitations announcing a romantic vacation cruise.
- *Many Waters*, by Madeline C. Engle. When twins Sandy and Denny Murray accidentally interrupt one of their father's experiments, they are thrown into a mysterious desert land populated by unicorns and other mythical creatures.
- *Aardvarks Disembark*, by Ann Jonas. After the flood, Noah calls out of the ark nine varieties of little-known animals, many of which are now endangered.
- *Wash Day on Noah's Ark*, by Glen Rounds. On the first sunny day after the flood, one of Noah's family members invents a wash line.

Attorney Kenneth Inskeep, a library trustee, said the board would consider DeJulio's request, if it is submitted properly. But, he added, "a public library cannot just take a book out because one member of the community wants it out. If he's a Christian and finds the book offensive, that is his prerogative. But to deny the rest of the community is ridiculous." Reported in: *Youngstown Vindicator*, June 26.

Charlottesville, Virginia

At least four magazines were slated for removal from Albemarle County school libraries after the county school board deemed them "inappropriate" June 10, but the next day, school officials said a final decision would be determined according to the district's reconsideration policy. Without a formal vote, the board authorized Superintendent Robert W. Paskel to remove *Mother Jones*, a liberal publication; *Thrasher*, a publication aimed at skateboarders; *Seventeen* and *Young and Modern*, magazines aimed at young women, and others he found inappropriate. Two parents had complained that articles and advertisements containing profanity, obscenity, and references to premarital sex and homosexuality could be found in the publications.

Audrey Welborn and Debbie Summers, a high school teacher, said *Thrasher* contained reviews of R-rated movies and obscene advertisements for T-shirts. An article in *Young*

and Modern, "Are You Ready for Full-Time Love? Should You and Your Dream Guy Move In Together?" told readers it was all right to lie to their parents about their relationships, they said.

Seventeen contained an article titled "Sex and the Prom, What Really Happens on Prom Night," Summers said. "Why bother teaching abstinence when these magazines openly glamorize premarital sex?" she asked. Welborn said *Mother Jones* emphasized condom use and one issue had an article about self-described feminist pornographers, titled "Nasty Girls."

At the board meeting, Paskel said the magazines were "inappropriate material for schools to provide." Board member William W. Finley pledged that "we will eliminate trash like this."

But the next day Paskel was more reticent. "Some things were said last night [that] we probably won't be able to do," he said, noting that board policy requires parents to take complaints about instructional and library materials to principals at individual schools first. If the principal decides to retain the materials in the school, the parent can appeal in succession to the assistant school superintendent, the superintendent, and finally the school board. "I'm going to follow the policy," Paskel said.

Welborn also expressed concern about certain films she said were shown to students at some schools. Movies with PG and PG-13 ratings have been shown in middle schools, she charged, and the R-rated films *Lost Boys* and part of *Pretty Woman* had been shown at Western Albemarle High School. Welborn said she was not trying to make decisions for everybody, but she wants notification for parents when such films are being shown, so they can keep their children from viewing them.

The school board's initial response to Welborn and Summers and its apparent willingness to ignore its own policies and procedures troubled local educators. "It's frightening when two or three people can scare a board into taking that kind of action," said Murray High School librarian and English teacher Charlotte Wellen. "It seems like they got their way immediately."

"What the school board did on the basis of two parents I think sets a very dangerous precedent," said Mark Crocket, president of the Albemarle Education Association and a teacher at Western Albemarle High School.

Although Welborn and Summers acted as individuals, the two are leaders of a newly formed conservative group called Family Council that announced its intent to mount systematic challenges to library books, classroom lessons, and teaching material to ferret out philosophies that run counter to traditional family values. "We act as a watchdog," said Ed Scully, president of the group, which claims a membership of between fifty and a hundred.

In September, 1990, Scully and other parents at Burley Middle School complained that two books used in a history class were inappropriate. The books were *The Kid's Book of Questions*, by Gregory Stock, and Nat Hentoff's *The Day They Came to Arrest the Book* (see *Newsletter*, January 1991, p. 18). The books were not removed. The parents also objected to the use of the rap group 2 Live Crew in a class discussion of the First Amendment. Reported in: *Charlottesville Daily Progress*, June 11, 12, 23.

Arcadia, Wisconsin

After defeating a motion to restrict a challenged book to the school psychologist's office, the Arcadia School Board voted to review other publications that might be used to replace it. That was against the advice of the board's attorney, who said that replacing *Everything You Need to Know About Sexual Abuse* was no different than banning it. "I think that if you follow through, you're doing exactly what the people are proposing, to ban the book entirely," he said.

The vote meant the eleven-person library advisory committee and other interested parents must consider alternative publications. The board set neither a timetable nor guidelines to find those publications.

About sixty people gathered May 23 to hear parents Sue Tuma and Sharyne Ziebarth argue that the book presents sexual abuse situations too descriptively. The board voted 5-2 to reject their call for the book's removal, but then voted 6-1 to consider alternative titles.

Board member Bernard Ziegeweid, who introduced the motion to investigate alternatives, said the book could act as a critical "safety valve" if family, church or school fail to help an abuse victim. But he said he would not object if the library had less graphic books on the subject instead. "I'm not saying we can just take it out and replace it, but there's got to be a practical way to replace it," he said. Reported in: *Winona Daily News*, May 24.

schools

Oakland, California

On June 5, in a 5-2 vote, the Oakland Board of Education rejected a series of controversial social studies textbooks for elementary and middle school students, but reached no conclusions about what to use instead. In a raucous and rowdy meeting punctuated by name calling, scores of parents and teachers crammed into the board chambers to either praise or denounce the Houghton Mifflin texts that have stirred fierce controversy throughout California. Critics of the books claim they are racist, charging they diminish the contributions made by minority groups.

These critics urged the Oakland board to select a curriculum that better meets the needs of the district's 90 percent minority student body, and threatened to campaign against board members who voted for the books. "These books represent educational apartheid," said Mary Hoover, a black studies professor at San Francisco State University. "Some students — like African-Americans and Asian

Americans — are denigrated so another group — Europeans — can be eulogized."

Supporters, including a committee of Oakland teachers who recommended using the books, contended they are a vast improvement over the old ones and superior to other books on the market. "If you have a book that is flawed, do you refuse to take the book and start over from scratch or do you use supplemental units to build it up?" said Shelly Weintraub, a teacher who headed the district social studies selection committee, which recommended adoption of the series.

Dozens of Oakland teachers who reviewed the books and tested them in classrooms called them a "giant leap" toward developing a multicultural curriculum. "The teachers felt these were the best materials available," said Steve Weinberg, head of the social studies department at Claremont Middle School. "If the board doesn't say 'yes' to the books, we have nothing to replace them with."

Houghton Mifflin regional manager John Perata insisted the texts are "without a doubt the most racially, ethnically and religiously balanced social studies materials to have ever been produced."

The California state Board of Education last fall approved the books following a series of heated meetings where many different religious, ethnic, and racial groups blasted the texts. School districts do not have to purchase the textbooks, but without a special waiver, the state won't approve the full cost of other books not approved by the state Board of Education. About 300 California districts chose to buy the Houghton Mifflin textbooks for at least one grade level; only Oakland rejected them outright. Another 800 districts have not decided.

In neighboring Berkeley, the textbook series also met with extensive criticism by protesters who denounced them as "racist" and "Eurocentric." But after a tumultuous four-hour meeting July 17, the school board accepted all but one of the texts. Rejected was the fourth-grade textbook on California history, *Oh California*, which had been recommended by staff. The vote meant that Berkeley fourth-grade teachers probably will either have to develop their own teaching materials or use the old text, Kevin Starr's *California*! Starr's book, said board president Irene Hegarty, "has worse problems than the one you're turning down."

"I find the vote disturbing," commented Berkeley School Superintendent LaVoneia C. Steele. "As a black woman I found things wrong in the Houghton Mifflin texts, but the kids have got to have texts."

Two weeks after the Oakland decision, on June 19, the San Francisco school board voted 5-1 to purchase the Houghton Mifflin texts, agreeing, however, to supplement them with more than 200 other materials. "Our books are not racist, our company is not racist," Houghton Mifflin editor-in-chief Ray Sheppard, an African-American, told a noisy five-hour board meeting, which had to be recessed several times to establish order in the audience. "To call these books racist is to call the educational system racist. It is to ignore that an African-American can be editor-in-chief of Houghton Mifflin," Sheppard said.

However, a district parent-teacher review committee developed a list of 200 books and other materials about religions, ethnic minorities, lesbians and gays after it found the textbooks to be "seriously lacking in the area of cultural diversity." The committee said the books contained "disturbing stereotypes, omissions, and distortions," said district curriculum director Roger Tom. "We cannot endorse this textbook series to be the primary component" in the district's social studies program, he said. Reported in: *Oakland Tribune*, June 4, 6, 21; *San Francisco Examiner*, June 18, 19, 20.

New Britain, Connecticut

Venus de Milo would never make it into the halls of New Britain High School — at least not into the main exhibit area. Three students found that out June 6 when their drawings of female nudes were removed from a public art exhibit by the school's program for gifted and talented students. The nudes were placed in a room down the hall from the main exhibit area.

Krista Genovese submitted three art pieces, including a nude self-portrait. A teacher told her a week before the exhibit that her nude drawing would not hang with the other works. Genovese protested by pulling her other artwork from the exhibit. Jonathan Bates created a work that showed the back of a nude woman. It placed first at an art fair last year, but was removed from the main exhibit at the high school.

The drawings might have been offensive to some visitors to the exhibit, Principal Evan Pitkoff said. "Since we are a high school, we really want to cater to the general community."

"I've never heard anything more ridiculous in my life," commented Patrick McCaughey, director of a Hartford gallery. "The human body has been valued in art for 2½ thousand years. The human body is regarded as the very acme of nature. The female nude has been the image of beauty from antiquity to the present day."

One nude did make it into the exhibit, but many visitors were unable to recognize it. Denise Balukas created a ceramic pitcher with a nude female figure for a handle. The pitcher was displayed in a glass showcase — with a propped book obscuring view of the handle. Reported in: *Hartford Courant*, June 9.

Waldorf, Maryland

The Newberry Award-winning *The Headless Cupid*, by Zilpha Keatley Snyder, has not cast a spell on two parents who want it removed from the approved reading list at Matthew Henson Middle School because of its references to witchcraft. The story revolves around a 12-year-old girl whose mother remarries a man with children. Before, she

was her mother's only confidant, but now she tries to gain attention by creating mysterious happenings she attributes to witchcraft.

"I believe the book gives them an introduction into the world of the occult because of the terms they use," said Doris Folineo, who attached six typed pages of excerpts that she found objectionable to a petition against the book that she filed with the school board. In a June 28 protest letter, she wrote: "We had an incident in Charles County of cemetery desecration which was cult-related, according to Charles County police. I would hate to think that some sixth-grade teacher was the one to get one of those children involved with the occult from offering a book about it in reading class."

Folineo also questioned what she termed an undermining of adult authority in the book. "I teach my children to tell the truth and be honest," she said. "I felt the whole family situation in the book was not good."

The book was previously challenged in the school district by a parent whose child attended John Hanson Middle School. That parent wrote: "This book can easily stir up a child's curiosity to experiment in witchcraft." After reviewing the petition, a committee recommended that the book be retained on the reading list.

When informed that the book had been previously reviewed and retained, Folineo said, "Well, I have done what I feel I had to do." She said that she hoped the school board would overrule the review committee. Reported in: *Maryland Independent*, July 10.

Pontiac, Michigan

Censorship is not just a word to be learned in civics classes, say Jason Lockwood and Phil Rizzi. The pair were suspended from Waterford Kettering High School in May after posting fliers they had written. One of the fliers protested the school's practice of locking bathrooms to thwart smokers. Others dealt with racism, the student dress code, war, and the confidentiality of student-written letters to a school "crisis box." Lockwood and Rizzi say school officials are trying to censor them.

Principal Ron Kowalewski declined to comment specifically on the incident, but said a school rule requires prior permission to post fliers. The students said they were unaware of the rule, and charged that the fliers were removed in overreaction to ironic suggestions on how to change the bathroom rule and to a profane word. Use of profanity is prohibited in the student code of conduct, Kowalewski said. Reported in: *Oakland Press*, May 30.

Grapevine, Texas

In front of the brick fireplace in Grapevine High School student Travis Black's home stands a painted department store mannequin. The mannequin, titled "Elektra: Somnambulist Bride," is Black's high school art project — and the center of a censorship controversy. The sculpture and artwork by four other students were removed from the Grapevine High School art show in May after the principal determined that they violated district policies prohibiting violent and religious themes from school displays. The incident provoked cries of censorship from angry students, parents, and teachers.

"They are insulting everyone's intelligence, including their own," said Black. "This is supposed to be a public school. I'm part of the public as much as anyone else."

The banned art was diverse. Tom Souther was prohibited from displaying his junk-metal crucifix sculpture. Lynn Zengler's watercolor depicting a woman's life cycle was banned as was Lacei Gray's sculpture that featured a wooden cross with plaster-cast hands and feet nailed to it. Kristin Kurry's painted and enchained bust of a woman, "Vertigo Spinning," was also removed.

Former Grapevine Principal Ted Gillum made the decision to remove the art. As this year's annual art show was about to open in the school library, Gillum and several other administrators walked through and decided that some of the works had to go. Souther and Gray said their crucifix-style sculptures were ordered out immediately. The other three projects were allowed in the show most of the week, but were removed for at least two days — the day the district's principals met at the school and the day of the annual awards assembly for family and friends.

"My daughter put a lot of thought into her artwork, and they are saying that it is something that even I am not allowed to look at," Patsy Gray said. "Every year it gets worse. They keep adding more and more rules." She and the other parents, all of whom supported their children's right to exhibit, encouraged them to speak out.

In a letter to the parents, Gillum wrote that the five projects — all approved and supported by the students' art teachers — were banned because their violent themes were contrary to the school's dress code. He also indicated that displaying the art would violate state laws regarding separation of church and state.

Art teacher Janie Sander, who protested the Grapevine decision, said administrators overreacted to some of the pieces. "We expect the students to be critical thinkers, yet when they practice critical thinking, we stop them from doing it," she said. "I think they expect art classes just to teach the kids how to paint barns and bluebonnets."

Gillum indicated as well that the U.S. Supreme Court's 1988 ruling in *Hazelwood* v. *Kuhlmeier*, which permitted school officials to censor student publications produced in school-sponsored journalism classes, validated his action. But the applicability of that decision was questioned by experts.

"The court only looked at the specific facts of Hazelwood High School," said Robert Peck, a U.S. Supreme Court Fellow who helped research the decision for Justice Byron R. White. "But many principals are using it [the decision] inappropriately. They are using it to have total control in

their schools, even though students do not give up their civil rights when they enter a school building. The court took some pains to make it clear they aren't giving a carte blanche to high school principals."

Since *Hazelwood*, the number of school censorship cases has greatly increased. "I have heard from journalism advisers who have been teaching without incident for ten years, and now they have principals who use the *Hazelwood* case to censor materials," said Mark Goodman, executive director of the Student Press Law Center in Washington, D.C. "But the court said the principal has to show an educational advantage to the censorship. They can't just do it because they disagree with content."

In *Hazelwood*, the justices ruled that student publications could be censored if they were produced in a class under school sponsorship and if the material in question violated the educational mission of the school. But the Court did not spell out what would constitute an educational mission, nor did they make distinctions for art shows, creative writing classes or textbooks. Moreover, the Court never gave principals the right to censor material based on religious grounds.

"School districts cannot endorse one religion over all religions or no religion," said University of Texas law professor Ed Sherman. "This doesn't mean there can't be any references to religion in the school. Religion would certainly be covered in history courses, and artwork reflecting all of society would no doubt contain religious themes.

"Banning artwork for religious reasons would be the same as saying a student couldn't wear a gold cross around their neck," Sherman added. "Taking the *Hazelwood* language and attempting to exercise broad veto power is troubling. What he [Gillum] is doing is censoring things that he feels don't treat religion with adequate respect."

One reason that Gillum's action could be sustained is that Grapevine schools have no written policy to cover such matters. But school Superintendent E.A. Sigler, who supported Gillum, said he had no intention of instituting such a policy. "The prinicipals in our district have a great deal of latitude to operate their campuses as they see fit," he said.

But some Grapevine parents want a policy. "If this happens again next year we will go through the proper channels to get this resolved," said Linda Burghuis, Travis Black's mother. "Travis is trying to get an education and he is being blocked. If they would just leave these kids alone, there wouldn't be half of the problems in the school." Reported in: *Ft. Worth Star-Telegram*, June 23.

student press

Bowie, Maryland

A controversial drawing, which Bowie High School Principal John Hagan says depicts male genitalia, will be returned to the artist, student Michael Masters, the principal announced June 12. But the school's literary magazine, *Etc.*, will not be distributed. Hagan previously refused to return the illustration, which was selected through a contest to be used on the cover of the magazine. Hagan also found a poem in the publication that he didn't think was appropriate. It describes a young girl crying out against abuse by her father. After 200 copies had been printed, the principal banned distribution.

The literary review, which is published annually, is a club activity. In the past year, it had not come under the same rigorous review process as the classroom-produced student newspaper and yearbook. Both of those publications were painstakingly reviewed following a controversy last year involving the yearbook in which a racial slur and obscenities were found in several senior picture captions.

Hagan said an art teacher and the literary review advisor approved Masters' artwork, which was the only contest entry. "But when it was called to my attention, I said, 'It's not going.' I didn't think it was appropriate for a high school publication. It's clearly visible," Hagan said. "I took it to six different staff members. Three of them are parents. I asked them if they thought the cover was appropriate to go out. They didn't."

The illustration depicts a knight coming out of a bookshelf. "I drew a loincloth like the knight used to wear," Masters said. "I bunched up the fabric and he said that was it. It's all corrugated, folded like when you open up a curtain." Reported in: *Prince George's Journal*, June 10; *Bowie Blade-News*, June 13.

Bronx, New York

Fordham University students charged the university administration with shutting down the university newspaper to silence protest by the editor against a controversial graduation speaker. Dean of Student Life Jeffrey Gray ordered security personnel to change the locks on the office of *The Ram*, Fordham's official weekly newspaper, May 14. Other offices were similarly barred to students, including the offices of the Student Print Shop, the Photo Darkroom, and *The Maroon*, Fordham's annual yearbook.

"No such blatant censorship has been attempted here in the past, as far as I can tell," said *Ram* editor, Patrick Reilly, who was the designated editor for the special graduation issue that would have been distributed May 16. "They can give all the excuses in the world for what they did. But the fact is that they knew they were disrupting a tradition at *The Ram*, and they were hostile when we tried to make new arrangements to get the paper out."

Reilly was the leader of a protest against this year's graduation speaker, Marian Wright Edelman. Edelman, founder and president of the Children's Defense Fund, has promoted school-based clinics that offer contraceptives and abortion services to minors. Reilly, an opponent of abortion, contends that Edelman was not an appropriate speaker for Fordham, which is a Jesuit institution in the Catholic tradition. He and a Fordham alumnus co-signed a letter to the parents of all

stores pull pregnant magazine cover

Several national supermarket chains including Safeway, Giant Food, Food Lion, Publix, Winn-Dixie, and Super Fresh refused to carry the July issue of *Vanity Fair* magazine, which featured a photo of pregnant actress Demi Moore standing naked with one hand under her belly and the other over her breasts.

"While we don't want to be in a position of censorship, there are times when we have to make a decision for the majority of our customers," said Barry Scher of Giant Food.

Although *Vanity Fair* distributed two versions of the issue, one with an opaque sleeve over the cover, the stores declined to carry either version. "We didn't think that the sleeve did an effective job of covering up the cover," said a Safeway representative. Reported in: *Washington Times*, July 16; *Daytona Beach News-Journal*, July 16; *Hagerstown Herald-Mall*, July 17.

graduating seniors encouraging them to protest Edelman's invitation.

Reilly said there was never any intention to include a protest against Edelman in *The Ram*. He said no administrator ever asked about his plans for the issue, and no indication of the university's concerns surfaced until he found himself shut out of the office "without any reasonable explanation."

The Rev. Joseph A. O'Hare, S.J., president of Fordham, has in the past criticized Reilly for protests against the university's recognition of a pro-choice and a gay/lesbian group, counseling referrals to Planned Parenthood for abortion services, and a freshman class that teaches contraception. In this context, O'Hare has insisted that "any university forum should encourage persuasion through principled rhetoric rather than the suppression of ideas and discussion."

"Is censorship really the way to promote free discussion?" Reilly asked. "O'Hare's double-talk is deceptive and manipulative. It serves his own purposes, but does not seem to apply when a student editor wishes to address issues that are central to a Catholic university." Reported in: *Bronx Press-Review*, May 30.

Charleston, West Virginia

The principal at DuPont High School did not like an editorial about cheerleaders and alcohol in the school newspaper and vowed to begin reviewing all stories and editorials written by the staff. But Amy Jean, faculty adviser for the *Panther Press*, said the students were "merely focusing on an important issue" and should not be censored.

"Ultimately, I'm the chief editor of the paper," said principal Jim Law. "I'd like to review everything ahead of time to make sure it's correct. I haven't attempted to do this before. I just feel they need to show caution and care."

The editorial questioned a school policy of barring cheerleaders who quit the squad from trying out next year, but not barring those who are kicked off the team. Earlier in the year, Law suspended four cheerleaders from school and removed them from the squad for using alcohol at a basketball game. Three of them tried out to cheer for the 1991-92 year, making the squad.

"We passed out the papers and before homeroom was even out, some of the cheerleaders were upset," said one staff member. "Our adviser was called to the office, then the four editors. The cheerleaders' mothers were there by third period wanting an apology. It was absolute chaos."

"The paper brought this out again and rubbed a lot of wounds that hadn't quite healed," Law said. "We're not against freedom of the press. You can have that, but only when there is responsibility."

Jean, an English teacher at the school, defended the student editors. "They went against peer pressure to talk about drinking," she said. "What they did was right. The article was not intended to hurt anybody, it was intended to focus on a policy and I think it did that accurately. Some people were upset, but the majority of students and parents overwhelmingly approved. I've always told my students to stand by their values. To tell them to apologize for what they believe would be inappropriate."

The staff said that if the principal edited the paper "all you'll see is flowery stuff — not what's really going on. We try to write what will hit home with students." Reported in: *Charleston Gazette*, May 25.

Madison, Wisconsin

The final school-year issue of Memorial High School's newspaper, shelved May 31 in a dispute over printing the name of a student who was shot, went to press three days later. Newspaper staff members had decided not to print *Sword & Shield* after Principal Carolyn Taylor told them how they should handle her demand that the youth's name not be published. However, the students agreed to a compromise whereby Taylor permitted publication of the paper without the student's name, but with a statement of resignation and protest by the editors.

"I feel very good that the majority of the paper will be published," said Sarah Ford, news editor and writer of the story at issue. "If we can only have 90 percent freedom of the press, I think we'll have to take what we can get."

Taylor had asked the newspaper to withhold the name after the student's mother said she didn't want it published. The staff had planned to comply with the request by running a black box where the story would have run. A line of type over the box said, "Principal Carolyn Taylor would not allow this article to be published as written." But Taylor wanted

that explanation to say she only asked that the name be removed. As published, the issue included the black box, with no story, and the line of type as originally planned.

In April, Taylor and the *Sword & Shield* editors clashed over a story about the grade point average of Memorial's black students. At that time, Taylor instituted a policy of prior review of the newspaper (see *Newsletter*, July 1991, p. 112). Reported in: *Capital Times*, May 31, June 1; *Wisconsin State Journal*, June 1.

public speaker

Boston, Massachusetts

A speaker at an AIDS education seminar for inner-city teenagers scheduled for July 19 at Boston College canceled his talk after being told, he said, that college officials would not allow him to mention condoms. "If we're not allowed to speak about condoms, we don't go," said John R. Dreyer, a member of the Massachusetts AIDS Action Committee.

Dreyer criticized Catholic Church officials for the decision, although officials from Boston College, a Jesuit institution, and the Boston Archdiocese denied any role in the flap. Although Cardinal Bernard Law recently criticized Boston College for inviting Faye Wattleton, president of Planned Parenthood, as a speaker, the archdiocese has no control over the college, said a church representative.

Larry Kessler, executive director of the Aids Action Committee, said that whatever the church's role, omission of information about condoms during a discussion of AIDS prevention amounts to "withholding life-saving and disease-preventing information." Kessler and Dreyer said the ban was part of a larger reluctance to talk about sex and preventing AIDS among adolescents, when statistics show that many are sexually active and at risk of contracting sexually transmitted diseases.

Dreyer was to speak to teenagers participating in a nationally sponsored sports camp at the college. He said he was told by the program's director that the decision to bar mention of condoms was made either by athletic director Chet Gladchuk or college president Rev. J. Donald Monan. About two years ago, a parent with a child in the program complained about the AIDS education session and during last year's program, an AIDS Action Committee speaker did not mention condoms at the program's request. Reported in: *Boston Globe*, July 19.

broadcasting

South Bend, Indiana; Durham, New Hampshire

WNIT in South Bend and WENH in Durham were among more than 200 Public Broadcasting Station outlets that declined to broadcast "Tongues Untied," a film about gay black men in the often controversial POV (Point of View) series, which contains scenes of men kissing, some nudity and harsh language. Stations in at least 17 of the nation's 50 largest broadcast markets declined to air the program. "Tongues Untied" has won awards for filmmaker Marlon Rigs, including Best Documentary at the Berlin Film Festival. It and the series of which it is a part both received funding from the National Endowment for the Arts.

Cynthia Fenneman, director of broadcasting for WENH, said the station's decision was reached after three station officials viewed the film. Fenneman said it was a "tough call," but argued that the explicit language in the film differentiated it from other controversial programs on similar subjects that the station had aired. "The language and eroticism throughout was what tipped the scales against airing it," she said. "The style of the film was overshadowed by the eroticism and language."

The decision at WNIT was ultimately station manager Kevin Gill's. Gill said the station received 45 phone calls about the program. Although many of the callers couldn't have seen the show, they unanimously opposed its airing. Added to the phone calls were the views of five members of the station's Community Advisory Board, four of whom were "ambivalent at best" about showing it. Based on this input and his own views, Gill decided the show was simply too explicit for his station's audience.

Ellen Schneider, co-producer of POV, said she understands that "Tongues Untied" put some stations in a difficult position. Nonetheless, she said that challenging programming that expresses alternative views is what POV and public television are about. "I'm disappointed that some individuals feel that's not a mission of public TV, and that audiences can't themselves make up their own minds about what they want to watch," she said. Reported in: *South Bend Tribune*, June 29; *Manchester Union Leader*, July 4.

Tyler, Texas

The MTV music video network, which found some Madonna videos too steamy to air, itself became a victim of a sort of censorship when TCA cable company of Tyler, which operates 53 cable companies in six states, announced June 25 that its 420,000 subscribers will no longer be able to tune in to MTV because of the content of some of the videos.

"As a corporate citizen, we don't feel we can continue to offer borderline pornographic materials," said Randy Ellisor, manager of TCA's Huntsville operation. He cited two videos, Madonna's "Like a Virgin" and Cher's "If I Could Hold Back Time," as particular targets of the hundreds of subscriber complaints that prompted the decision.

MTV charged that the cancellation arose from more mercantile concerns. "We are negotiating over fees. This has nothing to do with program content," said Carole Robinson, vice president for MTV press relations. "That's absolutely incorrect," countered TCA President Fred Nichols. "If [MTV is] saying that, they're just totally telling an incorrect statement. It's absolutely a content problem. That's the whole problem — they don't admit it."

In a prepared statement, TCA said MTV was considered suitable for most viewers when it first appeared in 1981. "By contract renewal time three years ago, the videos had become more explicit and our company asked for a contract that would allow us to drop the service if its programming did not conform to community standards. MTV wouldn't agree to the issue," the statement said. "We allowed the service to remain, and now we receive complaints over MTV content almost daily."

The move angered many customers, who accused the company of making moral decisions for other adults. About forty students at Texas A&M University in College Station picketed the firm's local office, promising an ongoing campaign against the company, which has 28,000 subscribers in the community. "We will continue as a way to protest censorship in general," said Gwynne Ash, a graduate student and founder of Citizens Against Censorship. Reported in: *Houston Chronicle*, June 26, July 1; *Houston Post*, June 27.

newspapers

Washington, D.C.

Three weekly newspapers widely read by American military personnel rejected an advertisement praising gay soldiers in the Persian Gulf war because the publisher said the armed forces had no homosexuals. Yet just weeks earlier, Defense Secretary Dick Cheney acknowledged that there were "a large number of gays in military service" despite Defense Department policy barring them from uniform.

The Army Times Publishing Company of Springfield, Virginia, which publishes *Army Times, Navy Times*, and *Air Force Times*, rejected a half-page advertisement for July 4 editions from the Gay and Lesbian Military Freedom Project, a coalition of civil liberties and gay rights groups.

Nat Kornfeld, vice president at the company, said that the ad would not be printed without certain changes to the wording, which he refused to specify to the press. The coalition refused to make the changes. "We are the publications of the military and we have strong, definite criteria," Kornfeld said. The three publications, which have a combined weekly circulation of 305,000 are widely read by service members.

Among the wording that the company found objectionable was, "Under current military regulations, if you disclose your sexual orientation, you will be investigated, discharged or even court-martialed." Kornfeld said a portion of the ad that said the coalition "was fighting to end the military's formal policy of discrimination" was acceptable. But the ad could not be run if it suggested that there were now gays in the military.

In a June 27 interview with *USA Today*, Cheney said: "The basic policy has been that a gay lifestyle is not consistent with military service. No question in my mind, we've got a large number of gays in military service." Reported in: *New York Times*, July 17.

bookstore

Lancaster, Pennsylvania

The Closet, a gay and lesbian bookstore that opened last May in Lancaster, was bombed June 24. An explosive device placed on the window sill in the alcove of the store's doorway exploded at about 1 a.m., destroying two windows and their framework, the alcove ceiling, and the mail slot, owner Nancy Helm said. Helm said that she and her store had been in the local media because of a debate over enacting a municipal law to prevent discrimination based on sexual orientation. Police Captain Joseph Geesey said that because the damage was relatively light, "It could just be persons out with fireworks. We have no indication it was anything along a hate line — there was no written message. It could be that, but it could also be criminal mischief. It was a high profile store in the news a lot. There are people who do this kind of thing from time to time." Reported in: *ABA Newswire*, July 1.

art and photography

Santa Cruz, California

A performance art piece titled "Torture Circus," featuring body piercing, lesbian domination, and ritual whipping, led feminist activist Ann Simonton to ask local businesses to withdraw their support of Bulkhead Gallery, which staged the show for a single performance May 17. Simonton said the performance promoted sexual violence.

"Everybody has a place where they draw the line," Simonton said. "It helps people see that not anything goes, even if you call it avant-garde."

But gallery workers disagreed. "Just because Ann Simonton doesn't think it's art doesn't mean it's not," said one volunteer. "It's somebody trying to lay their standards on somebody else." Peter Brown, another gallery worker, pointed out that the show was presented as theater. "When you see something with a title like 'Torture Circus,' you have to be a boob not to have an inkling what it is about," he said. "People said they had an intense experience — and that's theater."

In a letter given to gallery supporters, Simonton said business sponsors have a responsibility to the community to stop the promotion of sexual violence as a harmless form of entertainment. In the letter, Simonton claimed that seven businesses had already asked to have their names withdrawn from the gallery's program. But at least two said they had agreed to no such thing.

Neal Coonerty, a city council member and owner of Bookshop Santa Cruz, said he would continue to support Bulkhead's work. "When we decided [to contribute to Bulkhead] we didn't look at the content as much as the people. This is an alternative voice that has trouble getting funding. I think there is a difference between a piece of art in a public place like the County Building and an art project

Smithsonian attacked for 'revisionist' exhibit

Echoing recent efforts to halt federal aid for offensive art, a new battle emerged in June over an exhibit of art on the old American West. The exhibit, "The West as America: Reinterpreting Images of the Frontier, 1820-1920," at the Smithsonian Institution's National Museum of American Art drew record crowds with a controversial negative reinterpretation of artworks glorifying westward expansion.

Although widely praised by scholars and, according to a guest book, much of the viewing public, the exhibit drew the ire of conservative columnists and historians and of two Western senators. Sens. Ted Stevens (R-AK) and Slade Gorton (R-WA) attacked the show at an Appropriations Committee hearing, with Stevens accusing Smithsonian officials of pushing a left-wing point of view.

"I think you've got a political agenda," said Stevens, who later admitted that he had not seen the exhibit. "The Smithsonian thinks it must be the toadstool on which revisionists can stand," he added. "That's OK if it's a private institution, but I think of the Smithsonian as a place where we really demonstrate the truth." Sen. Gorton called the exhibit a "terribly distorted, negative and untrue statement about the settlement of the west."

The exhibit contained 164 paintings, photographs, prints and sculptures by artists who created images of the West that persist today. Critics did not object to the artworks, but to the 47 labels placed alongside them and in the exhibit program. The commentary suggests that those artists depicted the westward movement as a glorious, divinely ordained enterprise in which settlers tamed a lush, fertile wilderness. In the process, the settlers brought civilization to the Indians who lived there — or triumphed over the cruel savages who resisted. Ignored, the commentary points out, were the massacres and deprivation that were the lot of many who moved west, and the environmental plunder that resulted.

Museum officials argued that this view is not so controversial, and has been accepted by a majority of historians for years. "We're not really taking a historical point of view that is radical or eccentric or even avant garde," said Elizabeth Broun, director of the museum. Museum officials acknowledged that some of the commentary came off a bit heavy-handed, and shortly after the Senatorial criticism several captions were changed, although officials insisted this had been planned before the public furor began. "Most people who've complained think we're too humorless and relentless in the labels," Broun said. "We've laid it on. If we were starting over, maybe we would have used a lighter touch. But removing labels now would raise more questions than it would answer." Reported in: *Chicago Tribune*, May 24; *Monroe Evening News*, June 9. □.

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where people can make a choice as to whether to attend." Reported in: *Santa Cruz Sentinel*, May 23.

Stuart, Florida

A copy of a classic Renoir nude was removed from an exhibit touring the five campuses of Indian River Community College, causing the 61-year-old grandmother who painted it to cry censorship. Since banning the painting, the college has appointed a committee to study whether a policy might be needed on how to treat artwork that could be offensive.

"It's a shame to make people think there's something wrong with the human body. Art is art," said Marion Carton, whose version of "La Toilette" was part of the Million Dollar Masters Mimics Show until college officials removed it from display. "I was stunned by the whole reaction. This is Renoir's. It's not my idea. It's my copy."

In April, the school removed another full frontal nude painting that was to be part of an exhibit at the Port St. Lucie Community Center. The award-winning original, by college art instructor Billie Everett, was considered offensive because it depicted an unclothed young woman standing amid lilacs after finishing a swim. Reported in: *Stuart News*, June 2.

Wichita, Kansas

A Wichita artist who had seven of his works removed from an exhibition at the Century II cultural center said he would sue the group that removed the paintings for breach of contract and for infringing on his freedom of expression. Seven nude paintings by artist Eric Weidman were pulled from display June 10 after five people complained they were "offensive and pornographic," said Jeanice Thomas, executive director of the Wichita-Sedgwick County Arts and Humanities Council. The council oversees monthly exhibits in the Century II foyer. Weidman's one-man show contained abut eighty works, including several portraits of nude women.

"We had enough people upset about this, enough people who were genuinely offended, that we felt a legitimate need to remove the paintings," Thomas said. "We will defend an artist's right to paint anything he wants to, but not his right to use public exhibition space such as this for anything he chooses to put up."

Weidman contended, however, that he asked Thomas specifically whether he could include nudes and she told him he could. Thomas said her group does allow nudes at Cen-

tury II exhibitions, but that Weidman's were "ugly" and "in poor taste."

"The day he hung the paintings, I walked by and said to myself, 'Uh-oh. Here comes trouble,'" Thomas said. "But we decided to go with it, and if Wichita could handle it, then OK." The paintings were displayed for about a week before the council began receiving complaints. Reported in: *Wichita Eagle-Beacon*, June 20.

Hiram, Maine

A nude painting of a sixteenth century woman is the perfect advertisement for antiques, according to a Hiram business owner. But local officials think the "Venus of Urbino" would be better off in a more private setting, away from busy Route 113 and the eyes of local youth. In May, town selectmen and the code enforcement officer tried to get Edmond Chernesky, owner of Hiram Village store, to remove the mural from his storefront.

"I had a wild idea over the winter," Chernesky said, "that would draw attention to the fact that we were selling antiques. And I wanted to test the First Amendment over what was my right to display in public. It's high Italian Renaissance art. She's reclining on her right side and has flowers in her right hand and a dog at her feet. And her left hand covers her genitals so nothing shows. In the original you could see her nipples, but we covered them with a lock of hair. Evidently, they think that's too erotic."

Norman Wright was one of three residents who complained about the mural. "That's no place to put it, where little children have to look at it," said Wright, a deacon at Faith Baptist Church in Kennebunk. "Nudity is something that should be between two married people in the privacy of their home and it has no business outside in the public." Reported in: *Portland Press-Herald*, May 23.

Las Cruces, New Mexico

A performance by San Francisco artist David Noble, who was to have performed in the nude at New Mexico State University Art Gallery July 24, was moved off campus after university officials expressed concern about a possible backlash from people attending a religious art show on display at the gallery. "They're just two shows that each need to have their own place," said William Conroy, NMSU executive vice president and chief academic officer. Conroy said he, art department head Louis Ocepek, and Rene Casillas, acting dean of arts and sciences, decided on the move. Noble's show had been booked months before by gallery director Karen Mobley.

"It's still possible that it will be held at the university," Conroy said. "But we feel that there would be a concern with those people who have strong religious beliefs. This type of event would not appeal to me, but I feel the university should be an open forum." Reported in: *Albuquerque Journal*, July 10.

Montpelier, Vermont

The director of the Vermont chapter of the ACLU on May 24 criticized a decision to remove three photographs from a City Hall art exhibit. The photographs were removed following complaints from city employees who found them offensive and inappropriate for display in a public building. Vermont ACLU Director Leslie Williams said she viewed the removal as an infringement on the First Amendment.

"The excuse that City Hall is a workplace and therefore the employees can censor what's put on the walls is a pretty lame one as far as we're concerned," she said. "City Hall belongs not to those who work in it but to all of those who live in the city. It is a public building."

Three of photographer Kelly Doyle's works were removed from exhibit at the request of city officials. The three photographs showed nude bodies. One picture was a side view of the abdominal area of a woman, the other two were underexposed photographs of a naked man and woman intertwined. Other photographs that depicted nude bodies remained in the exhibit.

City officials said the lobby and wide center hall on the main floor of the building had been used for two decades to exhibit historic photographs and artifacts. In the last few years, the space has also been used to exhibit work by current Montpelier artists.

"Is this an art gallery or is it a display area for historical photographs and artifacts?" asked Mayor Ann Cummings. "If we define it as a gallery, then we have little control over what goes in there. But City Hall is also a work space and we have to consider the comfort level of the people who work her. So we may have competing interests. I think we need to define what it's going to be." Reported in: *Barre Times-Argus*, May 24. □

SUPPORT

THE

FREEDOM

TO

READ

from the bench

U.S. Supreme Court

The Supreme Court on June 21 allowed states and cities to ban nude erotic dancing, ruling 5-4 that requiring dancers to wear at least pasties and a G-string does not violate their freedom of speech. The decision came in *Barnes* v. *Glen Theater*, a case from South Bend, Indiana, in which JR's Kitty Kat Lounge, an adult bookstore, and three dancers challenged the state's public indecency law, which prohibited nude dancing. The ruling gives local prosecutors a "new option to restrict totally nude entertainment in their communities," said Indiana Deputy Attorney General Wayne G. Uhl.

The federal appeals court in Chicago had ruled that the dancing was "inherently expressive," communicating an emotional message of "eroticism and sensuality," and that the ban therefore violated the First Amendment. Five justices agreed to reverse that decision but disagreed on the reason why.

Chief Justice William H. Rehnquist, in an opinion joined by Justices Sandra Day O'Connor and Anthony M. Kennedy, said that while nude dancing enjoys some marginal First Amendment protection, the state's interest in promoting "order and morality" allows it to prohibit the dancing, just as it can ban other forms of public nudity.

"The appearance of people of all shapes, sizes and ages in the nude at a beach . . . would convey little if any erotic message, yet the state still seeks to prevent it," Rehnquist said. "Public nudity is the evil the state seeks to prevent, whether or not it is combined with expressive activity." He observed that the pasties and G-string requirement was a "modest" imposition and "the bare minimum necessary to achieve the state's purpose."

Justice David H. Souter said such laws are constitutional not because of the state's interest in promoting public morality in general, but because nude dancing is "associated" with such "other evils" as prostitution and sexual assault. He said he would have difficulty letting the state enforce its law against a legitimate production of *Hair* or *Equus*, two plays that feature nude scenes.

Justice Antonin Scalia said that because the law is simply a general prohibition of nudity and not specifically aimed at "expressive conduct," the First Amendment is not implicated at all. He said the fact that the strip joints admit only consenting adults does not deprive the state of its legitimate interest in stopping public nudity. "The purpose of Indiana's nudity law would be violated, I think, if 60,000 fully consenting adults crowded into the Hoosier Dome to display their genitals to one another, even if there were not an offended innocent in the crowd," Scalia said.

In a dissenting opinion, Justice Byron R. White said it was "transparently erroneous" for the court to say that the state was not aiming at suppressing the dancers' erotic message. Rather, White said, "it is precisely because of the distinctive, expressive content of the nude dancing performances" that the state seeks to stop them. As a result, he said, the law should be subject to "exacting scrutiny," requiring the state to show a compelling reason for banning nude dancing.

"That the performances in the Kitty Kat Lounge may not be high art, to say the least, and may not appeal to the court, is hardly an excuse for distorting and ignoring settled doctrine," White wrote. "The court's assessment of the artistic merits of nude dancing performances should not be the determining factor in deciding this case." Responding to Scalia's hypothetical assemblage of naked Hoosiers, White said he agreed about the Hoosier Dome, but added: "No one can doubt, however, that those same 60,000 Hoosiers would be perfectly free to drive to their respective homes all across Indiana and once there, to parade around, cavort and revel in the nude for hours in front of relatives and friends." The state's failure to prohibit such activity, White said, proves that its interest was not in enforcing morality but in suppressing an erotic message. White was joined by Justices Thurgood Marshall, Harry A. Blackmun and John Paul Stevens.

With its focus on the constitutional significance of pasties and G-strings, the case seemed to involve a fairly trivial application of the First Amendment. In addition, the state had alternative means for going after nude dancing if it wished; earlier decisions made clear states could use their authority under the 21st Amendment, which repealed Prohibition, to prohibit nudity in establishments that serve alcohol.

Yet both sides said the symbolic stakes were significant. Those supporting the ban, including state and local government groups and the American Family Association, saw the case as a test of the abilities of communities to enforce their own standards of moral decency. They were ecstatic. "It

is a green light for communities to aggressively enforce basic standards of decency," said Thomas Jipping of the conservative Free Congress Foundation. "The First Amendment is not an altar on which American families must sacrifice the traditional values that made this country great."

Those on the other side, including the American Civil Liberties Union and People for the American Way, said stamping out nude dancing at the Kitty Kat Lounge posed a grave risk of giving the state enormous discretion to decide what forms of artistic expression are worthy of First Amendment protection. They said those fears had been realized.

"It's a disturbing and dangerous decision with broad implications, that has much less to do with nude dancing than with the Rehnquist court's view that speech can be censored in the name of public morality," said Steven Shapiro of the ACLU. Rehnquist's opinion, he said, "comes very close to saying that as long as the state says its interest is in promoting morality rather than censoring speech, it can censor speech as a way of promoting morality."

Uhl, who argued the state's case, said: "We're not censoring anything. We're only telling people that they cannot appear nude in public. That is not censorship." But he noted that the law technically requires more than a G-string, because it prohibits the display of nude buttocks, as well as genitals, female breasts and "covered male genitals in a discernibly turgid state." Reported in: *Washington Post*, June 22.

Writers may be sued for fabricating or deliberately altering quotations if the damaging words they put in their subjects' mouths are significantly different from what actually was said, the Supreme Court ruled June 20. The court unanimously reinstated psychoanalyst Jeffrey M. Masson's libel suit against *New Yorker* writer Janet Malcolm over her 1983 series about Masson's controversial views on Sigmund Freud.

In an opinion by Justice Anthony M. Kennedy, seven justices said manufactured quotations can be the basis for a libel suit if there is a "material change in the meaning" of what the subject actually said. Justices Byron R. White and Antonin Scalia, concurring, said that standard lets the reporter "lie a little, but not too much," and that writers should be held liable for any "deliberate misquotation" that injures the reputation of the purported speaker.

Masson, a flamboyant Sanskrit scholar turned Freud expert, claims that Malcolm defamed him by inventing arrogant and boastful statements that she attributed to him in her *New Yorker* series and later her book about his involvement with the Freud Archives. Malcolm denies making up the quotations, which did not appear on the transcripts of her extensive tape-recorded interviews with Masson.

Media lawyers, who had feared that the unattractive facts and posture of the Masson case could result in a ruling that would expose news organizations to a torrent of lawsuits over alleged misquotations, expressed relief that the court had taken a moderate position, giving writers substantial flexibility in using quotations. "The important thing today is what the court did not do," said New York attorney Floyd Abrams. "Far from being the disaster that some had feared, the ruling takes account of First Amendment interests by assuring that only alterations that produce material changes in meaning can lead to a finding of liability."

The U.S. Court of Appeals for the Ninth Circuit in San Francisco had dismissed Masson's suit before it went to trial.

Justice Marshall retires

U.S. Supreme Court Justice Thurgood Marshall, a towering figure in civil rights for half a century and the only African-American Supreme Court justice in the nation's history, announced his retirement June 27. He said his "advancing age and medical condition" made it impossible for him to meet "the strenuous demands of court work." Marshall, who turned 83 the following week, announced his decision shortly after the court issued its last opinions for the term, including a stinging attack by Marshall on the court's conservative majority.

Marshall's resignation symbolized the passing of an era in which the court used the Constitution as a tool to advance the rights of minorities and the downtrodden. President Lyndon B. Johnson appointed him to the Supreme Court in 1967, breaking a 177-year color barrier. Marshall immediately joined the liberal majority of the Court, headed by then-Chief Justice Earl Warren, in support of the rights-conscious rulings of that era. In recent years, as those rulings have been eroded by a more conservative majority, Marshall increasingly assumed a defensive and dissenting role.

"The Supreme Court has lost a historic justice, a hero for all Americans and all times," said Senate Judiciary Committee Chair Joseph R. Biden Jr. (D-DE). Harvard Law professor Randall Kennedy, who clerked for Marshall during the court's 1982-83 term, said Marshall's departure "means the loss of one of the great voices in American constitutional jurisprudence, a voice that stood for values that are under tremendous threat, the most important of which is equality in all of its various meanings."

Within a week of Marshall's resignation, which the retiring justice insisted becomes effective only with the confirmation of a replacement, President Bush nominated black conservative Clarence Thomas, former head of the U.S. Civil Rights Commission and a member of the U.S. Court of Appeals for the District of Columbia since 1990, to fill the vacated seat. The

(continued on page 171)

Even assuming Malcolm invented the quotes, the court said, that did not matter because the disputed statements were in any event a "rational interpretation" of ambiguous statements and no worse than other egocentric and embarrassing things Masson admitted saying.

However, in *Masson* v. *New Yorker Magazine*, Kennedy said the appeals court went too far in protecting authors and underestimated the degree to which "quotations may be a devastating instrument for conveying false meaning" because they purport to use the speaker's own words. The "rational interpretation" standard, Kennedy wrote, would "give journalists the freedom to place statements in their subjects' mouths without fear of liability" and "diminish to a great degree the trustworthiness of the printed word."

But Kennedy also emphasized that constitutional protections for a free press require that reporters and writers be given substantial flexibility to use quotation marks without fear of being hauled into court. He rejected Masson's argument that reporters act with "actual malice" — the knowing or reckless disregard for the truth that is required for a public figure like Masson to sustain a libel suit — every time they go beyond cleaning up a source's grammar or syntax. Rather, he said, "If an author alters a speaker's words but effects no material change in meaning, including any meaning conveyed by the manner or fact of expression, the speaker suffers no injury to reputation that is compensable as a defamation."

Kennedy said there was enough evidence to justify a jury finding that Malcolm deliberately or recklessly altered the quotations, including the fact that many of the challenged passages resemble quotations on the tapes; the fact that she told then-*New Yorker* editor William Shawn that all the quotations came from the tape recordings; and evidence of intentional changes from the typewritten notes to the galley proofs. He then analyzed each of the six allegedly fabricated quotations and found that five were enough of a change from Masson's admitted words to support sending the case to trial. The statement that Kennedy dismissed involved Masson's explanation of why he changed his name.

The five included Masson's alleged statements that two prominent psychoanalysts considered him an "intellectual gigolo." Of that statement, Kennedy said: "A reasonable jury could find a material difference between the meaning of this passage and petitioner's tape-recorded statement that he was considered 'much too junior within the hierarchy of analysis for these important training analysts to be caught dead with (him).'"

At his Berkeley, California, home, Masson said the ruling "protects both writers and the public. . . . I never believed that because you get a few words wrong a person is entitled to a trial. What bothered me was that [Malcolm] changed what I said and what I meant, and that should not be permitted, either legally or ethically." Reported in: *Washington Post*, June 21.

The Supreme Court ruled June 24 that the First Amendment does not protect a news organization from a lawsuit if it promises to keep the name of a source secret but later discloses it. The 5-4 decision revived a highly publicized nine-year-old lawsuit by a former political consultant against Minnesota's two biggest newspapers, the *Minneapolis Star-Tribune* and the *St. Paul Pioneer Press Dispatch*. Both newspapers disclosed the consultant's identity, despite promises by their reporters to keep it secret, in articles about damaging information he had provided about a candidate for Lieutenant Governor. The consultant, Dan Cohen, sued the papers for breach of contract after he lost his job as a result of the disclosures.

The high court decision overturned a ruling by the Minnesota Supreme Court that the First Amendment's guarantee of freedom of the press protects newspapers from such suits. The state court in 1990 overturned a $200,000 verdict in Cohen's favor. The U.S. Supreme Court ruling left to the state court a decision on whether to reinstate that award.

Writing for the majority in *Cohen* v. *Cowles Media Co.*, Justice Byron R. White said a "well-established line of decisions" by the Supreme Court had established that the First Amendment does not exempt the press from "generally applicable" laws, even those that have "incidental effects on its ability to gather and report the news." In this case, he said, "Minnesota law simply requires those making promises to keep them."

In a dissenting opinion, Justice David H. Souter said the majority had adopted too narrow a view of the First Amendment and had failed to recognize that the rights at issue were not simply those of the press but of the public to receive information. "Freedom of the press is ultimately founded on the value of enhancing such discourse for the sake of a citizenry better informed and thus more prudently self-governed," Souter said.

Justice White's opinion was joined by Chief Justice William H. Rehnquist and by Justices John Paul Stevens, Antonin Scalia and Anthony M. Kennedy. Justice Harry A. Blackmun also wrote a dissenting opinion and joined Justice Souter's dissent, as did Justices Thurgood Marshall and Sandra Day O'Connor.

In an *amicus* brief, news organizations argued that newspapers owe an ethical obligation to keep promises to their sources, but not a legal duty. Their lawyer, Rex S. Heinke, said the ruling exposes news organizations to an array of claims by sources who are unhappy with the final product. "People are going to sue saying, 'Well, you promised to let me review my quotes. You promised to give me favorable coverage,' and so on," he said.

Elliot C. Rothenberg, Cohen's lawyer, said fears of a flood of lawsuits were "grossly exaggerated" and praised the ruling for "restoring some balance between the rights of newspapers and other media organizations and those with

whom they deal." Had it gone the other way, Rothenberg said, "Who in his or her right mind would trust the promise of a journalist?" Reported in: *New York Times*, June 25; *Washington Post*, June 25.

A First Amendment challenge to the California Constitution section prohibiting political parties and party central committees from endorsing, supporting, or opposing candidates for nonpartisan offices was not justifiable, the Supreme Court ruled June 17. Writing on behalf of six justices, Justice Anthony M. Kennedy reversed a lower court ruling that invalidated the provision. Although registered voters had standing to claim that the section had been applied to bar their own speech, Kennedy wrote, there was reason to doubt that the injury could be redressed by a declaration of the section's invalidity or an injunction against enforcement. Justices White, Marshall, and Blackmun dissented. Reported in: *West's Federal Case News*, June 28.

The Supreme Court agreed June 10 to decide whether "hate crime" laws, prohibiting cross-burning, displays of swastikas and other offensive activity, violate the constitutional guarantee of free speech. The court said it would decide whether a St. Paul, Minnesota, teenager, described by prosecutors as a skinhead, can be prosecuted under a local hate crime law for burning a cross on the lawn of the only black family in the neighborhood.

The youth, Robert A. Viktora, was charged with a misdemeanor for violating a St. Paul ordinance prohibiting the display of symbols designed to arouse "anger, alarm or resentment in others on the basis of race, color, creed or religion or gender."

Hate crime laws, along with campus speech codes, have become a popular tool in recent years to combat racial and religious bigotry. The Minnesota case, *R.A.V.* v. *St. Paul*, will be the high court's first examination of the constitutionality of such laws. A decision is not expected until next year.

The case arises amid what the Minnesota Civil Liberties Union, which opposes the ordinance, described as an "intense" nationwide debate "about the proper limits of these regulations, including the now-ubiquitous controversies over 'political correctness' and methods of enforcing it." The Minnesota Supreme Court rejected Viktora's argument that the ordinance violates the First Amendment.

"Burning a cross in the yard of an African-American family's home is deplorable conduct that the City of St. Paul may without question prohibit," the court said. "The burning cross is itself an unmistakable symbol of violence and hatred based on virulent notions of racial supremacy. It is the responsibility, even the obligation, of diverse communities to confront such notions in whatever form they appear."

The Minnesota court distinguished the St. Paul ordinance from a Texas flag-burning law struck down by the Supreme Court in 1989. The high court, voting 5-4, also overturned a federal flag-burning law last year, before Justice William J. Brennan, Jr., retired. Unlike the Texas flag-burning law, the Minnesota court said, the St. Paul ordinance does not ban all cross-burning, but rather "censors only those displays that one knows or should know will create anger, alarm or resentment based on racial, ethnic, gender or religious bias." It interpreted the law to prohibit only offensive conduct that amounts to "fighting words" or threatens "imminent lawless action" — categories of speech that the court has said may be prohibited.

Viktora also was charged with assault for causing fear of immediate bodily harm or death; he will face prosecution on that charge even if the hate crime law is overturned.

In asking the high court to review the case, Viktora's lawyer, Edward J. Cleary, said, "Displays of racial, ethnic, religious or gender intolerance reflect varied political viewpoints within our pluralistic society and are not susceptible to constitutionally valid restrictions." But Assistant Ramsey County Attorney Steven C. DeCoster said that when "symbolic conduct is designed solely to threaten, terrorize or injure others, it is not protected by the First Amendment." Reported in: *Washington Post*, June 11.

dial-a-porn

New York, New York

Reversing a lower court ruling, the U.S. Court of Appeals for the Second Circuit cleared the way July 15 for nationwide enforcement of a controversial law intended to control access to pornographic telephone services. The law, meant to protect children from possible harm caused by exposure to such services, is known as the Helms Amendment. Its main author was Sen. Jesse Helms (R-NC), and it was enacted by Congress in 1989.

Last August, a federal district court judge ruled that the law was vague on what constituted indecency and that it unfairly restricted free speech by ordering that all telephone subscribers be blocked from access to pornographic telephone services unless they specifically request them. Judge Robert P. Patterson, Jr., found the law unconstitutional and a governmental curb on free expression.

Judge Patterson's ruling, a preliminary nationwide injunction, prevented implementation of the statute. But the appellate decision, combined with an earlier decision upholding the law by the U.S. Court of Appeals for the Ninth Circuit in San Francisco, cleared the way for enforcement.

Writing for the Second Circuit panel, Judge Roger J. Miner ruled that Judge Patterson had erred. "Indecent, as used in the Helms Amendment, has been defined clearly by the Federal Communications Commission," he wrote, citing a definition that states "it is appropriate to define indecency as the description or depiction of sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards for the telephone medium."

Judge Patterson had found that the statute's pre-subscription requirement was too restrictive, and that voluntary restriction was adequate. But the appeals court cited a study that found the vast majority of New York households had no idea that voluntary restriction was available.

"In the opinion of a psychiatrist who testified at the preliminary injunction hearing," the judges continued, "a child may have suffered serious psychological damage from contact with dial-a-porn before the child's parents become aware from a monthly telephone bill that there has been access to an indecent message. The goal here is to prevent access to indecent messages by children."

As for the issue of prior restraint, the appeals court found that there was no basis for that because the law did not seek to suppress the phone services and only made an effort to classify them as pornographic so that blocking procedures could be activated. "There is no restraint of any kind on adults who seek access to dial-a-porn," the decision said. Reported in: *New York Times*, July 16.

video

Kansas City, Missouri

A landmark Missouri law restricting the sale or rental of violent videocassettes was ruled unconstitutional July 2. U.S. District Court Judge D. Brook Bartlett said the law was too vague in defining the videos it intended to regulate. The law was the first in the nation to try to restrict videos on the basis of violence.

The law called for placing violent videos "in a separate area" of stores if the violence would "appeal to morbid interest," "is patently offensive," or "lacks serious literary, artistic, political or scientific value for persons under the age of 17."

Judge Bartlett said the law's definition of violence did "not express with clarity what the General Assembly was attempting to regulate. . . . A vague law is a convenient tool for discriminatory law enforcement and for arbitrary suppression of First Amendment liberties."

"Unlike obscenity," Bartlett wrote, "violent speech or speech about violence has not been determined to be outside the protection of the First Amendment. Far greater precision must be used in articulating the purpose of an act regulating protected speech than unprotected speech."

Bartlett also had problems with holding a video store operator liable for the contents of every video in a store. The judge acknowledged "Missouri's compelling interest in the welfare of the youth of the state." But he said this particular law did not meet "the constitutional standards that apply when a state attempts to regulate expression." Reported in: *Kansas City Star*, July 3.

broadcasting

San Quentin, California

A federal judge ruled June 7 that news cameras may not record executions in California, blocking a San Francisco public television station's attempt to videotape the first use of the state's gas chamber since 1967. U.S. District Court Judge Robert H. Schnacke softened a ban on all media announced by San Quentin state prison and said reporters with pencils and paper may enter the viewing room. But he said pictures might spark a prison riot or endanger prison personnel captured on film.

The ruling, expected to be appealed, stymied an attempt by station KQED to make California the first state to televise executions. KQED filed suit last year after prison officials said they would allow print reporters but not cameras in the viewing room for the execution of convicted double murderer Robert Alton Harris. The execution has been delayed by appeals.

Schnacke said it was reasonable to apply to executions the same rules that usually apply to court hearings — notebooks but no cameras allowed. "The press has a right of access to whatever the public has a right to," he said, "but no special right of access." Schnacke said prison officials "are the experts. Their reasonable concerns must be accommodated. They reasonably see risks in permitting cameras."

The San Quentin warden originally wavered on whether to allow reporters to take notes during an execution, first permitting the process and then announcing a ban on all media just before trial in an apparent attempt to strengthen the case against cameras. In ruling for print reporters, Schnacke said, "Whether the press has actual rights by reason of long continuous usage . . . may be questionable, but when there has been such a long custom and practice of accommodating the press . . . it is probably irrational, unreasonable and capricious to bar the press at this point." Reported in: *Washington Post*, June 8.

church and state

San Francisco, California

Religious invocations and benedictions at public high school graduation ceremonies violate the First Amendment's Establishment Clause, the California Supreme Court ruled May 6 in a flurry of opinions that revealed the divisiveness of the issue. There was no majority opinion, but five of the seven justices agreed that under current Establishment Clause cases government sponsorship of graduation prayers is unconstitutional.

Six of the justices agreed that the case was governed by the test of *Lemon* v. *Kurtzman* (1971): the challenged practice must have a secular purpose, must have a primary effect that neither advances nor inhibits religion, and must not foster excessive government entanglement with religion.

The lead opinion, endorsed by only three members of the court, said the use of prayers at graduation ceremonies fails both the "effect" and "entanglement" prongs of *Lemon*. For many people, the opinion noted, high school graduation is a momentous occasion, a critical rite of passage. Using prayers at the beginning or end of this ritual creates a strong appearance of government endorsement of religion over non-religion, of religions that recognize petitionary prayer over other forms of prayer, and of religions that believe prayer should be public instead of private. Moreover, excessive entanglement arises when educators select religious speakers and approve the content of public prayer.

Two justices concurred reluctantly in separate opinions, but urged the U.S. Supreme Court to reexamine the applicability of *Lemon* to the graduation prayer context when it hears arguments in *Lee* v. *Weisman*, which the high court agreed in March to hear next term.

One dissenting justice refused to apply *Lemon* in this context, opting instead to employ a 1983 high court ruling upholding use of prayer to open legislative sessions. The other dissenter argued that even under *Lemon*, not all high school graduation prayers would be unconstitutional. Reported in: *U.S. Law Week*, May 28.

Ottawa, Illinois

Ottawa, Illinois', Christmas season display in a public park, consisting of sixteen large paintings depicting events in the life of Jesus Christ that are erected by a private organization with an assist from the city, constitutes governmental endorsement of religion prohibited by the Establishment Clause, the U.S. Court of Appeals for the Seventh Circuit held May 28. The court said "'establishment' means much more than coercion — it means acts of the state that place the imprimatur of governmental approval upon a religious creed or belief." It found an unconstitutional purpose based in part on a city council resolution that used the word "endorse" in granting permission for the display. Moreover, the content of the paintings was found to be "undeniably religious." The court added that the religious character of the display was not neutralized by the addition of a 15-foot snowman and a "festival of lights." Reported in: *U.S. Law Week*, June 18.

obscenity

Winona, Minnesota

Ruling that Minnesota's obscenity law is unconstitutionally vague, a divided panel of the state Court of Appeals overturned a Winona bookstore manager's conviction for distributing obscene material. In a decision filed June 11, Judge R.A. Randall held that the obscenity statute — which requires a jury to determine in each case whether the material in question offends "community standards" — violates constitutional due process rights.

The court said the concept of a "community standard" for defining obscenity, endorsed by the U.S. Supreme Court, may make sense between states. But, the court said, a problem of constitutional rights arises when communities in the same state are given the right to set standards and are not required to define those standards.

Randall held that the statute, which essentially leaves the precise definition of obscenity to a continually changing "community standard," fails to provide sufficient warning to citizens who sell or exhibit potentially actionable material. Moreover, he argued, a group of jurors is not in a position to judge what most people in the community would find offensive. And if the community is to determine what is offensive, he continued, then the defendant is denied his constitutional right to confront witnesses against him unless the entire community is paraded through court.

"Community standard" is a "useless tool," Randall wrote. "Distributors of erotic materials never know what or who a local government will select for prosecution and can hardly guess at much less know with any degree of certainty, before trial, what subjective community standard this or that six- or twelve-person jury in this or that community will come up with.

"Everyone is entitled to their own opinion, but in a criminal prosecution, a defendant should not be exposed to the whimsy of private opinions unknown before the trial," Randall wrote. "Citizens should only be exposed to the deprivation of liberty and property based on a standard known to them before the alleged criminal act is committed." The case was reviewed by a three-judge panel. Judge Roland Amundson concurred and Judge Doris Huspeni concurred in part and dissented in part.

Since the panel threw out the statute on grounds of vagueness, the judges did not address at length the First Amendment and privacy issues raised by the appeal. Reported in: *Twin Cities Star Tribune*, June 11; *St. Paul Pioneer Press*, June 11.

newspaper

Providence, Rhode Island

The Rhode Island Supreme Court July 2 upheld a lower court ruling that a newspaper could publish a monthly list of people who had been divorced, rejecting arguments that it was an invasion of privacy. The *Newport Daily News* was sued by two women who said their privacy right outweighed the paper's desire to print the divorce listings.

The court found that the newspaper had compiled its list from public records, declaring, "It is clear the statutory right to privacy in Rhode Island does not extend to those records deemed public." Reported in: *New York Times*, July 3. □

Kreimer v. Morristown

On May 22, U.S. District Court Judge H. Lee Sarokin ruled that public libraries cannot bar homeless people because their presence, their staring or their hygiene annoys or offends other library patrons (see Newsletter, July 1991, p. 116). At the ALA Annual Conference in Atlanta, the Intellectual Freedom Committee reported to the ALA Executive Board about the case, including a request that ALA join the Joint Free Public Library of Morristown by submitting an amicus *brief in the event of an appeal. The committee concluded that ALA's intellectual freedom policies are central to the issues involved in the case.*

The committee concluded that Judge Sarokin's opinion is consistent with ALA intellectual freedom and access policies; supports the authority and responsibility of local libraries to adopt appropriate policies to regulate use of the library in a non-discriminatory manner; and contains an extremely useful affirmation of the First Amendment right to receive *information and the public library's role as a "living embodiment of the First Amendment." The committee concluded that the facts in the case do not support intervention on behalf of the Morristown library.*

In addition, the case was also considered by the Board of Trustees of the Freedom to Read Foundation, which authorized its Executive Committee to review briefs prepared in the event of an appeal, and to enter the case as an amicus *in support of the principles of access and First Amendment rights as articulated by Judge Sarokin.*

Because the First Amendment aspects of Judge Sarokin's ruling are extremely significant for libraries, particularly in view of other recent court rulings that threaten to erode these rights, we reprint below excerpts from Judge Sarokin's opinion.

A public library has enacted a regulation which is admittedly aimed at barring a particular homeless person from its premises because his presence and appearance are considered offensive to others. The danger in excluding anyone from a public building because their appearance or hygiene is obnoxious to others is self-evident. The danger becomes insidious if the conditions complained of are borne of poverty.

The public library is one of our great symbols of democracy. It is a living embodiment of the First Amendment because it includes voices of dissent. It tolerates that which is offensive. The library of today frequently provides not only access to books, newspapers, and magazines, but also to concerts, lectures, and exhibits. It is a source of fact and fiction.

One cannot dispute the right and obligation of the library trustees to assure that the library is used for the general purposes for which it is intended. Libraries cannot and should not be transformed into hotels or kitchens, even for the needy. The public has the right to designate which of its institutions shall be utilized for particular purposes.

However, in establishing regulations for use, the conditions imposed must be specific, their purposes necessary, and their effects neutral. Likewise, enforcement cannot be left to the whim or personal vagaries of the persons in charge.

No one can dispute that matters of personal appearance and hygiene can reach a point where they interfere with the enjoyment of the facility by others. But one person's hayfever is another person's ambrosia; jeans with holes represent inappropriate dress to some and high fashion to others. Thus, no matter how laudable and understandable the goals of the library may be, we cannot — we dare not — cross the threshold of barring persons from entering because of how they appear based upon the unfettered discretion of another.

Society has survived not banning books which it finds offensive from its libraries; it will survive not banning persons whom it likewise finds offensive from its libraries. The greatness of our country lies in tolerating speech with which we do not agree; that same toleration must extend to people, particularly where the cause of revulsion may be of our own making. If we wish to shield our eyes and noses from the homeless, we should revoke their condition, not their library cards. . . .

The First Amendment protects the right to express ideas and the right to receive ideas; it protects the right of the speaker and the listener, the writer and the reader. The right to receive ideas is a natural corollary to the right to speak. "The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read." *Griswold v. State of Connecticut* (1965), *citing Martin v. City of Struthers* (1943). . . . Accordingly, the library policy at issue in this case, which conditions access to public reading materials, necessarily falls within the purview of First Amendment jurisprudence.

In *Perry Education Assn. v. Perry Local Educators' Association* (1983), the Supreme Court developed a standard by which to examine regulations under the First Amendment. The Court delineated three types of fora: a traditional public forum, a designated or limited public forum, and a nonpublic forum. In the first two categories — "[i]n places which by long tradition or by government fiat have been devoted to assembly and debate" — the rights of the state "to limit expressive activity are sharply circumscribed." In both of these categories, the government may impose reasonable time, place, and manner restrictions which are content-neutral, are narrowly tailored to serve a *significant* government interest, and leave open ample alternative channels of communication. . . . The third category, nonpublic fora, are governed by a different standard: "In addition to time, place, and manner regulations, the state may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." . . .

A public library is, by definition, "public property which the State has opened for use by the public as a place for expressive activity" — in this case, the First Amendment activities of expressing and receiving written ideas. . . . The intended and actual use of a library is as a place for the communication of the written word. A public library is a designated public forum, and defendants have conceded as much.

Moreover, apart from their governmental designation as a public forum, public libraries have traditionally functioned as a public forum for the communication of written ideas. Thus, a public library is not only a designated public forum, but also a "quintessential," "traditional" public forum whose accessibility affects the bedrock of our democratic system. A place where ideas are communicated freely through the written word is as integral to a democracy and to First Amendment rights as an available public space where citizens can communicate their ideas through the spoken word.

When considered as either a designated or a traditional public forum, the same standard of review applies. Government restrictions on access to a designated or traditional public forum must reasonably serve a significant state interest, the restrictions must be narrowly tailored to serve that interest, and the government must leave open alternative channels of communication. Defendants' argument that the court should afford the policy a presumption of reasonableness and thus defer to the library Board is entirely inconsistent with the applicable law. . . .

The library policy in the instant case is not narrowly tailored to serve the stated significant government interest, nor does the policy leave open any alternative means of access to publicly provided reading materials for patrons who may be "denied the privilege of access to the library" under the policy.

Defendants assert that the library policy serves the significant government interest of fostering a quiet and orderly atmosphere in the library conducive to every patron's exercise of their constitutionally protected interest in receiving and reading written communications. . . . This stated purpose is indeed a significant and valid interest in a library, a quiet place for reading and contemplation. The Supreme Court has consistently recognized the necessity of regulations designed to secure a quiet and peaceful environment. . . .

However, the Court has also consistently held that government must limit time, place, and manner restrictions of a public forum to prohibitions of activity which actually and materially interferes with the peaceful and orderly management of the public space. . . . When subjected to heightened scrutiny, regulations not designed specifically to address disruptive activity are not "reasonable" time, place, and manner restrictions, since they are not responsive to the government's stated purpose of curtailing disruptions, nor are they "narrowly tailored" to serve that purpose. . . .

. . . [T]he library patron policy at issue in this case does not limit itself to prohibitions of actual library disturbance. According to paragraphs 5 and 9 of the policy, library patrons are excluded from the facility if their behavior "annoys" another person or if their "bodily hygiene is so offensive as to constitute a nuisance to other persons." The policy does not condition exclusion upon an actual or imminent disruption or disturbance as a result of such behavior or hygiene, and hence, the policy does not reasonably effectuate its stated goal of preserving the good order of the library.

According to paragraph 1 of the policy, patrons who sit quietly and peacefully in the library but who are not actively "using library materials shall be asked to leave the building." This restriction has no relation to the library's stated purpose of preserving the peace and quiet of the facility for the benefit of all patrons. Thus, the court concludes that paragraphs 1, 5, and 9 of the library policy are not reasonable time, place, or manner restrictions which serve the state's significant interest in maintaining the library atmosphere at a level conducive to all patrons' use of the facility. As such, these paragraphs violate the First Amendment of the United States Constitution.

In addition, the last two unnumbered paragraphs violate the First Amendment because they are not narrowly tailored to serve the stated government interest in maintaining a quiet and peaceful atmosphere. These paragraphs provide that any patron not abiding by the terms of the policy shall be asked to leave and may be permanently "denied the privilege of access to the library," save some undefined and undetailed "appeal" process to the library Board of Trustees. Denying a patron all access to library materials leaves no "alternative channels of communication" available to those without private means of access to the quantity and diversity of written communications contained in a library. Such a drastic exclusion forecloses all comparable access to these materials for most people, especially the poor and homeless who are without the funds to purchase even a single newspaper. Without any requirement of evidence or suggestion that the excluded patron will be disruptive on a later occasion, the final two, unnumbered paragraphs of the library policy allow the library to permanently exclude library patrons. . . .

In addition to failing on First Amendment time, place, and manner grounds, the library policy fails on overbreadth grounds as well. . . .

The Supreme Court has identified three reasons supporting the "basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined": 1) a vague law may "trap the innocent" by failing to provide fair warning such that a person of ordinary intelligence would have a reasonable opportunity to know what was prohibited; 2) a vague law without explicit standards allows for arbitrary and discriminatory enforcement by impermissibly delegating decisions on basic policy mat-

ters to government officials who resolve the matters on an *ad hoc* and subjective basis; and 3) a vague law which touches on First Amendment freedoms "chills" free expression and inhibits the exercise of First Amendment rights. . . .

. . . [T]he court concludes that paragraphs 1, 5, and 9 of the current library policy are unconstitutionally vague.

. . . [T]he First Amendment prohibits the government from imposing time, place, and manner restrictions which unreasonably condition access to a public forum. Additionally, the constitutional doctrine of overbreadth prohibits the government from instituting an enactment which penalizes and/or chills a substantial amount of constitutionally protected conduct. Moreover, the due process clause of the Fourteenth Amendment prohibits the government from imposing a vague standard of conduct because of the possibility that government officials can enforce uncertain standards in an arbitrary and discriminatory manner. The noted provisions of the library policy are unconstitutional for all of these reasons.

In addition, the Due Process clause and the Equal Protection clause of the Fourteenth Amendment, coupled with the First Amendment rights of free assembly and association, prohibit the government from impinging upon individual liberty in an arbitrary and discriminatory manner without cause, justification, or reason. This is a different type of due process violation from vagueness; it requires a constitutional standard of fairness, such that the government cannot "make a crime out of what under the Constitution cannot be a crime." It is beyond dispute that the government may not penalize or afford different, discriminatory treatment to a disfavored, disliked individual or class of individuals. . . .

. . . [D]efendants freely admit that paragraphs 1, 5, and 9 of the policy were designed with the explicit intention of restricting plaintiff's (and other homeless persons') access to the library. The state may not exclude individuals from this public forum based merely on the identity of the library patron; the library policy of excluding patrons that are "offensive" to others is a reader-based restriction, analogous to prohibited speaker-based restrictions. In this case, the restriction is not because of the reader's views, but because of the plaintiff's other personal attributes which the library staff finds "annoying." . . .

The library's effort via the patron policy to exclude patrons such as plaintiff, i.e., homeless persons who may potentially use the library as temporary shelter from the elements, is also incompatible with the equal protection clause. . . . At oral argument, counsel for the library defended the need to exclude the homeless from the library based on the library's fear of liability should a homeless persons "molest" a child while wandering through the stacks. Like the legislature in *Edwards*, the library suffers from the same discriminatory assumption that poverty is a proxy for "moral pestilence." Thus, the library seeks to exclude patrons based on generalized, unsubstantiated prejudices and fears rather than on its legitimate interest in quelling actual disturbances. . . .

. . . The same can be said of the library policy, where the library's avowed practice is to eject patrons who do not have regular access to shower and laundry facilities. The "hygiene" test is not only irrelevant to serving library purposes; it conditions access to a public forum for First Amendment activity on what is at bottom an irrational and unreasonable wealth classification with a disparate impact on the poor. . . .

For the foregoing reasons, the court concludes that paragraphs 1, 5, 9, and the last two unnumbered paragraphs of the Morristown Library "Patron Policy" violate the First Amendment to the United States Constitution; these provisions are not narrowly tailored or reasonable time, place, and manner regulations which serve a significant government interest. In addition, paragraphs 1 and 5 of the library policy are unconstitutionally overboard; paragraphs 1, 5, and 9 are unconstitutionally vague; and paragraphs 1, 5, and 9 violate the equal protection and due process clauses of the Fourteenth Amendment in conjunction with the free association guarantee of the First Amendment.

The court also concludes that paragraphs 1, 5, 9, and the last two unnumbered paragraphs of the policy violate the New Jersey Constitution. □

(Justice Marshall . . . from page 164)

appointment was a controversial one and when, several weeks later, both the NAACP and the AFL-CIO announced their opposition, it seemed possible that the Senate could be in for another bruising battle like the one that resulted in the defeat of Robert Bork five years ago.

"It's going to be a very different court" without Marshall, warned University of Texas assistant law professor Jordan Steiker, who clerked for Marshall last year. "It's going to make a big difference not to have someone circulate memos to other justices pointing out issues that should be looked at," such as the importance of indigent litigants' access to the courts. Marshall's departure, added Harvard Law professor Laurence H. Tribe, means "there is no one there who has the slightest idea of what it's like to be seriously oppressed, segregated, the victim of relentless prejudice and who has not led a life of privilege."

In 1973, Marshall spoke with a real-world perspective when he dissented from a ruling that upheld a $50 filing fee in bankruptcy cases. The majority opinion said the man could have simply saved the money gradually. "It may be easy for some people to think that weekly savings of less than $2

are no burden," Marshall responded. "But no one who has had close contact with poor people can fail to understand how close to the margin of survival many of them are. . . . The desperately poor almost never go to see a movie, which the majority seems to believe is an almost weekly activity. They have more important things to with what little money they have — like attempting to provide some comforts for a gravely ill child . . . it is disgraceful for an interpretation of the Constitution to be premised upon unfounded assumptions about how people live."

Unlike virtually every justice before him, Justice Marshall joined the Supreme Court after he already had carved out a significant niche in the nation's constitutional history. Some court observers believe that his years from 1940 to 1961 as legal director of the NAACP — and especially his winning argument before the high court in *Brown* v. *Board of Education* — were as significant as anything he did later.

Marshall was not a great expounder of legal doctrine on the court, and he wrote few famous opinions there. The lead role in that area more often was taken by a more senior justice, William J. Brennan Jr., who retired last year. But Marshall's dissents, particularly in death penalty and civil rights cases, thundered with indignation. For anyone challenging a restriction of free speech, a questionable police search or interrogation, a weakening of an environmental regulation, a government expenditure benefiting religion or an act of discrimination, Marshall was a valued and unwavering supporter.

Thurgood Marshall was born in Baltimore on July 2, 1908, the great-grandson of a slave brought to America from the Congo. His father was a steward at an exclusive whites-only club on Gibson Island in the Chesapeake Bay. In high school he worked as a delivery boy and at Lincoln University waited on tables to help pay the tuition.

It was in the 1940s, before there were any laws or court precedents banning discrimination, that Marshall became a familiar figure in the South, traveling from town to town, 50,000 miles a year, in a painfully slow case-by-case struggle against racial restrictions on voting, jury service, housing, public accommodations and the rest of southern apartheid. President John F. Kennedy nominated Marshall to the U.S. Court of Appeals, only the second black nominated to an appeals court in U.S. history. He served on the appeals court until 1965, when President Johnson appointed him solicitor general of the United States, the government's chief advocate before the Supreme Court. In 1967, when Justice Tom Clark retired from the court after his son, Ramsey Clark, became attorney general of the United States, Johnson appointed Marshall to the Supreme Court.

"I figured he'd be a great example to younger kids," Johnson has been quoted as saying of the appointment. "There was probably not a Negro in America who did not know about Thurgood's appointment. All over America that day Negro parents looked at their children a little differently, thousands of mothers looked across the breakfast table and said, 'Now maybe this will happen to my child someday.'"

Marshall's service on the court ended with a bitter blast at what he viewed as an activist conservative majority poised to dismantle "scores" of precedents and to abandon the court's historical role "as a protector of the powerless." In dissenting from a decision that reversed two recent high court decisions that had banned so-called "victim impact" statements in criminal trials, Marshall wrote: "Power, not reason, is the new currency of this court's decision-making. . . . . Tomorrow's victims may be minorities, women, or the indigent."

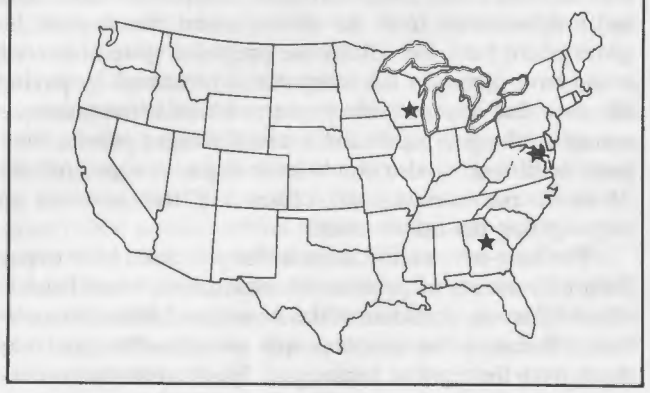
"Renouncing this court's historical commitment to a conception of 'the judiciary as a source of impersonal and reasoned judgments'," Marshall continued, "the majority declares itself free to discard any principle of constitutional liberty which was recognized or reaffirmed over the dissenting votes of four justices and with which five or more justices now disagree. The implications of this radical new exception to the doctrine of *stare decisis* are staggering. The majority today sends a clear signal that scores of established constitutional liberties are now ripe for reconsideration, thereby inviting the very type of open defiance of our precedents that the majority rewards . . ." Reported in: *Washington Post*, June 28, 29, 30. □

(OIF testimony . . . from page 148)

The American Library Association and several other organizations were *amici curiae* before the United States Supreme Court in *Rust* v. *Sullivan*. Their brief pointed out, among other things, that "libraries *per se* do not express opinions, but they do, without favoritism, make available books, magazines and other materials that express opinions, often in very strong terms. Thus, a library would not advocate abortion. But if asked by a pregnant woman wanting information about abortion, about the options available to her, or about places where she might obtain an abortion, a library would provide her the materials she seeks. Such materials might well 'counsel' or even advocate abortion in particular circumstances (or counsel against or discourage abortion)." The brief goes on to point out that "[I]f the secretary [of HHS] may constitutionally prohibit doctors and other health professionals in subsidized family planning clinics from providing abortion counseling, abortion referrals, and all information about abortion — despite the tradition in these professionals of unfettered expression of professional judgment in the patient's best interest — then government may also prohibit libraries and other institutions

(continued on page 175)

is it legal?



child pornography

Washington, D.C.

On July 1, the Justice Department issued proposed regulations to control the spread of child pornography, but the action brought immediate criticism and the promise of renewed litigation from arts, library, and publishing groups. The rules would require book and magazine publishers, movie, video and TV producers, and art photographers to record names, addresses, and birth dates of models and actors appearing in sexually explicit works, and maintain files listing every stage or professional name ever used by the performers.

Any book or magazine containing explicit work — even if the work is not legally judged obscene — would have to carry a notice indicating the location of the background records, according to the proposed rules. Videos and movies would have to display the information in their credits, and individual art photographs might be required to carry such labels, as well, according to the proposal.

The proposed regulations had been awaited since a February agreement between the Justice Department and groups led by the American Library Association that had filed suit in *ALA* v. *Thornburgh*, charging a new law would impose curbs on freedom of speech and artistic expression. Under the February agreement, the government said it would not try to enforce the new law until the Justice Department completed a complex rule-making process. Publication of the proposed regulations in the *Federal Register* July 1 initiated the rule-making, and plaintiffs in the suit said they would challenge them.

Charlotte Murphy, executive director of the National Association of Artists Organizations, said the rules suggest the Justice Department might be attempting to expand on the recent U.S. Supreme Court ruling in *Rust* v. *Sullivan* that permits the government to bar federally funded family planning agencies from discussing abortion with clients. "It is clear that the government is growing increasingly intolerant of diverse points of view and expression," Murphy said.

Under the proposed rules, publishers, film and video producers, and photographers would have to keep photocopies of passports, drivers' licenses and other identification documents produced by actors and models. Failure to keep the records or to make them available to federal law enforcement agencies would be a felony punishable by a two-year prison term. Reported in: *Los Angeles Times*, July 2.

schools

East Troy, Wisconsin

In what might appear to be a case of role-reversal, the American Civil Liberties Union has demanded the removal of a book from public schools. The conservative sex education curriculum series *Sex Respect*, the ACLU's Wisconsin affiliate charges, stereotypes boys as "sexual aggressors" and girls as "virginity protectors," mischaracterizes AIDS as nature's way of making "a statement on sexual behavior," frowns on birth control and presents two-parent heterosexual couples as "the sole model of a healthy, 'real' family."

All of that, argues the ACLU on behalf of parents in the East Troy School District who object to the curriculum, amounts to discrimination based on gender, marital status, sexual orientation and religion — all barred under Wisconsin law.

Sex Respect is a series of workbooks espousing "traditional values" and such unique concepts as "secondary virginity," which calls for sexually active teens to abstain from future premarital relations and regain their virgin status. The curriculum, in use in 1,600 school districts nationwide, was developed six years ago (with federal grant money) by Project Respect. Its director, Kathleen Sullivan, accused the ACLU of "book banning" and pushing a "hidden agenda" that condones teen sex. *Sex Respect* author Coleen Kelly Mast said the ACLU is "violating its own most cherished principles" by asking the state to suppress the curriculum because "they disapprove of its content."

"It is not illegal for public schools to teach from a certain point of view," commented Professor Michael McConnell of the University of Chicago law school. The *Sex Respect* dispute, he said, "raises a philosophical and educational issue — not a civil liberties issue." If conservative parents launched an appeal against a liberal curriculum, he asked, "Who would be the first to complain?"

Although schools generally enjoy great latitude in making choices about course materials, there are limits on required materials, especially if these can be shown clearly to

go beyond education to indoctrination — a school district cannot, for example, compel the teaching of creationism — or if they violate anti-discrimination protections. Wisconsin law includes a broad definition of discrimination. Reported in: *Newsweek*, June 17.

access to information

Washington, D.C.

Access to government documents is an issue that draws a specialized crowd on Capitol Hill. For a decade, opposing camps of librarians, academics and information companies have debated philosophy while trying to influence the distribution of thousands of computer files and databases the federal government creates every year. But this year the issue was swept up into the bigger issue of taxes and the deficit. As part of Congress's never-ending search for revenue, the House Merchant Marine and Fisheries Committee in June unanimously approved a new $21-an-hour charge for use of a new maritime computer database of information currently available, only on paper, for free.

The fees for using the Automated Tariff Filing and Information System (ATFI), a collection of shipping rates and data essential to U.S. commercial shippers, are designed to replace an estimated $718 million the government expects would be collected over the next five years from taxes on pleasure boats. The pleasure boat fee, enacted last year at a rate of $25 to $100 per boat, was widely unpopular. Under the rules of last year's budget agreement, no revenue source can be canceled without another created in its place. Thus, the proposed new charge for information.

In response, industry and public interest groups set aside some of their traditional differences to fight what they say is a new government royalty that will restrict access to public information. The American Library Association sees free access to government-produced information as a basic democratic right — the data citizens need to participate in their nation's decisions. The Information Industry Association sees it as the raw material for the for-profit information industry. But both are afraid the committee proposal will create a precedent in using provision of public information as a source of government revenue.

"If congressional committees are searching for funds to supplant or replace pet peeves that they have, then information is going to be a really easy target," said Ronald L. Plesser, who represents the Information Industry Association. "If this is successful, it will fundamentally change the nature of government information." User fees — charges that theoretically cover government expenses — are commonly attached to documents or databases. But Plesser and others object to the 35 cents per minute of computer time the committee proposes to charge, because charges would not be limited to the primary user of the information.

Shippers currently receive such information by buying it from the information industry, which takes the on-paper data provided free by the government, processes it and distributes it in database form. The information companies also collect tariff information from the shippers and file it with the government for a fee. Under the proposed system, anyone could have access to the computerized material by paying the fee. But any secondary user of that information — someone who gets access to the data through a private company or library — also would have to pay the government 35 cents per minute, and critics say that amounts to copyrighting the information.

"The long-term ramification is that you could have to pay for a wide variety of government information," said Patricia Glass Schuman, president of the American Library Association. "It means that unless people can afford to pay, they don't have the right to know. . . . We believe that is contrary to the basic democratic principle."

The committee sees the ATFI charges as similar to fees charged for access to information like the census. The bill, proposed by Rep. Robert W. Davis (R-MI), opens access to any computer owner, and the database will still be available free, on paper, in the Federal Maritime Commission office. "You usually think of copyrighted information as [what] a person gets paid for . . . but the copyright also gives you control over who can print it and who they can sell it to," a committee staff member explained. "None of that transfers with this (bill). This specifically says that anyone can get this without limitation," as long as the government collects its fee.

The American Library Association has led a coalition trying to give citizens greater access to all government computer documents, and Schuman said she supports the portion of the Davis bill that allows open access to the database. Reported in: *Washington Post*, June 25.

sex research

Washington, D.C.

In the face of conservative political pressure, Health and Human Services Secretary Louis Sullivan on July 23 dropped an $18 million study of teenage sexual practices that a senior subordinate touted only weeks before as evidence the Bush administration would not be cowed by such attacks.

"He doesn't think that this is the correct survey for the information," said a Sullivan representative. "He is concerned it would be counterproductive to his commitment to better communicate the message against casual sex."

Sullivan acted only two days before the House of Representatives was to take up conservative proposals to preserve a three-year-old ban on fetal tissue research and add a second on federal funding for studies of human sexual behavior. Several days earlier, the *Washington Times*, a conservative newspaper owned by the Rev. Sun Myung Moon's Unifica-

tion Church, published an article outlining criticism of the survey from conservative groups such as Concerned Women for America and Rev. Pat Robertson's Christian Coalition. Rep. William E. Dannemeyer (R-CA), a prominent conservative opponent of such research, had also announced that he would seek to block funding for the study.

Critics immediately attacked the secretary's move as capitulation. "He's letting right-wing extremists overwhelm public health considerations," said Rep. Henry A. Waxman (D-CA), who chairs the House subcommittee on health and the environment. Critics said Sullivan's decision could undermine recent administration efforts to reassure the scientific community that federal research will not be politicized.

In an interview published shortly before the decision, Bernardine Healy, the new director of the National Institutes of Health, the agency that underwrites most biomedical research in this country, singled out approval of the teenage sex survey as evidence that her agency would not bow to conservative pressure.

"That's a wonderful study," Healy said of the now-abandoned survey. "I knew that it might be controversial and I reviewed it personally. I read the whole thing myself and I think it's an excellent study."

The five-year survey, to be directed by researchers at the University of North Carolina, would have questioned 24,000 adolescents in grades 7 through 11 about sexual practices that raise risks of early pregnancy and sexually transmitted diseases. The administration scuttled a similar study of adult sexual practices three years ago, and Congress subsequently deleted funding for it. Reported in: *Boston Globe*, July 24.

arts funding

Atlanta, Georgia

At their annual meeting, delegates to the Southern Baptist Convention passed a resolution June 5 deploring President Bush's handling of the National Endowment for the Arts (NEA). In a strongly worded statement, the Baptists called on Bush to fire NEA chair John Frohnmayer and replace him with someone "who will stop funding obscene, offensive, morally repugnant and sacrilegious 'art.'" The convention urged the president and Congress to set standards for art, or cease funding the NEA.

The resolution illustrated that the heated controversy over government arts funding has not cooled. In a speech to the annual conference of the American Association of Museums, John Brademas, former representative from Indiana and outgoing president of New York University, warned that the dispute "has not run its course." In the 1960s, Brademas introduced legislation that led to the creation of the NEA. Last year he served as co-chair of an independent commission that studied NEA's grants process.

Although restrictive language has been dropped regarding NEA grants to possibly "obscene" projects, Brademas urged caution: "It seems clear to me that the religious and political right, having achieved significant change in the legislation governing the NEA, continues to see the issue of censorship of art as a political winner." Reported in: *Houston Chronicle*, June 6; *Rocky Mountain News*, May 21. □

(OIF testimony . . . from page 172)

dependent upon public funding from making that same information available in material maintained on library shelves."

This concern is not far-fetched. In fact, while the majority decision in *Rust* specifically exempted universities from ideologically based restrictions attached to federal funding, this was the *only* concession to the fundamental First Amendment concerns raised by the case. Furthermore, there are reports that the Office of Management and Budget, along with other administration officials, may be considering advising federal agencies that the rule in *Rust* could apply broadly, if not universally, to federally funded programs, so as to permit conditions imposing viewpoint discrimination in the administration of those programs.

Likewise, in a case pending before the U. S. Court of Appeals for the Ninth Circuit, called *Bullfrog Films* v. *Wick*, a challenge to regulations issued by the U. S. Information Agency regarding the certification of films as educational for export purposes, the United States government has sent a supplemental letter contending that the *Rust* decision permits the government to attach ideological strings to the granting of a certificate attesting to the educational value of films.

Libraries have been the victims of massive funding cuts this year, and are well aware that the *Rust* decision could provide inspiration to state and local governments nationwide to attach ideological limitations to their funding. Such an action would destroy traditional public library service and, thereby, the public's opportunity to have freely available and accessible ideas and information from all points of view. How then could the public enlighten itself on the issues and problems confronting this nation?

Another gravely disturbing feature of the *Rust* decision is the Supreme Court's seemingly cavalier attitude toward the First Amendment rights of poor people to receive information. Justice Rehnquist's majority opinion states that indigent Title X clients "are in no worse position than if Congress had never enacted Title X. 'The financial constraints that

restrict an indigent woman's ability to enjoy the full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortion, but rather of her indigency.'" To librarians, this is a truly astonishing statement, for it violates both the letter and the spirit of Article V of the *Library Bill of Rights*. That Article states, "A person's right to use the library should not be denied or abridged because of origin, age, background or views." Librarians construe "background" to encompass economic status as an invalid basis for denying information services. Nevertheless, the United States Supreme Court is on record as saying that when the federal government *does* decide to provide funds, it would be permissible for it to do so in a discriminatory manner.

When viewed in the practical terms of library operations, the threat of such restrictions becomes even more serious. In the Office for Intellectual Freedom, we daily receive calls from librarians who are facing challenges to particular library resources by would-be censors intent on preventing others from having access to such resources. The hundreds and hundreds of such challenges run the gamut of concerns: *The Color Purple* (Alice Walker) is challenged because it contains explicit sexual images; *Of Mice and Men* (John Steinbeck) is challenged because of its "vulgar" and "offensive" language; *Huckleberry Finn* (Mark Twain) is challenged because it is "racist;" Stephen King's books are challenged because of the "explicit" language King uses; *Witches' Children* (Patricia C. Clapp) is challenged because it encourages students "to dabble with the occult;" *Catcher in the Rye* (J. D. Salinger) because of "the sexual references" and "the profanity;" *My Friend Flicka* (Mary O'Hara) because it uses the words "bitch" (to refer to a female dog) and "damn." In many of these kinds of challenges, librarians report to me and my staff a perceived threat to their funding if the challenged materials are not removed.

Recently, there have been rumors — and I stress that at this point they are just that — unverified rumors — of librarians being pressured, because of the *Rust* decision, to remove from library shelves, *all* materials that mention abortion. If this should ever come to pass, it would only be a matter of time before libraries are pressured to remove and, of course, not to acquire, material containing that day's unspeakable idea. The crack in the dike would rapidly widen to allow the torrent of hates to sweep away ideas and points of view with which the most powerful or the most vocal disagree.

In this 200th anniversary year of the adoption of the Bill of Rights, it is incumbent on all of us to support the right, not only to express ideas and opinions, but also to *receive* those ideas. In our constitutional republic — a government of the people, by the people and for the people — it is for each person to decide, individually, what material they choose to read, view, or hear. But choices can be made only if the broad spectrum is available. It is totally inappropriate for a free people's government to dictate officially approve points of view. But this is what the government has done through its regulations under Title X, which now have been sanctioned by the U.S. Supreme Court in *Rust* v. *Sullivan*.

Taken to its logical extreme, the rule announced in *Rust* — that the government may attach viewpoint-based, discriminatory, ideological restrictions to public funding — would mean libraries could only keep on their shelves or acquire, books and other library materials which express a governmentally approved point of view. Those who could not afford to *buy* books and other information would not have access to the broad spectrum of thought and ideas. Their participation in the constitutional republic would be limited. Freedom could be enjoyed only by those who could afford to purchase it. But democratic government rejects the notion that the people's elected representatives may turn against them and tell them what they may or may not think or that they are not allowed to disagree with the governmentally sanctioned point of view. The elected and appointed officials of the United States government serve the people of the United States, and together the people and their government are subject to the one set of values and principles we all share — the Constitution and the Bill of Rights. It is crucial to the survival of our democracy that the people's government fund public libraries and other sources of intellectual, cultural and artistic enlightenment, and refrain from viewpoint based discrimination or restrictions on these activities. Tolerance and diversity are the great strengths of our nation. They remain strengths only if the people use their First Amendment rights to speak out on all issues of critical public concern, including abortion.

In closing, I would like to reiterate that the decision in *Rust* v. *Sullivan* has a chilling effect on libraries. For the first time, a U. S. Supreme Court decision imposes content-based restrictions on speech funded by public monies, and could have a severe, deleterious effect on libraries as they strive to fulfill their basic First Amendment function of providing all points of view on the questions and issues facing the nation. At the recent ALA Annual Conference in Atlanta at the end of June, the grave concerns raised by the *Rust* decision led the ALA's governing Council to adopt a "Resolution Supporting Access To Information On Family Planning And Abortion" (see page 185). In its resolution, the ALA reaffirmed "the responsibility of librarians to provide access to all information relating to family planning, abortion, and other issues regardless of viewpoint. . . ."

Thank you for this opportunity to present our concerns. □

success stories

libraries

Fayetteville, Arkansas

A controversial book about homosexuality will remain on the shelf of the Rogers-Hough Memorial Library. The library board voted 5-1, with one abstention, June 18 to retain *Intimacy Between Men*, by John Driggs and Stephen Finn. "The book has passed the book selection process," announced board president Al Goodridge. "The book is in the possession of the library and will remain on the shelf for reading."

"We're headed down the road to another San Francisco community," responded Hank Wehmeyer, a Rogers resident who filed a formal complaint with the library asking that the book be removed after reading of its purchase in a local newspaper. "If Rogers wants sodomy, sodomy we'll have."

All seven board members said they read *Intimacy Between Men* after Wehmeyer and a Rogers couple, Ken and Doris Peery, complained about it. In a letter to the board, Wehmeyer said that his objection was "of the strongest nature possible" and that he didn't want the library buying any more books "that have a subject like it." The Peerys told the board that the book promoted "a practical path" to intimate homosexuality. They asked that at a minimum its use be limited to academic research. Removing the book entirely they termed "even better."

But head librarian Alice Medin told the board the book met all criteria in the library's selection policy. It received good reviews, had been requested by patrons, and was in use in sociology classes at Northwest Arkansas Community College. She said the book was not a "how-to" manual, but an effort to help cope with problems associated with gay relationships. "America is about freedom. Ideas can be dangerous but the suppression of ideas is fatal to a democratic society," Medin told the board. "Freedom itself is a dangerous way of life, but it is ours."

"Free people must know that the truth won't hurt them," echoed board chair Goodridge in voting to retain the book.

The decision to keep *Intimacy Between Men* culminated a month-long controversy that received considerable publicity. Previously opponents and defenders of the book squared off in a public debate attended by more than fifty people. The decision to keep the book did not entirely end the dispute, however. Shortly after the vote, board member R.A. "Porky" Wenzel, who abstained, said he would ask the board in July to designate a section in the library to be off-limits to children. In addition, shortly after the vote, the library received another request to ban a book, *Lightning Bug*, by Donald Harrington, the fifth book to be challenged at the library in the last 3½ years (see page 151). All previous challenges were unsuccessful.

Wenzel said he would not discuss the details of his proposal until after a July 16 library construction bond vote, which Wehmeyer and some other opponents of *Intimacy Between Men* vowed to defeat. He noted, however, that "as it is now, anybody can check out any book in the library. The ongoing controversy has disturbed a large number of patrons who will not really want to prohibit the shelving of some objectionable books." Wenzel said he did not find *Intimacy Between Men* dangerous for adults and teenagers, "but I'm not sure I'd want my 12-year-old boy to read it if I had one."

Librarian Medin said that restricting some materials to certain age groups "is very much against the *Library Bill of Rights*," which states that "a person's right to use a library should not be denied or abridged because of origin, age, background or views."

"It's the parent's responsibility to monitor their children's reading," Medin said. "Libraries don't have the authority to designate what children can or can't read. The library is my life, I try to live by what I have been taught to do as a librarian."

Wenzel called her attitude "atrocious." At the July meeting, he proposed that the contents of the restricted shelf be determined by three board members and the head librarian. But Goodridge called the proposal a rash move and expressed doubt that it enjoyed much support. He suggested instead that a committee be established to formally examine the idea. Reported in: *Arkansas Democrat*, May 16, 18, 22, June 19, 20; *Arkansas Gazette*, May 16, 22, 23, June 19, 21; *Bentonville Daily Record*, May 16, 22; *Northwest Arkansas Morning News*, May 15, 22, June 19, 21, 24, July 24.

Boulder, Colorado

The Hardy Boys and Nancy Drew are still on the case, and now they're back on the shelves. Stories featuring the

young detectives will be available at the Boulder Public Library, the library commission decided July 10. The decision came two months after children's librarian Judith Volc described the books, written in the 1920s and '30s, as sexist, racist and a waste of money.

"I'm not trying to decide if kids should read them," Volc said. "But given the limited budget and space we have, it's a shame to buy these instead of what are universally deemed better books for which we get more requests."

The books became a hot issue in May when a patron complained that the library did not carry Nancy Drew, the Hardy Boys, or the Bobbsey Twins. Since then, several Boulder residents voiced lively views on the matter to the library administration and reporters, leading to widespread media coverage of the issue, including erroneous reports that the books had been banned.

But those who claimed censorship needn't have worried. Library director Marcelee Gralapp and Boulder Library Commission members said the books were always available through inter-library loan. But in July the officials decided to obtain a representative collection of the titles.

"Some people said this was censorship, and that's wrong. We just never carried these books before," said commissioner Jane Butcher. "But if the public wants these books available, as a public library, we should have them. I think the Hardy Boys series does provide, at some level, some interest to kids. Anything that will get kids to read is good, though I tend to agree with Judy that they're not good literature." Reported in: *Rocky Mountain News*, July 12; *Denver Post*, July 12.

Howard County, Maryland

Halloween ABC, a book of poetry by Eve Merriam, and *Ida and the Wool Smugglers*, a picture book by Sue Ann Alderson and Ann Blades, two books that parents had asked Howard County to remove from school libraries, will remain on the shelves, a school official decided June 5. Joan Palmer, associate superintendent for curriculum, upheld the decisions of a review committee of parents, teachers, administrators, and students.

The committee voted 7-4 to retain *Halloween ABC* and unanimously backed *Ida and the Wool Smugglers*. A parent had complained about Merriam's poetry, especially the poems "Demon" and "Icicle." Those who opposed the book said, "There should be an effort to tone down Halloween and there should not be books about it in the schools," said a district representative.

The objection to *Ida and the Wool Smugglers* was that the mother in the picture book was neglectful because she sent her daughter to the neighbors when she knew the smugglers were in the vicinity. But the committee said that the book was a "historical representation of nineteenth century rural Canada and it was normal for the child to take a long walk under the circumstances.

The county school system reviewed eight books in the 1990-91 school year, the largest number of protested library books in recent years. One of the eight, *Curses, Hexes and Spells*, by Daniel Cohen, was removed from elementary school libraries but kept in middle and high school libraries. Reported in: *Baltimore Sun*, June 6.

Wells River, Vermont

The Blue Mountain School Board voted in May against a motion to place a contested library book on a special teacher reference shelf. The book, *What is a Girl? What is a Boy?*, will remain on the regular shelves in the district library and available to all students. The library serves students in grades K-12. The book is aimed at preschool and kindergarten-aged children.

The board voted 3-3 on the motion, with chair Michael Cassidy casting the deciding "no" vote. Cassidy cited his agreement with the school library policy of free access to all library materials for all students. Reported in: *Bradford Journal-Opinion*, May 22.

Lynchburg, Virginia

Despite a grandmother's objections, the Lynchburg School Board decided May 21 that a critically acclaimed novel for teenagers belongs on middle school library shelves. Ruth Coleman filed a request in January to have *Holding Me Here*, by Pam Conrad, removed from the Dunbar Middle School library because the book contains "cursing and profane language and using God's name" in a slanderous manner. Coleman asked the school to withdraw the book, saying, "If you condone it in the school library, you are telling our children it is OK language to use anywhere."

Holding Me Here is about a teenager who is curious about a woman who moves into her house as a boarder. Her snooping reveals a secret about the woman — that she abandoned her children to get away from an abusive husband. Despite the adult subject matter, there are no sexual or violent themes in the book.

A committee of administrators, parents, and school personnel reviewed the book and advised its retention. "Although it may offend some readers," the committee concluded, "the language is used by the author to portray realistically the emotions of the characters and to show how much is wrong in the lives of these people."

Coleman appealed to the school board, which voted without debate to uphold the committee's recommendation. Reported in: *Lynchburg News and Daily Advance*, May 22.

schools

Campbell, California

The *Impressions* textbook series will remain in Campbell Union School District classrooms, as opponents of the books exhausted a final appeal to the board of trustees in June. A

group of more than twenty parents filed requests last December to have the books banned, filing 139 complaints related to more than 75 stories and poems. Following district policy, a panel of school officials and community members reviewed the books and came out in strong support of the series. The parents then appealed to the board.

Following a month-long review of the panel's report by trustees and district administrators, the board voted unanimously to retain the book as a supplement to the core literature program in kindergarten through fourth grades.

The controversial textbook series has been praised by educators for getting students interested in reading by combining classic and contemporary children's literature in brightly colored books without "dumbing down" the material. The books have been challenged, however, across California and the nation. Opponents say the series is too morbid and violent, encourages witchcraft and disrespect for parents and does not include enough stories about Americans. Reported in: *San Jose Mercury-News*, June 26.

Grove, Oklahoma

A review committee voted 5-0 to retain a sex education reference book that some parents and a Tulsa law firm objected to. Pam Sitton charged that the book, *Finding My Way*, is "too graphic for presentation in the classroom." Another parent and the law firm wrote to Grove High School citing a section about masochism in the book and reminding elected school officials that they can be replaced.

Librarian Jane Ann Duffield said the book is used only as a reference source and not as a textbook. She said students in an 11th and 12th grade home economics class, which includes a unit on family living, used it last year to discuss teen pregnancy. She said "it amazed me" that anyone complained about the book in the era of AIDS and other sexually transmitted diseases.

Duffield was a member of the committee that voted to retain the book. The committee presented a report to the Grove school board, which accepted the recommendation. Reported in: *Tulsa Tribune*, July 3.

Newport, Oregon

The Lincoln County school board voted May 28 to defeat efforts by some parents to remove the controversial *Impressions* reading series from county schools. The unanimous vote upheld Superintendent Cindi Seidel's earlier decision to continue use of the series in the language arts curriculum. The vote followed a marathon meeting that attracted more than two hundred people.

More than fifty people testified during the meeting, about half contending that many of the stories in the controversial series contain excessive violence and promote witchcraft and satanism. The other half defended the series, calling it "wonderfully rich" and "thought-provoking."

"I admit that there are some things in the series that are in poor taste that I don't like," said board member David Dundson. "But I do not believe that the Lincoln County school district is promoting satanism as a religion."

The board's action was the last step in an appeal process initiated by parents Julia Bickel and Pamela Powers. In February, the district's controversial issues committee rejected their request to discontinue use of the series. Reported in: *Corvallis Gazette-Times*, May 29.

art

Watsonville, California

The Watsonville City Council decided May 14 to continue a controversial art exhibit at City Hall, but also asked that a committee review where and how long art exhibits should be displayed.

"The council more or less decided they would allow art to continue to be displayed and they recognize they cannot control the content of the art unless it's obscene," said City Manager Steve Salomon.

A petition with more than twenty signatures from City Hall employees was presented to Salomon last week protesting a City Hall exhibit called "Espiritu de El Salvador — The Spirit of El Salvador." The exhibit, which featured eighteen color prints depicting suffering in the Central American country, included three pieces that seemed to have anti-American messages. In that category was a painting by David Bradford depicting a devil-like Miss Liberty holding two dead babies.

Artists from San Francisco, Santa Cruz and Watsonville spoke to the council and explained that Latino art is often political. Jorge Chino, publisher of the bilingual monthly *El Andar* and organizer of the exhibit, said the protest was essentially driven by city employees who feel threatened by Watsonville's large and growing Latino population. "The City Council was very supportive. They were sensitive toward Latinos and Latino culture," Chino said. "They perceive it as a threat."

Salomon said the council made a conscious decision to stand by its art exhibits even if some people take offense. "There will be art displayed over time that will probably please a great number of people in the community and offend a great number of people in the community at various times," he said.

The controversy over the exhibit followed a brouhaha at the County Building at the beginning of the month in which four pieces of art were pulled from public display after being deemed inappropriate because of sexual content. Reported in: *Santa Cruz Sentinel*, May 16.

Washington, D.C.

The Smithsonian Institution's National Museum of American Art restored a 1964 work by Sol LeWitt to a photography exhibit after Director Elizabeth Broun reversed her decision to remove the piece because viewing it was "degrading."

Broun's initial decision prompted the show's organizers at the Addison Gallery in Andover, Massachusetts, to accuse her of censoring their exhibit, "Eadweard Muybridge and Contemporary American Photography." Addison Gallery Director Jock Reynolds had asked Broun to close the show if she would not return the work. Twenty of the thirty-one living artists whose works were included in the exhibit also said they would remove their works if the LeWitt piece was not restored.

The work in question, "Muybridge I," is an oblong black box with ten tiny apertures through which the viewer glimpses an advancing nude female torso. The focus shifts, centering at one point on the pubic region and culminating on the naval. Broun said she found viewing the work "an embarrassing or humiliating experience" similar to watching a peep show. Broun framed her objections to the LeWitt work in feminist terms. "It's not a question of censorship. It's really a question of who controls the way a work will be seen in the museum," she said.

Originally the show had been too large for the space, and museum staff negotiated with the Addison Gallery to remove 38 pieces before the exhibit was shipped to Washington. Another 14 works were removed for space reasons after the exhibit arrived. In a July 8 letter to Reynolds, Broun said the LeWitt piece "was removed not only because of its size but because I found the experience of looking at it degrading and offensive."

While Broun maintained that she was not censoring the exhibit, she acknowledged that her reconsideration was influenced by concern that her actions might be so perceived. "One thing I did become aware of is [that] there is a sense that the art world is still very bruised and in a fragile state, and it would not be good for any of us to go through a public censorship battle."

Broun said she hoped the incident would prompt discussion of several issues. "What standards should curators use when they make judgments about works to be included in exhibitions?," she asked. "What methods are to be used to assess the contemporary associations of an artwork, since no work is frozen in time at the moment of creation?" She said she tries to "honor the curatorial integrity of exhibitions," but said curators and museum directors "constantly make judgments about what is appropriate" in an exhibit. In this case, she said, her concerns "focused on how the work will function within this show. If that hasn't been understood, I want to make it clear now."

While he expressed "delight" at her reversal, Reynolds called Broun's explanation "disingenuous." He argued that a museum director must make decisions about content when considering whether to mount a proposed show. But once the decision is made to show a particular exhibit, he stressed, support for the curators who assembled the material must be unswerving.

Before she changed her mind, Broun apparently had isolated herself in the art world. The National Endowment for the Arts, which helped fund the show with a $45,000 grant, implicitly opposed the removal in a statement that said in part: "As reviewed by the arts endowment, this was considered a professional and artistically excellent exhibition in its original composition." The Association of Art Museum Directors had prepared a formal statement opposing the LeWitt removal, but instead endorsed Broun's change of heart.

Mary Gardner Neill, president of the Association of Art Museum Directors and director of the Yale University Art Gallery, said Broun raised some "complicated" issues. "But when another institution initiates an exhibit, it's essential to preserve its integrity," she said.

Broun was not without some qualified political support. Although "gratified" that the LeWitt work was reinstated, Rep. Peter Kostmayer (D-PA) praised Broun on the floor of the House of Representatives. He said the director "believes deeply and passionately . . . in the First Amendment and its principles of freedom of expression." He cited her defense of her museum's "West as America" exhibit, which has been controversial because of its unflattering appraisal of the westward expansion of the United States (see page 161).

Asked whether she had underestimated the magnitude of the opposition to her initial decision, Broun said, "It did not occur to me that anything I was doing would invoke a public outcry about censorship. I regret that the exhibit organizers chose to put it in those terms." Reported in: *Washington Post*, July 13, 16.

periodical

Oklahoma City, Oklahoma

Playboy magazine will no longer be hidden behind checkout counters in Oklahoma City convenience stores, after attorneys for the magazine and the city agreed its covers and contents are not obscene or harmful to minors. The two sides reached agreement May 23 after attorneys for *Playboy* threatened the city with a federal lawsuit. A municipal ordinance mandates that all material "harmful to minors" must be obscured behind so-called "blinder racks," which hide the lower two-thirds of a magazine's cover.

Until recently, some Oklahoma City convenience stores were forced to put *Playboy* behind "blinder racks" with other adult magazines. On at least two occasions police officers issued misdemeanor citations to store clerks for displaying the magazine's entire cover.

Playboy attorney J.W. Coyle said, "The covers may show long legs and tops of breasts, but they do not show nipples or pubic hair. If it's not obscene, it should not be behind blinder racks. That prohibits the dissemination of the message and free flow of information."

Future enforcement of the ordinance will depend on each issue's merit, said assistant city attorney Patricia Dennis. "When we get a complaint, we'd have to look at that particular issue and decide whether the artistic material taken as a whole would be in violation," she said. Reported in: *Daily Oklahoman*, May 24. □

(IFC report . . . from page 139)

guidance on how libraries may appropriately define meeting room use. The Interpretation suggests language that, we have been advised by counsel, would be most likely to survive court challenge, and that best serves our desire to ensure that the principles of the *Library Bill of Rights* are supported consistently through all types of library resources and services. Similar language and recommendations can be found in our new Interpretation, "Exhibit Spaces and Bulletin Boards." We believed it best to separate these two, as meeting rooms particularly have been a matter of interest to libraries since the Mississippi case, and exhibit spaces and bulletin boards sometimes present distinct problems.

The IFC recommends adoption of these three Interpretations of the *Library Bill of Rights*.

Council previously requested that the IFC develop a policy in response to the FBI Library Awareness Program and other law enforcement inquiries about library users. At the height of the Library Awareness Program, the Committee developed and circulated guidelines for responding to such inquiries; these now have been revised and broadened into a policy statement which covers law enforcement agencies at all levels of government. This new document is entitled "Policy Concerning Confidentiality of Personally Identifiable Information About Library Users". The IFC recommends its adoption (see page 144).

Part Two

I am pleased to come before you today to complete my report on behalf of the Intellectual Freedom Committee. The Committee has six additional action items for your consideration.

Today we bring you the two final revised Interpretations of the *Library Bill of Rights*: "Administrative Policies and Procedures Affecting Access to Library Resources and Materials," which has been renamed "Regulations, Policies and Procedures Affecting Access to Library Resources and Services" and "Restricted Access to Library Materials". These revisions have been circulated at this Conference and revised in response to input which the Committee has received. These revisions complete the current comprehensive review of all the Interpretations of the *Library Bill of Rights*. Upon their adoption, the Office for Intellectual Freedom will go to press with the 4th edition of the *Intellectual Freedom Manual*.

The IFC recommends adoption of these two Interpretations of the *Library Bill of Rights*.

The Committee responded to a specific request to develop a new Interpretation of the *Library Bill of Rights* interpreting the meaning of Article V of the *Library Bill of Rights*: "A person's right to use a library should not be denied or abridged because of origin, age, background, or views." The Intellectual Freedom Committee feels that Article V speaks quite clearly for itself and, in lieu of a new Interpretation, has developed a brief statement of definition which will assist librarians in understanding the scope and effect of Article V. This statement will be incorporated in the new edition of the *Intellectual Freedom Manual*.

resolution on revision of a Smithsonian Institution exhibition

A retrospective exhibition of western art became another in a series of recent federal efforts to use the power of the purse to dictate or control speech in traditionally protected arenas. Objections to the commentary accompanying paintings in the Smithsonian Institution's current exhibit, "The West as America: Reinterpreting Images of the Frontier, 1820-1920," led to pressure to reduce the Institution's funding in testimony before the U.S. Senate Appropriations Committee (see page 161). The IFC has prepared a resolution in response to these circumstances and recommends its adoption.

resolution in appreciation of United States Supreme Court Justice Thurgood Marshall

On June 27, Justice Marshall announced his retirement after 24 years of distinguished service on the United States Supreme Court (see page 164). ALA, like all Americans, owes Justice Marshall deep gratitude for his consistent, courageous, and remarkable record on behalf of the civil rights, free expression, and privacy of all people. The IFC has prepared a resolution of appreciation and recommends its adoption.

resolution against pornography victims compensation act

As Chair of the Intellectual Freedom Committee, I was prepared to present testimony May 22 before the Senate Judiciary Committee on the Pornography Victims Compensation Act. This bill would provide for a civil cause of action by persons who cast themselves as victims of crimes "inspired" by published material. That is, if the perpetrator of a rape or other sexual crime testified that the crime was

inspired by something read in a book or a magazine, or seen on TV or in a film, the victim of the crime could sue the *publisher*, the *producer*, or the *distributor* of that material. This bill, besides being based on faulty scientific premises, would have a devastating impact on library collections and could potentially expose libraries to substantial financial liability for the circulation of constitutionally protected material. At the eleventh hour, the hearing was postponed, but I do anticipate going to Washington to testify when the hearing is re-scheduled in the near future. The IFC has prepared a resolution relating to this legislation and recommends its adoption.

resolution supporting access to information on family planning and abortion

This resolution reaffirms the responsibility of librarians to provide access to all information relating to family planning, abortion, and related issues, regardless of viewpoint, and reaffirms ALA's opposition to attempts at any level of government to restrict access to such information. This resolution is a response to the United States Supreme Court ruling in *Rust* v. *Sullivan*, which approved use of the power of the purse to limit and dictate the speech between doctors and patients regarding abortion in Title X funded family planning clinics. As you will recall, ALA and the Freedom to Read Foundation filed an *amicus curiae* brief before the United States Supreme Court in this case, pointing out the grave dangers to First Amendment rights posed by the Department of Health and Human Services regulations prohibiting health care workers from "counseling" women about abortion and, therefore, interfering with the confidential doctor-patient relationship. The *Rust* decision dictates that the government, by providing funds, may command that only government-approved viewpoints be represented in the program(s) supported by the funding. The implications for public libraries and library services are monstrous. We, therefore, ask Council to adopt this resolution.

memorandum on ALA video and special projects

The Intellectual Freedom Committee was approached in regard to the intellectual freedom implications of the decision to entirely eliminate ALA Video and Special Projects from the ALA budget. Video has raised many of the most difficult intellectual freedom concerns that have confronted librarians — and reached the attention of the Committee — in the last several years. ALA has provided major leadership in addressing these issues and the program support that has been offered membership through ALA Video and Special Projects — often in close conjunction with the Intellectual Freedom Committee, the Office for Intellectual Freedom, and other ALA units — has been invaluable. While the IFC recognizes that budgetary matters are generally outside its scope, the Committee believes the major intellectual freedom policy implications arising from this decision fall within its charge. Therefore, the IFC has prepared an advisory Memorandum to the Executive Board and Council on the subject and recommends reconsideration of the decision in relation to the issues identified in it.

universal declaration of human rights

At the 1991 Midwinter Meeting, Council referred to the IFC and the IRC the question of whether ALA should consider adopting the entire U.N. *Universal Declaration of Human Rights* or additional sections of it. At the Midwinter Meeting, in fact, this Council adopted Article 19 of that document as ALA policy. At the same time, Council adopted an Interpretation of the *Library Bill of Rights* entitled "The Universal Right to Free Expression," which references not only Article 19, but also Articles 18 and 20 of the U.N. *Declaration*. The ALA Council has never found it necessary to "adopt" the entire U.S. Constitution as policy, much less the Bill of Rights or the Declaration of Independence. The Intellectual Freedom Committee questioned the necessity of adopting entire blocks of policy documents from other sources, no matter how admirable, unless such adoption would significantly expand on the primary purposes of the Association and usefully supplement the existing corpus of ALA policy. For this reason, the IFC concurred with the IRC recommendation that was presented at Council II [not to adopt the *Universal Declaration of Human Rights*]. The Committee also expressed concerns that some of the articles raise issues that the Association lacks the resources or interest to address effectively. The potential for members to engage the Association's time and energy in areas of international concern only indirectly related to librarians and libraries based upon the commitment implied by the adoption of a document as broad as this concerns the Intellectual Freedom Committee.

Kreimer v. Morristown

There has been a great deal of interest and discussion at this conference concerning the *Kreimer* v. *Morristown* case in which portions of regulations intended to control the use of the Morristown, New Jersey, Public Library were invalidated by a judge for violating the First Amendment right of a homeless person to receive information (see *Newsletter*, July 1991, p. 116. For excerpts from the judge's opinion see page 169).

The case attracted considerable media attention, both locally and nationally, and has raised a question for many libraries concerning the legality of their own regulations. The problem is one of protecting all users' rights to receive information while maintaining a balance that adequately respects the legitimate need to maintain the comfort and safety of other patrons and staff members, and to provide for the necessary control of the library.

The Committee urges all those concerned about this case to read the full text of the Judge's decision which will be

made available to Council members and others by ALA upon request. In addition, copies of the ALA counsel's analysis of the decision are being circulated to Council this morning. The IFC has attached to this report its Memorandum to the ALA Executive Board concerning the case.

The Committee has studied the Judge's decision and believes that ALA's counsel is correct that the ruling both acknowledges and reinforces each local library's right, responsibility, and necessity to draft reasonable policies and procedures to guide the use of its facilities and services. We also believe that the case provides extremely strong support for the First Amendment protection of libraries and for the right to receive information as a corollary of the right to free expression. In the current judicial climate, this is an important case which provides some balance to other recent decisions that tend toward narrowing the First Amendment's protections. We would hate to see this aspect of the ruling overturned or weakened through a hasty or ill-conceived appeal. We believe that there are more effective, more economical, and less risky ways to resolve the issues raised by this case than attempting to reverse the decision. However, a reversal of the judge's decision resulting from an appeal would pose substantial danger for all libraries. Therefore, the IFC has recommended that in the event of an appeal in the case — and we believe that one already has been filed — ALA review the grounds of the appeal and consider filing an amicus brief in support of the principles of access to information and the First Amendment rights enumerated by Judge Sarokin. The Freedom to Read Foundation, as its President reported to you at Council I, has authorized similar action (see page 146).

In addition, the Intellectual Freedom Committee has established a task force to draw up guidelines. In its work, this task force will seek expert legal advice, resulting in the development of suggestions to assist local libraries in reviewing or drafting policies to deal with problem patrons that will likely meet constitutional standards. We anticipate completing this work prior to Midwinter.

hearing on fees for library service

On Sunday, June 30, the Intellectual Freedom Committee conducted the second in its series of hearings on fees for library service. We received testimony from ALA members speaking on various aspects of the question of fees. From the record the Committee is developing, we anticipate a number of policy recommendations emerging as well as continued exploration of related issues.

ALA v. Thornburgh II

In February of this year, ALA joined with the Freedom to Read Foundation to challenge the Child Protection Restoration and Penalties Enhancement Act of 1990. This new law purports to correct the constitutional infirmities identified in the Child Protection and Obscenity Enforcement Act of 1988 during our successful challenge of it in the U.S. Circuit Court of Appeals for the District of Columbia. The new law, however, requires recordkeeping and labeling of depictions of sexual activity, even between adults, and would require librarians to try to determine whether sexual depictions were actual or simulated. In addition, for the first time, it makes it a crime to distribute admittedly constitutionally protected material without first complying with recordkeeping requirements. The challenge to the new law has resulted in an agreed stipulation that the government will not enforce the law at least until regulations interpreting it have been issued and become effective. The government also has promised never to prosecute under the new law based upon images or depictions made prior to the effective date of these regulations. Regulations have been issued this week and the Committee has begun its analysis of them (see page 173). Now that they have been issued, there will be a 60 day period for public comment before they become effective. It is after that 60 day period that our constitutional challenge to the law itself, and our request for a permanent injunction against its enforcement may be ruled upon. Meanwhile, the government has appealed, and we have cross-appealed, in the older case challenging the old law. That appeal is still pending before the United States Circuit Court of Appeals for the District of Columbia.

modular education program

The IFC conducted the first field test of two modules of the Modular Education Program on Confidentiality in Libraries as a post-conference to the PLA National Conference in San Diego. As a result of information gained from these field tests, we are proceeding with the development, including revisions and modifications, of the program. A second field test of an additional module will take place in October. We anticipate publication of the entire program shortly thereafter. The program will feature trainers' manuals and participants' workbooks with activities designed to instruct library administrators, staff, trustees, and other interested groups and individuals about intellectual freedom in libraries, using confidentiality of library records as the model. The modules tested in San Diego were "Policy Writing" and "Technology and Confidentiality." We anticipate testing our legislative module in October. The IFC is excited about this program which, to my knowledge, is unique, as it is the only self-conducted educational program that focuses on the intellectual freedom aspects of confidentiality and privacy in libraries.

banned books week 1991

Banned Books Week 1991 will be held September 28 through October 5. Our theme this year is, of course, the Bicentennial of the Bill of Rights. In addition, OIF, with the American Bar Association's Commission on Public

Understanding About the Law, has produced a Bill of Rights Bicentennial Resource Kit which focuses not only on First Amendment issues, but also on the broader issues embodied in the entire Bill of Rights and 14th Amendment. A series of excellent posters developed by the American Bar Association, which have been appearing on public transport systems in selected cities, was reproduced in part to accompany the resource book. The Bicentennial kit, like the Banned Books Week kit, will assist librarians, community organizations, teachers, and others in preparing events and programs in celebration of the Bicentennial of the Bill of Rights.

My term as Chair of the Intellectual Freedom Committee has been an extraordinarily busy and fulfilling one. I wish to extend my thanks to my fellow committee members, the Council, and President Dougherty for the opportunity to serve. Intellectual freedom is the bedrock of our profession, and is the principle that guides my professional life. I have enjoyed the challenge of dealing with the IFC's ever-expanding agenda and the complex and profound issues which this Council has entrusted to the IFC. I look forward to continuing my involvement with the intellectual freedom concerns as a member of this Council, and I convey my best wishes to my colleagues serving on the Intellectual Freedom Committee next year. Thank you for the privilege to serve as the chair of the Intellectual Freedom Committee; this position has offered me the highest level of professional fulfillment. □

Resolution on Revision of a Smithsonian Institution Exhibition

Whereas, "The West as America: Reinterpreting Images of the Frontier, 1820-1920" is being exhibited March 15 through July 7, 1991, in the National Museum of American Art, operated by the Smithsonian Institution; and

Whereas, This art-historical exhibition has created a widely-publicized controversy because of its perceived interpretation of United States history; and

Whereas, Concern has been expressed at the U.S. Senate Appropriations Committee hearings about the exhibition's viewpoint; and

Whereas, Similar concerns over the content of artists' works recently have threatened suppression of artistic expression as a condition of federal funding; and

Whereas, *The Washington Post* reported on June 2, 1991, that the exhibition curators, pressured by reviewer comments and a Congressional threat to reduce funding, revised ten of the fifty-five exhibition texts; and

Whereas, In their role as traditional forums of free expression, libraries often use government funds to mount exhibits and present programs containing controversial points of view; now, therefore be it

Resolved, That the American Library Association urge the U.S. Senate Appropriations Committee to fund the Smithsonian Institution and similar institutions regardless of the point of view of the artist or exhibition; and be it further

Resolved, That the American Library Association support the exhibition curators and gallery administration in resisting pressure to revise text because of controversy and/or pressure about the viewpoint expressed in the exhibition's content; and be it further

Resolved, That copies of this resolution be transmitted to members of the U.S. Senate Appropriations Committee; Senator Ted Stevens of Alaska; Senator Slade Gorton of Washington; William Truettner, exhibit curator; John Frohnmayer, Director of the National Endowment for the Arts; Wilbur L. Ross, Jr., Chair of the National Museum of American Art Advisory Commission; and Robert McC. Adams, Secretary of the Smithsonian Institution.

Adopted July 3, 1991, by the ALA Council. □

Resolution in Appreciation of United States Supreme Court Justice Thurgood Marshall

Whereas, Associate Justice Thurgood Marshall, after 24 years on the United States Supreme Court, has announced his retirement; and

Whereas, Justice Marshall has been a resolute voice, both in majority and dissenting opinions, in defense of civil liberties, freedom of expression, and the right to privacy for all people; and

Whereas, United States libraries operate as traditional spheres of free expression only if protected by those constitutional freedoms defended so effectively and eloquently by Justice Marshall; and

Whereas, Such freedoms were reaffirmed by Justice Marshall in such majority opinions as *Tinker v. Des Moines Ind. Community School District* (1969); *Stanley v. Georgia* (1969); *Board of Education, Island Trees Union Free School District No. 26. v. Pico* (1982); and in such dissenting opinions as *Rust v. Sullivan* (1991); now, therefore be it

Resolved, That the American Library Association expresses its profound appreciation and gratitude to retiring United States Supreme Court Justice Thurgood Marshall for his defense of libraries through his dedicated affirmation of civil rights and the right to freedom of expression; and be it further

Resolved, That copies of this resolution be sent to Justice Thurgood Marshall, Chief Justice William Rehnquist, President George Bush, and members of the Senate Judiciary Committee.

Adopted July 3, 1991, by the ALA Council. □

Resolution Supporting Access to Information on Family Planning and Abortion

Whereas, 1988 regulations under Title X of the Family Planning Services and Population Act of 1970 prohibit doctors in federally funded family planning programs from exercising their First Amendment right to discuss the option of abortion; and

Whereas, These regulations have been upheld in the United States Supreme Court decision in *Rust* v. *Sullivan*, a case which involved a challenge to these regulations as a violation of the doctor/patient relationship and of the First Amendment right to free speech; and

Whereas, The American Library Association and the Freedom to Read Foundation filed an *amicus curiae* brief in support of the principle of an unrestricted First Amendment right to disseminate and receive information; and

Whereas, The Supreme Court decision specifically states that "The financial constraints that restrict an indigent woman's ability to enjoy the full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortion, but rather of her indigency," and this statement violates the intent of Article V of the *Library Bill of Rights* and;

Whereas, As a result of this decision, attempts may be made by interests at federal, state, or local levels of government to impose similar restrictions on other publicly supported agencies, including libraries, which provide access to information relating to family planning and abortion; now, therefore be it

Resolved, That the American Library Association reaffirm the responsibility of librarians to provide access to all information relating to family planning, abortion, and other issues regardless of viewpoint; and be it further

Resolved, That the American Library Association reaffirm its opposition to attempts at any level of government to restrict access to such information in violation of the *Library Bill of Rights*; and be it further

Resolved, That a copy of this resolution be sent to the Secretary of Health and Human Services, the American Medical Association, the President of the American College of Obstetricians and Gynecologists, and appropriate Congressional bodies.

Adopted July 3, 1991, by the ALA Council. □

Resolution Against Pornography Victims Compensation Act

Whereas, The Pornography Victims Compensation Act, S. 983, has been introduced in Congress; and

Whereas, This proposed legislation provides a cause of action for victims of sexual abuse, rape, and murder against producers and distributors of materials with sexual content; and

Whereas, This proposed legislation authorizes victims of sexual assault to sue distributors, which may include libraries, as well as exhibitors and sellers, for distributing a book, magazine, or recording that is protected by the First Amendment; and

Whereas, Victims of sexual assault could sue if they believe the library materials were a "proximate" cause of the crime committed against them; and

Whereas, Neither current research nor United States case law supports such a theory of causation; and

Whereas, Legal action under this act may be initiated up to six years after their "right of action first occurred"; and

Whereas, This proposed legislation would have a chilling effect on distributors of legally acquired, constitutionally protected materials, including libraries; and would expose libraries and their governing bodies to the potential for substantial financial liability; now, therefore be it

Resolved, That the American Library Association oppose the Pornography Victims Compensation Act; and be it further

Resolved, That the American Library Association support the rights of libraries to select for and circulate from their collections any constitutionally protected work they may legally acquire; and be it further

Resolved, That a copy of this resolution be sent to the Senate Judiciary Committee, Senator Joseph Biden, Chair.

Adopted July 3, 1991, by the ALA Council. □

intellectual freedom bibliography

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